

CDBG GOVERNMENT CAPITAL IMPROVEMENTS FORM AGREEMENT

AGREEMENT

Between

BROWARD COUNTY

and

CITY OF DANIA BEACH

**PROVIDING FOR FUNDING AND ADMINISTRATION OF
38th YEAR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS**

for

SOLAR STREET LIGHTING PROJECT

IN THE AMOUNT OF \$145,679

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IN THE AMOUNT OF \$145,679

This is an Agreement, made and entered into by and between: **BROWARD COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

and

CITY OF DANIA BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY."

WITNESSETH:

WHEREAS, COUNTY is a recipient of Community Development Block Grant ("CDBG") funds from the United States Department of Housing and Urban Development ("H.U.D.") pursuant to 24 C.F.R. 85; and

WHEREAS, on May 22nd, 2012, the Board adopted Resolution #2012-345 approving funding to CITY under COUNTY's CDBG Program for infrastructure improvements for a Solar Street Lighting Project in CITY, under the terms and conditions more specifically described herein; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and CITY agree as follows:

ARTICLE 1 - DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 **Assurances:** means those assurances made by CITY to COUNTY as specifically set forth in this Agreement.
- 1.2 **Board:** means the Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.
- 1.3 **Broward County CDBG Program or Program:** means the Community Development Program applied for by Broward County and awarded by HUD as authorized pursuant to Title I, Housing and Community Development Act of 1974, Public Law 93-383, as amended.
- 1.4 **CDBG Funds:** means the Community Development Block Grant Funds; the monies provided by COUNTY to CITY pursuant to the terms of this Agreement.
- 1.5 **Contract Administrator:** means the Community Development Specialist and/or Division Manager designated by the Division Director to administer this Agreement. Unless provided for otherwise in this Agreement, in the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator.
- 1.6 **County Administrator:** means the administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.7 **County Attorney:** means the chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.8 **Davis-Bacon:** means the prevailing wage rate as determined by the Secretary of Labor to be paid laborers and mechanics working on projects of Two Thousand and 00/100 Dollars (\$2,000.00) or more.
- 1.9 **Division:** means the Housing Finance and Community Development Division of Broward County.
- 1.10 **H.U.D.:** means the United States Department of Housing and Urban Development.

- 1.11 Project: means the Project(s) set forth in Article 3 hereof, and Exhibit "A," Project Description.
- 1.12 Rules and Regulations of H.U.D.: means the rules and regulations of H.U.D., including but not limited to, 24 C.F.R. 570, "Community Development Block Grant Regulations"; 24 C.F.R. 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments"; OMB Circular A-87 (now 2 C.F.R. 225), "Cost Principles for State, Local and Indian Tribal Governments"; OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organization"; as amended from time to time, which are incorporated herein by reference.

ARTICLE 2 - PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Title I of the Housing and Community Development Act of 1974, P.L. 93-383, consolidated several existing categorical programs for community development into a single program of CDBGs for the purpose of allowing local discretion as to the determination of needs and priorities for a community development program. The needs and priorities of community development in Broward County were determined through consultation with representatives of the community participating in the Broward County CDBG Program.
- 2.2 Pursuant to 24 C.F.R. 570.200(a) and 570.301 of the Rules and Regulations of H.U.D., the Project was included in the Broward County CDBG Program submission to H.U.D. It was determined that the proposals funded under this Project will address one (1) or more of the following three (3) national objectives:
 - 2.2.1 Activities benefiting a majority (at least 51%) of low and moderate-income persons in primarily residential areas, including:
 - a) Area benefit activities (uniform emergency telephone numbers system, payment of special assessments, qualifying activities in areas that are either a Federally-designated Empowerment Zone or Enterprise Community);
 - b) Limited clientele activities (at least 51%) of whom are low and moderate income, abused children, battered spouses, elderly persons, those "severely disabled," homeless, illiterate, persons living with AIDS, and migrant and farm workers; activities that serve

to remove material or architectural barriers to the mobility or accessibility of elderly persons or those "severely disabled"; a micro enterprise related assistance activity; a qualified activity designed to provide job training and placement and/or other employment and support services);

- c) Housing activities carried out for providing or improving permanent residential structures; and
- d) Job creation or retention activities designed to create or retain permanent jobs.

2.2.2 Activities which aid in the prevention or elimination of slums or blight based on varied criteria including, but not limited to, meeting the definition of a slum, blighted, or deteriorated area under State or local law, the documented presence of a number of deteriorated buildings or public improvements, addressing the conditions which contributed to the deterioration, rehabilitation to eliminate specific conditions detrimental to public health and safety, those activities which address prevention or elimination of slums or blight in an urban renewal areas.

2.2.3 Activities designed to meet community development needs having a particular urgency if the recipient of CDBG Funds certifies that the activity is designed to alleviate existing conditions which pose a serious threat to the health or welfare of the community, are of recent origin, the recipient is unable to finance the activity on its own, and that other sources of funding are not available.

- 2.3 Under the Rules and Regulations of H.U.D., COUNTY is the administrator for the Program and is mandated to comply with various statutes, rules and regulations of the United States and the Rules and Regulations of H.U.D., as to the allocation and expenditure of CDBG Funds as well as protecting the interests of certain classes of individuals who reside in Broward County, Florida.
- 2.4 COUNTY shall conduct all programs and activities relating to housing and community development in a manner which will affirmatively further fair housing. COUNTY shall fund only subrecipients who have taken steps to promote fair housing.
- 2.5 COUNTY desires to disburse CDBG Funds to CITY and has obtained assurances from CITY that it will comply with the statutes, rules and regulations of the United States, the Rules and Regulations of H.U.D., the State of Florida, and applicable codes and regulations of COUNTY relating to the Project and the Program, as a condition precedent to the release of such CDBG Funds to CITY.

- 2.6 If CITY is found to be taking actions designed to discourage affordable housing for sale or rent within the confines of Broward County, it shall not be eligible to receive CDBG Funds under this Agreement.
- 2.7 This Agreement is subject to the availability of CDBG Funds as more specifically described in Article 10 herein.

ARTICLE 3 – PROJECT

- 3.1 CITY shall provide and implement infrastructure improvements for the Solar Street Lighting Project outlined in Exhibit "A," Project Description, attached hereto. If the Project is to be constructed, provided, located or implemented on CITY's property, CITY shall assume all liability for same upon completion of the Project.
- 3.2 CITY shall comply with the Project Schedule/Timeline set forth in Exhibit "C," attached hereto. Failure to maintain the implementation schedule within sixty (60) days of the deadlines identified in Exhibit "C" may warrant a full review by the Division's staff to meet H.U.D.'s required expenditure rates for the Program year. Such referral may be the first step toward possible reprogramming of funds. Failure to maintain the implementation schedule within ninety (90) days of the deadlines may be cause for a recommendation from the Division that all uncommitted and unexpended funds be transferred to the contingency account or be reprogrammed consistent with the Housing and Community Development Act of 1974, as amended.
- 3.3 All specifications and plans prepared or to be used for the Project shall be certified and approved by CITY and submitted to the Division for approval prior to advertisement or implementation as applicable.
- 3.4 The Division may issue a Stop Order to CITY which shall halt all work on the Project in the event that the work is not being done according to specifications or when, in the Division Director's judgment, CITY or its contractor have violated federal guidelines and regulations, or the terms of this Agreement.
- 3.5 The Division will carry out periodic monitoring and evaluation activities as determined necessary by the Division. The continuation of this Agreement is dependent upon satisfactory evaluation conclusions. Such evaluation will be based on the terms of this Agreement, comparisons of planned versus actual progress relating to Project(s) scheduling, budgets, in-kind contributions and output measures. Upon request, CITY shall furnish to the Division Director, COUNTY or their designees, such records and information, including copies and/or transcriptions, as is determined necessary by the Division Director or COUNTY. CITY shall submit on a monthly and quarterly basis, and at other times upon the request of the Division Director, information and status reports required by Division, COUNTY or H.U.D. on forms approved by the Division Director.

3.6 If CITY shall hire design professionals and/or contractors to perform any services to complete the Project, the following shall apply:

3.6.1 CITY shall provide COUNTY with a copy of all contracts and correspondence between CITY and the design professional for the Project. The design professional's service shall include civil, structural, mechanical and electrical engineering and architectural services, as applicable for the Project, including all necessary, incidental and related activities and services required by the Project's scope and contemplated in the professional's level of effort.

3.6.2 CITY shall provide COUNTY with a copy of all contracts and correspondence between CITY and any contractors for the Project. The Contractor's service shall include, but not be limited to, labor, materials, equipment and other services necessary to perform all of the work described in the Contract Documents for the construction of the Project in accordance with the requirements and provisions of the codes as defined by plan review incident to permitting. The Project also includes all Project site preparations (pre-inspection, examination; tests and borings, and discovery of the site conditions and other similar activities.

3.6.3 COUNTY shall reimburse CITY for its design expenditures upon completion of each design phase more particularly described in the Project Schedule, which shall include, but not be limited to, Schematic Design, Design Development and Contract Documents. At the conclusion of each phase, CITY shall provide the associated deliverable and shall submit an invoice for payment:

a) Schematic Design

The design professional shall prepare and submit for approval by the Division Director, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. Additionally, the design professional shall submit a written Statement of Probable Construction Cost based on current area, volume or other unit costs. The design professional must research all applicable codes, ordinances, rules, regulations and requirements of governmental authorities having jurisdiction over the Project.

b) Design Development

The design professional shall prepare the Design Development Documents consisting of drawings and other documents describing the size and character of the entire Project, including architectural, structural, mechanical, and electrical systems, materials and such other essentials as may be appropriate. The design professional shall consider the availability of materials, equipment and labor, construction sequencing and scheduling, economic analysis of construction and operations, user safety and maintenance requirements and energy conservation.

The Design Development Documents shall consist of, but are not limited to, the following:

1. Expansion of the architectural, structural, mechanical and electrical Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through appropriate: Plans, sections and elevations, typical construction details; three dimensional sketches; basic materials and finishes; equipment and furniture layouts and space requirements; basic structural system and dimensions; energy conservation measures; outline specifications; basic selection of mechanical and electrical equipment and their capabilities;
2. Development scheduling services consisting of reviewing and updating previously established schedules; and
3. Written Statement of Probable Construction Cost consisting of updating and refining the Schematic Design Phase Statement of Probable Construction Cost.

c) Contract Documents

The design professional shall prepare from the approved Design Development Documents the working drawings and specifications setting forth in detail and prescribing the work to be done, the materials, quality of work, finishes and equipment required for the architectural, structural, mechanical and electrical work and the necessary bidding information (collectively referred to as the "Contract Documents"). The design professional shall, in the preparation of the drawings and specifications, take into account all prevailing codes and regulations governing construction in Broward County. Work tasks to accomplish this include but are not limited to

the following: prepare drawings and specifications for construction; update and revise the Probable Construction Costs.

The Contract Documents shall be sufficiently complete and include sufficient detail to permit issuance of a building permit and responsive bids obtained.

- 3.7 No construction work may be undertaken by CITY without written authorization from the Division prior to issuance of COUNTY's Notice to Incur Costs.
- 3.8 All change orders shall receive prior written approval from the Division.
- 3.9 At the completion of each Project, "as-built" drawings, when necessary, shall be submitted to the Division for approval prior to final payment.
- 3.10 COUNTY shall reimburse CITY for its construction expenditures pursuant to the Project Schedule, which shall indicate the dates for the commencement and completion of the various stages of construction and shall be revised as required by the conditions of the Project. The Project's construction schedule shall be updated at least monthly by CITY or its Contractor.
- 3.11 At no time shall COUNTY distribute CDBG Funds where CITY has not provided the required deliverables.
- 3.12 In the event CITY is unable to complete the Project because of delays resulting from untimely review by COUNTY or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of CITY, COUNTY shall grant a reasonable extension of time for completion of the services without additional funding. It shall be CITY's responsibility to notify COUNTY promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform COUNTY of all facts and details related to the delay.
- 3.13 CITY shall submit invoices for reimbursement of construction expenditures which are identified by the specific project number in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished. Invoices for each phase shall not exceed the amounts allocated to that phase. The invoice shall show a summary of fees with accrual of the total and credits for portions paid previously. Payment to CITY shall be as provided for in Article 4 herein.
- 3.14 CITY shall meet or exceed the standards described in the Project Description attached hereto as Exhibit "A," if applicable, and all applicable codes, ordinances, statutes and any other regulations imposed by any regulatory body or authority governing the design and construction.

- 3.15 CITY shall meet with COUNTY at reasonable times and with reasonable notice to discuss the Project.
- 3.16 CITY shall provide COUNTY with Monthly Progress Reports as provided in Exhibit "D," attached hereto, which shall indicate the status of all outstanding work that has been authorized by COUNTY including the planned versus actual progress of each individual project based on the project schedule and project budget. Such reports shall be submitted to the Division on the first business day following the end of the preceding month.
- 3.17 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data recorded in the Fort Lauderdale/Hollywood International Airport Weather Station.

**ARTICLE 4 - FUNDING AND METHOD OF PAYMENT AND
PROVISIONS RELATING TO THE USE OF THE FUNDS**

- 4.1 The maximum amount payable by COUNTY under this Agreement shall be One Hundred Forty-five Thousand Six Hundred Seventy-nine and 00/100 Dollars (\$145,679.00).
- 4.2 COUNTY shall reimburse CITY for the Project expenses incurred as provided for in Exhibit "B," Budget Table/Costs For Project, attached hereto, provided a suspension of payment as provided for within this Agreement has not occurred, and provided further that CITY complies with the procedures for invoices and payments as set forth in this Article.
- 4.3 CITY shall invoice COUNTY monthly using Exhibit "E," Request for Payment, on the following basis:
 - 4.3.1 CITY shall provide COUNTY with an executed original of any contracts or subcontracts authorizing the work to be done on the Project.
 - 4.3.2 CITY shall provide COUNTY with documentation of leveraging which has occurred during each month.
 - 4.3.3 CITY shall submit a certified copy of the purchase order authorizing the services for which it is invoicing.
 - 4.3.4 If CITY has awarded a contract to an independent contractor to perform Project services, CITY shall submit to COUNTY a certified copy of the contractor's invoice stating the services rendered and the date the services were rendered.

- 4.3.5 CITY's administrator or the administrator's authorized representative shall certify that the work that is being invoiced has been completed.
- 4.4 CITY shall disclose to COUNTY any and all third party funding, whether public or private, for the Project. No COUNTY funding shall be used to supplant existing third party funding.
- 4.5 CITY shall submit invoices for reimbursement of construction expenditures in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished. The invoice shall show a summary of fees with accrual of the total and credits for portions paid previously. Upon receipt of invoices, reports and other materials as described in Section 4.3, the Division shall audit such bid awards, contracts, reports and invoices to determine whether the items invoiced have been completed and that the invoiced items are proper for payment.
- 4.6 Upon determination by the Division that the services or material invoiced have been received or completed, the Division shall make payment to CITY the amount it determines, pursuant to the audit, to be payable. Payment for travel expenses, if any, shall be made in accordance with COUNTY guidelines for travel reimbursement.
- 4.7 For purposes of this section, invoices, reports and other materials as described in Section 4.3, shall not be honored by COUNTY if received later than sixty (60) days after expiration or termination of this Agreement; however, invoices for impact fees will be honored by COUNTY up to twelve (12) months after expiration or termination of this Agreement.
- 4.8 COUNTY shall pay CITY within thirty (30) calendar days from receipt of CITY's invoice for reimbursement of Project expenses, as defined by COUNTY's Prompt Payment Ordinance, Section 1-51.6, as may be amended from time to time, ninety percent (90%) of the total shown to be due on such invoice. When the services to be performed on the Project are fifty percent (50%) complete and upon written request by CITY, COUNTY shall assess whether the Project is progressing in a satisfactory manner, in its sole discretion, and may authorize that subsequent payments may be increased to ninety-five percent (95%) of the total shown to be due on subsequent statements.
- 4.9 Upon CITY's satisfactory completion of the Project and after COUNTY's review and approval, COUNTY shall remit to CITY the ten percent (10%) or five percent (5%) portion of the amounts previously withheld.
- 4.10 CITY shall notify the Division at least forty-eight (48) hours in advance of the date that work on the Project will be initiated in order that on-site inspections may be conducted by COUNTY.

- 4.11 CITY shall expend the CDBG Funds allocated to the Project by the end of the term of this Agreement. All CDBG Funds not expended within the term of this Agreement shall remain in the custody and control of COUNTY.
- 4.12 Any of the following events shall be sufficient cause for suspension of payments by COUNTY. Such events include but are not limited to:
 - 4.12.1 Ineligible use of CDBG Funds;
 - 4.12.2 Failure to comply with the terms of this Agreement;
 - 4.12.3 Failure to submit reports as required including a favorable audit report;
and
 - 4.12.4 Submittal of incorrect or incomplete reports in any material respect.
- 4.13 Reversion of assets. In accordance with the requirements of 24 C.F.R. 570.503 (b)(7) and 570.505, upon expiration of this Agreement, CITY shall transfer to COUNTY any CDBG Funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG Funds. Any property under CITY's control that was acquired or improved in whole or in part with CDBG Funds (including CDBG Funds provided to CITY in the form of a loan) in excess of Twenty-five Thousand and 00/100 Dollars (\$25,000.00) shall either be;
 - 4.13.1 (i) Used to meet one of the national objectives in 24 C.F.R. 570.208 (formerly 24 C.F.R. 570.901) until five (5) years after expiration of this Agreement, or for such longer period of time as determined to be appropriate by COUNTY; or (ii) not used in accordance with subsection (i) above, in which event, CITY shall pay to COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. Payment by CITY is program income to COUNTY. (No payment is required from CITY after the period of time specified in subsection (i) above.)
- 4.14 Payments to CITY shall be sent to:

Robert Baldwin, City Manager
City of Dania Beach
100 Dania Beach Blvd
Dania Beach, Florida 33304

- 4.15 Any documentation required to be provided to COUNTY by CITY under this Agreement shall be sent to:

Ralph Stone, Director
Broward County Housing Finance and Community Development Division
110 N.E. 3rd Street – Third Floor
Fort Lauderdale, Florida 33301

ARTICLE 5 – LIABILITY/INDEMNIFICATION

- 5.1 CITY shall be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.
- 5.2 In the event that CITY contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:
 - 5.2.1 Indemnification: To the fullest extent permitted by law, CITY's Contractor shall indemnify and hold harmless COUNTY, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CITY's Contractor and persons employed or utilized by CITY's Contractor in the performance of this Contract. These indemnifications shall survive the term of this Contract.

ARTICLE 6 – INSURANCE

- 6.1 CITY and COUNTY are state agencies or political subdivisions of the state of Florida as defined in Chapter 768.28, Florida Statutes, and each party shall be fully responsible for acts and omissions of its agents, contractors, or employees in the performance of its obligations under this Agreement, to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the state of Florida to be sued by third parties, in any matter, arising out of this Agreement or any other contract. Both parties shall furnish the Contract Administrator of the other party with written verification of liability protection in accordance with state law prior to final execution of this Agreement.
 - 6.1.1 In the event CITY elects to purchase excess liability coverage, Broward County, shall be named as an additional insured and certificate holder under said policy and COUNTY shall be notified of said coverage and provided evidence of same.

6.2 Insurance Requirements for CITY's Contractor(s).

6.2.1 In the event CITY elects to enter into an agreement with a third party Contractor(s) ("Contractor") to perform any work/activities for the Project referenced herein, CITY shall include in its contract with the successful Contractor the requirements set forth below in favor of COUNTY in addition to any CITY requirements and CITY shall provide COUNTY, prior to commencement of any activities, Certificates of Insurance evidencing compliance with the following requirements:

6.2.1.1 Contractor shall maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following insurance coverage, limits, including endorsements described herein. The requirements contained herein, as well as CITY's or COUNTY's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Agreement.

- a. Commercial General Liability: Contractor shall maintain Commercial General Liability coverage with minimum limits of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) each occurrence combined single limit for bodily injury and property damage. Contractor's coverage shall not contain any restrictive endorsement(s) excluding or limiting Products/Completed Operations, Independent Contractors, Broad Form Property Damage, Contractual Liability or Cross Liability. Coverage must include Premises and/or Operations Coverage, and Explosion, Collapse and Underground Hazards.
- b. Business Automobile Liability: Contractor shall maintain Business Automobile Liability coverage with minimum limits of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) each occurrence combined single limit for bodily injury and property damage. Coverage shall include liability for Owned, Non-Owned, Hired and Any Auto if applicable.
- c. Workers' Compensation Insurance and Employers' Liability: Contractor shall maintain Workers' Compensation Insurance for all employees in compliance with Chapter 440, Florida Statutes, as amended from time to time, and Employers' Liability Insurance with minimum limits of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) each accident. Note: Elective exemptions or

coverage through an employee leasing arrangement will NOT satisfy this requirement.

- d. Builder's Risk Insurance: Contractor performing construction or remodeling services shall maintain Builder's Risk insurance and provide an all risk Completed Value form Builder's Risk Policy with a deductible not to exceed Ten Thousand and 00/100 Dollars (\$10,000.00) each claim for all perils except wind and flood. For the peril of wind, Contractor shall maintain a deductible that is commercially feasible which does not exceed five percent (5%) of the value of the Contract Price said percentage to be determined at the sole discretion of COUNTY's Risk Manager. For the peril of flood, Contractor shall maintain a deductible that is commercially feasible which does not exceed One Hundred Thousand and 00/100 Dollars (\$100,000.00). Such Policy shall reflect Broward County, as an additional loss payee. Contractor shall be responsible for all deductibles.
- e. Additional Insured: Contractor shall endorse CITY and COUNTY as additional insureds to the Commercial General Liability Policy and any Excess Policies. The additional insured endorsements shall read "City of Dania Beach, Florida" and "Broward County."
- f. Waiver of Subrogation: Contractor agrees by entering into this Contract to a Waiver of Subrogation in favor of CITY and COUNTY for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others or its equivalent.
- g. Certificates of Insurance: Contractor shall provide CITY a Certificate(s) of Insurance evidencing that all coverage, limits and endorsements required herein are maintained and in full force and effect.
- h. Such policy or policies shall be issued by approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in Broward County, Florida.

6.3 In the event of loss, CITY shall give prompt notice to the insurance carrier and COUNTY. COUNTY may make proof of loss if not made promptly by CITY.

- 6.4 All policies shall be endorsed to provide COUNTY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the required term, copies of renewal certificates shall be furnished at least thirty (30) days prior to the date of their expiration.
- 6.5 Right to Revise or Reject: CITY and COUNTY reserve the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverage and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work/specifications affecting the applicability of coverage. Additionally, CITY and COUNTY reserve the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due of its poor financial condition or failure to operate legally.

ARTICLE 7 - ASSURANCES

- 7.1 The Assurances provided by CITY in this Article shall survive the expiration or earlier termination of this Agreement.
- 7.2 CITY shall comply with the provisions of Section 102, Executive Order 11246, incorporated herein by reference, and with the guidelines for applicants on equal opportunity obligations for CDBG Funds in regard to construction contracts.
- 7.3 CITY shall submit written notification to the Division of all prebid and preconstruction meetings at least two (2) weeks prior to the actual date, of the meetings.
- 7.4 CITY shall comply with the provisions outlined in 24 C.F.R., Part 135 which implements Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U. S. C. 1701u).
- 7.5 CITY shall comply with all applicable federal, state and county laws, ordinances, and codes and regulations. Any conflict or inconsistency between the above federal, state or county guidelines and regulations and this Agreement shall be resolved in favor of the more restrictive regulations.
- 7.6 CITY shall act in accordance with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which provides, in part, that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which CITY receives federal financial assistance and will immediately take any measures necessary to effectuate this Agreement. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to CITY, this assurance shall obligate CITY or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal

financial assistance is extended or for another purpose involving the provision of similar services or benefits.

7.7 CITY shall not use CDBG Funds for religious activities or provide same to primarily religious entities for any activities, including secular activities.

7.8 CITY shall establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other associates.

7.9 CITY shall comply with the following requirements as they relate to acquisition, lease, sublease, and disposition of real property.

7.9.1 Real property acquired utilizing CDBG Funds provided under this Agreement shall be subject to a Declaration of Restrictive Covenants in favor of COUNTY, in substantially the form provided to CITY by COUNTY. The Declaration of Restrictive Covenants shall ensure that the real property is used for eligible activities consistent with the Rules and Regulations of H.U.D. and that CITY's overall project to be completed following acquisition of the property complies with the H.U.D. National Objective set forth in Exhibit "A," Project Description, consistent with 24 C.F.R. 570.208. The Declaration of Restrictive Covenants shall be recorded by COUNTY in the Public Records of Broward County, Florida, prior to the disbursement of any CDBG Funds under this Agreement and shall be a covenant running with the land for a period five (5) years after completion of the H.U.D. National Objective. If the CDBG Funds provided to CITY are in the form of a loan versus a grant, CITY shall execute a Promissory Note, in favor of COUNTY, in substantially the form provided by COUNTY to CITY. Failure to use the property for the purpose(s) intended and pursuant to the terms within this Agreement shall result in breach of this Agreement and all remedies available to COUNTY.

7.9.2 Before entering into a lease or sublease with a third party, CITY shall notify the Division in writing of its intent to enter into a lease or sublease, provide a copy of the proposed lease or sublease and obtain the Division's consent.

7.9.3 Property acquired utilizing CDBG Funds provided under this Agreement shall be used for the original approved purpose and CITY shall demonstrate significant progress within twelve (12) months of closing on such property. In the event such progress is not evidenced nor commenced within said twelve (12) months of closing, CITY shall transfer ownership of the property acquired with CDBG Funds to COUNTY, if COUNTY so requests in writing.

- 7.9.4 All real property transferred to COUNTY's ownership as a result of the aforementioned deficiency, lack of significant material progress, or real property returned as a result of expiration and subsequent termination of this Agreement, shall be used by COUNTY at its discretion for reallocation to other eligible CDBG activities.
- 7.9.5 Real property acquired utilizing CDBG Funds which are used for the purpose of housing construction shall be deeded to home buyers at no cost to the home buyer. Any income realized as a result of the disposition of property by CITY shall be returned to COUNTY, unless otherwise provided for by written agreement.
- 7.9.6 Any regulations, policies, procedures, or requirements governing the acquisition, use and disposition of real property including, but not limited to, the Uniform Relocation and Real Property Acquisition Policies Act, incorporated herein by reference, shall be followed and provisions of said regulations, policies, procedures and requirements shall be met.
- 7.9.7 The income of persons benefiting from acquisition of real property used for housing shall not exceed H.U.D. Section 8 guidelines unless written authorization is given by the Division.
- 7.9.8 Proceeds from the sale of real property purchased in whole or in part with CDBG Funds shall be used for the originally authorized purposes as long as needed for that purpose(s), and CITY shall not dispose of or encumber its title or other interests, consistent with 24 C.F.R. 85.31.
- 7.9.9 Method of transfers of real property acquired with or improved by use of CDBG Funds shall be accomplished after written approval by the Division Director.
- 7.10 Real property, equipment and supplies acquired with CDBG Funds provided under this Agreement, and no longer needed for the originally authorized purpose, shall be disposed of in the manner authorized by the Division Director consistent with 24 C.F.R. 85 after CITY has requested disposition instructions.
- 7.11 If there is any construction work over Two Thousand and 00/100 Dollars (\$2,000.00), financed in whole or part with CDBG Funds under this Agreement, CITY shall, if applicable, comply with the Davis-Bacon Act, 40 U.S.C. 276a-276a-5, as amended, which requires all laborers and mechanics working on the Project be paid not less than prevailing wage rates as determined by the Secretary of Labor. COUNTY shall determine the applicability of the Davis-Bacon Act to the Project under this Agreement.
- 7.12 If CITY is seeking to use CDBG Funds for payment of impact fees, CITY shall attempt to secure a waiver of such impact fees. If CITY is unsuccessful in

obtaining a waiver, CITY shall submit to the Division documentation reflecting CITY's unsuccessful efforts prior to utilization of CDBG Funds for payment of impact fees.

7.13 CITY shall administer, in good faith, a policy designed to assure a workplace free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.

7.14 CITY shall provide applicants for rehabilitation assistance, tenants in housing being rehabilitated and purchasers of H.U.D. associated housing with information concerning the dangers of Lead-Based Paint.

7.15 CITY agrees that:

7.15.1 No federal appropriated funds have been paid or will be paid, by or on behalf of CITY, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal funded contract, grant, loan or cooperative agreement.

7.15.2 If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal funded contract, grant, loan, or cooperative agreement, CITY shall complete and submit COUNTY's Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

7.15.3 CITY shall assure that the language of this Section 7.15 be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients of funding shall comply with the requirements.

7.16 In accordance with Section 519 of Public Law 101-144 and Section 104 (I) of the Federal Act (the H.U.D. Appropriations Act), CITY certifies that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations.

ARTICLE 8 - FINANCIAL RESPONSIBILITY

- 8.1 CITY shall give COUNTY, H.U.D., and the U. S. Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents relating to the Project.
- 8.2 CITY shall comply with the requirements and standards of OMB Circular A-87 (now 2 C.F.R. 225), "Cost Principles for State, Local and Indian Tribal Governments" and 24 C.F.R. 85, incorporated herein by reference, as may be amended from time to time and copies of which are incorporated herein by reference.
- 8.3 CITY shall comply with the audit requirements of OMB Circular A-133, entitled "Audits of States, Local Governments and Non-Profit Organizations." The audit shall cover the entire operations of the local government or, at the option of that government, may cover only the department or agency that received, expended, or otherwise administered the federal funds. Such audit must be filed with COUNTY within one hundred twenty (120) days after the close of the fiscal year of the governmental entity. All grant funds from COUNTY should be shown via explicit disclosure in the annual financial statements or the accompanying notes to the financial statements.
- 8.4 CITY shall use all CDBG Funds for the Program only for eligible activities specifically outlined in this Agreement. In the event any of such funds are used for ineligible activities, such inappropriately used funds shall be repaid to COUNTY by CITY, and COUNTY, in its sole discretion, may reallocate the funds to other eligible CDBG projects.
- 8.5 CITY shall budget and expend all CDBG Funds provided by COUNTY under this Agreement in accordance with the Division's "Procedures Manual for Subrecipients."
- 8.6 CITY shall account for program income related to the Project financed in whole or part with CDBG Funds. Upon the prior written approval of COUNTY, program income generated as a result of receipt of CDBG Funds under this Agreement shall be used in one (1) of the following manners:
- 8.6.1 Added to funds committed to the Project by CITY and used proportionally to the original funding allocation to further eligible program objectives.
 - 8.6.2 To finance the nonfederal share of the Project.
 - 8.6.3 Only for eligible CDBG activities.
 - 8.6.4 Returned to COUNTY upon written request of the Division.

- 8.7 Any real property under CITY's control that was acquired or improved in whole or in part with CDBG Funds shall be:
- 8.7.1 Used to meet one of the National Objectives in 24 C.F.R. 570.208 until five (5) years after expiration of this Agreement; and
 - 8.7.2 Disposed of, if disposition occurs, in a manner that results in COUNTY being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to the expenditure of non-CDBG Funds for acquisition of or improvement to the property.
- 8.8 If CITY causes any CDBG Funds provided by COUNTY under this Agreement to be expended in violation of this Agreement, it shall be responsible to refund such monies in full to COUNTY from nonfederal resources, or, if this Agreement is still in force, any subsequent request for payment shall be withheld by COUNTY. Failure to complete the Project in accordance with this Agreement, whether voluntarily or otherwise, constitutes a material breach of this Agreement, and any CDBG Funds provided by COUNTY pursuant to this Agreement for the Project shall be repaid in full to COUNTY from nonfederal resources. This provision shall survive the expiration or earlier termination of this Agreement.

ARTICLE 9 - TERM OF AGREEMENT

The term of this Agreement shall commence retroactively on **October 1, 2012**, and shall end on **September 30, 2013**, unless terminated earlier or extended pursuant to the terms of this Agreement.

ARTICLE 10 - TERMINATION

- 10.1 This Agreement is subject to the availability of CDBG Funds. Should CDBG Funds no longer be available, this Agreement shall terminate upon no less than twenty-four (24) hours notice in writing to CITY. Said notice shall be provided by COUNTY in accordance with Article 11, Notices. COUNTY shall be the final authority as to the availability of CDBG Funds.
- 10.2 If, through any cause, CITY fails to commence work on the Project, as set forth in Exhibit "C," Project Schedule/Timeline, within ninety (90) days from the date of COUNTY's issuance of the Notice to Incur Costs, or fails to fulfill in timely and proper manner its obligations under this Agreement, or if CITY shall violate any of the covenants, agreements, or stipulations of this Agreement, COUNTY, in the discretion of and through the County Administrator, shall have the right to terminate this Agreement or suspend payment in whole or part by providing written notice to CITY of such termination or suspension of payment and specifying the effective date thereof, at least five (5) days before the effective date of termination or suspension. If payments are withheld, the Division shall

specify in writing the actions that must be taken by CITY as a condition precedent to resumption of payments and should specify a reasonable date for compliance.

- 10.3 In the event of termination, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, capital equipment and any other assets secured by CITY with CDBG Funds provided by COUNTY under this Agreement shall be returned to COUNTY.
- 10.4 Notwithstanding the above, CITY shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by CITY, and COUNTY may withhold any payments to CITY, for the purposes of setoff until such time as the exact amount of damages is determined.
- 10.5 In the best interests of the Program and in order to better serve the people in the target areas and fulfill the purposes of this Agreement, either party may terminate this Agreement upon giving thirty (30) days' notice in writing of its intent to terminate, stating its reasons for doing so. In the event COUNTY terminates this Agreement, COUNTY shall pay CITY for documented committed eligible Project expenses in accordance with Exhibit "B," Budget Table/Costs for Project; however, after COUNTY provides notice of termination to CITY, COUNTY shall not be required to reimburse CITY for any of its eligible Project expenses under this Agreement up to the date of termination, if COUNTY is not able to obtain such funding from H.U.D. for the payment of these costs. The County Administrator is authorized to terminate this Agreement on behalf of COUNTY pursuant to this Section upon the Administrator's determination that termination is in the best interests of COUNTY and the Program.
- 10.6 All requests for amendments to this Agreement shall be submitted in writing to the Division Director no less than ninety (90) days prior to the termination date of this Agreement.
- 10.7 If, in the opinion of the Division Director, CITY has violated the terms of this Agreement, the Division Director may bring the matter before the County Administrator for consideration.

ARTICLE 11 – NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Ralph Stone, Director
Broward County Housing Finance and Community Development Division
110 NE 3rd Street, Suite 300
Fort Lauderdale, Florida 33301

FOR CITY:

Robert Baldwin, City Manager
City of Dania Beach
100 Dania Beach Blvd
Dania Beach, Florida 33304

ARTICLE 12 – MISCELLANEOUS

12.1 EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE.

No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. CITY shall comply with all applicable requirements of the Broward County CBE Program in the award and administration of this Agreement. Failure by CITY to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the Board, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Broward County Code of Ordinances, or under the Broward County Administrative Code, or under applicable law, with all of such remedies being cumulative.

CITY shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

CITY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. CITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding

nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CITY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, CITY represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from CITY all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

12.2 AUDIT RIGHT AND RETENTION OF RECORDS.

COUNTY shall have the right to audit the books, records, and accounts of CITY and its subcontractors that are related to this Project for the period of time required by 24 C.F.R. 570, if such retention period is greater than that required by the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time. CITY and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CITY and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CITY, or its subcontractor, as applicable, shall make same available at no cost to COUNTY in written form.

CITY and its subcontractors shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period, or for a minimum period of five (5) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the required retention period or five (5) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to CITY's and its subcontractors' records, CITY and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CITY or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

CITY shall, by written contract, require its subcontractors to comply with the requirements and obligations of this Section 12.2.

12.3 INDEPENDENT CONTRACTOR.

CITY is an independent contractor under this Agreement. Services provided by CITY shall be performed by employees of CITY subject to the supervision by CITY, and shall not be deemed officers, employees, or agents of COUNTY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CITY, which policies of CITY shall not conflict with COUNTY, or State of Florida policies, rules or regulations relating to the use of CDBG Funds provided under this Agreement.

12.4 PRIOR AGREEMENTS SUPERSEDED.

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein; and there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

12.5 AMENDMENTS.

COUNTY may, in its discretion, amend this Agreement to conform to changes in federal, state, local, and/or COUNTY 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 Board of County Commissioners, except the County Administrator shall be authorized to execute amendments that change the term of the Agreement or that change the Project, so long as the Project consists of eligible activities under 24 C.F.R. Part 570. Except for the provisions as set forth herein, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. The Division Director shall be authorized to approve line item changes to the budget information set out in Exhibit "B," Budget Table/Costs for Project, attached hereto, in the form of an amendment to this Agreement, provided such changes do not result in an increase in the CDBG Fund amount set forth in Section 4.1 of this Agreement, and Exhibit "B."

12.6 SUBCONTRACT AND ASSIGNMENT.

Except as provided for in this Agreement, CITY shall not subcontract, transfer or assign the performance of services called for in this Agreement. However, this Agreement shall run to COUNTY or its successors.

12.7 REPORTS.

All reports, plans, surveys, information, documents, maps and other data procedures developed, prepared, assembled or completed by CITY for the purposes of this Agreement shall become the property of COUNTY without restriction, reservation or limitation of their use and shall be made available by CITY at any time upon request by COUNTY or Division. Upon completion of all work contemplated under this Agreement, copies of all of the above data shall be delivered to the Division Director upon the Director's written request.

12.8 CONFLICT OF INTEREST.

CITY shall comply with the requirements of 24 C.F.R. 570.489 relative to the Conflict of Interest provisions. CITY, its officers, employees, agents, or consultants who exercise or have exercised any functions or responsibilities with respect to the Project or who are in a position to participate in a decision making process or gain inside information with regard to the Project, shall not obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter. Any possible conflicting interest on the part of CITY, its employees, or agents, shall be disclosed in writing to the Division.

12.9 CONFLICTS.

Neither CITY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CITY's loyal and conscientious exercise of judgment related to its performance under this Agreement. None of CITY's employees shall, during the term of this Agreement, serve as an adverse or hostile witness against COUNTY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of COUNTY in any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement. In the event CITY is permitted to utilize subcontractors to perform any services required by this Agreement, CITY shall prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

12.10 JURISDICTION, VENUE, WAIVER OF JURY TRIAL.

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

12.11 SEVERANCE.

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CITY elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

12.12 LEGAL PROVISIONS DEEMED INCLUDED.

Each and every provision of any law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party this Agreement shall forthwith be amended to make such insertion.

12.13 COMPLIANCE WITH APPLICABLE LAWS.

CITY shall keep fully informed of all Federal and State laws, all local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect work authorized under the terms of this Agreement. CITY shall at all times observe and comply with all such laws, ordinances, regulations, and orders.

12.14 THIRD PARTY BENEFICIARIES.

Neither CITY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, there are no third party beneficiaries to this Agreement and no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is

not their intent to create any rights or obligations in any third person or entity under this Agreement.

12.15 WAIVER OF BREACH AND MATERIALITY.

Failure by COUNTY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. No waiver shall be effective unless it is in writing and signed by the party against whom it is asserted. A waiver of any provision of this Agreement or failure to perform any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any prior or subsequent failure to perform any term, covenant or condition of this Agreement and shall not be construed to be a modification of the terms of this Agreement. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

12.16 JOINT PREPARATION.

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

12.17 PRIORITY OF PROVISIONS.

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 12 of this Agreement shall prevail and be given effect. In the event there is a conflict between any provisions set forth in this Agreement and a more stringent State or Federal provision which is applicable to any services performed under this Agreement, the more stringent State or Federal provision shall prevail.

12.18 INCORPORATION BY REFERENCE.

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A" – "E" are incorporated into and made a part of this Agreement. The Rules and Regulations of H.U.D. and any other H.U.D. regulations addressed in this Agreement which are not specifically identified in the definition contained in Section 1.12 herein shall be deemed incorporated herein by reference.

12.19 USE OF TERMS.

All terms and words used in this Agreement, despite the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section of this Agreement, such reference is to the section as a whole, including all of the subsections and subparagraphs of such section unless the reference is made to a particular subsection or subparagraph of such section.

12.20 SURVIVAL.

Either party's right to monitor, evaluate, enforce, audit and review, any obligations to indemnify and insure, and any assurances and items of financial responsibility shall survive the expiration or earlier termination of this Agreement. Any provision of this Agreement which contains a restriction or requirement which extends beyond the date of termination or expiration set forth herein shall survive termination or expiration of this Agreement and be enforceable.

12.21 FURTHER ASSURANCE.

CITY and COUNTY shall execute, acknowledge, deliver, and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties intend to cooperate with each other in effecting the terms of this Agreement.

12.22 TIME IS OF THE ESSENCE.

Time shall be of the essence under this Agreement and the representations and warranties solely made herein are all material and of the essence of this Agreement.

12.23 WAIVER OF CLAIMS.

CITY shall waive any claim against COUNTY, and its agents, servants and employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment of award in any suit or proceeding declaring this Agreement null, void or voidable, delaying the same or any part thereof, from being carried out.

12.24 CUMULATIVE RIGHTS.

All rights and remedies of COUNTY hereunder or at law or in equity are cumulative and shall be in addition to any other rights and remedies available. The exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. Failure by COUNTY to promptly exercise any of its rights shall not operate to forfeit or be treated as a waiver of any such rights.

12.25 SPECIFIC PERFORMANCE.

In addition to all other remedies, CITY's obligations contained herein shall be subject to the remedy of specific performance by appropriate action commenced in a court of competent jurisdiction.

12.26 FORCE MAJEURE.

If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the parties may otherwise have to terminate this Agreement.

12.27 COUNTY BUSINESS ENTERPRISE PROGRAM.

COUNTY has established a policy relating to County Business Enterprise ("CBE") program participation in all County contracts. Although this Agreement does NOT have assigned CBE goals, pursuant to 24 C.F.R. 85.36(e) or 84.44(b), CITY shall take affirmative steps to use small firms, minority-owned firms, or labor surplus area firms when possible as the sources of supplies, equipment and services.

12.28 EXECUTION AUTHORITY.

The individual executing this Agreement on behalf of CITY personally warrants that he or she has full authority to execute this Agreement on behalf of CITY.

12.29 MULTIPLE ORIGINALS.

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY, through the County Administrator, authorized to execute same by action of the Board on May 22, 2012, and CITY OF DANIA BEACH, signing by and through its _____, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through the
County Administrator

Signature

By _____
Bertha Henry

Print Name

_____ day of _____, 20____.

Signature

Print Name

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Insurance requirements
approved by Broward County
Risk Management Division

By _____
Signature (Date)

By _____
Patrice M. Eichen (Date)
Assistant County Attorney

Print Name and Title above

PME:hb
38YR CDBG Dania Beach Solar Street Lighting 122712.doc
12/27/12
#12-129.31

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF DANIA BEACH
PROVIDING FOR FUNDING AND ADMINISTRATION OF 38th YEAR COMMUNITY
DEVELOPMENT BLOCK GRANT PROGRAMS FOR SOLAR STREET LIGHTING
PROJECT IN THE AMOUNT OF \$145,679

CITY

ATTEST:

CITY OF DANIA BEACH

By _____
City Clerk

By _____
Signature

Print Name and Title

____ day of _____, 20____.

Approved as to form:

By _____
City Attorney

EXHIBIT "A"

PROJECT DESCRIPTION

Project Name: Solar Street Lighting Project

Project Description:

CDBG Funds provided by COUNTY under the Agreement shall be used by CITY for infrastructure improvements for the Solar Street Lighting Project. The Project shall consist of the construction (purchase and installation) of a minimum of fifteen (15) solar powered street lighting poles with fixtures in CDBG eligible areas (Census Tracts noted below) that are in need of additional street and safety lighting. All lighting poles with fixtures shall be located within CITY's rights-of-way or on CITY-owned park property. CITY has approved a decorative style pole which costs approximately \$7,000 to \$9,500 a unit installed. Based on this per unit cost, CITY shall purchase a minimum of fifteen (15) units and install them within Census Tract 804.02 Block Group 1 and Census Tract 805.

CDBG HUD National Objective: 570.208(a) (1) Area Benefit

EXHIBIT "B"

BUDGET TABLE/COSTS FOR PROJECT

Each cost category below reflects the proposed amount necessary to complete the Project by funding source(s).

Funding Sources					
Cost Category		(1) CDBG	(2) Non-CDBG	(3)	Total
A.	Personnel	\$			\$
B.	Fringe Benefits	\$			\$
C.	Travel	\$			\$
D.	Equipment	\$			\$
E.	Supplies	\$			\$
F.	Contractual Services	\$	\$7,000		\$ 7,000
G.	Construction	\$ 145,679			\$ 145,679
H.	Other	\$	\$3,000		\$ 3,000
I.	Total	\$ 145,679	\$10,000		\$ 155,679

EXHIBIT "B"

BUDGET TABLE/COSTS FOR PROJECT
(Continued)

BUDGET NARRATIVE

The budget narrative statements below provide a detailed justification for each cost category shown in the budget table for both CDBG Funds and Non-CDBG funding sources utilized in financing the Project.

CDBG Funds: \$145,679

CITY shall utilize the CDBG Funds provided by COUNTY for infrastructure improvements for the Project consisting of construction (purchase and installation) of a minimum of fifteen (15) solar powered street lighting poles. The cost for each pole and fixture installation is estimated to be between \$7,000 and \$9,500.

Non-CDBG Funds: \$10,000

Contractual Services

CITY funds in the amount of \$7,000 shall be used for engineering services to identify pole locations and create bid specifications.

Other Costs

CITY funds in the estimated amount of \$3,000 shall be used to pay the Project's permit costs.

EXHIBIT "B"
BUDGET TABLE/COSTS FOR PROJECT
(Continued)

Allowable Cost for U.S. HUD Share of Budget

Federal cost principles for grants and contracts with state and local governments are stated in OMB Circular A-87 (now 2 C.F.R. 225), Cost Principles for State, Local and Indian Tribal Governments. This document is an extensive and somewhat complicated series of principles governing the allowability of various types of costs under federal grants and contracts. General information concerning the cost principles is summarized below. The following types of costs are specifically unallowable:

- (A) Advertising costs other than those associated with recruitment of personnel and the solicitation of bids for goods and services.
- (B) Bad debts.
- (C) Contingencies.
- (D) Contribution and donations.
- (E) Entertainment.
- (F) Fines and penalties.
- (G) Interest.
- (H) Losses on other grants or contracts.

Most other categories of cost are generally allowable under the cost principles provided the costs are allowable and reasonable. General comments on individual cost elements are listed below:

Salary costs are generally allowable provided they are based on actual current salaries adjusted for any anticipated cost-of-living or merit increases during the grant period. Salary costs for unidentified new employees must be consistent with the organization's overall employee compensation structure. The organizational compensation policy should not change as a result of obtaining a federal grant.

Fringe Benefit costs such as pay for vacations, holidays, sick leave, employee insurance, and unemployment benefits are allowable to the extent required by law or established organizational policy.

EXHIBIT "B"

BUDGET TABLE/COSTS FOR PROJECT

(Continued)

Travel costs consistent with established organizational policy are generally allowable. The difference between first class and coach air fare is specifically unallowable. In the absence of established organizational travel policy, it is a good practice to adopt policies consistent with the federal travel regulations.

Equipment costs should be based on the least cost method of acquisition (rent, purchase, lease with option to buy) over the grant period as demonstrated by competitive bidding. Equipment costs are only allowable to the extent the equipment is directly necessary to accomplish the grant. The cost of equipment not fully utilized under the grant must be allocated to other organization costs to assure a fair share distribution. Whenever practical, used equipment should be considered in meeting equipment needs.

Material cost directly associated with the project is allowable. Prices must generally be justified through competitive bids except for nominal purchases.

Subcontracts must be awarded on a competitive basis except in extraordinary circumstances. The same principles applicable to individual cost principles for grantees are generally applicable cost-reimbursement type subcontracts under grants.

Consultant agreements should include a certification by the consultant that the consultant rate is equal to or less than the lowest rate the consultant accepts for comparable work. Additionally the Congress has prohibited the salary component of consultant fees under H.U.D. Grants not to exceed the applicable approved rate schedule.

Construction costs include construction of new buildings, structures, or other real property as well as alteration or repair of existing structures. Construction costs should be supported by detailed cost estimates and competitive bidding. Consult with the Housing Finance and Community Development Compliance Officer on applicability of the Davis-Bacon Wage determination to this project.

Other costs include all types of direct costs not specified above. Normally, such costs include space, telephone, utilities, printing, and other basic operating expenses.

Leverage is that which the municipality or non-profit organization brings to the project. It may be in the form of services or contributed operating expenses (in-kind contributions) or cash support from the organization itself or from other sources.

EXHIBIT "C"

PROJECT SCHEDULE/TIMELINE

The table below lists the main work tasks required to complete Project objectives before the term of the Agreement expires.

Work Task	Start-Up Date	Date of Completion
Develop bid specifications	JUNE 26, 2013	JULY 24, 2013
Bid and award project	JULY 25, 2013	AUGUST 20, 2013
Construction	SEPTEMBER 9, 2013	SEPTEMBER 23, 2013
Project close out	SEPTEMBER 24, 2013	SEPTEMBER 30, 2013

EXHIBIT "D"

MONTHLY PROGRESS REPORT

Reporting Period: _____

Date Report Prepared: _____

A. Project Information:

Agency Name	
Person Preparing the Report	
Job Title	
Signature	
Project Name	
Project Start-Up Date	
Project Completion Date	
Amended Completion Date (if applicable)	

B.1 Project Cost

		Funds Expended to Date	Percentage
Total Project	\$	\$	%
CDBG Funds	\$	\$	%
Other Funding (specify source below) _____	\$	\$	%

B.2 Declaration of Agency Budget Changes

Program Income: _____

Source of Program Income: _____

EXHIBIT "D"

MONTHLY PROGRESS REPORT
(Continued)

B.3 Other Grant Awards

Date(s): _____ Dollar Amount(s): _____

Funding Source(s): _____ Funding Contract Person(s): _____

B.4 Describe attempts to secure additional funding:

B.5 Percent of Project completed to date: _____ %

B.6 Anticipated Changes in Staffing:

1. Office Hours: _____

2. Resignations: _____

3. Part-time or Full-time Employee(s):

C.1 Brief Project Description & Project Location (if applicable, include homeowner's name and address, general scope of work performed, and associated expenses):

C. 2 Describe specific work tasks & status completed this month:

Work Tasks	Status (i.e., underway, completed)

EXHIBIT "D"
MONTHLY PROGRESS REPORT
(Continued)

C.3 Describe success or problems encountered with the Project:

C.4 Anticipated problems or concerns with Project. Please identify technical assistance needed and/or requested from Housing Finance and Community Development Division staff.

C.5 Anticipated advertisements and/or other contractual services. If so, has the Housing Finance and Community Development Division staff been advised and appropriate steps taken to assure compliance?

C.6 If applicable, please complete the following Direct Benefit Report Form provided by COUNTY on all program participants.

EXHIBIT "D"

MONTHLY PROGRESS REPORT
(C.6 – Continued)

Indicate persons or households. Only unduplicated counts should be given.

Total number served
this month

Total number served
year to date

Hispanic
Non-Hispanic

1. Total

- 11. White
- 12. Black/African American
- 13. Asian
- 14. American Indian/Alaskan Native
- 15. Native Hawaiian or other Pacific Islander

- 16. American Indian/Alaskan Native & White
- 17. Asian & White
- 18. Black/African American & White
- 19. American Indian/Alaskan Native & Black/African American
- 20. Other Multi-Racial

2. Total

- Very Low Income <30% of area median
- Low Income <50% of area median
- Moderate Income <80% of area median
- Non-Low Moderate Income

**income levels must equal persons benefiting*

3. Total

- Households
- Persons
- Homeless
- Female Head of Household
- Disabled Persons Assisted
- Elderly Persons Assisted
- Census Tract served

EXHIBIT "D"

MONTHLY PROGRESS REPORT
(C.6 – Continued)

Applicable if implementing one of the following activities:

Public Services / Public Facilities and Improvements

Total number
this quarter

Total number
year to date

Number that have *new* access to this service or benefit
Number that have *improved* access to this service or benefit
Number that receive a service or benefit that is no longer
substandard

1. Total

Number that have *new* access to this type of public facility or
infrastructure improvement

Number that have *improved* access to this type of public facility or
infrastructure improvement

Number served by public facility or infrastructure that is no
longer substandard

2. Total

Number of beds created in overnight shelter or other emergency housing

3. Total

EXHIBIT "D"

MONTHLY PROGRESS REPORT
(C.6 – Continued)

Applicable if implementing one of the following activities:

Housing and Economic Development Data

**Total number
this quarter**

**Total number
year to date**

Occupied by elderly
Units moved from sub-standard to standard (HQS or local code)
Units qualified as Energy Star
Units made accessible
Units brought into compliance with lead safety rules (24 C.F.R. Part 35)

1. Total

Number received housing counseling
Number downpayment assistance / closing costs

2. Total

Number of *new* businesses assisted
Number of *existing* businesses assisted

Number of existing businesses *expanding*
Number of existing businesses *relocating*

Number of businesses assisted with commercial façade treatment/
business building rehab

Number of businesses assisted that provide goods or services to
meet the needs of a service area, neighborhood or community

Women-owned business

3. Total

**DUNS number required for each business*

EXHIBIT "D"

MONTHLY PROGRESS REPORT
(Continued)

D. Program Objectives

* Work Tasks	Projected Yearly Total / Performance	Monthly Progress	Progress Yr-To-Date	Supporting Documentation
Develop bid specifications	1			Copy of Bid Specifications
Bid and award Project	1			Copy of Bid Advertisement and Tabulations
Construction (Purchase and installation of the solar lights)	15			Inspection Reports and As-built Survey
Project close out	1			Progress Reports, Pay Requests, Releases of Liens and Final Invoice

* Please list Work Tasks as listed in the Agreement's Exhibit "C" (Project Schedule/Timeline).

EXHIBIT "E"

REQUEST FOR PAYMENT

**Community Development Block Grant Program
_____ Year Funding**

Contract Period: _____ to _____

1. Project Name:			
2. Organization:		Telephone Number:	
3. Billing Number:			
4. Billing Period Covered:			
5. % of Total Contract, Expended thru this Billing:			
6. Cost Categories	Total Expenditures Up to Last Billing	Expenditures This Billing	Total Expenditures To Date
A. Project Costs			
Salary & Fringes			
Contractual			
Construction			
Other Project Costs			
Total Expenditures			
Funds Obligated: (By Funding Agreement)			
Balance			
B. In-kind			

