

RESOLUTION NO. 2013-70

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING ACCEPTANCE OF GRANT FUNDS AND EXECUTION OF A U.S. DEPARTMENT OF HUD SMALL CITIES COMMUNITY DEVELOPMENT BLOCK SUB-GRANT AGREEMENT WITH THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, AUTHORIZING THE CHAIR OF THE BOARD OF COUNTY COMMISSIONERS OR HIS DESIGNEE TO EXECUTE THE CONTRACT AND ALL SUBSEQUENT REQUIRED DOCUMENTS ON BEHALF OF THE COUNTY AND AMENDING THE FISCAL YEAR 2013 TRANSPORTATION TRUST FUND BUDGET TO RECOGNIZE AND APPROPRIATE THE GRANT.

RECITALS

WHEREAS, in its efforts to encourage economic development, the Board of County Commissioners ("Board") considered and approved submission of an application to the U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG") Program, as administered by the Florida Department of Economic Opportunity ("DEO"), to aid in funding infrastructure improvements associated with development of the Silver Creek Assisted Living Facility ("Project"); and

WHEREAS, the DEO selected the County's application for the award of grant funding in the amount of \$750,000, and subsequently on July 17, 2012, the Board adopted Resolution 2012-194, authorizing the Chair (or designee) to execute the required HUD Small Cities CDBG Sub-Grant Agreement subject to the terms and conditions contained therein; and

WHEREAS, the Project developer, Montgomery Land Co., did not finalize its financing obligations within the timeframe provided under the terms and conditions of the Sub-Grant Agreement; and

WHEREAS, in its continued efforts to encourage economic development, the Board conducted two public hearings on September 4, 2012 and October 18, 2012, to again consider submission of an application to the HUD CDBG Program as administered by the DEO, to aid in funding infrastructure improvements associated with development of the Project; and

WHEREAS, the DEO has selected the County's application for the award of grant funding in the amount of \$750,000, and has forwarded the required Sub-Grant Agreement (attached hereto and incorporated herein) governing use of the funds to the County for execution; and

WHEREAS, construction of the proposed facility will provide an economic benefit to the County through the expenditure of construction funds and the creation of approximately 180 full-time jobs when the full development is complete; and

WHEREAS, many of the jobs will benefit low and moderate income individuals; and

WHEREAS, the Board has reviewed the terms and conditions of the Sub-Grant Agreement, and determined it serves a public purpose and the interests of St. Johns County; and

WHEREAS, in the preparation of the St. Johns County Board of County Commissioners Fiscal Year 2013 budget, OMB did not anticipate the award of a U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG") Program in the amount of \$750,000, as administered by the Florida Department of Economic Opportunity ("DEO").

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. Resolution 2012-194 is hereby rescinded.

Section 3. The Board authorizes the Chair, or designee, to execute the HUD Small Cities CDBG Sub-Grant Agreement with the Florida Dept. of Economic Opportunity, governing the use of grants funds in the amount of \$750,000 for infrastructure improvements related to development of the Project. The Board further authorizes the Chair, or designee, to execute any subsequent agreements and/or documents as required for receipt and administration of such grant funds. The Board further authorizes amending the Fiscal Year 2013 Transportation Trust Fund to recognize and appropriate the \$750,000 grant.

Section 4. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor or context of this Resolution, then this Resolution may then be revised without the subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED this 2 day of April, 2013.

**BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY, FLORIDA**

By: 
John H. Morris, Chairman

ATTEST: Cheryl Strickland, Clerk

By: 
Deputy Clerk

RENDITION DATE 4/2/13



STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

Res 2013-70

Contract Number: 13DB-OI-04-65-01-E 07

CFDA Number: 14.228

Rule Chapter: 73C-23, Florida Administrative Code

Effective: June 6, 2010

FFY 2011 FEDERALLY-FUNDED SUBGRANT AGREEMENT

Economic Development

THIS AGREEMENT is entered into by the State of Florida, Department of Economic Opportunity, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Department"), and St. Johns County (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and

B. The Department has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and

C. The Department has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Department and the Recipient agree to the following:

(1) SCOPE OF WORK

The Recipient shall perform the work in accordance with the Program Budget, Attachment A of this Agreement; the Activity Work Plan, Attachment I of this Agreement; and the Florida Small Cities Community Development Block Grant (CDBG) Application submitted by the Recipient on **October 1, 2012**, including future amendments to this Subgrant Agreement that are agreed upon by both parties.

(2) INCORPORATION OF LAWS, RULES, REGULATIONS AND POLICIES

The Recipient and the Department shall be governed by applicable State and Federal laws, rules and regulations, including those identified in Attachment B.

(3) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties, and shall end twenty-four (24) months after the last signed date, unless terminated earlier in accordance with the provisions of Paragraph (12) of this Agreement. Contract extensions will not be granted unless Recipient is able to provide substantial justification and the Division Director approves such extension.

(4) MODIFICATION OF CONTRACT

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(5) RECORDKEEPING

(a) As applicable, Recipient's performance under this Agreement shall be subject to the federal OMB Circular No. A-102, "Common Rule: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (53 Federal Register 8034) or 2 CFR 215, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and either 2 CFR 225, "Cost Principles for State, Local and Indian Tribal Governments," 2 CFR 220, "Cost Principles for Educational Institutions," or 2 CFR 230, "Cost Principles for Non-Profit Organizations."

(b) The Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, and the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of six years from the date the audit report is issued, and shall allow the Department or its designee, the State Chief Financial Officer or the State Auditor General access to the records upon request. The Recipient shall ensure that audit working papers are available to them upon request for a period of six years from the date the audit report is issued, unless extended in writing by the Department. The six year period may be extended for the following exceptions:

1. If any litigation, claim or audit is started before the six year period expires, and extends beyond the six year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
2. Records for the disposition of non-expendable personal property valued at \$5,000 or more at the time it is acquired shall be retained for six years after final disposition.
3. Records relating to real property acquired shall be retained for six years after the closing on the transfer of title.

(c) The Recipient shall maintain all records for the Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Program Budget - Attachment A - and all other applicable laws and regulations.

(d) The Recipient, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to the Department, its employees, and agents. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the Department.

(6) AUDIT REQUIREMENTS

(a) The Recipient agrees to maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement.

(b) These records shall be available at reasonable times for inspection, review, or audit by state personnel and other personnel authorized by the Department. "Reasonable" shall ordinarily mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

(c) The Recipient shall provide the Department with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.

(d) If the Recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised, and in the event that the Recipient expends \$500,000 or more in Federal awards in its fiscal year, the Recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this Agreement shows the Federal resources awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this paragraph.

In connection with the audit requirements addressed in this Paragraph 6 (d) above, the Recipient shall fulfill the requirements for auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

If the Recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Recipient expends less than \$500,000 in Federal awards in its fiscal year and chooses to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal funds.

(e) Send copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by subparagraph (d) above, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Recipient to:

The Department of Economic Opportunity at each of the following addresses:

Department of Economic Opportunity
Office of Inspector General
107 East Madison Street – MSC 130
Tallahassee, Florida 32399-6508
and

Department of Economic Opportunity
Florida Small Cities Community Development Block Grant Program
107 East Madison Street – MSC 400
Tallahassee, Florida 32399-6508

[also send an electronic copy to cdbg@deo.myflorida.com]

Send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

and to any other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

(f) Pursuant to Section .320 (f), OMB Circular A-133, as revised, the Recipient shall send a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letter issued by the auditor, to the Department at the following addresses:

Department of Economic Opportunity
Office of Inspector General
107 East Madison Street – MSC 130
Tallahassee, Florida 32399-6508
and

Department of Economic Opportunity
Florida Small Cities Community Development Block Grant Program
107 East Madison Street – MSC 400
Tallahassee, Florida 32399-6508

[also send an electronic copy to cdbg@deo.myflorida.com]

(g) By the date due, send any reports, management letter, or other information required to be submitted to the Department pursuant to this Agreement in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(h) Recipients should state the date that the reporting package was delivered to the Recipient when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General,

(i) If the audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to the Department of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty days after the Department has notified the Recipient of such non-compliance.

(j) The Recipient shall have all audits completed by an independent certified public accountant (IPA), either a certified public accountant or a public accountant licensed under Chapter 473, Fla. Stat. The IPA shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Department no later than nine months from the end of the Recipient's fiscal year.

(7) REPORTS

(a) The Recipient shall provide the Department with quarterly reports and a close-out report. These reports shall include the current status and progress by the Recipient and all subrecipients and subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Department.

(b) Quarterly reports are due to the Department no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

(c) The close-out report is due 45 days after termination of this Agreement or 45 days after completion of the activities contained in this Agreement, whichever first occurs.

(d) If all required reports and copies are not sent to the Department or are not completed in a manner acceptable to the Department, the Department may withhold further payments until they are completed or may take

other action as stated in Paragraph (11) REMEDIES. "Acceptable to the Department" means that the work product was completed in accordance with the Program Budget, Attachment A of this Agreement; the Activity Work Plan, Attachment I of this Agreement; and the CDBG Application submitted by the Recipient.

(e) The Recipient shall provide additional program updates or information that may be required by the Department.

(f) The Recipient shall provide additional reports and information identified in Attachment D.

(8) MONITORING

The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement, and reported in the quarterly report.

In addition to reviews of audits conducted in accordance with paragraph (6) above, monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits, and/or other procedures. The Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event that the Department determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by the Department to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Department will monitor the performance and financial management by the Recipient throughout the contract term to ensure timely completion of all tasks.

(9) LIABILITY

(a) Unless Recipient is a State agency or subdivision, as defined in Section 768.28, Fla. Stat., the Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement, and shall hold the Department harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Recipient agrees that it is not an employee or agent of the Department, but is an independent contractor.

(b) Any Recipient which is a state agency or subdivision, as defined in Section 768.28, Fla. Stat., agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Department, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, Fla. Stat. Nothing herein is intended to serve as a waiver of sovereign immunity by any Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(10) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Department to make further payment of funds shall, if the Department elects, terminate and the Department has the option to exercise any of its remedies set forth in Paragraph (11). However, the Department may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment:

(a) If any warranty or representation made by the Recipient in this Agreement or any previous agreement with the Department is or becomes false or misleading in any respect, or if the Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Department and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

(b) If material adverse changes occur in the financial condition of the Recipient at any time during the term of this Agreement, and the Recipient fails to cure this adverse change within thirty days from the date written notice is sent by the Department.

(c) If any reports required by this Agreement have not been submitted to the Department or have been submitted with incorrect, incomplete or insufficient information;

(d) If the Recipient has failed to perform and complete in timely fashion any of its obligations under this Agreement.

(11) REMEDIES

If an Event of Default occurs, then the Department may, upon thirty calendar days written notice to the Recipient and upon the Recipient's failure to cure within those thirty days, exercise any one or more of the following remedies, either concurrently or consecutively:

(a) Terminate this Agreement, provided that the Recipient is given at least thirty days prior written notice of such termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address set forth in paragraph (13) herein;

(b) Begin an appropriate legal or equitable action to enforce performance of this Agreement;

(c) Withhold or suspend payment of all or any part of a request for payment;

(d) Require that the Recipient refund to the Department any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

(e) Exercise any corrective or remedial actions, to include but not be limited to:

1. request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

2. issue a written warning to advise that more serious measures may be taken if the situation is not corrected,

3. advise the Recipient to suspend, discontinue, or refrain from incurring costs for any activities in question, or

4. require the Recipient to reimburse the Department for the amount of costs incurred for any items determined to be ineligible;

(f) Exercise any other rights or remedies which may be otherwise available under law.

(g) Pursuing any of the above remedies will not keep the Department from pursuing any other remedies in this Agreement or provided at law or in equity. If the Department waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Department, or affect the later exercise of the same right or remedy by the Department for any other default by the Recipient.

(12) TERMINATION

(a) The Department may terminate this Agreement for cause with thirty days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform in a timely manner, and refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Fla. Stat., as amended.

(b) The Department may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Recipient with thirty calendar days prior written notice.

(c) The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment shall state the effective date of the termination and the procedures for proper closeout of the Agreement.

(d) In the event that this Agreement is terminated, the Recipient will not incur new obligations for the terminated portion of the Agreement after the Recipient has received the notification of termination. The Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Recipient shall not be relieved of liability to the Department because of any breach of Agreement by the Recipient. The Department may, to the extent authorized by law, withhold payments to the Recipient for the purpose of set-off until the exact amount of damages due the Department from the Recipient is determined.

(13) NOTICE AND CONTACT

(a) All notices provided under or pursuant to this Agreement shall be in writing, either by hand delivery, or first class, certified mail, return receipt requested, to the representative identified below at the address set forth below or said notification attached to the original of this Agreement.

(b) The name and address of the Division contract manager for this Agreement is:

Debbie Boyette, Government Operations Consultant II
Florida Small Cities CDBG Program
Department of Economic Opportunity
107 East Madison Street – MSC 400
Tallahassee, Florida 32399-6508
Telephone: (850) 717-8426 – Fax: (850) 922-5609
Email: Debbie.Boyette@deo.myflorida.com

(c) The name and address of the Representative of the Recipient responsible for the administration of this Agreement is:

Ms. Dana Froberg
Homeownership Programs Administrator
500 San Sebastian View
Saint Augustine, Florida, 32084
Telephone: (904) 827-6895 - Fax: (904) 827-6899
Email: dfroberg@sjcfl.us

(d) In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided as stated in (13)(a) above.

(14) SUBCONTRACTS

If the Recipient subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be forwarded to the Department for approval. The Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Department and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Recipient shall document in the quarterly report the subcontractor's progress in performing its work under this Agreement.

For each subcontract, the Recipient shall provide a written statement to the Department as to whether that subcontractor is a minority vendor, as defined in Section 288.703, Fla. Stat.

(15) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(16) ATTACHMENTS

- (a) All attachments to this Agreement are incorporated as if set out fully.
- (b) In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- (c) This Agreement has the following attachments (check all that are applicable):

- Exhibit 1 – Funding Sources
- Attachment A – Program Budget
- Attachment B – Program Statutes and Regulations
- Attachment C – Recordkeeping (N/A)
- Attachment D – Reports
- Attachment E – Justification of Advance (N/A)
- Attachment F – Warranties and Representations
- Attachment G – Certification Regarding Debarment
- Attachment H – Statement of Assurances (N/A)
- Attachment I – Activity Work Plan
- Attachment J – Program and Special Conditions
- Attachment K – Civil Rights Compliance Assurance
- Attachment L – Signature Authorization Form

(17) FUNDING/CONSIDERATION

(a) The funding for this Agreement shall not exceed **\$750,000.00**, subject to the availability of funds.

(b) The Recipient agrees to expend funds in accordance with the Program Budget, Attachment A of this Agreement, and the Subgrant Application.

(c) All funds shall be requested in the manner prescribed by the Department. The authorized signatory for the Recipients set forth on the Signature Authorization Form, Attachment L to this Agreement, must approve the submission of each Request for Funds (RFFs) on behalf of the Recipient.

(d) Pursuant to 24 C.F.R. Section 570.489(b), pre-agreement costs reflected in the Subgrant Application as originally submitted that relate to preparation of the Subgrant Application are considered eligible costs and may be reimbursed to the Recipient, if they are otherwise in compliance with all other requirements of the Agreement.

(e) Funds expended for otherwise eligible activities prior to the effective date of the Agreement, except for those provided for in this Agreement or prior to the effective date of the enabling amendment wherein the Department agrees to their eligibility, fundability, or addition to the Agreement, or a separate letter authorizing such costs, are ineligible for funding with CDBG funds.

If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer, or under subparagraph (19)(h) of this Agreement, all obligations on the part of the Department to make any further payment of funds shall terminate, and the Recipient shall submit its closeout report within thirty days of receiving notice from the Department.

(18) REPAYMENTS

All refunds or repayments to be made to the Department under this Agreement are to be made payable to the order of "Department of Economic Opportunity" and mailed directly to the Department at the following address:

Department of Economic Opportunity
Community Development Block Grant Programs
Cashier
107 East Madison Street – MSC 400
Tallahassee, Florida 32399-6508

In accordance with Section 215.34(2), Fla. Stat., if a check or other draft is returned to the Department for collection, Recipient shall pay to the Department a service fee of Fifteen Dollars (\$15.00) or Five Percent (5%) of the face amount of the returned check or draft, whichever is greater.

(19) MANDATED CONDITIONS

(a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any later submission or response to a Department request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Department and with thirty days written notice to the

Recipient, cause the termination of this Agreement and the release of the Department from all its obligations to the Recipient.

(b) This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

(c) Any power of approval or disapproval granted to the Department under the terms of this Agreement shall survive the term of this Agreement.

(d) This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(e) The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.) and the Florida Civil Rights and Fair Housing Acts (sections 760.01 – 760.37, Florida Statutes), which prohibit discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, state and local government services, and telecommunications.

(f) A person or organization who has been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

(g) Any Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals:

1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;
2. have not, within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph 19(g)2. of this certification; and
4. have not within a 5-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

If the Recipient is unable to certify to any of the statements in this certification, then the Recipient shall attach an explanation to this Agreement.

In addition, the Recipient shall send to the Department (by e-mail or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" (Attachment G) for each intended subcontractor which Recipient plans to fund under this Agreement. Such form must be received by the Department before the Recipient enters into a contract with any subcontractor.

(h) The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Fla. Stat. or the Florida Constitution.

(i) All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

(j) Any bills for travel expenses shall be submitted in accordance with Section 112.061, Fla. Stat.

(k) The Department of Economic Opportunity reserves the right to unilaterally cancel this Agreement if the Recipient refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Fla. Stat., which the Recipient created or received under this Agreement.

(l) If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Department or be applied against the Department's obligation to pay the contract amount.

(m) The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A (e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A (e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Department.

(n) The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Fla. Stat.) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Fla. Stat.

(20) LOBBYING PROHIBITION

(a) No funds or other resources received from the Department under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(b) The Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, 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 contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying."

3. The Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose.

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

(21) COPYRIGHT, PATENT AND TRADEMARK

ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA. ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE RECIPIENT TO THE STATE OF FLORIDA.

(a) If the Recipient has a pre-existing patent or copyright, the Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

(b) If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Recipient shall refer the discovery or invention to the Department for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Department. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.

(c) Within thirty days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists. The Department shall then, under Paragraph (b), have the right to all patents and copyrights which accrue during performance of the Agreement.

(22) LEGAL AUTHORIZATION.

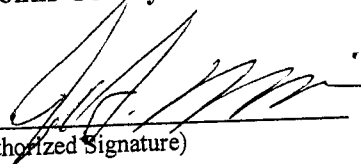
The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

State of Florida
Department of Economic Opportunity
Federally Funded Subgrant Agreement
Signature Page

Contract Number: 13DB-OI-04-65-01-E 07

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month, and year set forth below.

Saint Johns County

By:  Date: 4/3/13
(Authorized Signature)

Name: Jay Morris

Title: Chairman

Federal Tax ID#: 596000825-008

DUNS#: 073236739

Department of Economic Opportunity

By: _____ Date: _____
(Authorized Signature)

Name: Ken Reecy

Title: Assistant Director,
Division of Community Development

Approved as to form and legal sufficiency,
subject only to the full and proper execution
by the parties
Office of the General Counsel
Department of Economic Opportunity

By: _____

Approved Date: _____

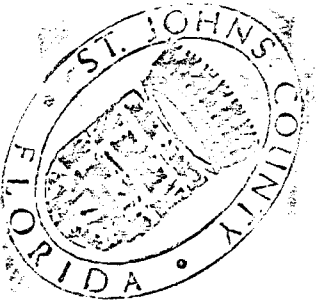


EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE RECIPIENT UNDER THIS AGREEMENT:

Separately list the following information for each federal program from which the resources awarded to the Recipient originate:

	Florida Small Cities Community Development Block Grant Program
Federal agency	U.S. Department of Housing and Urban Development
Catalog of Federal Domestic Assistance title:	Community Development Block Grants/State's Program and Nonentitlement Grants
Catalog of Federal Domestic Assistance #:	14.228
Award amount:	\$750,000.00

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

Separately list each applicable compliance requirement (eligible activities, service, or commodities; eligible recipients; etc.) and specify to which federal program each requirement applies:

Compliance Requirement

Program

- 1. The Recipient will fully perform the obligations in accordance with the Program Budget, Attachment A of this Agreement, the subgrant application incorporated herein by reference, and 24 C.F.R, Subpart I, Sections 570.480 – 570.497.*
- 2. The Recipient shall be governed by 290.401-409, F.S., Rule 73C-23, F.A.C. and Federal Laws, rules and regulations, including but not limited to those identified in Attachments B and J.*

Small Cities CDBG

NOTE: Instead of listing the specific compliance requirements as shown above, the State awarding agency may elect to use language that requires the Recipient to comply with the requirements of applicable provisions of specific laws, rules, regulations, etc. For example, for Federal Program 1, the language may state that the Recipient must comply with specific laws, rules, or regulations that pertain to how the awarded resources must be used or how eligibility determinations are to be made. The State awarding agency, if practical, may want to attach a copy of the specific law, rule, or regulation referred to.

NOTE: For federal programs included in Exhibit 1, Section .400(d) of OMB Circular A-133, as revised, and for state projects included in Exhibit 1, Section 215.97(5)(a), Florida Statute requires the information in Exhibit 1 to be provided to the Recipient.

ATTACHMENT A
Program Budget

Department of Economic Opportunity – Small Cities Community Development Block Grant Program
ATTACHMENT A – Program Budget

Recipient: Saint Johns County Modification Number: na Contract Number: 13DB-OI-04-65-01-E 07

Activity Number	Activity		Accomplishments			Beneficiaries			Budget					
	Description	Unit	Number	LMI	VLI	Total	CDBG Amount	Subtotal of Activity ¹	Other Funds ²	Source Number ²	Program Income			
17B	Water Lines	L.F.	615	39		76	\$62,000.00							
17B	Sewer Facilities	L.F.	1,600	39		76	\$358,550.00							
17B	Street Improvements	L.F.	800	39		76	\$290,000.00							
17B	Other ED - Sidewalks	L.F.	500	39		76	\$19,000.00							
17B	Other ED - Electrical Lines	L.F.	500	39		76	\$20,450.00							
17B	Engineering for 17B Activities													
17B	Subtotal of 17B Activities			39		76		\$840,000.00						
17A	Acquisition in Support Of	Parcel	1							\$1,500,000.00				
17C	Building Construction	Bid	2							\$18,910,000.00				
17C	Administration Paid w/ Non-CDBG Funds									\$60,000.00				
Totals								\$750,000.00			\$20,560,000.00			

¹ For an activity number that has multiple functions (for example, 03J-Sewer Lines, 03J-Hookups and 03J-Water Lines, add a line 03J-Subtotal and then add up the amounts and show it in the subtotal column).
² Show the sources and amounts of "Other Funds" below and show the Source Number in column 11.
 1. Silver Creek, LLLP \$20,560,000 (\$1,250,000.00 Leverage) \$ _____
 2. _____ \$ _____
 3. _____ \$ _____
 4. _____ \$ _____
 Rev. 7/19/2012 17

ATTACHMENT B

State and Federal Statutes and Regulations

By signature of this Agreement, the local government hereby certifies that it will comply with the following applicable federal and state requirements:

State and Federal Statutes and Regulations

1. Community Development Block Grant, 24 CFR Part 570, Subpart I;
2. Florida Small and Minority Business Act, §288.702-288.714, Florida Statutes;
3. Administrative Requirements for Grants, 24 CFR Part 85;
4. Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes;
5. Title I of the Housing and Community Development Act of 1974, as amended;
6. Treasury Circular 1075 regarding drawdown of CDBG funds;
7. Sections 290.0401-290.049, Florida Statutes;
8. Rule Chapter 73C-23, Florida Administrative Code;
9. CDBG Technical Memorandums;
10. HUD Circular Memorandums applicable to the Small Cities CDBG Program;
11. Single Audit Act of 1984;
12. Environmental Review Procedures 24 CFR Part 58;
13. Environmental Criteria and Standards 24 CFR Part 51;
14. Floodplain/Wetland Management 24 CFR Part 55 and Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands);
15. National Environmental Policy Act of 1969 and other provisions of law which further the purpose of this act;
16. National Historic Preservation Act of 1966 (Public Law 89-665) as amended and Protection of Historic Properties (24 CFR Part 800) and other provisions of law which further the purpose of this act;
17. Preservation of Archaeological and Historical Data Act of 1966;
18. Florida Coastal Zone Protection Act, §161.52-161.58, Florida Statutes;
19. Reservoir Salvage Act;
20. Safe Drinking Water Act of 1974, as amended;
21. The Federal Water Pollution Control Act of 1972, as amended (33 USC, §1251 et. seq.);
22. Clean Water Act of 1977;
23. Davis – Bacon Act – sets requirement for paying prevailing wages on Federally funded projects;
24. Contract Work Hours and Safety Standards Act of 1962, 40 USC §327 et. seq.;
25. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1975 (42 USC, §6901 et. seq.);
26. Architectural Barriers Act of 1968, 42 USC 4151;
27. Cost-Effective Energy Conservation Standards, 24 CFR Part 39;
28. Federal Fair Labor Standards Act, 29 USC, §201 et. seq.;
29. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L., 100-17, and 49 CFR Part 24;
30. Copeland Anti-Kickback Act of 1934;
31. Hatch Act of 1939, as amended;
32. Title IV Lead-Based Paint Poisoning Prevention Act (42 USC, §1251 et. seq.);
33. OMB Circulars A-87, A-102, A-122, and A-133, as revised;
34. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 and 24 CFR Part 12.

ATTACHMENT C
Recordkeeping

N/A

ATTACHMENT D

Reports

The following reports must be completed and submitted to the Department in the time frame indicated. Failure to timely file these reports constitutes an event of default, as defined in Paragraph (10) of this Agreement.

1. The Contractual Obligation and MBE Report must be submitted to the Department by April 15 and October 15 annually. The form must reflect all contractual activity for the period. If no activity has taken place during the reporting period, the form must indicate "no activity".
2. A Quarterly Progress Report must be submitted to the Department fifteen (15) days after the end of the quarter on the report form provided by the Department: April 15, July 15, October 15 and January 15.
3. The Administrative Closeout Package must be submitted to the Department forty-five (45) days after the Agreement termination date.
4. In accordance with OMB Circular A-133, revised, should the Recipient meet the threshold for submission of a single or program specific audit, the audit must be conducted in accordance with OMB Circular A-133 and submitted to the Department no later than nine (9) months from the end of the Recipient's fiscal year. If the Recipient did not meet the audit threshold, a certification must be provided to the Department no later than nine (9) months from the end of the Recipient's fiscal year.
5. The Section 3 Summary Report must be completed and submitted to the Department by July 31 annually. The form must be used to report annual accomplishments regarding employment and other economic opportunities provided to persons and businesses that meet Section 3 requirements.
6. Request for Funds must be submitted as required by the Department of Economic Opportunity.

ATTACHMENT E
Justification of Advance Payment

N/A

ATTACHMENT F
Warranties and Representations

Financial Management

Recipient's financial management system must include the following:

- (1) Accurate, current and complete disclosure of the financial results of this project or program.
- (2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- (3) Effective control over and accountability for all funds, property and other assets. Recipient shall safeguard all assets and assure that they are used solely for authorized purposes.
- (4) Comparison of expenditures with budget amounts for each Request For Payment. Whenever appropriate, financial information should be related to performance and unit cost data.
- (5) Written procedures to determine whether costs are allowed and reasonable under the provisions of the applicable OMB cost principles and the terms and conditions of this Agreement.
- (6) Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions shall be done in a manner to provide open and free competition. The Recipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure excellent contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected if there is a sound, documented reason [See 24 CFR §85.36(d)(2)(ii)E].

Codes of Conduct

The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by public grant funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct shall provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the Recipient.

Business Hours

The Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site at all reasonable times for business. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

Licensing and Permitting

All subcontractors or employees hired by the Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Recipient.

ATTACHMENT G

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Subcontractor Covered Transactions

- (1) The prospective subcontractor of the Recipient, (name of subcontractor), certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Contractor's subcontractor is unable to certify to the above statement, the prospective contractor shall attach an explanation to this form.

(Sub-Contractor's Name)

St. Johns County
(Recipient's Name)

_____ Date: _____
(Authorized Signature)

(Print Name and Title)

13DB-OI-04-65-01-E 07
(DEO Contract Number)

(Street Address)

(City, State, Zip)

ATTACHMENT H
Statement of Assurances

N/A

ATTACHMENT I
Activity Work Plan

ATTACHMENT I – Activity Work Plan

3/8/2012

Recipient: St. Johns County

Date Prepared: 02/21/2013

**Project Budget: \$20,560,000.00
– Participating Party**

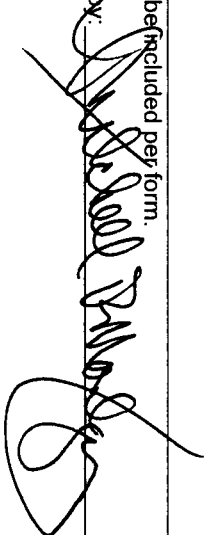
Contract Number: 13DB-OI-04-65-01-E07

Modification Number: N/A

Date Start (month/year)	Date End (month/year)	Describe Proposed Action to be completed by the "Date End."	# Units to be completed by "Date End"	Proposed \$\$ to be Requested by "Date End"	Proposed Administration \$\$ to be Requested by "Date End"
06/13	10/13	Construction Phase – 25% Complete	0	\$4,100,000.00	\$0.00
11/13	2/14	Construction Phase – 50% Complete	0	\$8,200,000.00	\$0.00
3/14	6/14	Construction Phase – 75% Complete	0	\$12,500,000.00	\$0.00
7/14	10/14	Construction Phase – 100% Complete	1	\$20,560,000.00	\$0.00
9/14	12/14	Begin Hiring of Required Jobs	1	\$20,560,000.00	\$0.00
01/15	02/15	Complete Hiring of Required Jobs	1	\$20,560,000.00	\$0.00
02/15	03/15	Provide Documentation of Leverage Expenditures and Job Creation	1	\$20,560,000.00	\$0.00
04/15	04/15	Submit Administrative Closeout	1	\$20,560,000.00	\$0.00

Note: More than one activity may be included per form.

Approved for Silver Creek, LLLP by:



Date:

2-22-13

ATTACHMENT J

Program, Category Specific, and Special Conditions

1. The Recipient shall maintain records of expenditure of funds from all sources that will allow accurate and ready comparison between the expenditures and the contracted budget/activity line items as defined on Attachment A (Program Budget) and Attachment I (Activity Work Plan).
2. No costs may be incurred prior to the effective date of this Agreement, except for those eligible application preparation costs outlined in the original Subgrant Application submitted to the Department, unless pre-agreement costs were approved in writing by the Department.
3. For each procured and executed professional services contract for which CDBG funding will be requested, the Recipient shall submit a copy of the following procurement documents:
 - a. When publication of the RFP is used as a means of solicitation, a copy of the advertisement, including an affidavit of publication;
 - b. List of entities to whom a notification of the request for proposals was provided by mail or fax (if applicable);
 - c. For engineering contracts, a list of firms that submitted a proposal (only if short-listing procedure was used);
 - d. Completed short-listing evaluation/ranking forms, including any ranking summary document, and document transmitting the short-listed firms to the commission (only if short-listing procedure used);
 - e. Completed and signed final evaluation/ranking forms;
 - f. Commission minutes approving contract award;
 - g. Cost breakout from selected firm used for completion of the cost analysis (if pricing information was not submitted with proposals);
 - h. Contract (signed or proposed);
 - i. Truth-in-Negotiation certification (if not in the contract) for engineering contracts over \$195,000;
 - j. If a protest was filed, a copy of the protest and documentation of resolution;
 - k. A request for the Department's approval of a single source procurement if only one firm was considered and the contract exceeds \$25,000. Additionally, the Recipient shall not enter into a contract to be paid with CDBG funds based on a sole source or single proposal procurement without prior written approval from the Department. Failure to secure prior written approval shall relieve the Department of any obligation to fund the said procurement contract. Any previous payments to the Recipient to fund said contract shall be ineligible and shall be repaid to the Department by the Recipient.
 - l. If a regional planning council or local government is performing administration services, the Recipient shall submit only a copy of the contract and cost analysis information; and
 - m. If professional services procurement will not be undertaken, advise the Department in writing no later than 90 days from the effective date of this agreement.
4. Prior to the obligation or disbursement of any funds, except for administrative expenses for all subgrants other than Economic Development subgrants, not to exceed five thousand dollars (\$5,000), and for Economic Development Grants, not to exceed eight thousand dollars (\$8,000), but in any case, no later than ninety (90) days from the effective date of this Agreement, the Recipient shall complete the following:

- a. Submit and obtain the Department's approval of the documentation required in paragraph 3 above for any professional services contract. The Recipient proceeds at its own risk if more than the specified amount is incurred before the Department approves the procurement. If the Department does not approve the procurement of a professional services contract, the local government will not be able to use CDBG funds for that contract beyond \$5,000 (\$8,000 for Economic Development).
 - b. Comply with procedures set forth in 24 C.F.R. Part 58, Environmental Review Procedures for Title I Community Development Block Grant Programs and 40 C.F.R. Section 1500-1508, National Environmental Policy Act Regulations. When this condition has been fulfilled to the satisfaction of the Department, the Department will issue a Notice of Removal of Environmental Conditions.
5. The Recipient shall obtain approval from the Department prior to requesting CDBG funds for engineering activities and costs which are additional engineering as defined in Rule 73C-23.0031(1), Florida Administrative Code.
 6. Should the recipient undertake any activity subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), the Recipient shall document completion of the acquisition by submitting all documentation required for a desk monitoring of the acquisition, including notice to property owners of his or her rights under URA, invitation to accompany the appraiser, all appraisals, offer to the owner, acceptance, contract for sale, statement of settlement costs, copy of deed, waiver of rights (for donations), as applicable. The documentation shall be submitted prior to completing the acquisition (closing) so that the Department can determine whether remedial action may be needed.
 7. The Recipient shall, prior to the disbursement of any CDBG administrative funds exceeding \$15,000, provide to the Department a copy of all engineering specifications and construction plans, if required, for the activities described in the Agreement. The Recipient shall also furnish the Department, prior to soliciting bids or proposals, a copy of bid documents for services and/or materials to provide those services and/or materials for construction activities when the bids are expected to exceed \$25,000. Additionally, the Recipient shall not publish any request for bids for construction purposes or distribute bid packages until the Department has provided its written acceptance of the engineering specifications, construction plans, and bid documents.
 8. The Recipient shall undertake an activity each quarter to affirmatively further fair housing pursuant to 24 C.F.R. Section 570.487(b)(4).
 9. All leveraged funds shall be expended concurrently and, to the extent feasible, proportionately with the expenditure of CDBG funds for the same activity. The Recipient shall document the expenditure of leveraged funds required for the points claimed in the application as it may have been amended through the completeness process and as reflected on Attachment A of this Agreement. Except for the CDBG portion of the cost of post-administrative closeout audits, all funds claimed for leverage shall be expended after the date of site visit and prior to submission of the administrative closeout.
 10. The resulting product of any activity funded under this Agreement as amended shall be ineligible for rehabilitation or replacement with CDBG funds for a period of five (5) years.
 11. A deed restriction shall be recorded on any real property or facility, excluding easements, acquired with CDBG funds. This restriction shall limit the use of that real property or facility to the use stated in the sub-grant application and that title shall remain in the name of the Recipient. Such deed shall be made a part of the public records in the Clerk of Court of the county in which the real property is located. Any future disposition of that real property shall be in accordance with 24 C.F.R. Section 85.31. Any future change of use shall be in accordance with 24 C.F.R. Section 570.489(j).
 12. For structures constructed prior to 1978, the Recipient shall provide that appropriate abatement procedures will be undertaken should lead-based paint be found on a structure scheduled for rehabilitation in whole or in part with CDBG funds and that the owners and/or occupants of the building will be advised:
 - a. The property may contain lead-based paint;

- b. The hazards of lead-based paint;
 - c. The symptoms and treatment of lead poisoning;
 - d. The precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards);
 - e. The need for and availability of blood lead-level screening for children under seven years of age; and
13. The Recipient shall comply with the historic preservation requirements of 24 C.F.R. 58.17 and the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.
 14. Pursuant to Section 102(b), Public Law 101-235, 42 U.S.C. Section 3545, the Recipient shall update and submit Form HUD 2880 to the Department within 30 days of the Recipient's knowledge of changes in situations which would require that updates be prepared. The Recipient must disclose:
 - a. All developers, contractors, consultants, and engineers involved in the application or in the planning, development, or implementation of the project or CDBG funded activity; and
 - b. Any person or entity that has a financial interest in the project or activity that exceeds \$50,000 or ten percent (10%) of the grant, whichever is less.
 15. A final Form HUD 2880, if required, shall be provided to the Department with the request for administrative closeout, and its absence or incompleteness shall be cause for rejection of the administrative closeout.
 16. Conflicts of interest relating to procurement shall be addressed pursuant to 24 C.F.R. Section 570.489(g). Conflicts of interest relating to acquisition or disposition of real property; CDBG financial assistance to beneficiaries, businesses, or other third parties; or any other financial interest, whether real or perceived, shall be addressed pursuant to 24 C.F.R. Section 570.489(h).
 17. Any payment by the Recipient using CDBG funds for acquisition of any property, right-of-way, or easement that exceeds fair market value as determined through the appraisal process established in HUD Handbook 1378 shall be approved in writing by the Department prior to distribution of the funds. Should the Recipient fail to obtain Department pre-approval, any portion of the cost of the acquisition exceeding Fair Market Value shall not be paid or reimbursed with CDBG funds.
 18. The Recipient shall take photographs or video of all activity locations prior to initiating any construction. As the construction progresses, additional photography or videography shall document the ongoing improvements. Upon completion of construction, final documentation of the activity locations will be provided to the Department with administrative closeout documents.
 19. If an activity is designed by an engineer, architect, or other licensed professional, it shall be certified upon completion by a licensed professional as meeting the specifications of the design, as may have been amended by change orders. The date of completion of construction shall be noted as part of the certification. This certification shall be accomplished prior to submission of an administrative closeout package and a copy of the certification shall be submitted with the administrative closeout package.

For Economic Development Grants Only

1. The Recipient shall enter into a Participating Party Agreement with the Participating Party in accordance with the terms of this Agreement. Said Participating Party Agreement shall provide in part that The Participating Party agrees to perform the specific activities described in the Subgrant Application. Such Participating Party Agreement shall include at a minimum the following provisions:
 - a. The Participating Party shall create and satisfactorily document the creation and/or retention of at least the number of full-time equivalent permanent net new jobs and the number of full-time equivalent permanent net new jobs made available to members of low or moderate income families as specified in the Subgrant Application Forms E-3 (if applicable for retention) and E-4 and on Attachment A to this Agreement. If more than the number of full-time equivalent permanent net new jobs specified in Form E-4 of the Subgrant Application and on Attachment A to this Agreement are created and/or retained, fifty-one percent (51%) of those jobs shall be made available to members of low and moderate income families. These jobs shall be created and/or retained no later than the termination date of this Agreement, as it may be amended. Documentation shall be the Florida Small Cities CDBG Program Household Income Verification Form or its equivalent for each job created and/or retained and a certified payroll that verifies that the jobs documented on the forms were employed at a particular point in time. The documentation of the creation and/or retention of these jobs shall be retained by The Participating Party for a period of six (6) years following the completion of review and clearance of a final audit for this Agreement;
 - b. The Participating Party must comply with Chapter 119, Fla. Stat., for all documents, papers, letters or other materials subject to the provisions of Chapter 119, Fla. Stat., and made or received by the Participating Party in conjunction with this Agreement or the Participating Party Agreement. The failure of the Participating Party to comply with Chapter 119, Fla. Stat. is an act of default and shall be cause for the unilateral cancellation of the Participating Party Agreement and this Agreement;
 - c. The failure of the Participating Party to create or cause to be created and/or retain or to satisfactorily document the creation and/or retention of the agreed upon number of jobs to be made available to members of low or moderate income families, or to expend or satisfactorily document the expenditure of the full amount of leverage dollars agreed upon in the Application, shall be an act of default under the Participating Party Agreement. The Recipient and the Grant Participating Party will define acts of default in the Participating Party Agreement to include the foregoing as an act of default;
 - d. The Participating Party shall provide or cause to be provided such training to members of families of low and moderate income as may be necessary to equip them with the skills required for them to obtain and retain the jobs to be created and/or retained;
 - e. The Participating Party shall expend at a minimum, after the date of the site visit, the amount of leverage referenced on Form L-1 and on Attachment A to this Agreement. The funds are to be expended on construction, and the Participating Party will furnish documentation of expenditures. This documentation shall be provided to the Recipient in a form and content satisfactory to the Department that allows accurate ready comparison between expenditures and related activities as defined on Form L-1 of the Subgrant Application. This documentation shall be provided to the Recipient as the expenditures occur;
 - f. The Participating Party shall construct or cause to be constructed one or more buildings, which shall accommodate at a minimum the facility described in the Subgrant Application (the "Participating Party Facility"). The buildings shall remain titled in the name of the Participating Party until such time as all requirements in paragraph 1a of Attachment C, Section II: Program Conditions have been satisfied;

- g. The Participating Party shall develop a schedule which identifies the start date for construction of its facilities; the dates by which such construction will be 33%, 66% and 100% complete; the date that hiring of employees will begin; and the date by which all employees will be hired, which shall be on or before the termination date of this Agreement. These same Participating Party milestones shall be made an attachment to the Participating Party Agreement, and shall be made a part of Attachment I, Activity Work Plan, of this Agreement. Timely satisfaction of these milestones shall be used in determining whether the Recipient is "on schedule" under this Agreement;
- h. The Participating Party shall submit a detailed quarterly report to the Recipient that demonstrates its progress toward achieving the milestones set forth in the Participating Party Activity Work Plan. These reports shall be delivered to the Recipient no later than the end of each quarter of the program year and shall continue to be submitted each quarter until submission of the administrative closeout report by the Recipient. The ending dates for each quarter of the program year are March 30, June 30, September 30 and December 31;
- i. The Participating Party shall also notify the Recipient in writing when it begins hiring for the required jobs and when it has completed hiring for the required jobs;
- j. The Participating Party, if requested by the Recipient, shall provide to the Recipient or its agents such reasonable information concerning the project as the Recipient may reasonably require as it relates specifically to the conditions of the grant;
- k. That the Participating Party shall begin construction and furnish to the Recipient evidence of the Participating Party's commencement of construction on the "Participating Party Facility" within the time frame specified in the Participating Party Schedule;
- l. That prior to execution of the Participating Party Agreement the Department must approve in writing the form and content of the Participating Party Agreement and any amendments thereto. The right of approval granted to the Department with respect to the Participating Party Agreement between the Recipient and The Participating Party shall survive the term of this Agreement. The Department does not assume any liability or responsibility for the accuracy or enforceability of the Participating Party Agreement through the exercise of this right of approval;
- m. The Participating Party Agreement shall not expire until the issuance of a letter of Administrative Closeout of this Agreement; however, all required job creation must be completed and documented by the termination date of this Agreement. Extension of the Award Agreement shall act as an extension of the Participating Party Agreement. Failure of the Recipient to notify the Participating Party of such an extension shall not invalidate this provision;
- n. The Participating Party shall utilize the service of the local workforce board and/or advertise the newly created employment positions in one or more of the local newspapers that serve the city/county.
2. The Recipient shall track all new jobs created as a direct result of the construction and availability of the infrastructure paid for with CDBG funds. New businesses that would otherwise not be able to locate and existing business that are now able to expand or create new jobs because of the availability of infrastructure must agree to provide such information as a condition of hookups and building permits. The aggregate of all jobs created or retained as a result of the infrastructure shall be counted to ensure that fifty-one (51%) percent of all new full-time equivalent jobs are taken by or made available to low and moderate income persons. Tracking and retention of said job creation shall continue until a cost per job of under \$10,000 is reached or one year following the completion of the CDBG funded infrastructure, whichever comes first.

3. The Recipient shall maintain records of the Participating Party's expenditure of funds that will allow accurate and ready comparison between the expenditures and contracted budget line items by contracted activity as defined on Attachments A and I of this Agreement.
4. The Department will allow the Recipient to seek reimbursement for administrative, Subgrant Application preparation costs, preliminary and design engineering expenses incurred prior to the date of the Agreement. Reimbursement will be allowed only for those engineering activities undertaken by the Recipient and engineering expenses incurred by the Recipient after the date of the site visit. No reimbursement will be allowed for any engineering cost that would be approvable as a post-agreement expense for resident inspection (or observation), for any "Section D" expenses, or for expenses incurred by any entity other than the Recipient. Should this Agreement not be executed by the Department, or should the procurement process be subsequently determined not to meet program requirements, no reimbursement shall be allowed.
5. The Recipient shall design or cause to be designed and construct or cause to be constructed only the minimum acceptable level of infrastructure to provide the required levels of service for the on-going operations of The Participating Party in the project area. The Recipient shall demonstrate that the route chosen for construction of said infrastructure (when appropriate) is the least expensive of the available alternative routes. Documentation of the satisfaction of this requirement shall be in the form of a certification from a licensed engineer, bearing said engineer's seal.
6. This project must meet Public Benefit Standards by having a cost per job (grant amount divided by total jobs created) of less than \$35,000. For each contracted job (see Attachment A) not created, the Recipient shall repay the Department \$35,000.
7. This job creation project must meet a National Objective by at least 51% of all jobs created being held by persons from Low to Moderate Income households. If this National Objective is not achieved, the Recipient shall be required to pay back all CDBG funds drawn down.

Special Conditions

1. The Recipient shall demonstrate that progress is being made in completing project activities in a timely fashion. Within 180 days of the subgrant award, the Recipient shall complete the following activities:
 - a. Submit the environmental assessment for review and obtain the release of funds;
 - b. Request approval for all professional service contracts;
 - c. Submit an initial request for funds for administration, if applicable;
 - d. Request wage decision(s) for anticipated construction activities;
 - e. For Housing subgrants, beneficiaries shall be identified; and
 - f. For Commercial Revitalization subgrants, identify all facades to be renovated.

If the Recipient does not comply with all applicable criteria listed above, a justification for the delay and a plan for timely accomplishment must be submitted to the Department. The Department shall rescind any subgrant for which the Recipient has not completed activities a-f if it cannot provide adequate justification for the delay.

2. If necessary, The Recipient shall retain sufficient administration funds to ensure Internet access, including email, for the duration of the contract, including any time extensions. If the Recipient does not already have a computer designated to the person responsible for grant oversight, which is located in the program office and capable of Internet access, administrative funds may be used as needed to obtain, at reasonable cost, a computer to allow Internet access.

ATTACHMENT K
Civil Rights Compliance Assurance

Fair Housing

As a condition for the receipt of Small Cities Community Development Block Grant funds, each recipient must certify that it will "affirmatively further fair housing" in its community. A recipient shall demonstrate its commitment to affirmatively further fair housing by implementing the actions listed below.

Each recipient shall do the following:

- 1) Have in place a fair housing resolution or ordinance that covers all federally protected classes [race, color, familial status, handicap, national origin, religion, and sex];
- 2) Publish quarterly a phone number that people can call to ask fair housing questions or register a complaint;
- 3) Designate an employee who is available Monday through Friday during regular business hours to receive fair housing calls;
- 4) Establish a system to record the following:
 - a) The nature of the calls,
 - b) The actions taken in response to the calls, and
 - c) The results of the actions taken, and
 - d) The end results of referrals to other agencies, when applicable;
- 5) Conduct at least one fair housing activity each quarter. Identical activities shall not be conducted in consecutive quarters. (See examples below.), and
- 6) Display a fair housing poster in the CDBG Office. (This does not count as an activity.)

The fair housing contact person is expected to have received training so that they can handle fair housing phone inquiries or to refer the inquiries to the appropriate people/agencies. Records maintained by the contact will help the community do the following:

- 1) Define where discriminatory practices are occurring,
- 2) Help the community measure the effectiveness of its outreach efforts, and
- 3) Provide the community with a means to gain information that can be used to design and implement strategies that will eliminate fair housing impediments.

Examples of fair housing activities include the following:

- Presentations at schools, civic clubs, and neighborhood associations,
- Distributing fair housing materials at libraries, fairs, and businesses,
- Print a fair housing notice on utility bills mailed to residents, and
- Conducting fair housing workshops for city/county employees, realtors, bank and mortgage company employees, insurance agents, and apartment complex owners.

Recipients shall document the fair housing activities and include information about the activities in the comment section of their quarterly report.

Equal Employment Opportunity

As a condition for the receipt of Small Cities Community Development Block Grant funds, each recipient must certify that it and the contractors that it hires with CDBG funds will abide by the Equal Employment Opportunity Laws of the United States. A recipient shall demonstrate its commitment to abide by the laws through the actions listed below.

Each recipient shall do the following:

- 1) Have in place an equal employment opportunity resolution or ordinance that protects its applicants and employees and the applicants and employees of its contractors from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex, national origin, disability, age, or genetics;
- 2) Publish quarterly a phone number that residents can call to ask equal employment opportunity questions or register a complaint;

- 3) Designate an employee who is available Monday through Friday during regular business hours to receive equal employment opportunity calls; and
- 4) Establish a system to record the following:
 - a) The nature of the calls,
 - b) The actions taken in response to the calls, and
 - c) The results of the actions taken;

Each recipient shall maintain a list of certified minority- and women-owned businesses that operate in its region. The recipient shall use this list to solicit businesses to bid on CDBG-funded activities and shall provide a copy of the list to prime contractors to use when they hire subcontractors. The Department of Management Services maintains a list of certified minority- and women-owned businesses that can be used for this purpose at the following website: <https://vendorstrator.dms.myflorida.com/directory>.

Section 504 and the Americans with Disabilities Act (ADA)

As a condition for the receipt of Small Cities Community Development Block Grant funds, each recipient must certify that it provides access to all Federally funded activities to all individuals, regardless of handicap. A recipient shall demonstrate its commitment to abide by the laws through the actions listed below.

Each recipient shall do the following:

- 1) Have in place a resolution or ordinance that is designed to eliminate discrimination against any person who
 - a) Has a physical or mental impairment which substantially limits one or more major life activities,
 - b) Has a record of such an impairment, or
 - c) Is regarded as having such an impairment;
- 2) Publish a phone number that residents can call to ask questions or register a complaint related to Section 504 or the Americans with Disabilities Act;
- 3) Designate an employee who is available Monday through Friday during regular business hours to receive calls; and
- 4) Establish a system to record the following:
 - a) The nature of the calls,
 - b) The actions taken in response to the calls, and
 - c) The results of the actions taken.

The Section 504 prohibitions against discrimination (See 45 CFR Part 84.) apply to service availability, accessibility, delivery, employment, and the administrative activities and responsibilities of organizations receiving Federal financial assistance. A recipient of Federal financial assistance may not, on the basis of disability:

- Deny qualified individuals the opportunity to participate in or benefit from federally funded programs, services, or other benefits,
- Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers, or
- Deny employment opportunities, including hiring, promotion, training, and fringe benefits, for which they are otherwise entitled or qualified.

The ADA (Title II, 28 CFR Part 35, and Title III, 28 CFR Part 36) prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability.

Title II covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings). State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities.

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities. Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless

shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by Title III.

Section 3 - Economic Opportunities for Low- and Very Low-Income Persons

Each recipient shall encourage its contractors to hire qualified low and moderate income residents for any job openings that exist on CDBG-funded projects in the community. The recipient and its contractors shall keep records to document the number of low and moderate income people who are hired to work on CDBG-funded projects. The number of low and moderate income residents who are hired to work of the project shall be reported in the comment section of the quarterly report.

The following clause from 24 CFR Part 135.38 is required to be included in CDBG-funded contracts of \$100,000 or more.

Section 3 Clause.

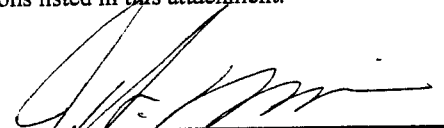
- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC §1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or 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.
- B. The parties to this contract agree to comply with HUD's regulations 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 commitments 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.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Civil Rights Statutes

As a condition for the receipt of Small Cities Community Development Block Grant funds, each recipient must certify that it will abide by the following Federal laws and regulations:

1. Title VI of the Civil Rights Act of 1964 – Prohibits discrimination by government agencies that receive Federal funding;
2. Title VII of the Civil Rights Act of 1964 – prohibits employment discrimination on the basis of race, color, religion, sex, or national origin;
3. Title VIII of the Civil Rights Act of 1968 – as amended (the Fair Housing Act of 1988);
4. 24 CFR §570.487(b) – Affirmatively Furthering Fair Housing;
5. 24 CFR §570.490(b) – Recordkeeping Requirements;
6. 24 CFR §570.606(b) – Relocation assistance for displaced persons at URA levels;
7. Age Discrimination Act of 1975;
8. Executive Order 12892 – Fair Housing;
9. Section 109 of the Housing and Community Development Act of 1974 – No person shall be excluded from participation in, denied benefits of, or subjected to discrimination under any program or activity receiving CDBG funds because of race, color, religion, sex or national origin;
10. Section 504 of the Rehabilitation Act of 1973 and 24 CFR Part 8, which prohibits discrimination against people with disabilities;
11. Executive Order 11063 – Equal Opportunity in Housing;
12. Executive Order 11246 – Non-discrimination; and
13. Section 3 of the Housing and Urban Development Act of 1968, as amended – Employment/Training of Lower Income Residents and Local Business Contracting.

I hereby certify that St. Johns County shall comply with all of the provisions and Federal regulations listed in this attachment.

By:  Date: 4/3/13
(Authorized Signature)

Name: Jay Morris

Title: Chairman

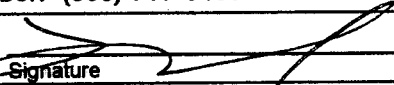
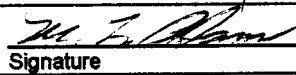
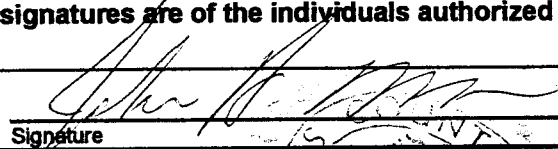


ATTACHMENT L
Signature Authorization Form

Department of Economic Opportunity – Small Cities Community Development Block Grant Program
Attachment L - Signature Authorization Form

8/14/2012

*Submit an original Signature Authorization form with each copy of the contract.
 Use the tab key to move between form fields when completing the form electronically.*

Recipient Name: St. Johns County		Contract Number: 13DB-OI-04-65-01-E07		Funding Source: <input checked="" type="checkbox"/> Small Cities CDBG <input type="checkbox"/> Disaster <input type="checkbox"/> NSP	
Mailing Address (Street or P.O. Box): 500 San Sebastian View				Local Government DUNS #: 073236739	
City, State, and Zip Code: St. Augustine, Florida 32084				FEID #: 59-6000825	
Project Contact Person: Dana Froberg		Telephone Number: (904) 827-6895 Ext:		E-mail Address: dfroberg@sjcfl.us	
Financial Contact Person: Allen MacDonald		Telephone Number: (904) 819-3669 Ext:		E-mail Address: fincoc@sjcfl.us	
Other Local Government Contact: Press Tompkins		Telephone Number: (904) 209-0113 Ext:		E-mail Address: htompkins@sjcfl.us	
Requests for Funds (RFFs) require (<i>check one</i>): <input checked="" type="checkbox"/> one signature <input type="checkbox"/> two signatures of individuals authorized below. RFFs must be submitted via the Department's website at http://ecdbg.doe.myflorida.com/ (or by an alternative means specified by the Department). CDBG Phone Number: (850) 717-8405					
Name Typed: Press Tompkins		Date: <u>2-25-13</u>		Signature 	
<input checked="" type="checkbox"/> Check here if above person is authorized to submit RFFs.		E-mail Address: htompkins@sjcfl.us			
Name Typed: Mike Adams		Date: <u>25 FEB 13</u>		Signature 	
<input checked="" type="checkbox"/> Check here if above person is authorized to submit RFFs.		E-mail Address: madams@sjcfl.us			
Name Typed:		Date: _____		Signature _____	
<input type="checkbox"/> Check here if above person is authorized to submit RFFs.		E-mail Address: _____			
Name Typed:		Date: _____		Signature _____	
<input type="checkbox"/> Check here if above person is authorized to submit RFFs.		E-mail Address: _____			
I certify, as the recipient's Chief Elected Official, that the above signatures are of the individuals authorized to sign Requests for Funds and to submit RFF's electronically.					
Typed Name: John H. Morris		Date: <u>4/13/13</u>		Signature 	
<input checked="" type="checkbox"/> Check here if your local government utilizes Electronic Funds Transfer (EFT) from the State of Florida. <input checked="" type="checkbox"/> Check here if your local government will be working on a reimbursement basis. <input type="checkbox"/> If this signature authority form pertains to a <u>housing rehabilitation</u> grant, check here if your local government will use an escrow account for housing activities.					
CDBG payments to local governments using EFT are automatically deposited in the local government's general account. If the account is interest bearing, the CDBG funds must be transferred to a non-interest bearing account. You can check the status of your deposit at the Comptroller's website: http://flair.dbf.state.fl.us/ .					
Local governments not receiving EFT, and not working on a reimbursement basis, must establish a non-interest bearing account. Provide account information for the financial institution (insured by FDIC) below. All signatures on the account must be bonded.					
Name of Financial Institution: Wells Fargo Bank, N.A.				Account Number: 2000014949498	
Address: 1 Independent Drive				Telephone Number: (904) 489-5831	
City, State and Zip Code: Jacksonville, FL					

**PARTICIPATING PARTY AGREEMENT
ST. JOHNS COUNTY / SILVER CREEK, LLLP
UNDER THE COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM**

This **PARTICIPATING PARTY AGREEMENT** ("Agreement") is made and entered into this ___ day of _____, 2013 by and between the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY**, a political subdivision of the State of Florida ("Recipient"), and **SILVER CREEK, LLLP**, a Florida limited liability limited partnership ("Participating Party"), to implement the requirements of the Community Development Block Grant ("CDBG") Program, and hereby mutually agree as follows:

1. The application to the Florida Department of Economic Opportunity ("Department") for CDBG grant assistance and the CDBG Sub Grant Agreement between the Recipient and the Department, Contract Number: 13DB-OI-04-65-01-E07, is hereby incorporated by reference into this Agreement. The Participating Party shall comply with all provisions of the application and CDBG Sub Grant Agreement to the extent such provisions are applicable to the Participating Party.
2. The Participating Party shall develop a schedule for renovation activities and hiring of employees. This schedule shall identify, at a minimum, the start date for construction of its facility or facilities; the dates by which such construction will be 33 percent, 66 percent and 100 percent complete; the date that hiring of employees will begin, and the date by which all employees will be hired. These same Participating Party milestones are attached hereto as Exhibit "A" and incorporated herein by this reference (the "Milestones") and shall be made a part of Attachment I ("Activity Work Plan") of the CDBG Sub Grant Agreement. Timely satisfaction of these milestones shall be used in determining whether the Recipient is "on schedule" under this Agreement and the CDBG Sub Grant Agreement, as that term is defined in Rule 73C-23.0041(9), Florida Administrative Code.
3. The Participating Party shall execute and the Participating Party, and its successors and assigns, shall be bound by all documents in such form and substance as the Recipient or the Department may reasonably require for the Recipient and the Participating Party to comply with the terms and conditions of the CDBG Sub Grant Agreement. Such documents may impose reasonable material covenants, terms, conditions, obligations or other requirements on the Participating Party in addition to, but not inconsistent with, those set forth herein.
4. The Participating Party shall construct the Silver Creek Assisted Living Facility which shall accommodate at a minimum the facility described in the Silver Creek, LLLP application (the "Application"). The land, buildings and developed site subject to the Application shall remain titled in the name of the Participating Party or the obligations set forth herein shall run with title to the land pursuant to a recorded Memorandum of Participating Party Agreement which shall set forth that such obligations shall be binding upon all owners thereof until the obligations are fully satisfied.

5. The Participating Party shall commence construction and furnish to the Recipient evidence of its commencement of construction of the Silver Creek assisted living facility within the time frame specified in the Milestones.
6. The Participating Party shall expend, at a minimum, after the date of the site visit, the amount of leverage (\$1,250,000.00) claimed for match and referenced on the Sources and Uses of Funds, and the Leverage Score Summary Form L-1 and on Attachment A to the CDBG Sub Grant Agreement (the "Expenditure Requirement"). These funds are to be expended at the project location on the construction and equipment purchase at the Silver Creek Assisted Living Facility as described in the Application. The Participating Party will furnish documentation of its expenditures as stated in the Application, the Program Budget and Scope of Work, and the Work Plans. This documentation shall be provided to the Recipient in a form and content satisfactory to the Department that allows accurate ready comparison between expenditures and related activities as defined on Form L-1 of the Grant Application. This documentation shall be provided to the Recipient as expenditures occur.
7. The Participating Party shall create and satisfactorily document the creation of at least seventy-six (76) full-time equivalent permanent net new jobs, of which at least thirty-nine (39) full-time equivalent permanent net new jobs are to be for members of low or moderate income households, as specified in the Application (the "Hiring Requirement"). If more than seventy-six (76) full-time equivalent permanent net new jobs are created, fifty-one percent (51%) of those jobs shall be made available to members of low and moderate income families. These jobs shall be created no later than the termination date of the CDBG Sub Grant Agreement, as it may be amended. Documentation shall be the Florida Small Cities CDBG Program Household Income Verification Form (Form I-2) or its equivalent for each created job as well as documentation, in a form acceptable to the Department that verifies all of the individuals for which Household Income Verification Forms are being provided were employed simultaneously at a specified specific moment in time. Tracking and retention of said job creation shall continue until a cost per job of under \$10,000 is reached or one year following the completion of the CDBG funded infrastructure, whichever comes first. The documentation of the creation of these jobs shall be retained by the Participating Party for a period of six (6) years following the final closeout of the CDBG Sub-grant agreement.
8. The Participating Party shall satisfactorily document the creation of any additional new jobs that were created as a result of the CDBG funded infrastructure improvements as well as the retention of those jobs originally committed to by submitting to the Recipient a Florida Small Cities CDBG Household Income Verification Form and payroll verification documentation for each newly created job. These requirements shall be in place until the Administrative Closeout of the CDBG Sub Grant Agreement.
9. The Participating Party shall provide or cause to be provided such training to persons who are members of low and moderate-income households as may be necessary to equip them with the skills required for them to obtain and retain the jobs to be created.

10. The Participating Party shall notify the Recipient in writing when it begins hiring the required jobs and when it has completed hiring the required jobs.
11. The Participating Party shall utilize the service of the local workforce board and/or advertise the newly created employment positions in one or more of the local newspapers that serve the Recipient.
12. The Participating Party attests that the assisted activity will not result in the relocation of any industrial or commercial plant, facility, or operation from one Labor Market Area (LMA) to another, and, if so, the number of jobs that will be relocated from each LMA;
13. The Participating Party certifies from that neither it, nor any of its subsidiaries, have plans to relocate jobs at the time this agreement is signed that would result in a significant job loss as defined in 24 CFR 570.210; and
14. The Participating Party agrees to reimburse the County any CDBG assistance provided to, or expended on behalf of, the Participating Party, in the event that such assistance results in the relocation of jobs as prohibited under 24 CFR 570.210.
15. The failure of the Participating Party to create or to cause to be created or to satisfactorily document the creation of the agreed upon total number of jobs or the number of jobs to be made available to members of low or moderate income families, or for the Participating Party to expend or satisfactorily document the Expenditure Requirement (\$1,250,000.00), shall be an act of default under this Agreement and shall subject the Participating Party and Guarantors to all remedies allowed by law, equity and this Agreement. The Recipient and the Participating Party will define additional acts of default.
16. That, if requested by the Recipient, the Participating Party shall provide to the Recipient or its agents such reasonable information concerning the project as the Recipient or the Department may reasonably require as it relates specifically to the conditions of the grant.
17. The Participating Party shall submit a detailed quarterly report to the Recipient that demonstrates its progress toward achieving the milestones set forth in this Participating Party Activity Work Plan. These reports shall be delivered to the Recipient no later than the end of each quarter of the program year and shall continue to be submitted each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 30, June 30, September 30 and December 31.
18. The Participating Party shall comply with Chapter 119, Florida Statutes, for all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Participating Party in conjunction with this Agreement or the Participating Party Agreement. The failure of the Participating Party to comply with Chapter 119, Florida Statutes, is an act of default and shall be cause for the unilateral cancellation of this Agreement.
19. The Participating Party, notwithstanding any other provision hereof to the contrary, shall comply with all applicable local, state and federal statutes, laws, rules, regulations or

other requirements of St. Johns County, its agencies and instrumentalities, and the State of Florida, its agencies and instrumentalities, and the United States of America, and its agencies and instrumentalities.

20. This Agreement and any amendments thereto must be approved by the Department as to form and content prior to execution. Upon the approval of the Department, this Agreement shall be immediately executed, and a copy shall be mailed to the Department. The right of approval granted to the Department with respect to changes in this Agreement shall survive the term hereof. The Department does not assume any liability or responsibility for the accuracy or enforceability of this Agreement through the exercise of this right of approval.
21. This Agreement shall terminate and no longer be binding on the Participating Party upon the occurrence of all of the following: (a) the Participating Party satisfies the Hiring Requirement; (b) the Participating Party satisfies the Expenditure Requirement; (c) the Participating Party documents compliance with the Hiring Requirement and the Expenditure Requirement as set forth herein; and, (d) Recipient closes out the CDBG Sub Grant Agreement with the Department [items (a), (b) and (c) are collectively referred to herein as the "PPA Requirements"]. Once the Participating Party satisfies the PPA Requirements and completes a final submission of the required job creation documentation, due prior to the CDBG Sub Grant Agreement expiration date, the Participating Party shall deliver written notice thereof to the Recipient ("the Participating Party's Termination Notice"). Upon receipt of the Participating Party's Termination Notice, the Recipient shall promptly attempt to verify that the Participating Party has satisfied the PPA Requirements and, in the event that the Recipient determines that the Participating Party has satisfied the PPA Requirements, the Recipient shall immediately provide the same documentation to the Department for their review. In the event, however, that the Recipient determines that the Participating Party has not satisfied the PPA Requirements, the Recipient shall notify the Participating Party in writing of its conclusion (including the specific grounds for such conclusion). In the event that the Department concludes that the Participating Party has not satisfied the PPA Requirements a notice will be made to the Recipient and the Recipient will then notice the Participating Party of the deficiencies. In the event that the Department determines that the documentation provided is sufficient to satisfy the PPA Requirement, the Department shall issue the Recipient a "Letter of Compliance." The Recipient will provide a copy of the Department's "Letter of Compliance" to the Participating Party, which shall terminate this Agreement.
22. Any extension of the CDBG Sub Grant Agreement pursuant to Rule 73C-23.0041, Florida Administrative Code, shall act as an extension of this Agreement. Failure of the Recipient to notify the Participating Party of such extension shall not invalidate this provision.
23. For purposes of this Agreement, any notices, records, reports or papers required to be furnished by the Participating Party to the Recipient shall be delivered to the Offices of St. Johns County, 500 San Sebastian View, St. Augustine, Florida 32084.

24. All documentation submitted to the Department by the Participating Party or the Recipient in any form is hereby and will, if submitted after execution hereof, be made a part of this Participating Party Agreement by reference, and it is understood by all parties that the Department relies on this information as a basis for decision making. Should any submission be found to be inaccurate to the extent that it is reasonable to conclude that the Department's decision would have been substantially different had the true and accurate information been available, the Recipient may declare this Agreement to be terminated and require repayment by the Participating Party of any funds expended on the project by the Recipient.
25. The Participating Party's failure to: (a) satisfy the Hiring Requirement; (b) satisfy the Expenditure Requirement, or (c) document compliance with the Hiring Requirement and the Expenditure Requirement in accordance with this Agreement shall constitute a default hereunder and shall subject the Participating Party to all remedies allowed by law.
26. The Participating Party shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) as it relates to employment discrimination, facility accessibility and the Americans with Disabilities Act.
27. Under the CDBG Sub Grant Agreement between the Recipient and the Department, the Recipient may request amendments to the CDBG Sub Grant Agreement subject to the discretion of the Department. Further, the Recipient is obligated to provide certain reports and data to the Department, and to constantly monitor performance, including the provisions herein. For such purposes, the Participating Party shall cooperate with the Recipient, and its agents including providing access to its premises and operations, and providing any data, reports, inspections or records as required by the Recipient, and attending any meetings required by the Recipient.
28. The Participating Party shall promptly notify the Recipient, in writing, of any judicial or administrative litigation pending as of closing against it and shall furnish the Recipient with a copy of all pleadings or papers filed with a court or administrative agency as such pleadings or papers are filed.
29. The Participating Party shall allow reasonable access to its records and facilities by the Department or its agents and by any other state or federal agency or their agents asserting jurisdiction to access compliance with any condition of the CDBG Sub Grant Agreement including compliance with any applicable state and federal law. The Participating Party shall promptly notify the Recipient as soon as it is informed that any such agency intends to seek access, or otherwise is preparing to access or monitor for compliance.
30. For a period of six (6) years following the final closeout of the CDBG Sub Grant Agreement, the Participating Party shall retain all original records pertaining to the implementation of this CDBG Economic Development program and pertaining to its compliance with the CDBG application and this Agreement. This period of record retention shall be automatically extended by any period of time that the Department extends this CDBG Sub Grant Agreement. If any litigation, claim or audit is started before the expiration of the record retention period otherwise required by this paragraph

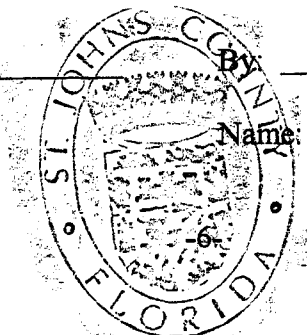
and extends beyond that period, the records shall be maintained until all litigation, claims or audit findings have been resolved.

31. Should the Recipient fail to enforce the provisions of any obligation specified in this Agreement, the Department may, with thirty (30) days written notice to the Recipient and to the Participating Party, automatically substitute itself for the Recipient in said Agreement for the purpose of enforcing said Agreement and may, at its sole discretion, continue to administer said Agreement, but may exercise such control only in accordance with the terms of this Agreement and the Application.
32. Should the Participating Party exercise its rights under any chapter of the Federal Bankruptcy Act or any state insolvency laws or should an involuntary action be commenced against the Participating Party, which shall not be dismissed with sixty (60) days after notice thereof to the Participating Party, the Participating Party shall give notice thereof to the Recipient. The Recipient shall so advise the Department within ten (10) days of the Recipient's receipt of such notice or other information in that regard.
33. Should the Recipient have substantive knowledge of any civil suit against the Participating Party prior to the expiration of this Agreement as amended, the Recipient shall notify the Department within ten (10) days of receipt of such information.
34. Venue for any dispute involving this agreement shall be in the Circuit Court of St. Johns County, Florida. In the event either party seeks to enforce any or all of the terms of this Agreement, the party which prevails by order, judgment, stipulation, decree, settlement, voluntary action or otherwise, shall receive all reasonable attorney's fees and any costs of paralegals, expert consultants and any other expenses of litigation, whether judicial or administrative, including any appeals, from the losing party.
35. The Participating Party shall provide sufficient information to the Recipient so that the Recipient can certify that none of the Recipient's Grant proceeds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of the Grant, any Federal contract, any Federal loan, any Federal grants, or any extension, renewal, modification or amendment thereto.
36. This Agreement is executed in multiple copies, each copy of which shall be deemed an original.

ATTEST:

**Board of County Commissioners of St.
Johns County, a political subdivision of the
State of Florida**

By: *Ron Halter*
Deputy County Clerk



By: *John H. Morris*
Name: John H. Morris, Chairman

Date: _____

(corporate seal)

ATTEST:

Silver Creek, LLLP, a Florida limited liability limited partnership

By: _____
Secretary

By: Silver Creek Enterprises, LLC, a Florida limited liability company, its General Partner

By: _____

Name: _____

Date: _____

(corporate seal)

Exhibit "A"

Milestones

ATTACHMENT 1 – Activity Work Plan

3/8/2012

Recipient: St. Johns County

Date Prepared: 02/21/2013

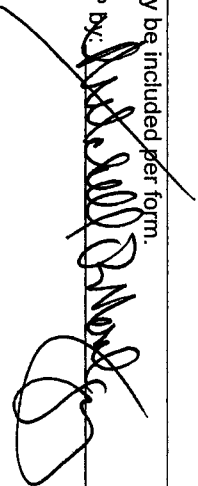
**Project Budget: \$20,560,000.00
– Participating Party**

Contract Number: 13DB-OI-04-65-01-E07

Modification Number: N/A

Date Start (month/year)	Date End (month/year)	Describe Proposed Action to be completed by the "Date End." <i>Examples of Actions: Complete Environmental Review and Obtain Release of Funds, Request Wage Decision, Complete and Submit Design and Specifications, Advertise for and Open Bids, Issue Notice to Proceed, % Construction Completion (33, 66, and 100%), Complete Procurement Process, Advertise Availability of Housing Rehabilitation Funds, Complete Rankings of Homes per HAP, and Number of Houses Rehabilitated.</i>	# Units to be completed by "Date End"	Proposed \$\$ to be Requested by "Date End"	Proposed Administration \$\$ to be Requested by "Date End"
06/13	10/13	Construction Phase – 25% Complete	0	\$4,100,000.00	\$0.00
11/13	2/14	Construction Phase – 50% Complete	0	\$8,200,000.00	\$0.00
3/14	6/14	Construction Phase – 75% Complete	0	\$12,500,000.00	\$0.00
7/14	10/14	Construction Phase – 100% Complete	1	\$20,560,000.00	\$0.00
9/14	12/14	Begin Hiring of Required Jobs	1	\$20,560,000.00	\$0.00
01/15	02/15	Complete Hiring of Required Jobs	1	\$20,560,000.00	\$0.00
02/15	03/15	Provide Documentation of Leverage Expenditures and Job Creation	1	\$20,560,000.00	\$0.00
04/15	04/15	Submit Administrative Closeout	1	\$20,560,000.00	\$0.00

Note: More than one activity may be included per form.

Approved for Silver Creek, LLLP by: 

Date: _____

2-22-13

RESOLUTION NO. 2013- 70

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING ACCEPTANCE OF GRANT FUNDS AND EXECUTION OF A U.S. DEPARTMENT OF HUD SMALL CITIES COMMUNITY DEVELOPMENT BLOCK SUB-GRANT AGREEMENT WITH THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, AUTHORIZING THE CHAIR OF THE BOARD OF COUNTY COMMISSIONERS OR HIS DESIGNEE TO EXECUTE THE CONTRACT AND ALL SUBSEQUENT REQUIRED DOCUMENTS ON BEHALF OF THE COUNTY AND AMENDING THE FISCAL YEAR 2013 TRANSPORTATION TRUST FUND BUDGET TO RECOGNIZE AND APPROPRIATE THE GRANT.

RECITALS

WHEREAS, in its efforts to encourage economic development, the Board of County Commissioners ("Board") considered and approved submission of an application to the U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG") Program, as administered by the Florida Department of Economic Opportunity ("DEO"), to aid in funding infrastructure improvements associated with development of the Silver Creek Assisted Living Facility ("Project"); and

WHEREAS, the DEO selected the County's application for the award of grant funding in the amount of \$750,000, and subsequently on July 17, 2012, the Board adopted Resolution 2012-194, authorizing the Chair (or designee) to execute the required HUD Small Cities CDBG Sub-Grant Agreement subject to the terms and conditions contained therein; and

WHEREAS, the Project developer, Montgomery Land Co., did not finalize its financing obligations within the timeframe provided under the terms and conditions of the Sub-Grant Agreement; and

WHEREAS, in its continued efforts to encourage economic development, the Board conducted two public hearings on September 4, 2012 and October 18, 2012, to again consider submission of an application to the HUD CDBG Program as administered by the DEO, to aid in funding infrastructure improvements associated with development of the Project; and

WHEREAS, the DEO has selected the County's application for the award of grant funding in the amount of \$750,000, and has forwarded the required Sub-Grant Agreement (attached hereto and incorporated herein) governing use of the funds to the County for execution; and

WHEREAS, construction of the proposed facility will provide an economic benefit to the County through the expenditure of construction funds and the creation of approximately 180 full-time jobs when the full development is complete; and

WHEREAS, many of the jobs will benefit low and moderate income individuals; and

WHEREAS, the Board has reviewed the terms and conditions of the Sub-Grant Agreement, and determined it serves a public purpose and the interests of St. Johns County; and

WHEREAS, in the preparation of the St. Johns County Board of County Commissioners Fiscal Year 2013 budget, OMB did not anticipate the award of a U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG") Program in the amount of \$750,000, as administered by the Florida Department of Economic Opportunity ("DEO").

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. Resolution 2012-194 is hereby rescinded.

Section 3. The Board authorizes the Chair, or designee, to execute the HUD Small Cities CDBG Sub-Grant Agreement with the Florida Dept. of Economic Opportunity, governing the use of grants funds in the amount of \$750,000 for infrastructure improvements related to development of the Project. The Board further authorizes the Chair, or designee, to execute any subsequent agreements and/or documents as required for receipt and administration of such grant funds. The Board further authorizes amending the Fiscal Year 2013 Transportation Trust Fund to recognize and appropriate the \$750,000 grant.

Section 4. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor or context of this Resolution, then this Resolution may then be revised without the subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED this 2 day of April, 2013.

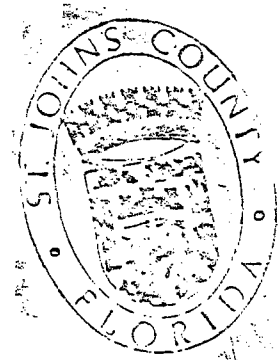
**BOARD OF COUNTY COMMISSIONERS ,
ST. JOHNS COUNTY, FLORIDA**

By: 
John H. Morris, Chairman

ATTEST: Cheryl Strickland, Clerk

By: 
Deputy Clerk

RENDITION DATE 4/2/13



Prepared by/Return to:
Ellen Avery-Smith, Esq.
Roger Towers, P.A.
100 Whetstone Place, Suite 100
St. Augustine, Florida 32086

Parcel ID No.: 102782-0043

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT ("Agreement") is made and entered effective as of the ____ day of _____ 2012, between the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County"), and **SILVER CREEK, LLLP**, a Florida limited liability limited partnership ("Developer").

WHEREAS, Developer has requested the County provide it with economic development assistance by constructing certain roadway, sidewalk, electrical service, and water and wastewater utility system improvements (collectively, the "Infrastructure") to service a 33-acre parcel known as St. Johns County Property Appraiser's Parcel No. 102782 0043 located on the north side of SR 207 in unincorporated St. Johns County, Florida ("Property"); and

WHEREAS, Developer has acquired the Property and plans on constructing an assisted living facility and related health care facilities thereon, and

WHEREAS, the County has applied to the Florida Department of Economic Opportunity ("Department") for Community Development Block Grant Program Assistance ("Grant") to help fund construction of the Infrastructure from State Road 207 to the Property; and

WHEREAS, the Grant has been awarded to the County; and

WHEREAS, the County has accepted the Grant but will construct the Infrastructure with the Grant proceeds only upon assurances from Developer that it will develop the Project (as hereinafter defined) on the Property and conform to all requirements of the Department and the Grant and that it will agree to pay all costs associated with the installation of the Infrastructure in excess of the amount funded by the Grant; and

WHEREAS, the Developer has agreed to develop the Project on the Property, to conform to all requirements of the Department and the Grant, and to pay all costs associated with installation of the Infrastructure to the Property in excess of the amount funded by the Grant.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **PROJECT.** The Developer shall construct an assisted living facility containing approximately one hundred twenty four (124) assisted living beds and sixty (60) assisted living memory care beds (the "Project") on the Property. The Infrastructure will be constructed within an 80-foot right-of-way owned by a third party that leads from State Road 207 to the Property (the "Right-of-Way").
2. **GRANT.** The County has received the Grant, which has grant number 12DB-OH-04-65-01-E07, in the amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) to pay for construction of the Infrastructure to benefit the

Project. The County hereby agrees to administer said Grant subject to the conditions set forth herein.

3. **COST OF ENGINEERING AND ADMINISTRATION.** All engineering services related to constructing the Infrastructure will be performed by an engineering firm selected and funded by the Developer. All Grant administrative services will be carried out by a consultant selected and funded by the Developer. Both the engineering firm and grant administrator selected by the Developer to carry out such services must be acceptable to the County.
4. **DESIGN REVIEW BIDDING AND CONSTRUCTION OBSERVATION.** The County shall have final review and approval of design for the Infrastructure to be constructed with the Grant funds. The County shall be responsible for bidding, awarding, contracting, issuing Notice to Proceed to the contractor, carrying out and approving all Infrastructure construction activities.
5. **COSTS OF CONSTRUCTION.** The parties hereto do not believe the cost of constructing the Infrastructure will exceed the amount of the Grant proceeds. However, in the event such costs do exceed the amount of the Grant proceeds, construction of the Infrastructure shall not begin until County and Developer have approved any bid amounts in excess of the Grant proceeds available for such construction and the Developer, at its option, either has escrowed with the County funds in the amount of the construction contract in excess of the available Grant proceeds or has posted a performance bond in such amount as security for the payment of excess construction costs. All change orders to the construction contract shall be approved by both the County and Developer prior to being executed. The Developer shall, at its option, either place in escrow with the County an amount equal to the funds required to pay for any approved change orders to the construction contract or post a performance bond with the County in such amount as security for change order costs prior to the change order being executed. The County shall be permitted to release the escrowed funds or draw on the performance bond posted by the Developer pursuant to this section only upon receipt of all applicable statutory lien waivers and releases from the contractor and all applicable subcontractors.
6. **COST OF UPSIZING.** The Developer agrees to escrow with the County funds necessary to pay the cost of any upsizing of the electrical, potable water and wastewater utility lines, equipment and other improvements required for use by future tenants of the Developer not associated with the Project and of the property owner deeding the Right-of-Way to the County (the "Adjacent Owner") being installed as part of the Infrastructure. The County shall be permitted to release the funds escrowed by the Developer pursuant to this section only upon receipt of all applicable statutory lien waivers and releases from the contractor and all applicable subcontractors.
7. **COST OF UPGRADING STREET LIGHTING, LANDSCAPING AND SIGNAGE.** The Developer agrees to escrow with the County the funds to pay for any upgrading of the street lighting, landscaping and signage installed as part of the Infrastructure above the minimum improvements required by County Code. The County shall be permitted to release the funds escrowed by the Developer pursuant to this section only upon receipt of all applicable statutory lien waivers and releases from the contractor and all applicable subcontractors.

8. **FACILITATING THE DEEDING OF THE ENTRANCE RIGHT-OF-WAY.** The Developer agrees to facilitate the deeding of the Right-of-Way from the Adjacent Owner to the County. It is the parties' intent that the Infrastructure be constructed within said Right-of-Way. Both the Developer and the County agree it is the intent of both parties hereto that the deed to the Right-of-Way be executed by the Adjacent Owner and held in escrow by the County Attorney prior to placing Infrastructure design and construction out for bids. Once the Infrastructure, located within the Right-of-Way, has been constructed and the Adjacent Owner and the County have accepted the Infrastructure, the deed giving ownership of the Right-of-Way to the County shall be recorded.
9. **TEMPORARY CONSTRUCTION EASEMENT.** The parties shall work together to secure from the Adjacent Owner a temporary construction easement required for the construction and installation of the Infrastructure within the Right-of-Way.
10. **MAINTENANCE OF RIGHT-OF-WAY.** The Developer agrees to maintain the Infrastructure constructed within the Right-of-Way in perpetuity. The Developer further agrees to record a deed restriction on the Property indicating maintenance of the Infrastructure within the Right-of-Way shall be the responsibility of the owner of the Property and shall run with title to the Property in perpetuity.
11. **SECURITY FOR PERFORMANCE.** Should the County be required to refund all or a portion of the Grant proceeds to the Department, for any reason attributable to the Developer, the Developer will pay to the County the amount demanded by the Department. Said payment shall be made in good funds and received by the County no later than five (5) business days prior to the date that the funds are due from the County to the Department. Should the Department refuse to disburse any Grant proceeds to the County to pay for construction costs of the Infrastructure incurred by the County for any reason attributable to the Developer, the Developer will pay sufficient funds to the County to make said payments within five (5) business days after being notified of the Department's refusal. Should the Department subsequently disburse the funds to the County, the County will pay over said funds to Developer. To evidence its obligations hereunder, the Developer shall provide either an improvements bond or an irrevocable letter of credit, in the form attached to this Agreement as **Exhibit "A"**, in favor of the County with a face amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00). The bond or letter of credit shall be posted and provided to the County no later than the date the County commences construction of or contracts for construction services for the Infrastructure within the Right-of-Way. The County shall only be permitted to request payment from the bond or letter of credit if Developer fails to pay over monies to the County as required under this paragraph and then only to the extent of the nonpayment. The bond or letter of credit will be canceled upon the successful completion of construction of the project and closeout of the Grant. All costs of administering the bond or letter of credit shall be paid by Developer.
12. **ADMINISTRATION AND CONSTRUCTION.** The County will oversee administration of the Grant funds, compliance with Grant requirements, design, bidding, inspection, and construction of the Infrastructure. If the County is required to refund the Grant proceeds or if the Department refuses to disburse any

Grant proceeds to the County to pay cost incurred for any reason attributable to the County's failure to properly administer the Grant funds or comply with the requirements of this Agreement, the County shall be responsible for paying the amount of the refunded or retained proceeds and Developer will not be required to reimburse the County for those proceeds.

13. **LIABILITY.** To the extent permissible by law, Developer shall indemnify, defend and hold the County harmless from, and against, all claims and reasonable costs associated with Developer's performance under this Agreement.
14. **ACCEPTANCE OF MONIES UNDER THE GRANT.** The County will accept monies under the Grant only upon the Developer entering into a Participating Party Agreement under the Community Development Block Grant Program, which agreement is acceptable to all parties.
15. **RECORDING.** This Agreement may be recorded in the public records of St. Johns County, Florida. Upon completion of construction of the Infrastructure, payment of all costs of constructing the Infrastructure and dedication of the Right-of-Way to the County, a Notice of Termination of this Agreement shall be recorded in the public records of St. Johns County, Florida.
16. **MISCELLANEOUS PROVISIONS.**
 - A. **Modification.** Either party may request modification of the provisions of this Agreement. Changes that are mutually agreed upon shall be valid only when in writing, signed by each of the parties, and attached to and incorporated in this Agreement.
 - B. **Assignment.** In light of the scope and rationale for this Agreement, neither the County nor the Developer may assign, transfer, and/or sell any of the rights noted in this Agreement, or associated with this Agreement, without the express written approval of the other party.
 - C. **Governing Law and Venue.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida. Venue for any actions arising out of this Agreement shall be St. Johns County, Florida.
 - D. **Compliance with Applicable Laws.** Both the County and Developer shall abide by, and comply with, all applicable laws, rules, regulations, orders and policies of the local, state and federal governments.
 - E. **Public Records.** The County reserves the right to unilaterally terminate this Agreement if the Developer refuses to allow public access to all documents, papers, letters, or other materials created or received under this Agreement and otherwise subject to the provisions of Chapter 119, Florida Statutes.
 - F. **Severability.** If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of such conflict, and shall be

severable, but shall not invalidate any other provision of this Agreement.

17. **MULTIPLE ORIGINALS.** This Agreement is executed in multiple copies, each copy of which shall be deemed an original.
18. **AUTHORITY TO EXECUTE.** Each party covenants to the other party/parties that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals:

ST JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS:

_____, St. Johns County Board of County Commissioners Chairman

Attested By:

_____, County Administrator

STATE OF FLORIDA)
)
COUNTY OF ST. JOHNS)

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by _____, as _____ of St. Johns County, Florida, on behalf of St. Johns County, Florida, who is ___ personally known to me or who has produced _____ as identification and who did take an oath.

Notary Public, State of Florida
Print Name: _____
My Commission Expires: _____
My Commission No.: _____

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

SILVER CREEK, LLLP, a Florida limited liability
limited partnership

By: _____

Name: _____

Title: _____

STATE OF FLORIDA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, as _____ of Silver Creek, LLLP, a Florida limited liability limited partnership, on behalf of the partnership, who is _____ personally known to me or who has produced _____ as identification and who did take an oath.

Notary Public, State of Florida
Print Name: _____
My Commission Expires: _____
My Commission No.: _____

EXHIBIT "A"

FORM OF REQUIRED IMPROVEMENTS BOND

Bond no. _____

KNOW ALL MEN BY THESE PRESENTS, that we _____, a
_____ corporation,
_____ as Principal, and _____
authorized to do business in the State of Florida, as Surety, are held and firmly bound unto the
Board of County Commissioners of St. Johns County, St. Johns County Courthouse, St.
Augustine, Florida 32084 as Obligee, in the penal sum of _____
U.S. DOLLARS, lawful money of the United States of America, for the payment of which well and truly
to be made, we bind ourselves, our heirs, executors, administrators, successors, and
assigns, jointly and severally, firmly by these presents, for a period of 12 months from the date of
issuance with an **automatic renewal clause**.

WHEREAS, _____

Address: _____

has agreed to construct and maintain to county standards the following improvements:

- 1) Roads Drainage and Utility improvements within _____.
- 2.) The Required Improvements Bond shall be issued with an automatic renewal clause. Each year sixty (60) days prior to the annual renewal date the owner or assign shall submit to the County an updated cost estimate to insure the adequacy of the existing Required Improvements Bond per Sec. 6.04.08 of the St. Johns County Land Development Code.
- 3) Said required improvements and/or repair having been required to be completed and accepted by the Board of County Commissioners under St. Johns County Ordinance No. 99-51 effective September 15, 1999, as amended.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal shall maintain the improvements herein described and shall save the Obligee harmless from any loss, cost or damage by reason of its failure to complete said work, then this obligation shall be null and void; otherwise to remain in full force and effect.

Signed, sealed and dated this _____ day of _____, 20__

Principal By: _____

Title _____

Surety By: _____

Title _____

Surety Contact Name _____

Surety Contact Phone # _____

FORM OF REQUIRED LETTER OF CREDIT

**IRREVOCABLE LETTER OF CREDIT# _____
FOR REQUIRED IMPROVEMENTS**

DATE: _____

APPLICANT & ADDRESS

BENEFICIARY

**AMOUNT: \$ _____
US DOLLARS**

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY
4040 LEWIS SPEEDWAY
ST. AUGUSTINE, FLORIDA 32084
ATTN: VALERIE PACETTI, DEVELOPMENT REVIEW

YOU ARE AUTHORIZED TO VALUE ON _____ BANK OF
_____ FLORIDA BY DRAWING DRAFTS
AT SIGHT ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. A notarized statement signed by an authorized representative of the board of County Commissioners of St. Johns County certifying that _____, has failed to complete its agreement to construct and maintain the following required improvements to County Standards :

Roads, drainage and utilities within: _____

2. The Required Improvements letter of credit shall be issued with an automatic renewal clause. Each year sixty (60) days prior to the annual renewal date the owner or assign shall submit to the County an updated cost estimate to insure the adequacy of the existing Required Improvements letter of credit per Sec. 6.04.08 of the St. Johns County Land Development Code.

Said required improvements or repairs having been required to be completed and accepted by the Board of County Commissioners under St. Johns County Ordinance No. 99-51 effective September 15, 1999, as amended.

3. Original of this Letter of Credit

THE AMOUNT OF ANY DRAFT DRAWN UNDER THIS CREDIT MUST BE ENDORSED ON THE REVERSE HEREOF. ALL DRAFTS MUST BE MARKED "DRAWN UNDER _____ BANK OF _____, FLORIDA LETTER OF CREDIT NUMBER _____ DATED _____.

THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500".

WE HEREBY AGREE THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED BY US ON DELIVERY OF DOCUMENTS AS SPECIFIED ABOVE.

AUTHORIZED SIGNATURE and TITLE