



CITY OF AVON PARK

Highlands County, Florida
110 East Main Street
Avon Park, Florida 33825

August 6, 2014

Avon Park City Council
110 East Main Street
Avon Park, Florida 33825

Dear Council Members:

Pursuant to City Ordinance No. 874, you are hereby notified of a Regular Meeting of the City Council on Monday, August 11, 2014, at 6:00 p.m., in the City Council Chambers located at 123 East Pine Street, Avon Park, Florida. If you are unable to attend, please contact me at 452-4403.

Sincerely,

A handwritten signature in black ink, appearing to read "Julian Deleon".

Julian Deleon
City Manager

**CITY COUNCIL REGULAR MEETING
CITY COUNCIL CHAMBERS
123 E. Pine St. Avon Park, FL
August 11, 2014
6:00 PM
REVISION-1**

A. OPENING

1. Invocation
2. Pledge of Allegiance
3. Roll Call

B. CONSENT AGENDA:

4. Council Minutes – Approval of Regular Council Meeting of July 28, 2014

C. CITIZENS/OUTSIDE AGENCIES

5. Proclamation-**Women's Equality Day**- Highlands County Democratic Women's Club

D. COMMITTEE REPORTS/ATTY UPDATES/ANNOUNCEMENTS/PRESENTATIONS

E. ADMINISTRATIVE

11. Approval on the Contract to possibly acquire the Brickell Building
12. Contract approval Lake Verona Water quality Improvements
13. CDBG grant agreement with DEO
14. Resolution 14-13 Signature Authority for Subgrant agreements with DEO
15. Annexation and Utility Service Agreement with BHG

F. CITIZENS PARTICIPATION

G. ADJOURN

Any person who might wish to appeal any decision made by the City Council of the City of Avon Park, Highlands County, Florida, in public hearing or meeting is hereby advised that he/she will need a record of the proceedings, and for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based. Any person with disabilities requiring accommodations in order to participate should contact the City Manager prior to the meeting.

B-4

CITY COUNCIL REGULAR MEETING MINUTES
Council Chambers – 123 E. Pine St., Avon Park, FL
July 28, 2014
6:00 PM

Members Present: Deputy Mayor Brenda Giles, Councilman Garrett Anderson, Councilman Parke Sutherland and Councilman Terry Heston. **Members Absent:** Mayor Sharon Schuler.

Others Present: City Manager Julian Deleon, and Administrative Services Director Maria Sutherland, Attorney Gerald T. Buhr, Members of Press and Audience.

Deputy Mayor Brenda Giles called the meeting to order at 6:10 P.M. The invocation was given and the Pledge of Allegiance was recited. The roll was called and a quorum was present.

CONSENT AGENDA: City Manager, Julian Deleon, noted the items on the consent agenda. Council Minutes Regular Meeting July 14, 2014. Motion made by Councilman Terry Heston, seconded by Councilman Garrett Anderson to approve consent agenda as presented. Motion carried unanimously.

CITIZENS/OUTSIDE AGENCIES: Proclamation –National Community Health Center Week. Administrative Service Director Maria Sutherland read the Proclamation into the record. Motion made by Councilman Garrett Anderson, Seconded by Councilman Terry Heston to approve Proclamation as read. Motion carried unanimously.

Highlands County Parks and Recreation Survey. It was discussed and recommended by the City Council to all citizens of Avon Park take this survey. The feedback from the survey is to help assess current uses and needs for parks and recreation.

ADMINISTRATIVE:

Final Reading for Ordinance 15-14 (Annexation of 2525 U S 27S)

Deputy Mayor Brenda Giles declared the public hearing open. The owner of Lake Glenada Mobile Home Park approached the podium and voiced concerns about not being noticed regarding the annexation. She, however, explained that she was out of town at the time of notification. She explained she inherited the property and was not told by her father about a covenant he had signed prior. City Attorney Buhr mentioned the covenant is an agreement that is tied to the property, not the owner. Comments from audience were both for and against annexation. The owner only voiced concerns over the notification process and not the annexation itself. With no more show of hands Deputy Mayor Brenda Giles closed the public hearing. Motion made by Councilman Terry Heston, Seconded by Councilman Parke Sutherland to approve final reading of Ordinance 15-14. Motion carried 3 to 1 with Councilman Garrett Anderson voting no.

Final Reading for Ordinance 16-14 (Changes to APFD vesting schedule).

Motion: Made by Councilman Terry Heston, seconded by Councilman Parke Sutherland to approve final reading of Ordinance 16-14 as presented. Motion carried unanimously.

Final Reading for Ordinance 18-14 (Adopt Flood Hazard Maps)

Motion: Made by Councilman Terry Heston, Seconded by Councilman Parke Sutherland to approve final reading of Ordinance 18-14 as presented. Motion carried unanimously.

Resolution 14-09 to vacate a portion of Joe Hilton Street CFRPC Public Hearing: It was brought to the attention of the Council by Attorney Gerald T Buhr that you could not vacate a portion of a street by Resolution, it had to be an ordinance. Alice Parzely approached the podium and asked why the vacate is taking place. She is against closing the lake front. She stated people liked to fish on that section of the lake. Owner Kim Kildahl approached the podium and stated she had never seen anyone fish that area or use that area. She said she had been maintaining since she purchased the property. Arnold Davis approached the podium and requested the vacating not take place. Al Joe Hinson also approached the podium and voiced against the vacating, Jean Jordan also spoke against vacating the road. Attorney Buhr stated the vacation should be under Ordinance and not Resolution and suggested changing to Ordinance for properness.

Motion made by Councilman Parke Sutherland to change the Resolution 14-09 to Ordinance 19-14 for first reading. Motion failed for lack of second. The vacation died for lack of second.

Approval on the Contract to possibly acquire the Brickell Building. City Manager Julian Deleon spoke about the historic value of the building and inquired Council to discuss options of purchase of the building. Tom Macklin spoke against the purchase and pointed out discrepancies in the commercial contract. After discussion, Attorney Gerald T. Buhr suggested that City Manager Julian Deleon and him go over the contract to make sure everything in the contract is correct and in accordance with State Statutes. After further discussion it was noted that City Manager Julian Deleon could put up a \$15,000.00 deposit to hold the sale until the contract could be corrected and presented to the Council. Motion made by Councilman Garrett Anderson, Seconded by Councilman Terry Heston to table the item until at least the next Council Meeting. Motion carried unanimously.

Airport Budget Changes:

The Council will need to amend budget to include the fuel farm at the Airport.

1. \$600,000 in the Airport Fund to build new or relocate T-Hangers. (100% FDOT Grant Funded) Motion made by Councilman Garrett Anderson, Seconded by Councilman Terry Heston to approve item #1 as presented. Motion carried unanimously.
2. \$650,000.00 in the Airport Fund to build a fuel farm. (80% FDOT grant funded in FY 2015-2016. This means that we have to front the cost for the entire project next fiscal year.) Motion made by Councilman Terry Heston, Seconded by Councilman Garrett Anderson to approve item #2 as presented, motion carried unanimously.
3. Budget an **Interfund transfer** of \$100,000.00 from the Airport CRA to the Airport Fund for the purpose of the fuel farm. Motion made by Councilman Terry Henderson, Seconded by Councilman Garrett Anderson to approve Item #3 as presented. Motion carried unanimously.
4. Budget an **Interfund Loan** from the Infrastructure Fund to the Airport Fund for \$550,000.00. Motion made by Councilman Garrett Anderson, Seconded by Councilman Terry Heston to approve Item #4 as presented. Motion carried unanimously.

CITIZENS PARTICIPATION:

Robert Flores approached the podium and addressed the Council. As a member of the Main Street CRA and resident of the City- he spoke in favor of the purchase of the Brickell Building.

Others made public announcements.

Meeting adjourned at 7:45 PM

Recorded and transcribed by Maria Sutherland.

ATTEST: _____
Maria Sutherland

Sharon Schuler, Mayor

C-5

Proclamation by the City of Avon Park FL, Council

Women's Equality Day

Whereas, throughout the history of our great nation, women have been subjected to treatment as second-class citizens and have not been entitled the full rights and privileges, public or private, legal or institutional; and

Whereas, women have united and rallied together to assure that these basic rights and privileges are available to all citizens equally regardless of sex: and

Whereas, on August 26, 1920, the 19th Amendment giving women the right to vote was finally ratified after a seventy-two year struggle by women to win the right to vote; and

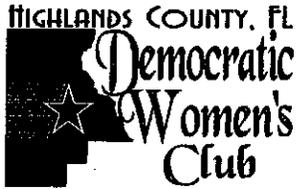
Whereas, in 1971, the United States Congress designated August 26th as Women's Equality Day each year at the urging of Representative Bella Abzug of New York; and

Whereas, the observance of Women's Equality Day calls attention to women's continuing efforts toward full equality including equal pay for equal work; and

Whereas, the Democratic Women Club of Highlands County deems it appropriate and necessary to celebrate the extraordinary accomplishments of women in America and throughout the world and renew our commitment to equality for all women, both at home and abroad.

NOW, THEREFORE, BE IT RESOLVED, by the Avon Park City Council, duly assembled, that said Council hereby designates August 26, 2014 as Women's Equality Day in Avon Park Florida.

I, _____ Mayor of the City of Avon Park, Florida do hereby proclaim Tuesday, August 26, 2014 as Women's Equality Day in Avon Park, Florida.



July 28, 2014

To: The City of Avon Park City Council

August 26th is Women's Equality Day. The Highlands County Democratic Women Club is asking that you proclaim, at your regular meeting August 26th, 2014 Women's Equality Day in Avon Park, Florida.

I am including information about this important day in my communication along with a Proclamation to be signed at your next meeting.

We are planning a Celebration of Women's Equality Day, at our monthly meeting on Saturday, August 23, 2014-9:45am.

Please join us!

You may contact; Margaret Turnbull at 452-3834 or Velma Lumpkin at 863-471-2672 for more information.

Thank you for your support.

Respectfully,

Velma Lumpkin, President

What is Women's Equality Day?

At the behest of Rep. Bella Abzug (D-NY), in 1971 the U.S. Congress designated August 26 as "Women's Equality Day."

The date was selected to commemorate the 1920 passage of the 19th Amendment to the Constitution, granting women the right to vote. This was the culmination of a massive, peaceful civil rights movement by women that had its formal beginnings in 1848 at the world's first women's rights convention, in Seneca Falls, New York.

The observance of Women's Equality Day not only commemorates the passage of the 19th Amendment, but also calls attention to women's continuing efforts toward full equality. Workplaces, libraries, organizations, and public facilities now participate with Women's Equality Day programs, displays, video showings, or other activities.

Joint Resolution of Congress, 1971 Designating August 26 of each year as Women's Equality Day

WHEREAS, the women of the United States have been treated as second-class citizens and have not been entitled the full rights and privileges, public or private, legal or institutional, which are available to male citizens of the United States; and

WHEREAS, the women of the United States have united to assure that these rights and privileges are available to all citizens equally regardless of sex; and

WHEREAS, the women of the United States have designated August 26, the anniversary date of the passage of the Nineteenth Amendment, as symbol of the continued fight for equal rights: and

WHEREAS, the women of United States are to be commended and supported in their organizations and activities,

NOW, THEREFORE, BE IT RESOLVED, the Senate and House of Representatives of the United States of America in Congress assembled, that August 26th of each year is designated as Women's Equality Day, and the President is authorized and requested to issue a proclamation annually in commemoration of that day in 1920, on which the women of America were first given the right to vote, and that day in 1970, on which a nationwide demonstration for women's rights took place

E-11



Commercial Contract

1. PARTIES AND PROPERTY: _____ City of Avon Park _____ ("Buyer")

agrees to buy and _____ Citizens Bank & Trust _____ ("Seller")

agrees to sell the property as: Street Address: 2 E. Main St. Avon Park FL 33825

Legal Description: See attached Addendum 1 (2 Pages)

and the following Personal Property: _____

(all collectively referred to as the "Property") on the terms and conditions set forth below.

2. PURCHASE PRICE: \$ 370000

(a) Deposit held in escrow by Ridge Security Title \$ 15000 ("Escrow Agent") (checks are subject to actual and final collection)

Escrow Agent's address: 36248 US HWY 27, Haines City FL 33899 Phone: _____

(b) Additional deposit to be made to Escrow Agent within ___ days after Effective Date \$ _____

(c) Additional deposit to be made to Escrow Agent within ___ days after Effective Date \$ _____

(d) Total financing (see Paragraph 5) \$ _____

(e) Other \$ _____

(f) All deposits will be credited to the purchase price at closing. Balance to close, subject to adjustments and prorations, to be paid with locally drawn cashier's or official bank check(s) or wire transfer. \$ 355000

3. TIME FOR ACCEPTANCE; EFFECTIVE DATE; COMPUTATION OF TIME: Unless this offer is signed by Seller and Buyer and an executed copy delivered to all parties on or before August 5, 2014, this offer will be withdrawn and the Buyer's deposit, if any, will be returned. The time for acceptance of any counter offer will be 3 days from the date the counter offer is delivered. The "Effective Date" of this Contract is the date on which the last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer. Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. of the next business day. Time is of the essence in this Contract.

4. CLOSING DATE AND LOCATION:

(a) Closing Date: This transaction will be closed on October 28, 2014 (Closing Date), unless specifically extended by other provisions of this Contract. The Closing Date will prevail over all other time periods including, but not limited to, Financing and Due Diligence periods. In the event insurance underwriting is suspended on Closing Date and Buyer is unable to obtain property insurance, Buyer may postpone closing up to 5 days after the insurance underwriting suspension is lifted.

Buyer (signature) and Seller () () acknowledge receipt of a copy of this page, which is Page 1 of 8 Pages.

37* (b) Location: Closing will take place in Highlands County, Florida. (If left blank, closing
38 will take place in the county where the property is located.) Closing may be conducted by mail or electronic means.

5. THIRD PARTY FINANCING:

40* BUYER'S OBLIGATION: Within _____ days (5 days if left blank) after Effective Date, Buyer will apply for third party
41* financing in an amount not to exceed _____% of the purchase price or \$ _____, with a fixed interest rate
42* not to exceed _____% per year with an initial variable interest rate not to exceed _____%, with points or commitment
43* or loan fees not to exceed _____% of the principal amount, for a term of _____ years, and amortized over _____
44 years, with additional terms as follows:

45* _____
46 Buyer will timely provide any and all credit, employment, financial and other information reasonably required by any
47* lender. Buyer will use good faith and reasonable diligence to (i) obtain Loan Approval within _____ days (45 days if
48 left blank) from Effective Date (Loan Approval Date), (ii) satisfy terms and conditions of the Loan Approval, and
49 (iii) close the loan. Buyer will keep Seller and Broker fully informed about loan application status and authorizes the
50 mortgage broker and lender to disclose all such information to Seller and Broker. Buyer will notify Seller immediately
51 upon obtaining financing or being rejected by a lender. CANCELLATION: If Buyer, after using good faith and
52* reasonable diligence, fails to obtain Loan Approval by Loan Approval Date, Buyer may within _____ days (3 days if left
53 blank) deliver written notice to Seller stating Buyer either waives this financing contingency or cancels this Contract.
54 If Buyer does neither, then Seller may cancel this Contract by delivering written notice to Buyer at any time
55 thereafter. Unless this financing contingency has been waived, this Contract shall remain subject to the
56 satisfaction, by closing, of those conditions of Loan Approval related to the Property. DEPOSIT(S) (for purposes
57 of Paragraph 5 only): If Buyer has used good faith and reasonable diligence but does not obtain Loan
58 Approval by Loan Approval Date and thereafter either party elects to cancel this Contract as set forth above or the
59 lender fails or refuses to close on or before the Closing Date without fault on Buyer's part, the Deposit(s) shall be
60 returned to Buyer, whereupon both parties will be released from all further obligations under this Contract, except for
61 obligations stated herein as surviving the termination of this Contract. If neither party elects to terminate this Contract
62 as set forth above or Buyer fails to use good faith or reasonable diligence as set forth above, Seller will be entitled to
63 retain the Deposit(s) if the transaction does not close.

64* 6. TITLE: Seller has the legal capacity to and will convey marketable title to the Property by statutory warranty
65 deed other _____, free of liens, easements and encumbrances of record or
66 known to Seller, but subject to property taxes for the year of closing; covenants, restrictions and public utility
67 easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be
68* subject) _____

69* _____;
70 provided there exists at closing no violation of the foregoing and none of them prevents Buyer's intended use of the
71* Property as _____ to further its public purposes

72 (a) Evidence of Title: The party who pays the premium for the title insurance policy will select the closing agent
73* and pay for the title search and closing services. Seller will, at (check one) Seller's Buyer's expense and
74* within 30 days after Effective Date or at least _____ days before Closing Date deliver to Buyer (check one)
75* (i.) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be
76 discharged by Seller at or before Closing and, upon Buyer recording the deed, an owner's policy in the amount
77 of the purchase price for fee simple title subject only to exceptions stated above. If Buyer is paying for the
78 evidence of title and Seller has an owner's policy, Seller will deliver a copy to Buyer within 15 days after
79 Effective Date.

80* (ii.) an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an
81 existing firm. However, if such an abstract is not available to Seller, then a prior owner's title policy acceptable
82 to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies
83 of all policy exceptions and an update in a format acceptable to Buyer from the policy effective date and
84 certified to Buyer or Buyer's closing agent together with copies of all documents recited in the prior policy and
85 in the update. If such an abstract or prior policy is not available to Seller then (i.) above will be the evidence of
86 title.

87 (b) Title Examination: Buyer will, within 15 days from receipt of the evidence of title deliver written notice to Seller
88 of title defects. Title will be deemed acceptable to Buyer if (1) Buyer fails to deliver proper notice of defects or

89* Buyer  (_____) and Seller (_____) (_____) acknowledge receipt of a copy of this page, which is Page 2 of 8 Pages.

90* (2) Buyer delivers proper written notice and Seller cures the defects within 30 days from receipt of the notice
91 ("Curative Period"). If the defects are cured within the Curative Period, closing will occur within 10 days from receipt
92 by Buyer of notice of such curing. Seller may elect not to cure defects if Seller reasonably believes any defect
93 cannot be cured within the Curative Period. If the defects are not cured within the Curative Period, Buyer will have
94 10 days from receipt of notice of Seller's inability to cure the defects to elect whether to terminate this Contract or
95 accept title subject to existing defects and close the transaction without reduction in purchase price.

96 (c) Survey: (check applicable provisions below)

97* (i.) Seller will, within 10 days from Effective Date, deliver to Buyer copies of prior surveys, plans,
98 specifications, and engineering documents, if any, and the following documents relevant to this transaction:

99* _____
100 prepared for Seller or in Seller's possession, which show all currently existing structures. In the event this
101 transaction does not close, all documents provided by Seller will be returned to Seller within 10 days from the
102 date this Contract is terminated.

103* Buyer will, at Seller's Buyer's expense and within the time period allowed to deliver and examine title
104 evidence, obtain a current certified survey of the Property from a registered surveyor. If the survey reveals
105 encroachments on the Property or that the improvements encroach on the lands of another, Buyer will
106 accept the Property with existing encroachments such encroachments will constitute a title defect to be
107 cured within the Curative Period.

108 (d) Ingress and Egress: Seller warrants that the Property presently has ingress and egress.

109 7. PROPERTY CONDITION: Seller will deliver the Property to Buyer at the time agreed in its present "as is"
110 condition, ordinary wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition.
111 Seller makes no warranties other than marketability of title. In the event that the condition of the Property has
112 materially changed since the expiration of the Due Diligence Period, Buyer may elect to terminate the Contract and
113 receive a refund of any and all deposits paid, plus interest, if applicable. By accepting the Property "as is", Buyer
114 waives all claims against Seller for any defects in the Property. (Check (a) or (b))

115* (a) As Is: Buyer has inspected the Property or waives any right to inspect and accepts the Property in its "as is"
116 condition.

117* (b) Due Diligence Period: Buyer will, at Buyer's expense and within 45 days from Effective Date ("Due
118 Diligence Period"), determine whether the Property is suitable, in Buyer's sole and absolute discretion, for Buyer's
119 intended use and development of the Property as specified in Paragraph 6. During the Due Diligence Period,
120 Buyer may conduct any tests, analyses, surveys and investigations ("Inspections") which Buyer deems necessary
121 to determine to Buyer's satisfaction the Property's engineering, architectural, environmental properties; zoning and
122 zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of
123 access to public roads, water, and other utilities; consistency with local, state and regional growth management and
124 comprehensive land use plans; availability of permits, government approvals and licenses; compliance with
125 American with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections
126 that Buyer deems appropriate to determine the suitability of the Property for Buyer's intended use and
127 development. Buyer will deliver written notice to Seller prior to the expiration of the Due Diligence Period of
128 Buyer's determination of whether or not the Property is acceptable. Buyer's failure to comply with this notice
129 requirement will constitute acceptance of the Property in its present "as is" condition. Seller grants to Buyer, its
130 agents, contractors and assigns, the right to enter the Property at any time during the Due Diligence Period for the
131 purpose of conducting Inspections; provided, however, that Buyer, its agents, contractors and assigns enter the
132 Property and conduct Inspections at their own risk. ~~Buyer will indemnify and hold Seller harmless from losses,
133 damages, costs, claims and expenses of any nature, including attorneys' fees at all levels, and from liability to any
134 person, arising from the conduct of any and all inspections or any work authorized by Buyer. Buyer will not engage
135 in any activity that could result in a mechanic's lien being filed against the Property without Seller's prior written
136 consent. In the event this transaction does not close, (1) Buyer will repair all damages to the Property resulting
137 from the Inspections and return the Property to the condition it was in prior to conduct of the Inspections, and
138 (2) Buyer will, at Buyer's expense release to Seller all reports and other work generated as a result of the
139 Inspections. Should Buyer deliver timely notice that the Property is not acceptable, Seller agrees that Buyer's
140 deposit will be immediately returned to Buyer and the Contract terminated.~~

141 (c) Walk-through Inspection: Buyer may, on the day prior to closing or any other time mutually agreeable to the

Buyer () and Seller () () acknowledge receipt of a copy of this page, which is Page 3 of 8 Pages.

193 Social Security Numbers to the closing agent. If Buyer does not pay sufficient cash at closing to meet the
194 withholding requirement, Seller will deliver to Buyer at closing the additional cash necessary to satisfy the
195 requirement.

196 **10. ESCROW AGENT:** Seller and Buyer authorize Escrow Agent or Closing Agent (collectively "Agent") to
197 receive, deposit, and hold funds and other property in escrow and, subject to collection, disburse them in accordance
198 with the terms of this Contract. The parties agree that Agent will not be liable to any person for misdelivery of
199 escrowed items to Seller or Buyer, unless the misdelivery is due to Agent's willful breach of this Contract or gross
200 negligence. If Agent has doubt as to Agent's duties or obligations under this Contract, Agent may, at Agent's option,
201 (a) hold the escrowed items until the parties mutually agree to its disbursement or until a court of competent
202 jurisdiction or arbitrator determines the rights of the parties or (b) deposit the escrowed items with the clerk of
203 the court having jurisdiction over the matter and file an action in interpleader. Upon notifying the parties of such action,
204 Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. If
205 Agent is a licensed real estate broker, Agent will comply with Chapter 475, Florida Statutes. In any suit in which Agent
206 interpleads the escrowed items or is made a party because of acting as Agent hereunder, Agent will recover
207 reasonable attorney's fees and costs incurred, with these amounts to be paid from and out of the escrowed items and
208 charged and awarded as court costs in favor of the prevailing party.

209 **11. CURE PERIOD:** Prior to any claim for default being made, a party will have an opportunity to cure any alleged
210 default. If a party fails to comply with any provision of this Contract, the other party will deliver written notice to the non-
211 complying party specifying the non-compliance. The non-complying party will have ___ days (5 days if left blank) after
212 delivery of such notice to cure the non-compliance. Notice and cure shall not apply to failure to close.

213 **12. RETURN OF DEPOSIT:** Unless otherwise specified in the Contract, in the event any condition of this Contract is
214 not met and Buyer has timely given any required notice regarding the condition having not been met, Buyer's deposit
215 will be returned in accordance with applicable Florida Laws and regulations.

216 **13. DEFAULT:**

217 (a) In the event the sale is not closed due to any default or failure on the part of Seller other than failure to make
218 the title marketable after diligent effort, Buyer may either (1) receive a refund of Buyer's deposit(s) or (2) seek
219 specific performance. If Buyer elects a deposit refund, Seller will be liable to Broker for the full amount of the
220 brokerage fee.

221 (b) In the event the sale is not closed due to any default or failure on the part of Buyer, Seller may either (1) retain
222 all deposit(s) paid or agreed to be paid by Buyer as agreed upon liquidated damages, consideration for the
223 execution of this Contract, and in full settlement of any claims, upon which this Contract will terminate or (2) seek
224 specific performance. If Seller retains the deposit, Seller will pay the Brokers named in Paragraph 20 fifty percent
225 of all forfeited deposits retained by Seller (to be split equally among the Brokers) up to the full amount of the
226 brokerage fee. If Buyer fails to timely place a deposit as required by this Contract, Seller may either (1) terminate
227 the Contract and seek the remedy outlined in this subparagraph or (2) proceed with the Contract without waiving
228 any remedy for Buyer's default.

229 **14. ATTORNEY'S FEES AND COSTS:** In any claim or controversy arising out of or relating to this Contract, the
230 prevailing party, which for purposes of this provision will include Buyer, Seller and Broker, will be awarded reasonable
231 attorneys' fees, costs, and expenses.

232 **15. NOTICES:** All notices will be in writing and may be delivered by mail, overnight courier, personal delivery, or
233 electronic means. Parties agree to send all notices to addresses specified on the signature page(s). Any notice,
234 document, or item given by or delivered to an attorney or real estate licensee (including a transaction broker)
235 representing a party will be as effective as if given by or delivered to that party.

236 **16. DISCLOSURES:**

237 (a) **Commercial Real Estate Sales Commission Lien Act:** The Florida Commercial Real Estate Sales
238 Commission Lien Act provides that a broker has a lien upon the owner's net proceeds from the sale of commercial
239 real estate for any commission earned by the broker under a brokerage agreement. The lien upon the owner's net

240 Buyer () and Seller () () acknowledge receipt of a copy of this page, which is Page 5 of 8 Pages.

241 proceeds is a lien upon personal property which attaches to the owner's net proceeds and does not attach to any
242 interest in real property. This lien right cannot be waived before the commission is earned.

244 (b) **Special Assessment Liens Imposed by Public Body:** The Property may be subject to unpaid special
245 assessment lien(s) imposed by a public body. (A public body includes a Community Development District.) Such
liens, if any, shall be paid as set forth in Paragraph 9(e).

246 (c) **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in
247 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that
248 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon
249 and radon testing may be obtained from your county public health unit.

250 (d) **Energy-Efficiency Rating Information:** Buyer acknowledges receipt of the information brochure required by
251 Section 553.996, Florida Statutes.

252 **17. RISK OF LOSS:**

253 (a) If, after the Effective Date and before closing, the Property is damaged by fire or other casualty, Seller will bear
254 the risk of loss and Buyer may cancel this Contract without liability and the deposit(s) will be returned to Buyer.
255 Alternatively, Buyer will have the option of purchasing the Property at the agreed upon purchase price and Seller
256 will credit the deductible, if any and transfer to Buyer at closing any insurance proceeds, or Seller's claim to any
257 insurance proceeds payable for the damage. Seller will cooperate with and assist Buyer in collecting any such
258 proceeds. Seller shall not settle any insurance claim for damage caused by casualty without the consent of the
259 Buyer.

260 (b) If, after the Effective Date and before closing, any part of the Property is taken in condemnation or under the
261 right of eminent domain, or proceedings for such taking will be pending or threatened, Buyer may cancel this
262 Contract without liability and the deposit(s) will be returned to Buyer. Alternatively, Buyer will have the option of
263 purchasing what is left of the Property at the agreed upon purchase price and Seller will transfer to the Buyer at
264 closing the proceeds of any award, or Seller's claim to any award payable for the taking. Seller will cooperate with
and assist Buyer in collecting any such award.

266 18. **ASSIGNABILITY; PERSONS BOUND:** This Contract may be assigned to a related entity, and otherwise is
267 not assignable is assignable. If this Contract may be assigned, Buyer shall deliver a copy of the assignment
268 agreement to the Seller at least 5 days prior to Closing. The terms "Buyer," "Seller" and "Broker" may be singular or
269 plural. This Contract is binding upon Buyer, Seller and their heirs, personal representatives, successors and assigns
270 (if assignment is permitted).

271 19. **MISCELLANEOUS:** The terms of this Contract constitute the entire agreement between Buyer and Seller.
272 Modifications of this Contract will not be binding unless in writing, signed and delivered by the party to be bound.
273 Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated
274 electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or
275 typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract
276 is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Contract will be
277 construed under Florida law and will not be recorded in any public records.

278 20. **BROKERS:** Neither Seller nor Buyer has used the services of, or for any other reason owes compensation to,
279 a licensed real estate Broker other than:

280* (a) **Seller's Broker:** Coldwell Banker Commercial NRT Joseph M. Nolen SR
281 (Company Name) (Licensee)
282* _____
283 (Address, Telephone, Fax, E-mail)

284* who is a single agent is a transaction broker has no brokerage relationship and who will be compensated
285* by Seller Buyer both parties pursuant to a listing agreement other (specify) _____

286* _____

287* Buyer  () and Seller () () acknowledge receipt of a copy of this page, which is Page 6 of 8 Pages.

288* (b) Buyer's Broker: Worden Realty Grant Worden
289 (Company Name) (Licensee)
615 W. Main St Avon Park Fl 33825 863-453-5678
300* (Address, Telephone, Fax, E-mail)

292* who is a single agent is a transaction broker has no brokerage relationship and who will be compensated
293* by Seller's Broker Seller Buyer both parties pursuant to an MLS offer of compensation other (specify)

294*
295 (collectively referred to as "Broker") in connection with any act relating to the Property, including but not limited to
296 inquiries, introductions, consultations, and negotiations resulting in this transaction. Seller and Buyer agree to
297 indemnify and hold Broker harmless from and against losses, damages, costs and expenses of any kind, including
298 reasonable attorneys' fees at all levels, and from liability to any person, arising from (1) compensation claimed which is
299 inconsistent with the representation in this Paragraph, (2) enforcement action to collect a brokerage fee pursuant to
300 Paragraph 10, (3) any duty accepted by Broker at the request of Seller or Buyer, which is beyond the scope of
301 services regulated by Chapter 475, Florida Statutes, as amended, or (4) recommendations of or services provided and
302 expenses incurred by any third party whom Broker refers, recommends, or retains for or on behalf of Seller or Buyer.

303 21. OPTIONAL CLAUSES: (Check if any of the following clauses are applicable and are attached as an addendum to
304 this Contract):

- 305* Arbitration Seller Warranty Existing Mortgage
306* Section 1031 Exchange Coastal Construction Control Line Buyer's Attorney Approval
307* Property Inspection and Repair Flood Area Hazard Zone Seller's Attorney Approval
308* Seller Representations Seller Financing Other _____

309 22. ADDITIONAL TERMS:

310* This sale is contingent upon obtaining City Council approval with a planned meeting on August 11, 2014.

311* Notwithstanding anything contained in the Contract in the Commercial "AS-IS, WHERE-IS" Addendum. Buyer has a

312* Due Diligence Period of 45 days after the Effective Date to determine its sole and absolute discretion whether or not

the Property is acceptable.

314* _____

315* _____

316* _____

317* _____

318* _____

319* _____

320* _____

321 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE
322 ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL
323 FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE
324 PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE
325 EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR
326 REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER
327 ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL
328 REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER
329 REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF
330 THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS
331 AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE
332 AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.

Buyer  (_____) and Seller (_____) (_____) acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

334 Each person signing this Contract on behalf of a party that is a business entity represents and warrants to the other
335 party that such signatory has full power and authority to enter into and perform this Contract in accordance with its
336 terms and each person executing this Contract and other documents on behalf of such party has been duly authorized
to do so.

338* _____
339 _____

Date: _____

340* JULIAN DELEON

Tax ID No: _____

341 (Typed or Printed Name of Buyer)

342* Title: City Mgr

Telephone: _____

343* _____

Date: _____

344 _____

345* _____
346 (Typed or Printed Name of Buyer)

Tax ID No: _____

347* Title: _____

Telephone: _____

348* Buyer's Address for purpose of notice: _____

349* Facsimile: _____

Email: _____

350* _____

Date: _____

351 _____

352* _____
353 (Typed or Printed Name of Seller)

Tax ID No: _____

354* Title: _____

Telephone: _____

355* _____

Date: _____

356 _____

357* _____
358 (Typed or Printed Name of Seller)

Tax ID No: _____

359* Title: _____

Telephone: _____

360* Seller's Address for purpose of notice: _____

361* Facsimile: _____

Email: _____

The Florida Association of REALTORS® makes no representation as to the legal validity or adequacy of any provision of this form in any specific transaction. This standardized form should not be used in complex transactions or with extensive riders or additions. This form is available for use by the entire real estate industry and is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. The copyright laws of the United States (17 U.S. Code) forbid the unauthorized reproduction of this form by any means including facsimile or computerized forms.

362* Buyer (initials) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is Page 8 of 8 Pages.

Addendum 1 (2 pages)

OFFICIAL RECORDS FILE# 1645136 BK 2312 PG 1303 RCD: 02/01/2012 08:54:44 AM
.C. JBASSETT DEED DOC STAMPS \$0.70 ROBERT W. GERMAINE CLERK OF COURTS
HIGHLANDS CO.

5/20

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR HIGHLANDS COUNTY, FLORIDA
CIVIL DIVISION**

CITIZENS BANK AND TRUST,

Plaintiff,

Case No.: 11-000814-GCS

vs.

AMERICAN HERITAGE PROPERTIES OF POLK, LLC,
a Florida limited liability company, and JOSE F. REYNOSO,

Defendants.

FILED
2012 JAN 31 A 8:50
HIGHLANDS COUNTY
CLERK OF COURT

CERTIFICATE OF TITLE

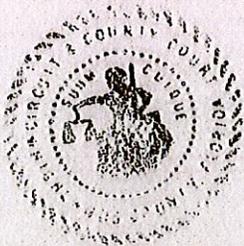
The undersigned Clerk of the Court certifies that he/she executed and filed a Certificate of Sale in this action on January 31, 2012, for the property described herein and that no objections to the sale have been filed within the time allowed for filing objections. The following property in Highlands County, Florida, described as follows, was sold to Citizens Bank and Trust, 222 State Road 60, Lake Wales, Florida 33853.

SEE ATTACHED EXHIBIT "A"

WITNESS my hand and the sale of this Court, on January 31, 2012.

ROBERT W. GERMAINE
Clerk of the Circuit Court, Highlands County, Florida

By: [Signature]
Deputy Clerk



Copies furnished to:

American Heritage Properties of Polk, LLC
c/o Jose F. Reynoso, Registered Agent
627 Crescent Hills Place

Bartow Redevelopment Group 190, LLC
c/o Jose F. Reynoso, Registered Agent
627 Crescent Hills Place

[Handwritten signature]

EXHIBIT "A"

A PORTION OF LOT 5 AND A PORTION OF THE WEST 110.00 FEET OF LOT 4, BLOCK 42, TOWN OF AVON PARK IN SECTION 22, TOWNSHIP 33 SOUTH, RANGE 28 EAST, AS RECORDED IN PLAT BOOK 1, PAGE 58, OF THE PUBLIC RECORDS OF DESOTO COUNTY, FLORIDA, OF WHICH HIGHLANDS COUNTY WAS FORMERLY A PART; MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHWEST CORNER OF SAID LOT 5; THENCE RUN SOUTH 89 DEGREES 19 MINUTES 17 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 5 FOR 80.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 05 MINUTES 41 SECONDS EAST FOR 55.76 FEET; THENCE NORTH 89 DEGREES 45 MINUTES 03 SECONDS WEST FOR 7.80 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 41 SECONDS WEST FOR 27.62 FEET; THENCE NORTH 89 DEGREES 41 MINUTES 28 SECONDS WEST FOR 12.00 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 41 SECONDS EAST FOR 74.84 FEET; THENCE SOUTH 89 DEGREES 35 MINUTES 12 SECONDS EAST FOR 1.10 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 41 SECONDS EAST FOR 11.35 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 19 SECONDS WEST FOR 4.90 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 41 SECONDS EAST FOR 8.80 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 19 SECONDS WEST FOR 38.70 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 41 SECONDS EAST FOR 4.10 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 19 SECONDS WEST FOR 17.70 FEET TO THE WEST LINE OF SAID LOT 5; THENCE NORTH 00 DEGREES 05 MINUTES 41 SECONDS EAST, ALONG SAID WEST LINE, FOR 88.06 FEET TO THE NORTHWEST CORNER OF SAID LOT 5; THENCE SOUTH 89 DEGREES 43 MINUTES 01 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 5 AND A PORTION OF LOT 4 FOR 145.23 FEET; THENCE SOUTH 00 DEGREES 16 MINUTES 59 SECONDS WEST ALONG A COMMON LINE BETWEEN A TWO STORY AND ONE STORY BUILDING FOR 75.57 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 01 SECONDS EAST FOR 43.42 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 01 SECONDS WEST FOR 25.56 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 01 SECONDS EAST FOR 41.85 FEET TO A POINT 10.00 FEET WEST OF THE EAST LINE OF SAID LOT 4; THENCE SOUTH 00 DEGREES 05 MINUTES 18 SECONDS WEST AND PARALLEL TO SAID EAST LINE OF LOT 4 FOR 170.24 FEET TO THE SOUTH LINE OF SAID LOT 4; THENCE NORTH 89 DEGREES 19 MINUTES 17 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOTS 4 AND 5 FOR 150.29 FEET TO THE POINT OF BEGINNING. THE GRANTORS RESERVE A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHWEST CORNER OF LOT 4, COMMON WITH THE SOUTHEAST CORNER OF LOT 5, OF BLOCK 42, TOWN OF AVON PARK, IN SECTION 22, TOWNSHIP 33 SOUTH, RANGE 28 EAST, AS RECORDED IN PLAT BOOK 1, PAGE 58, OF THE PUBLIC RECORDS OF DESOTO COUNTY, FLORIDA, OF WHICH HIGHLANDS COUNTY WAS FORMERLY A PART; THENCE RUN SOUTH 89 DEGREES 19 MINUTES 17 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 4 FOR 12.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 05 MINUTES 18 SECONDS EAST FOR 110.38 FEET; THENCE NORTH 45 DEGREES 00 MINUTES 00 SECONDS EAST FOR 36.44 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 01 SECONDS EAST FOR 58.85 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 01 SECONDS EAST FOR 30.42 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 01 SECONDS WEST FOR 25.56 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 01 SECONDS EAST FOR 41.85 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 18 SECONDS WEST FOR 54.00 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 01 SECONDS WEST FOR 64.70 FEET; THENCE SOUTH 45 DEGREES 00 MINUTES 00 SECONDS WEST FOR 18.83 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 18 SECONDS WEST FOR 102.32 FEET TO THE SOUTH LINE OF SAID LOT 4; THENCE NORTH 89 DEGREES 19 MINUTES 17 SECONDS WEST ALONG SAID SOUTH LINE OF LOT 4 FOR 20.00 FEET TO THE POINT OF BEGINNING.

Parcel ID #A223328-0100200040



COMMERCIAL "AS-IS, WHERE-IS" ADDENDUM

Citizens Bank & Trust

THIS COMMERCIAL "AS-IS, WHERE-IS" ADDENDUM (the "Addendum") is made, executed and delivered on _____, by and between Citizens Bank & Trust (the "Seller") and City of Avon Park (the "Buyer"), who state and agree that the following provisions are incorporated in and made a part of the sale and purchase contract (the "Contract") between the Buyer and Seller of even date herewith regarding the sale and purchase of that certain real property located at 2 E. Main Street, Avon Park, Highlands County, Florida 33825, and being more particularly described in the Contract (the "Property").

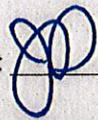
1. **Disclaimer of Warranties; Property "As-Is."** BUYER, FOR ITSELF, AND FOR BUYER'S SUCCESSORS, HEIRS, AND ASSIGNS, WARRANTS AND ACKNOWLEDGES TO, AND AGREES WITH SELLER THAT BUYER SHALL PURCHASE THE PROPERTY, AND ANY IMPROVEMENTS THEREON, IN THEIR "AS-IS, WHERE-IS" CONDITION, WITH ALL FAULTS AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF THE SELLER. Buyer hereby releases the Seller and its employees, officer, directors and agents from any and all liability for any known or unknown defects in the Property, and any improvements thereon, now existing or which may arise in the future, or which Seller may have undertaken to repair or replace prior to the date of this Release; and, Purchaser hereby waives any rights which Purchaser may have or which may arise in the future regarding the repair or replacement of any defect in the Property, or any improvements thereon. Buyer acknowledges that Buyer as been given a reasonable opportunity to inspect and investigate the Property and all improvements thereon, either independently or through agents of Buyer's choosing, and Buyer acknowledges that Buyer has not relied, and is not relying, upon any information, document, sales brochures or other literature, maps or sketches, projection, proforma statement, representation, guarantee or warranty (whether express or implied, or oral or written, or material or immaterial) that may have been given or made by or on behalf of the Seller unless it is contained in or arises pursuant to this Contract.

2. **Chinese/Problem Drywall.** Due to the shortage of building materials in the United States, some properties were built or renovated using problem drywall imported from or manufactured in China. Chinese/problem drywall reportedly emits levels of sulfur, methane and/or other volatile organic compounds that cause corrosion of circuit breakers, air conditioner and refrigerator coils, copper tubing, electrical wiring, computer wiring and other items as well as create noxious odors which may also pose health risks.

i. **Seller's Knowledge.** Seller has no knowledge of the presence of Chinese/problem drywall or of any records or reports pertaining to Chinese/problem drywall affecting the Property.

ii. **Buyer's Acknowledgement.** Buyer acknowledges that Seller is a lender which acquired the Property through foreclosure or other default-related means and that Seller possesses little, if any, information about the Property. Buyer acknowledges that the sale is on an "as-is, where-is" basis and Buyer is being given or has been given the opportunity to conduct a risk assessment or inspection of the Property for the presence of Chinese/problem drywall.

Seller's Initials: _____

Buyer's Initials:  _____

of the Property and has not in any way, relied upon any representations of the Seller, Seller's employees, officers, directors, contractors, or agents concerning the past or present existence of hazards in or around the Property.

4. **Keys and Entry Devices to Property.** Seller will deliver all keys and entry devices for the Property in Seller's possession to the Buyer at closing. Buyer hereby agrees to change the locks on the Property immediately after closing. Buyer also acknowledges and agrees to accept full responsibility/risk for any matters that may result from Buyer failing to change the locks to the Property immediately after closing. ~~Buyer holds harmless, releases, and indemnifies Seller and Seller's employees, officers, directors or agents from any liability/recourse/damages (financial or otherwise) resulting from the Buyer failing to change the locks on the Property immediately after closing.~~

5. **Conflict with Contract Terms.** The provisions of this Addendum shall take precedent and control over any conflicting provisions within the Contract. Except as expressly modified herein, the Contract shall remain in full force and effect, and the terms thereof are hereby ratified and confirmed.

6. **Addendum Survives Closing.** The terms and provisions of this addendum shall survive the closing of the Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date and year first above written.

SELLER:

CITIZENS BANK AND TRUST

√ _____
Printed Name: _____
Witness #1

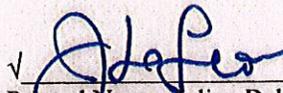
By: _____
Printed Name: _____
Its: _____

√ _____
Printed Name: _____
Witness #2

BUYER:

CITY OF AVON PARK

√ 
Printed Name: Maria T. Sutherland
Witness #1

√ 
Printed Name: Julian Deleon
Its: City Manager


Printed Name: BRENNA SLIVE
Witness #2

except with respect to Buyer's right to a 45 day Due Diligence period to determine its sole discretion whether or not the Property is acceptable.



Agenda Item Summary

8/11/2014

Subject: Lake Verona Drainage Contract/Bid Award

Item No. E-12

Placed on Agenda by: City Manager

Total Amount of Project: \$509,329 budgeted for FY 2014/2015

Staff Review: Yes

Attorney Review: N/A

Recommended Motion(s):

Motion to authorize the contract between the City and the lowest most responsible bidder Excavation Point, Inc. in the amount of \$509,329.

Background:

The City entered into a contract with the SWFWMD for joint funding for drainage and water quality improvements for the north end drainage basin discharging into Lake Verona. (This project is similar to the current projects on Lake Tulane and Lake Isis.)

The project has been designed, permitted, and bids were received as tabulated below:

Excavation Point	\$ 509,329.00
Cobb Site Development	\$ 697,203.67
Close Construction	\$ 729,579.00

As a reminder, this project is funded through the District's joint funding program which amounts to 75% District Funds and 25% City Funds.

E-13

Rick Scott
GOVERNOR



Jesse Panuccio
EXECUTIVE DIRECTOR

July 18, 2014

The Honorable Sharon Schuler
Mayor, City of Avon Park
110 East Main Street
Avon Park, Florida 33825

RE: Small Cities Community Development Block Grant (CDBG) Program
Federal Fiscal Year (FFY) 2013 Funding

Dear Mayor Schuler:

The Florida Department of Economic Opportunity has completed the review of your Florida Small Cities CDBG application for the FFY 2013 funding cycle. The final score for your application fell within the fundable range. Copies of the Small Cities CDBG contract and attachments are being e-mailed to the project contact person identified in your application. Please return two copies of the contract, each with original signature, as soon as possible.

The signed copies of the contract should be sent to Roger Wilburn, Government Operations Consultant II, at the mailing address below. If you have any questions, please contact Mr. Wilburn at (850) 717-8424 or at Roger.Wilburn@deo.myflorida.com.

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

In addition, if you have not sent copies of your application to the State Clearinghouse, you must do so now. Four copies of the following application sections must be sent to the Clearinghouse:

- Part II: Application Profile and General Scoring Criteria;
- Part III: Sources and Uses of Non-CDBG Funds (Leverage), if applicable;
- Form C-1 from Part IV (Commercial) or Form N-1 from Part VII (Neighborhood);
Part IX: Appendix A: Maps; and
- Part IX: Appendix D: Historic Preservation Documents, if applicable.

The address for the Clearinghouse is –

Florida State Clearinghouse
Florida Department of Environmental Protection
3900 Commonwealth Blvd, M.S. 47
Tallahassee, Florida 32399-3000

Florida Department of Economic Opportunity |

Tallahassee, FL 32399

STATE OFFICES | 904.487.3100 | 800.977.6833 Fax

www.fldeop.com | www.twitter.com/FLDEO | www.facebook.com/FLDEO

The Honorable Sharon Schuler

July 18, 2014

Page 2 of 2

The *Implementation Training for FFY 2013 Grant Recipients* is scheduled to be held in Ocala from August 19-21, 2014. The Department will reimbursement the travel expenses for one employee from the City to attend the training. Additional information regarding the training will be e-mailed to the project contact. I encourage you to send a City employee to the training even if the City is planning to hire a consultant to administer the subgrant activities. As the subgrant recipient, the City is responsible for ensuring compliance with all state and federal regulations, submitting reports on time, and completing project activities in accordance with Attachment E of the agreement – the Activity Work Plan.

Sincerely,



Roger J. Doherty, CLER
Planning Manager, Small Cities CDBG Program

RJD/rw

Enclosures

cc: Ms. Maria Sutherland, Director, Administrative Services, City of Avon Park
Ms. Christine Alday, President, Guardian CRM, Inc

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

Contract Number: 15DB-OJ-07-38-02-C 02

CFDA Number: 14.228

Rule Chapter: 73C-23, Florida Administrative Code

Effective: June 6, 2010

FFY 2013 FEDERALLY-FUNDED SUBGRANT AGREEMENT

Commercial Revitalization

THIS AGREEMENT is entered into by the **State of Florida, Department of Economic Opportunity**, with headquarters in Tallahassee, Florida (hereinafter referred to as "DEO" or the "Department"), and **City of Avon Park** (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 E of this Agreement; and the Florida Small Cities Community Development Block Grant (CDBG) **FFY 2013 Application for Funding** submitted by the Recipient on **March 12, 2014**, 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 Attachments B and G.

(3) Period of Agreement

This Agreement shall begin upon execution by both parties, and shall end 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) Records

(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) Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the federal government and their duly authorized representatives shall have access to any of Recipient's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.

(c) Recipient shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by DEO under this Agreement.

(d) Recipient will provide a financial and compliance audit to DEO, if applicable, and ensure that all related party transactions are disclosed to the auditor.

(e) The Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, and the compliance of all contractors and consultants paid from funds under this Agreement, for a period of six years from the date this Agreement is final closed. The Recipient shall ensure that audit working papers are available upon request for a period of six years from the date this Agreement is final closed, 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.

(f) The Recipient shall maintain all records and supporting documentation for the Recipient and for all contractors and 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.

(g) The Recipient, its employees or agents, including all contractors and consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the federal government and their duly authorized representatives. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday.

(h) To the extent that it does not conflict with federal regulations, the Recipient shall transfer, at no cost to DEO, all public records upon completion or termination of this Agreement, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All electronic records shall be provided to DEO in a DEO-compatible format.

(i) The Recipient shall include the aforementioned audit and record keeping requirements in all approved contracts and assignments.

(6) Audit Requirements

(a) Review the Audit Requirements listed in Attachment H of this contract. For local government fiscal years beginning after December 26, 2014, a recipient will not have to have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised, unless it expends \$750,000 or more in Federal awards during its fiscal year.

(b) The requirements listed in Attachment H, Part II: State Funded, are not applicable to this subgrant agreement which is a Federal pass-through award.

(c) Within sixty (60) days of the close of the fiscal year, on an annual basis, the Recipient shall electronically submit a completed Audit Compliance Certification (a version of this certification is attached hereto as Attachment I) to audit@deo.myflorida.com. Recipient's timely submittal of one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and the Recipient.

This form is in addition to the audit certification memo that must be sent to the Department if an audit is not required because the local government spent less than \$500,000 (\$750,000 for fiscal years starting after December 26, 2014) in Federal funds during a fiscal year.

(d) In addition to the submission requirements listed in Attachment H, each recipient should send an electronic copy of its audit report or certification memo (available on the CDBG website) by June 30 following the end of each fiscal year in which it had an open CDBG subgrant to its grant manager at the following address to ensure that it does not incur audit penalty points:

Email: Roger.Wilburn@deo.myflorida.com

(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 contractors and consultants 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 E of this Agreement; and the **Application for Funding** 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 C.

(8) Monitoring

The Recipient shall monitor its performance under this Agreement, as well as that of its contractors 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 the Recipient is a State agency or subdivision, as defined in Section 768.28, Florida Statutes (FS), 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, FS, 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, FS. 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 shall, upon 30 calendar days written notice to the Recipient and upon the Recipient's failure to cure within those 30 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 30 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 30 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, FS, 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 30 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 grant manager for this Agreement is:

Roger Wilburn, 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) 717-8424 – Fax: (850) 922-5609
Email: Roger.Wilburn@deo.myflorida.com

(c) The name and address of the Local Government Project Contact for this Agreement is:

Ms. Maria Sutherland
City of Avon Park
110 East Main Street
Avon Park, Florida, 33825
Telephone: (863) 452-4411 - Fax: (863) 452-4413
Email: sutherland@avonpark.cc

(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) Contracts

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

For each contract, the Recipient shall report to the Department as to whether that contractor, or any subcontractors hired by the contractor, is a minority vendor, as defined in Section 288.703, FS.

(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 – Reports
 - Attachment D – Warranties and Representations
 - Attachment E – Activity Work Plan
 - Attachment F – Program, Category Specific, and Special Conditions
 - Attachment G – Civil Rights Compliance Assurance
 - Attachment H – Audit Requirements
 - Attachment I – Audit Compliance Certification
 - Attachment J – eCDBG Access 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 **Application for Funding**.

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

(d) Pursuant to 24 CFR 570.489(b), pre-agreement costs reflected in the Recipient's **Application for Funding** as originally submitted that relate to preparation of the **Application for Funding** 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

(a) The Recipient and its contractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period; however, pursuant to 24 CFR 570.489(b), reimbursement can be requested for eligible application preparation costs that were listed in the Recipient's **Application for Funding**.

(b) In accordance with Section 215.971, FS, the Recipient shall refund to DEO any balance of unobligated funds which has been advanced or paid to Recipient.

(c) The Recipient shall refund to DEO all funds paid in excess of the amount to which Recipient or its contractors are entitled under the terms and conditions of the Agreement.

(d) All refunds or repayments to be made to the Department under this Agreement are to be made payable to the order of the "Department of Economic Opportunity" and mailed directly to DEO 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), FS, if a check or other draft is returned to the Department for collection, Recipient shall pay to the Department a service fee of \$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 30 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 United States Code (USC) Section 12101 *et seq.*) and the Florida Civil Rights and Fair Housing Acts (sections 760.01 – 760.37, FS), 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 a completed Form SC-37, ***Certification Regarding Debarment, Suspension, And Other Responsibility Matters – Primary Covered Transactions***, to the Department for each prime contractor that the Recipient plans to hire under this Agreement. The form must be received by the Department before the Recipient enters into a contract with the respective prime contractor.

(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, FS, 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, FS.

(k) 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.

(l) The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, FS) 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, FS.

(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 Title 31 USC Section 1352. 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 30 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.

(23) Public Record Responsibilities

(a) Recipient must notify DEO, both by e-mail and first class mail, within one (1) business day from receipt of all request(s) for public records, as a public record is defined in Section 119.011, Florida Statutes. In accordance with Chapter 119 of the Florida Statutes, Recipient shall be responsible for responding to all public records requests per the cost structure provided for records made or received by Recipient in conjunction with this Agreement, unless the records are exempt from section 24(a) of Article I of the State Constitution and Section 119.07(1), Florida Statutes. Notice of public records requests received by the Recipient shall be e-mailed to PRRequest@deo.myflorida.com and mailed to:

Public Records Coordinator
Department of Economic Opportunity
107 East Madison Street
Tallahassee, Florida 32399
Office: (850) 245-7140

(b) This Agreement may be terminated by DEO for refusal by the Recipient to comply with Florida's public records laws or to allow public access to any non-exempt public record made or received by the Recipient in conjunction with this Agreement.

(24) Employment Eligibility Verification

(a) Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires DEO contracts in excess of nominal value to expressly require Recipient to:

1. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Recipient during the Agreement term; and,

2. Include in all prime contracts under this Agreement, the requirement that contractors and subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment eligibility of all new employees hired by the contractors and subcontractors during the term of the contract.

(b) E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States after the effective date of the required Memorandum of Understanding (MOU); the responsibilities and elections of federal contractors, however, may vary, as stated in Article II.D.1.c. of the MOU. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found at:

http://www.dhs.gov/files/programs/gc_1185221678150.shtm

(c) If Recipient does not have an E-Verify MOU in effect, Recipient must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Agreement.

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

Contract Number: 15DB-OJ-07-38-02-C 02

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

City of Avon Park

Department of Economic Opportunity

By: _____ Date: _____
(Authorized Signature)

By: _____ Date: _____
(Authorized Signature)

Name: Sharon Schuler

Name: Bob Dennis

Title: Mayor

Title: Chief, Bureau of Community Revitalization

Federal Tax ID#: 59-6000-269

DUNS#: 024831232

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

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:

Federal Agency:	U.S. Department of Housing and Urban Development
Catalog of Federal Domestic Assistance Title:	Community Development Block Grants/State's Program and Non-entitlement Grants in Hawaii
Catalog of Federal Domestic Assistance #:	14.228
Award Amount:	\$750,000.00

Compliance Requirements Applicable to the Federal Resources Awarded Pursuant to this Agreement are as Follows:

Federal Program

- 1. The Recipient shall perform the obligations in accordance with 24 Code of Federal Regulations, Subpart I, Sections 570.480 – 570.497.*
- 2. The Recipient shall be governed by the Federal Laws, rules and regulations identified in Attachments B and K of this Agreement.*
- 3. The Recipient shall be governed by Sections 290.0401-048, Florida Statutes,*
- 4. The Recipient shall perform the obligations in accordance with Chapter 73C-23, Florida Administrative Code; the Program Budget, Attachment A of this Agreement; the Activity Work Plan, Attachment I of this Agreement; and Program, Category Specific, and Special Conditions, Attachment J of this Agreement.*

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:

N/A

Matching Resources for Federal Programs:

N/A

Subject to Section 215.97, Florida Statutes:

N/A

Compliance Requirements Applicable to State Resources Awarded Pursuant to this Agreement are as Follows:

N/A

NOTE: Section .400(d) of OMB Circular A-133, as revised, and, Section 215.97(5), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 to be provided to the Recipient.

Attachment A

Program Budget

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 290.0401-290.048, Florida Statutes;
8. 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, F.S.;
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

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 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 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. A copy of the audit report must be received by the Department no later than nine months from the end of the Recipient's fiscal year. If the Recipient did not meet the audit threshold, a certification letter must be received by the Department no later than nine 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 and as scheduled on Attachment E – **Activity Work Plan**.

Attachment D

Warranties and Representations

Financial Management

The 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. The 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 (RFF). 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, and 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 contractors 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 E

Activity Work Plan

**(Replace this page with your
Activity Work Plan.)**

Attachment F

Program, Category Specific, and Special Conditions

Program 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 to the Department for review;
 - b. Request approval for all professional service contracts;
 - c. Submit an initial Request for Funds (RFF) for administrative services, if applicable;
 - d. Request a wage decision(s) for applicable construction activities if points were received on the application for Readiness to Proceed;
 - e. For Housing Rehabilitation subgrants, a list of applicants for assistance shall be developed and a copy provided to the Department; and
 - f. For Commercial Revitalization subgrants, if façades are to be renovated, a list of businesses that will be assisted shall be developed and a copy provided to the Department.

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. listed above unless it can provide adequate justification for the delay.

2. 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 E (Activity Work Plan).
3. No costs may be incurred prior to the effective date of this Agreement, except for those eligible application preparation costs outlined in the original Small Cities CDBG *Application for Funding* submitted to the Department, unless pre-agreement costs were approved in writing by the Department.
4. The Recipient shall request approval of all professional services contracts that will be reimbursed with CDBG funds. Copies of the following documents must be provided to the Department for review:
 - a. When publication of the RFP is used as a means of solicitation, a copy of the advertisement, including an affidavit of publication;
 - b. A 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. The proposed contract;
- i. Truth-in-Negotiation certification (if not in the contract) for engineering contracts over \$150,000;
- 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; and
- 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.

The Department will either approve the procurement or notify the Recipient that the procurement cannot be approved because it violates State, federal or local procurement guidelines.

The Recipient must notify the Department in writing no later than ninety (90) days from the effective date of this agreement if it will not be procuring any professional services or if it will be using non-CDBG funds to pay for professional services.

- 5. Prior to the obligation or disbursement of any funds, except for administrative expenses for all subgrants other than Economic Development subgrants, not to exceed \$5,000, and for Economic Development Grants, not to exceed \$8,000, but in any case, no later than 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 CFR Part 58, Environmental Review Procedures for Title I Community Development Block Grant Programs and 40 CFR 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***.
- 6. 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.
- 7. 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.

8. 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.

9. For each procured construction contract in Neighborhood Revitalization, Commercial Revitalization and Economic Development projects for which CDBG funding will be requested, the Recipient shall submit the following procurement documents:
 - a. A copy of the bid advertisement, including an affidavit of publication;
 - b. Documentation of the Recipient's efforts made to inform minority- and woman-owned businesses of the opportunity to bid on the construction contract;
 - c. A copy of the bid tabulation sheet;
 - d. A copy of the engineer's recommendation to award;
 - e. A letter requesting sole source approval, if applicable;
 - f. A copy of the bid bond (5% of the bid price) for the prime contractor(s) selected to do the work, and;
 - g. Completed copies of the following forms:
 - Bidding Information and Contractor Eligibility – Form SC-51;
 - Certification Regarding Debarment, Suspension, And Other Responsibility Matters (Primary Covered Transactions) – Form SC-37;
 - Section 3 Participation Report (Construction Prime Contractor) – Form SC-52;
 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Subcontractor) – Form SC-38, if applicable;
 - Section 3 Participation Report (Construction Subcontractor) – Form SC-53, if applicable, and;
 - Documentation for Business Claiming Section 3 Status – Form SC-54, if applicable.

10. For each Commercial Revitalization, Economic Development and Neighborhood Revitalization RFF that includes reimbursement of construction costs, the Recipient shall provide a copy of the American Institute of Architects (AIA) form G702, *Application and Certification for Payment*, or a comparable form approved by the Department, signed by the contractor and inspection engineer, and a copy of form G703, *Continuation Sheet*, or a comparable form approved by the Department. For each Housing Rehabilitation RFF that includes construction costs, the Recipient shall provide a copy of AIA form G702, or a comparable form approved by the Department, signed by the contractor and the local building inspector or housing specialist and a copy of form G703, or a comparable form approved by the Department.

11. When the Recipient issues the **Notice to Proceed** to the contractor(s), copies of the following documents shall be sent to the Department:
 - a. Notice to Proceed;
 - b. The contractor's performance bond (100% of the contract price); and
 - c. The contractor's payment bond (100% of the contract price).

12. The Recipient shall undertake an activity each quarter to affirmatively further fair housing pursuant to 24 CFR Section 570.487(b)(4).
13. 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.
14. 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.
15. 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 CFR 85.31. Any future change of use shall be in accordance with 24 CFR 570.489(j).
16. 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
17. The Recipient shall comply with the historic preservation requirements of 24 CFR 58.17 and the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.
18. Pursuant to Section 102(b), Public Law 101-235, 42 USC 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.
19. 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.
20. Conflicts of interest relating to procurement shall be addressed pursuant to 24 CFR 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 CFR 570.489(h).

21. 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.
22. 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.
23. 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.
24. 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.

Category Specific Conditions for Commercial Revitalization Grants Only

1. The Recipient must prepare, receive Department approval, and adopt procedures for providing rehabilitation assistance to buildings occupied by businesses through the Rehabilitation of Commercial Buildings activity before requesting funds for that activity. The procedures shall include at a minimum, but not be limited to, the following:
 - a. Restrict the rehabilitation of commercial buildings to those commercial buildings within the project area pursuant to 24 CFR 570.202(a)(3). Properties upon which or adjacent to where CDBG activities are undertaken shall not be zoned for residential purposes only;
 - b. Require all businesses receiving rehabilitation assistance to provide services that are available to all the residents of the service area, thereby meeting the national objective of benefiting low and moderate-income persons;
 - c. Specify the terms and conditions under which the rehabilitation assistance will be provided.
 - d. Provide that all buildings to be rehabilitated, except as provided in k. below, will be occupied at the time the assistance is provided or subject to a lease agreement such that the building will be occupied prior to closeout. The occupant shall be a legally constituted business with business, sales tax, and occupational licenses;
 - e. Provide that all contracts over \$2,000 for rehabilitation will comply with the Davis-Bacon Act.
 - f. Provide that businesses residing in a building rehabilitated with CDBG funds shall comply with the provisions of Section 504 of the Rehabilitative Act of 1973 (29 USC Section 794) as it relates to employment discrimination and facility accessibility;
 - g. Provide that CDBG funds addressing those code violations specified in the application will be in compliance with all local and state building codes and standards;

- h. Establish a process for recognizing potential conflicts of interest, making those conflicts publicly known, dealing with those conflicts on a local level, and requesting waivers of those conflicts when appropriate pursuant to 24 CFR 570.489 and Chapter 112.311-112.3143, F.S. Additionally, provide that no building owner, lessor, lessee, tenant, or occupant, or employee or immediate relative of the same, either personally or corporately, shall serve as a contractor to be paid with CDBG funds for the rehabilitation of said building, nor shall they be paid for their own labor with CDBG funds for the rehabilitation of said building;
- i. Establish a process for final inspection of a commercial structure after rehabilitation and a process for final acceptance of a contractor's work on any grant funded activity and before the local government considers the rehabilitation completed.
- j. The expenditure of CDBG funds per façade shall not exceed \$22,000 in CDBG funds. A building on a corner containing a single business may be considered to have two facades. Buildings which have been previously subdivided or portioned may be addressed as separate facades only if the building is subdivided such that:
 - 1. There are separate primary entrances for each business; and
 - 2. Each of the businesses has separate and distinct occupational and sales tax licenses.
- k. The façade of a vacant building may only be addressed if it is part of an overall building façade renovation effort in a contiguous area.
- l. CDBG funds may be expended on the roof of a privately owned commercial building only after the issuance of a bona fide code violation report and only after the rehabilitation of the façade, the removal of architectural barriers to handicap access in the entrances and the bathroom areas, and the correction of other documented code violations.
- m. Funds requested and approved for Commercial Revitalization activities shall not be used as grants or loans for working capital, inventory or supplies, or for interior repairs and renovations, except for repairs necessary to correct code violations or removal of architectural barriers to handicap access; and correction of architectural barriers to handicap access in public buildings located in the Community Redevelopment Area pursuant to the requirements of 24 CFR Part 8.

Special Conditions

None

Attachment G

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; (This does not count as a fair housing activity. Permanently posting the contact information on the Recipient's website can substitute for publishing in a newspaper.)
- 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 a fair housing 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:

- Define where discriminatory practices are occurring,
- Help the community measure the effectiveness of its outreach efforts, and
- 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:

- Making fair housing presentations at schools, civic clubs, and neighborhood association meetings;
- Manning a booth and distributing fair housing materials at libraries, health fairs, community events, yard sales, and church festivals; and
- Conducting fair housing workshops for city/county employees, local residents, realtors, bank and mortgage company employees, insurance agents, and rental property owners.

Printing a fair housing notice on a utility bill is no longer accepted as a fair housing activity. Placing posters in public buildings does not meet the requirement for a fair housing activity.

Recipients shall document their fair housing activities by keeping photographs, newspaper articles, sign-in sheets and copies of handouts in their CDBG project file and include information about the activities in the comment section of each 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-owned business enterprises (MBE) and women-owned business enterprises (WBE) that operate in its region. The recipient shall use this list to solicit companies to bid on CDBG-funded construction activities and shall provide a copy of the list to the prime contractor to use when it hires subcontractors. The Department of Management Services maintains a list of certified minority- and women-owned businesses that can be used to develop a local MBE/WBE list 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 Regulations

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 City of Avon Park shall comply with all of the provisions and Federal regulations listed in this attachment.

By: _____ Date: _____
(Authorized Signature)

Name: Sharon Schuler

Title: Mayor

Attachment H

Audit Requirements

The administration of resources awarded by DEO to the recipient may be subject to audits and/or monitoring by DEO as described in this section.

Monitoring

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by DEO. In the event DEO determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by DEO staff 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 Chief Financial Officer (CFO) or Auditor General.

Audits

Part I: Federally Funded

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the recipient expends \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) 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 indicates Federal resources awarded through DEO 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 DEO. 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 part.

2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

3. If the recipient expends less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) 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 \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year and elects 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 resources (i.e., the cost of such an audit must be paid from the recipient resources obtained from other than Federal entities).

4. Although the audit provisions of OMB Circular A-133 ordinarily do not apply to for-profit sub recipients, in the case of Federal funding provided by the U.S. Department of Health and Human Services, Circular A-133 does apply. See 45 CFR 74.26 for further details.

5. A web site that provides links to several Federal Single Audit Act resources can be found at: <http://harvester.census.gov/sac/sainfo.html>

Part II: State Funded

This part is applicable if the recipient is a non-state entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient (for fiscal years ending September 30, 2004 or thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit 1 to this agreement indicates state financial assistance awarded through DEO by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

4. Additional information regarding the Florida Single Audit Act can be found at: <http://www.myflorida.com/fsaa/statutes.html>.

Part III: Other Audit Requirements

N/A

Part IV: Report Submission

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Part I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following at the address indicated:

A. DEO at each of the following addresses:

Electronic copies (preferred): Audit@deo.myflorida.com

or

Paper (hard copy):

Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, Fl. 32399-4126

B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse) at the following address:

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

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

2. Pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit 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 DEO at each of the following addresses:

Electronic copies (preferred): Audit@deo.myflorida.com

or

Paper (hard copy):

Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, Fl. 32399-4126

3. Copies of financial reporting packages required by Part II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

A. DEO at each of the following addresses:

Electronic copies (preferred): Audit@deo.myflorida.com

or

Paper (hard copy):

Department Economic Opportunity
MSC # 130, Caldwell Building
107 East Madison Street
Tallahassee, Fl. 32399-4126

B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, FL 32399-1450

Email Address: flaudgen_localgovt@aud.state.fl.us

4. Copies of reports or the management letter required by Part III of this agreement shall be submitted by or on behalf of the recipient directly to:

A. DEO at each of the following addresses:

N/A

5. Any reports, management letter, or other information required to be submitted to DEO pursuant to this agreement shall be submitted timely 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.

6. Recipients, when submitting financial reporting packages to DEO for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

Part V: Record Retention

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five (5) years from the date the audit report is issued, or five (5) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer. The recipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by DEO.

Attachment I

Audit Compliance Certification

Audit Compliance Certification

Email a copy of this form within 60 days of the end of each fiscal year in which this subgrant was open to audit@deo.myflorida.com.

Recipient: City of Avon Park

FEIN: 59-6000-269

Recipient's Fiscal Year: October 1 through September 30

Contact Name: Ms. Maria Sutherland

Contact's Phone: (863)452-4411

Contact's Email: sutherland@avonpark.cc

1. Did the Recipient expend state financial assistance, during its fiscal year, that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Recipient and the Department of Economic Opportunity (DEO)? Yes No

If the above answer is yes, answer the following before proceeding to item 2.

Did the Recipient expend \$500,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year? Yes No

If yes, the Recipient certifies that it will timely comply with all applicable state single or project-specific audit requirements of section 215.97, Florida Statutes, and the applicable rules of the Department of Financial Services and the Auditor General.

2. Did the Recipient expend federal awards, during its fiscal year, that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Recipient and DEO? Yes No

If the above answer is yes, also answer the following before proceeding to execution of this certification:

Did the Recipient expend \$500,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year? Yes No

If yes, the Recipient certifies that it will timely comply with all applicable single or program-specific audit requirements of OMB Circular A-133, as revised.

By signing below, I certify, on behalf of the Recipient, that the above representations for items 1 and 2 are true and correct.

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

Title of Authorized Representative

Attachment J

eCDBG Access Authorization Form

**(Replace this page in each copy
of the Agreement with an original
eCDBG Access Authorization Form.)**



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

Recipient Name: City of Avon Park	Contract Number: 15DB-OJ-07-38-02-C02	Funding Source: <input checked="" type="checkbox"/> Small Cities CDBG <input type="checkbox"/> DRI <input type="checkbox"/> NSP
Mailing Address (Street or P.O. Box): 110 East Main Street		
City, State, and Zip Code: Avon Park, FL 33825		
Recipient's DUNS #: 02-483-1232		Recipient's FEID #: 59-6000269
<p>Note: A maximum of two employees of the Recipient can be authorized to access eCDBG for this contract. The individuals listed below have been designated to access eCDBG on behalf of the Recipient listed above for the purpose of submitting Requests for Funds (RFFs) and required reports. The eCDBG website address is – http://www.deocdbg.com. If you need to update the names of the individuals who are authorized to access eCDBG for this contract, submit a copy of SC-55, eCDBG Access Authorization Update Form, to the Department. CDBG Program Phone Number: (850) 717-8405.</p>		
Primary User's Name: Maria Sutherland	Date: _____	_____ Signature
Title: Project Manager	E-mail Address:	
Secondary User's Name: Allison Jacobs	Date: _____	_____ Signature
Title: Finance Director	E-mail Address: ajacobs@avonpark.cc	
<p>As the Chief Elected Official of the Recipient, I certify that the above individuals are authorized to submit RFF's and reports through eCDBG on behalf of the Recipient.</p>		
Name: Sharon Schuler Title: Mayor	Date: _____	_____ Signature
Additional Payment Information for Processing Requests for Funds		
<input checked="" type="checkbox"/> Check here if the Recipient utilizes Electronic Funds Transfer (EFT) from the State of Florida. <input checked="" type="checkbox"/> Check here if the Recipient 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.		
<p>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/.</p>		
<p>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.</p>		
Name of Financial Institution: Highlands Independent Bank	Account Number: XXXXXXXXX	
Address: 400 US HWY 27 N	Telephone Number: (863) 453-6400	
City, State and Zip Code: Avon Park, Florida 33828		



Small Cities CDBG Program Information Sheet

Recipient Name: City of Avon Park

CFDA Number: 14.228

Contract Number: 15DB-OJ-07-38-02-C02

Contact Information

1. Chief Elected Official

CEO Name: Sharon Schuler	Title: Mayor
Address: 110 East Main Street	
City, State, Zip Code: Avon Park, Florida 33825	
Telephone No: (863) 452-4400 Ext:	Fax Number: (863) 452-4413
E-Mail Address: sschuler@avonpark.cc	

2. Recipient Employee Designated by Resolution to Sign Subgrant Documents

Name: Maria T Sutherland	Title: Administrative Services Director
Address: 110 E Main St	
City, State, Zip Code: Avon Park, FL 33825	
Telephone No: (863) 452-4411 Ext:	Fax Number: (863) 452-4413
E-Mail Address: Sutherland@avonpark.cc	

3. Chief Financial Officer

CFO Name: Julian Deleon	Title: City Manager
Address: 110 East Main Street	
City, State, Zip Code: Avon Park, Florida 33825	
Telephone No: (863) 452-4409 Ext:	Fax Number: (863) 452-4413
E-Mail Address: jdeleon@avonpark.cc	

4. Project Contact

Name: Maria Sutherland	Title: Administrative Services Director
Address: 110 East Main Street	
City, State, Zip Code: Avon Park, Florida 33825	
Telephone No: (863) 452-4411 Ext:	Fax Number: (863) 452-4413
E-Mail Address: Sutherland@avonpark.cc	



Small Cities CDBG Program Information Sheet

5. Civil Rights Contacts

<p>Fair Housing Coordinator: Maria Sutherland Title: Administrative Services Director Telephone No: (863) 452-4411 Ext: E-Mail Address: Sutherland@avonpark.cc</p>
<p>EEO Coordinator: Brenda Silva Title: Human Resource Specialist Telephone No: (863) 452-4403 Ext: E-Mail Address: Bsilva@avonpark.cc</p>
<p>Section 504/ADA Coordinator: Brenda Silva Title: Human Resource Specialist Telephone No: (863) 452-4403 Ext: E-Mail Address: Bsilva@avonpark.cc</p>

6. Private Consultant (If applicable)

<p>Consultant Firm: Guardian Community Resource Management, Inc. Consultant Contact: Christine Alday Address: 930 Marcum Road, Suite 3 City, State, Zip Code: Lakeland, FL 33565 Telephone No: (863) 937-9035 Ext: Fax Number: (863) 583-0357 E-Mail Address: Christine.Alday@GuardianCRM.com</p>

Administrative Data

1. Local Government Federal ID Number: 59-6000269
2. Local Government DUNS Number: 02-483-1232
3. Districts: United States Congress 16
 Florida Senate 26,21 Florida House 55



Small Cities CDBG Program Information Sheet

7/14/2014

- 4. If the recipient is not receiving Electronic Funds Transfer (EFT) from the State of Florida, please provide an address for transmittal of the reimbursement warrant:

Recipient Name: City of Avon Park

Street Address: 110 East Main Street

City, State, Zip: Avon Park, Florida 33825

- 5 Please provide a brief Project Description:

The scope of work includes designs, permits and construction of pedestrian malls and walkways as well as flood and drainage improvements and related restoration along South Delaney and East Hal McRae, Avon Park, Florida. Pedestrian malls include sidewalks, benches, landscaping, lighting and related support improvements and restoration. Flood and Drainage includes repaving, culverts, retention and related restoration. Unaddressed needs include, subject to the availability of funds due to low bids, continuing pedestrian mall and parking improvements as well as utility relocation along South Delaney North of East Green.



Civil Rights Profile Sheet

7/15/2014

Recipient Name: City of Avon Park

Contract Number: 15DB-OJ-07-38-02-C02 Date: 07/25/2014

Demographic Data

- 1. Total Number of Local Government Employees: 60 (Do not include constitutional officers.)
- 2. Number of Employees who work on CDBG-funded activities: 2
- 3. Total Number of Local Government Minority Employees: 14 (Do not include constitutional officers.)
- 4. Number of Minority Employees who work on CDBG funded activities: 0
- 5. Local Government Population #: 8,463 (Counties – do not include populations of incorporated cities.)
- 6. Local Government Minority Population: 4,774 (Counties – do not include populations of incorporated cities.)
- 7. Local Government Minority Population Percentage: 56.41 (Counties – do not include populations of incorporated cities.)
- 8. Percentage of Persons of Low- and Moderate-Income in the Local Government: 52.82 (Counties – do not include populations of incorporated cities.)

For Neighborhood Revitalization and Commercial Revitalization Projects Only

- 9. Service Area Population: 8,463
- 10. Percentage of Persons of Low- and Moderate-Income in the Service Area: 53

To document civil rights compliance, this profile and the beneficiary table on page 2 must be completed and returned to:

Small Cities CDBG Program
 Department of Economic Opportunity
 107 East Madison Street
 MSC - 400
 Tallahassee, Florida 32399-6508

Retain a file copy in the event that a CDBG grants manager wishes to review it during a monitoring visit.



Civil Rights Profile Sheet

7/15/2014

Instructions for Completing Beneficiary Form

For All Subgrants:

Use application survey data or census data, as appropriate, to determine beneficiary information. **Complete a copy of the form below for each activity**, except Administration and Engineering. Submit civil rights information with executed contract and update the data upon completion of subgrant activities.

1. Total Beneficiaries in Service Area: Using project data on eligible individuals, enter number of individual beneficiaries in each population group to be assisted.
2. LMI Beneficiaries in Service Area: Using project data regarding individuals, enter number of individual LMI beneficiaries in each population group to be assisted.

For Economic Development Subgrants Only (Should be provided at the time of grant completion.)

3. Job Applicants: Use job applicant information provided by the employer and enter number of individual job applicants in each population group to complete.
4. Job Hires: Use job applicant and hiring information provided by the employer and enter number of job hires (employees) holding jobs when final job creation requirements have been met.

For Housing Subgrants Only:

5. (Complete column 5 below at closeout using data provided by assisted households.)

Activity Name: 03I-Drainage Activities

Population Group	1. Total Beneficiaries	2. LMI Beneficiaries	3. Job Applicants	4. Employees Hired	5. Housing Beneficiaries	6. Hispanic
White	5,924	3,139	N/A	N/A	N/A	2,454
African American	2,369	1,255	N/A	N/A	N/A	N/A
Asian	67	35	N/A	N/A	N/A	N/A
Native Hawaiian/Pacific Islander	0	0	N/A	N/A	N/A	N/A
American Indian/Alaskan Native	25	13	N/A	N/A	N/A	N/A
Other Multi-Racial	78	41	N/A	N/A	N/A	N/A
Female Head of Household	648	343	N/A	N/A	N/A	N/A
Elderly Head of Household	1,079	571	N/A	N/A	N/A	N/A
Handicapped	2,079	1101	N/A	N/A	N/A	N/A



Civil Rights Profile Sheet

7/15/2014

Instructions for Completing Beneficiary Form

For All Subgrants:

Use application survey data or census data, as appropriate, to determine beneficiary information. **Complete a copy of the form below for each activity**, except Administration and Engineering. Submit civil rights information with executed contract and update the data upon completion of subgrant activities.

1. Total Beneficiaries in Service Area: Using project data on eligible individuals, enter number of individual beneficiaries in each population group to be assisted.
2. LMI Beneficiaries in Service Area: Using project data regarding individuals, enter number of individual LMI beneficiaries in each population group to be assisted.

For Economic Development Subgrants Only *(Should be provided at the time of grant completion.)*

5. Job Applicants: Use job applicant information provided by the employer and enter number of individual job applicants in each population group to complete.
6. Job Hires: Use job applicant and hiring information provided by the employer and enter number of job hires (employees) holding jobs when final job creation requirements have been met.

For Housing Subgrants Only:

5. (Complete column 5 below at closeout using data provided by assisted households.)

Activity Name: 17D – Relocation of Utilities

Population Group	1. Total Beneficiaries	2. LMI Beneficiaries	3. Job Applicants	4. Employees Hired	5. Housing Beneficiaries	6. Hispanic
White	5,924	3,139	N/A	N/A	N/A	2,454
African American	2,369	1,255	N/A	N/A	N/A	N/A
Asian	67	35	N/A	N/A	N/A	N/A
Native Hawaiian/Pacific Islander	0	0	N/A	N/A	N/A	N/A
American Indian/Alaskan Native	25	13	N/A	N/A	N/A	N/A
Other Multi-Racial	78	41	N/A	N/A	N/A	N/A
Female Head of Household	648	343	N/A	N/A	N/A	N/A
Elderly Head of Household	1,079	571	N/A	N/A	N/A	N/A
Handicapped	2,079	1101	N/A	N/A	N/A	N/A



Civil Rights Profile Sheet

7/15/2014

Instructions for Completing Beneficiary Form

For All Subgrants:

Use application survey data or census data, as appropriate, to determine beneficiary information. **Complete a copy of the form below for each activity**, except Administration and Engineering. Submit civil rights information with executed contract and update the data upon completion of subgrant activities.

1. Total Beneficiaries in Service Area: Using project data on eligible individuals, enter number of individual beneficiaries in each population group to be assisted.
2. LMI Beneficiaries in Service Area: Using project data regarding individuals, enter number of individual LMI beneficiaries in each population group to be assisted.

For Economic Development Subgrants Only (Should be provided at the time of grant completion.)

7. Job Applicants: Use job applicant information provided by the employer and enter number of individual job applicants in each population group to complete.
8. Job Hires: Use job applicant and hiring information provided by the employer and enter number of job hires (employees) holding jobs when final job creation requirements have been met.

For Housing Subgrants Only:

5. (Complete column 5 below at closeout using data provided by assisted households.)

Activity Name: 03L – Sidewalk and Pedestrian Malls

Population Group	1. Total Beneficiaries	2. LMI Beneficiaries	3. Job Applicants	4. Employees Hired	5. Housing Beneficiaries	6. Hispanic
White	5,924	3,139	N/A	N/A	N/A	2,454
African American	2,369	1,255	N/A	N/A	N/A	N/A
Asian	67	35	N/A	N/A	N/A	N/A
Native Hawaiian/Pacific Islander	0	0	N/A	N/A	N/A	N/A
American Indian/Alaskan Native	25	13	N/A	N/A	N/A	N/A
Other Multi-Racial	78	41	N/A	N/A	N/A	N/A
Female Head of Household	648	343	N/A	N/A	N/A	N/A
Elderly Head of Household	1,079	571	N/A	N/A	N/A	N/A
Handicapped	2,079	1101	N/A	N/A	N/A	N/A

ATTACHMENT E - Activity Work Plan

Recipient: City of Avon Park

Activity: Commercial Revitalization Project

Project Budget: \$ 750,000.00

Contract Number: 15DB-OJ-07-38-02-C02

Date Prepared: 07/25/2014

Modification Number: Original

Start Date (month/year)	End Date (month/year)	Describe Proposed Action to be Completed by the "End Date." <i>Examples of Actions: Procure Administrator or Engineer, 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% or 25, 50, 75, and 100%), Complete Construction Procurement Process, Advertise Availability of Housing Rehabilitation Funds, Complete Rankings of Homes per HAP, Number of Houses Rehabilitated, and Submit Closeout Package to DEO.</i>	# Units to be completed by "End Date"	Proposed \$\$ to be Requested by "End Date"	Proposed Administration \$\$ to be Requested by "End Date"
09/2014	12/2014	Complete Environmental Review and obtain Release of Funds		0	\$5,000.00
01/2015	5/2015	Develop project files, complete bid documents, permits		\$0	\$5,000.00
06/2015	09/2015	Review and approve bid documents		\$0	\$5,000.00
07/2015	09/2015	Request wage decision and advertise open bids		\$2,000.00	\$8,000.00
10/2015	11/2015	Award contract and issue Notice to Proceed		\$0	\$5,000.00
12/2015	02/2016	Construction @ 33% completion	33% of CDBG contract	\$148,000.00	\$6,000.00
03/2016	04/2016	Construction @ 66% completion	66% of CDBG contract	\$150,000.00	\$8,000.00
05/2016	06/2016	Construction @ 100% completion	100% of CDBG contract	\$300,000.00	\$8,000.00
07/2016	08/2016	Finalize contractor payments		\$90,000.00	-\$5,000.00
09/2016	09/2016	Submit administration closeout		\$0	\$5,000.00
		Totals		\$690,000.00	\$0
					\$60,000.00

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

AGREEMENT NO. _____

**AGREEMENT
BETWEEN THE
CITY OF AVON PARK
AND
EXCAVATION POINT, INC.
FOR
LAKE VERONA NORTHWEST BASIN, BEST MANAGEMENT PRACTICES PROJECT
(14-100)**

THIS AGREEMENT is made and entered into by and between THE CITY OF AVON PARK, a municipality of the State of Florida, whose address is 110 East Main Street, Avon Park, Florida 33825, hereinafter referred to as the "CITY," and EXCAVATION POINT, INC., a private corporation, whose address is 7944 South George Boulevard, Sebring, Florida 33875, hereinafter referred to as the "CONTRACTOR."

WITNESSETH:

WHEREAS, the CITY desires to engage the CONTRACTOR to complete the work of the Lake Verona Northwest Basin, Best Management Practices Project, hereinafter referred to as the "PROJECT"; and

WHEREAS, the CONTRACTOR represents that it possesses the requisite skills, knowledge, expertise and resources and agrees to provide the desired services to the CITY; and

WHEREAS, the CITY and the CONTRACTOR have agreed on the type and extent of services to be rendered by the CONTRACTOR and the amount and method of compensation to be paid by the CITY to the CONTRACTOR for services rendered.

NOW THEREFORE, the CITY and the CONTRACTOR, in consideration of the mutual terms, covenants and conditions set forth herein, agree as follows:

1. **INDEPENDENT CONTRACTOR.** The CONTRACTOR will perform as an Independent Contractor and not as an employee, representative or agent of the CITY.
2. **PROJECT MANAGER AND NOTICES.** Each party hereby designates the employee set forth below as its respective Project Manager. Project Managers will assist with PROJECT coordination and will be each party's prime contact person. Notices and reports will be sent to the attention of each party's Project Manager by U.S. mail, postage paid, by nationally recognized overnight courier, or personally to the parties' addresses as set forth in the introductory paragraph of this Agreement. Notice is effective upon receipt.

Project Manager for the CITY:
Julian DeLeon
The City of Avon Park
110 East Main Street
Avon Park, Florida 33825

Project Manager for the CONTRACTOR:
Tal Rancourt
Excavation Point, Inc.
7944 South George Boulevard
Sebring, Florida 33875

Any changes to the above representatives or addresses must be provided to the other party in writing.

- 2.1 The CITY'S Project Manager is hereby authorized to approve requests to extend a PROJECT task deadline set forth in this Agreement. Such approval must be in writing, explain the reason for the extension and be signed by the Project Manager and his or her Bureau Chief, or Director if the Bureau Chief is the Project Manager, unless the CITY'S Signature Authority provides otherwise. The CITY'S Project Manager is not authorized to approve any time extension which will result in an increased cost to the CITY or which will exceed the expiration date set forth in Paragraph 5, Contract Period.
3. **SCOPE OF WORK.** The CONTRACTOR, upon written notice to proceed from the CITY, agrees to furnish all equipment, tools, materials, labor and all other things necessary to complete the PROJECT, and perform in accordance with the terms and conditions of this Agreement, the Special Project Terms and Conditions, set forth in Exhibit "A," the CITY'S Request For Bids, RFB #14-100, including all Addenda, and the CONTRACTOR'S response to RFB #14-100 which are both incorporated herein by reference, and Exhibit "B" CONTRACTOR'S Progress Schedule. Time is of the essence in the performance of each obligation under this Agreement. Any changes to this Scope of Work and associated costs, except as provided in Subparagraphs 2.1 and 3.3 herein, must be mutually agreed to in a formal written amendment approved by the CITY and the CONTRACTOR prior to being performed by the CONTRACTOR, subject to the provisions of Paragraph 4, Compensation.
- 3.1 No acceptance or approval by the CITY of any subcontractor, supplier or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of the CITY to reject defective work or shall create any CITY liability for the acts or omissions of these individuals or entities.
- 3.2 Change Orders may be issued by the CITY Project Manager for additional work on an as needed basis for ancillary PROJECT services. The CONTRACTOR will provide a cost estimate and performance schedule for completing the Change Order. Upon approval of the cost estimate and performance schedule, the CITY Project Manager will issue the CONTRACTOR a notice to proceed with the Change Order. The parties agree that payment for any such ancillary PROJECT services is budgeted as contingency and is not to exceed the contingency amount established by the CITY. Prior to issuing a Change Order under this provision the CITY Project Manager must document the reason for the Change Order and obtain written approval from all appropriate CITY staff in accordance with the CITY'S Signature Authority.
4. **COMPENSATION.** For satisfactory completion of the PROJECT, the CITY will pay the CONTRACTOR the sum of Five Hundred Nine Thousand Three Hundred Twenty-Nine Dollars (\$509,329.00). Except as provided below, the DISTRICT will have no obligation beyond this amount. Payment will be made to the CONTRACTOR on a Unit Price basis in accordance with the PROJECT Budget and individual Change Orders issued to the CONTRACTOR. Payment will be made in accordance with the Local Government Prompt Payment Act, Part VII of Chapter 218, Florida Statutes (F.S.), upon receipt of a proper invoice as defined in subparagraph 4.1.

Accounts Payable
City of Avon Park
110 E. Main Street
Avon Park, Florida 33825

In addition to sending an original invoice to the CITY'S Accounts Payable Section as required above, copies of invoices may also be submitted to the CITY'S Project Manager in order to expedite the review process. Failure of the CONTRACTOR to submit invoices to the CITY in the manner provided herein will relieve the City of its obligation to pay within the aforementioned timeframe.

- 4.1. All invoices must include the following information: (1) CONTRACTOR'S name, address and phone number (include remit address, if different than principal address in the introductory paragraph of this Agreement); (2) CONTRACTOR'S invoice number and date of invoice; (3) CITY Agreement number; (4) Dates of service; (5) CONTRACTOR'S Project Manager; (6) CITY'S Project Manager; (7) Progress Report with the CONTRACTOR Project Manager's assessment of the PROJECT'S actual progress as compared to the Progress Schedule; and (8) Supporting documentation necessary to satisfy auditing purposes, for cost and project completion. Invoices that do not conform with this paragraph will not be considered a proper invoice. Disputes will be resolved in accordance with the CITY'S dispute resolution procedure.
- 4.2. If an invoice does not meet the requirements of this Agreement, the CITY'S Project Manager, after consultation with his or her Bureau Chief, will notify the CONTRACTOR in writing that the invoice is improper and indicate what corrective action on the part of the CONTRACTOR is needed to make the invoice proper. If a corrected invoice is provided to the CITY that meets the requirements of the Agreement, the invoice will be paid within twenty-five (25) days after the date the corrected invoice is received by the CITY.
- 4.3. In the event any dispute or disagreement arises during the course of the PROJECT, including those concerning whether a deliverable should be approved by the CITY, the CONTRACTOR will continue to perform the PROJECT work in accordance with the CITY'S instructions and may claim additional compensation. The CONTRACTOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by providing the details and basis of the dispute with a request for additional information, additional compensation, or schedule adjustment, as appropriate, to the CITY'S Project Manager no later than ten (10) days after the precipitating event. If not resolved by the Project Manager, in consultation with his or her Bureau Chief, the dispute will be forwarded to the Executive Director. The Executive Director in consultation with the CITY'S Office of General Counsel will issue a final determination. The CONTRACTOR will proceed with the PROJECT in accordance with the CITY'S determination; however, such continuation of work will not waive the CONTRACTOR'S position regarding the matter in dispute. No PROJECT work will be delayed or postponed pending resolution of any disputes or disagreements.
- 4.4. Each CONTRACTOR invoice must include the following certification, and the CONTRACTOR hereby delegates authority by virtue of this Agreement to its Project Manager to affirm said certification:

"I hereby certify that the costs requested for payment, as represented in this invoice, are directly related to the performance under the Lake Verona Northwest Basin, Best Management Practices Project agreement between

The City of Avon Park and Excavation Point, Inc. (Agreement No. _____), are allowable, allocable, properly documented, and are in accordance with the approved project budget."

- 4.5. The CITY will hold back a retainage of ten percent (10%) of each invoice amount until the PROJECT is fifty percent (50%) complete, thereafter, the CITY will hold back a retainage of five percent (5%) of each invoice amount. Retainage will not be held on permits, insurance, bond, utility charges and plant maintenance. Retainage will be released by the CITY and the CONTRACTOR in accordance with the Local Government Prompt Payment Act, Part VII of Chapter 218, F.S. Prior to the CITY'S release of final payment, the CONTRACTOR must provide the CITY with a properly executed Affidavit stating that the CONTRACTOR has complied with the Local Government Prompt Payment Act with respect to all lower tier entities such as subcontractors, suppliers, etc., and that all taxes have been paid, a Final Release of Lien and a Consent of Surety to Final Payment.
- 4.6. The CITY may, in addition to other remedies available at law or equity, retain such monies from amounts due CONTRACTOR as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against the CITY. The CITY may set off any liability or other obligation of the CONTRACTOR or its affiliates to the CITY against any payments due the CONTRACTOR under any contract with the CITY. The CITY reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, or any other things required by this Agreement have been submitted to the satisfaction of the CITY'S Project Manager.
5. **CONTRACT PERIOD.** This Agreement will be effective upon execution by all parties and will remain in effect through June 30, 2015, unless terminated, pursuant to Paragraph 12 or 13 below, or as amended in writing by the parties.
6. **PROJECT RECORDS AND DOCUMENTS.** The CONTRACTOR, upon request, will permit the CITY to examine or audit all PROJECT related records and documents during or following completion of the PROJECT at no cost to the CITY. Payments made to the CONTRACTOR under this Agreement shall be reduced for amounts found to be not allowable under this Agreement by an audit. If an audit is undertaken by the CITY, all required records shall be maintained until the audit has been completed and all questions arising from it are resolved. The CONTRACTOR will maintain all such records and documents for at least three (3) years following completion of the PROJECT.
 - 6.1. Pursuant to Subsection 119.071(3)(b), F.S., building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, or other structure owned or operated by the CITY are exempt from the inspection, examination and duplication of public records provisions of Subsection 119.07(1), F.S., and Subsection 24(a), Article I of the State Constitution. Information made exempt by Subsection 119.071(3)(b), F.S., may only be disclosed to other governmental entities if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to licensed architects, engineers, or contractors who are performing work on or related to the building or other structure; or upon a showing of good cause before a court of competent jurisdiction. Entities or persons receiving such information are required to maintain the exempt status of the information. The CONTRACTOR agrees to include the above provision in all agreements with

subcontractors that are related to the CONTRACTOR'S performance under this Agreement, and to which the provisions of Chapter 119, F.S., also apply.

7. **OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.** All documents, including reports, drawings, estimates, programs, manuals, specifications, and all goods or products, including intellectual property and rights thereto, purchased under this Agreement with CITY funds or developed in connection with this Agreement will be and will remain the property of the CITY.
8. **REPORTS.** The CONTRACTOR will provide the CITY with any and all reports, models, studies, maps, or other documents resulting from the PROJECT at no cost to the CITY.
9. **INDEMNIFICATION.** The CONTRACTOR agrees to indemnify and hold harmless the CITY and all CITY agents, employees and officers from and against all liabilities, claims, damages, expenses or actions, either at law or in equity, including attorney fees and costs and attorney fees and costs on appeal, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR, its agents, employees, subcontractors, assigns, heirs or anyone for whose acts or omissions any of these persons or entities may be liable during the CONTRACTOR'S performance under this Agreement. This provision shall survive the termination or expiration of this Agreement.
10. **INSURANCE REQUIREMENT.** The CONTRACTOR must maintain during the entire term of this Agreement, insurance in the following kinds and amounts or limits with a company or companies authorized to do business in the State of Florida and will not commence work under this Agreement until the CITY has received an acceptable certificate of insurance showing evidence of such coverage. Certificates of insurance must reference the CITY Agreement Number and Project Manager.
 - 10.1 Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office without restrictive endorsements, or equivalent, with the following minimum limit and coverage:

\$1,000,000 Per Occurrence

As applicable, supplemental liability insurance must include explosion, underground and collapse hazard (XCU)
 - 10.2 Vehicle liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverage:

Bodily Injury Liability per Person	\$100,000
Bodily Injury Liability per Occurrence	\$300,000
Property Damage Liability	\$100,000
or	
Combined Single Limit	\$500,000
 - 10.3 The CITY and its employees, agents, and officers must be named as additional insured on the general liability policy to the extent of the CITY'S interests arising from this Agreement.
 - 10.4 CONTRACTOR must carry workers' compensation insurance in accordance with

Chapter 440, F.S., and maritime law, if applicable (navigable waters). If CONTRACTOR does not carry workers' compensation coverage, CONTRACTOR must submit to the CITY both an affidavit stating that the CONTRACTOR meets the requirements of an independent contractor as stated in Chapter 440, F.S. and a certificate of exemption from workers' compensation coverage.

- 10.5 The CONTRACTOR must deliver to the CITY, prior to commencing any work under this Agreement, a Performance, Payment and Guarantee bond which is satisfactory to the CITY and equal to one hundred percent (100%) of the contract amount as set forth below in Paragraph 11.
 - 10.6 CONTRACTOR must notify the CITY in writing of the cancellation or material change to any insurance coverage required by this Agreement. Such notification must be provided to the CITY within five (5) business days of the CONTRACTOR'S notice of such cancellation or change from its insurance carrier.
 - 10.7 The CONTRACTOR must obtain certificates of insurance from any subcontractor otherwise the CONTRACTOR must provide evidence satisfactory to the CITY that coverage is afforded to the subcontractor by the CONTRACTOR'S insurance policies.
11. **BONDING REQUIREMENTS.** Prior to the effective date of this Agreement, the CONTRACTOR, at its sole expense, will provide the CITY with a Performance, Payment and Guarantee Bond in the amount of Five Hundred Nine Thousand Three Hundred Twenty-Nine Dollars (\$509,329.00) as security for the performance of all the CONTRACTOR'S obligations under this Agreement pursuant to the terms and conditions of Section 255.05, F.S. The bond must be in a form and with sureties that are acceptable to the CITY and must provide that it will remain in full force and effect during the entire term of this Agreement, plus one (1) year from the date of acceptance of the PROJECT by the CITY. The CONTRACTOR agrees to repair, replace or otherwise correct any defects in the work performed or furnished according to the terms of this Agreement which become apparent prior to the expiration of the bond. If the CITY determines that any part of the PROJECT is defective and requires repair or replacement during the lifetime of the bond, the CITY will notify the CONTRACTOR of the defect in writing. If the CONTRACTOR refuses or neglects to repair, replace or otherwise correct the defect within ten (10) days from the date of receipt of such notice, the CITY has the option to have the work performed or furnished by others and the cost will be paid by the CONTRACTOR or its surety.
 12. **TERMINATION WITHOUT CAUSE.** This Agreement may be terminated by the CITY without cause upon ten (10) days written notice to the CONTRACTOR. Termination is effective upon the tenth (10th) day as counted from the date of the written notice. In the event of termination under this paragraph, the CONTRACTOR will be entitled to compensation for all services provided to the CITY up to the date of termination on a pro-rated basis and which are within the Scope of Work, are documented in the Budget, and are allowed under this Agreement.
 13. **DEFAULT.** Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, as long as the terminating party is not in default of any term or condition of this Agreement at the time of termination. To effect termination, the terminating party will provide the defaulting party with a written

"Notice of Termination" stating its intent to terminate and describing all terms and conditions with which the defaulting party has failed to comply. If the defaulting party has not remedied its default within thirty (30) days after receiving the Notice of Termination, this Agreement will automatically terminate. The parties agree that this Agreement is an executory contract. If, after termination by the CITY, it is determined that the CONTRACTOR was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the CITY.

14. **RELEASE OF INFORMATION.** The CONTRACTOR agrees not to initiate any oral or written media interviews or issue press releases on or about the PROJECT without providing notices or copies to the CITY'S Project Manager no later than three (3) business days prior to the interview or press release.
15. **ASSIGNMENT.** Except as otherwise provided in this Agreement, CONTRACTOR may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the CITY. If the CONTRACTOR assigns its rights or delegates its obligations under this Agreement without the CITY'S prior written consent, the CITY is entitled to terminate this Agreement. If the CITY terminates this Agreement, the termination is effective as of the date of the assignment or delegation. Any termination is without prejudice to the CITY'S claim for damages.
16. **LAW COMPLIANCE.** The CONTRACTOR will abide by and assist the CITY in satisfying all applicable federal, state and local laws, rules, regulations and guidelines, related to performance under this Agreement. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, disability, marital status or national origin.
17. **EMPLOYMENT OF FLORIDA RESIDENTS.** In accordance with Section 255.099, F.S., CONTRACTOR must give preference to the employment of Florida residents in the performance of the work on this PROJECT if Florida residents have substantially equal qualifications to those of nonresidents. As used in this Section, the term substantially equal qualifications means the qualification of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons. CONTRACTOR must contact the Agency for Workforce Innovation (www.floridajobs.org) to post the CONTRACTOR'S employment needs in Florida's job bank system. This Section may not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, or marines, or prohibiting as unlawful any other preference or discrimination among the citizens of the United States.
18. **EMPLOYMENT ELIGIBILITY VERIFICATION.** The CONTRACTOR must utilize the U.S. Department of Homeland Security's Employment Verification (E-Verify) Program to verify the employment eligibility of CONTRACTOR employees performing work directly associated with this Agreement in accordance with the terms and conditions applicable to the E-Verify Program. If the CONTRACTOR uses subcontractors to furnish services directly associated with this Agreement, performed in the United States, in an amount greater than \$3,000, the CONTRACTOR must include the requirements of this provision (appropriately modified for identification of the parties) in each subcontract. Information on registration for and use of the E-Verify Program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

19. **VENUE AND APPLICABLE LAW.** All claims, counterclaims, disputes, and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach of it will be decided in accordance with the laws of the State of Florida and by a court of competent jurisdiction within the State of Florida and Venue will lie exclusively in the County of Highlands. This provision shall survive the termination or expiration of this Agreement.
20. **REMEDIES.** Unless specifically waived by the CITY, the CONTRACTOR'S failure to timely comply with any obligation in this Agreement will be deemed a breach of this Agreement and the expenses and costs incurred by the CITY, including attorneys' fees and costs and attorneys' fees and costs on appeal, due to said breach will be borne by the CONTRACTOR. Additionally, the CITY will not be limited by the above but may avail itself of any and all remedies under Florida law for any breach of this Agreement. The CITY'S waiver of any of the CONTRACTOR'S obligations will not be construed as the CITY'S waiver of any other obligations of the CONTRACTOR. This provision shall survive the termination or expiration of this Agreement.
21. **ATTORNEY FEES.** Should either party employ an attorney or attorneys to enforce any of the provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach of this Agreement, the party prevailing is entitled to receive from the other party all reasonable costs, charges and expenses, including attorneys' fees, expert witness fees, fees and costs on appeal, and the cost of paraprofessionals working under the supervision of an attorney, expended or incurred in connection therewith, whether resolved by out-of-court settlement, arbitration, pre-trial settlement, trial or appellate proceedings, to the extent permitted under Section 768.28, F.S. This provision does not constitute a waiver of the CITY'S sovereign immunity or extend the CITY'S liability beyond the limits established in Section 768.28, F.S. This provision shall survive the termination or expiration of this Agreement.
22. **DRUG-FREE WORKPLACE.** Prior to the commencement of any work by the CONTRACTOR pursuant to the terms of this Agreement, the CONTRACTOR must provide the CITY with written certification that it has implemented a drug-free workplace program in accordance with Subsection 440.102(15), F.S., and provide the CITY with the written certifications from any subcontractors to which the provisions of Subsection 440.102(15), F.S., also apply.
23. **SUBCONTRACTORS.** Nothing in this Agreement will be construed to create, or be implied to create, any relationship between the CITY and any subcontractor of the CONTRACTOR.
24. **THIRD PARTY BENEFICIARIES.** Nothing in this Agreement will be construed to benefit any person or entity not a party to this Agreement.
25. **PUBLIC ENTITY CRIMES.** Pursuant to Subsections 287.133(2) and (3), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a

period of 36 months following the date of being placed on the convicted vendor list. By signing this Agreement, CONTRACTOR warrants that it is not currently on a suspended vendor list and that it has not been placed on a convicted vendor list in the past 36 months. CONTRACTOR further agrees to notify the CITY if placement on either of these lists occurs.

26. **DISCRIMINATION.** Pursuant to Subsection 287.134(2)(a), F.S., an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 any public entity; and may not transact business with any public entity. By signing this Agreement, CONTRACTOR warrants that it is not currently on the discriminatory vendor list and that it has not been placed on the discriminatory vendor list in the past 36 months. CONTRACTOR further agrees to notify the CITY if placement on this list occurs.
27. **ENTIRE AGREEMENT.** This Agreement and the attached exhibits listed below constitute the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.
28. **DOCUMENTS.** The following documents are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority will first be given to the language in the body of this Agreement, then to Exhibit "A," then to Exhibit "B," then to Exhibit "C," and then to Exhibit "D."

Exhibit "A"	Special Project Terms and Conditions
Exhibit "B"	CONTRACTOR'S Progress Schedule
Exhibit "C"	CITY'S Request for Bids RFB # 14-100
Exhibit "D"	CONTRACTOR'S Response to RFB # 14-100

IN WITNESS WHEREOF, the parties hereto, or their lawful representatives, have executed this Agreement on the day and year set forth next to their signatures below.

THE CITY OF AVON PARK

By: _____
Sharon Schuler, Mayor Date

EXCAVATION POINT, INC.

By: Tal Rancourt _____ 7/30/14
Tal Rancourt, President Date
Authorized Agent for Company

AGREEMENT
BETWEEN THE
CITY OF AVON PARK
AND
EXCAVATION POINT, INC.
FOR
LAKE VERONA NORTHWEST BASIN, BEST MANAGEMENT PRACTICES PROJECT
(14-100)

EXHIBIT "A"

SPECIAL PROJECT TERMS AND CONDITIONS

1. During construction of the PROJECT the CONTRACTOR will keep a competent superintendent on the PROJECT site who is authorized to represent the CONTRACTOR in CONTRACTOR'S absence. The CONTRACTOR will maintain an office, off site, staffed by an employee of the CONTRACTOR, who has the ability to reach the CONTRACTOR in case of emergency during regular CITY business hours (0800 - 1700, Monday through Friday). Answering services and mechanical telephone answering machines are not an acceptable substitute.
2. Prior to commencing work the CITY and CONTRACTOR will mutually agree upon the location of parking, material storage, dumpster, restroom and concrete wash out areas. Upon completion, the CONTRACTOR will restore all disturbed areas to their original condition.
3. All persons entering the PROJECT area on behalf of the CONTRACTOR will adhere to posted speed limits and traffic patterns.
4. Foul/offensive language will not be permitted; harassment of any type will not be permitted; firearms, other than power actuated devices are NOT PERMITTED at the PROJECT site. This includes bow and arrow.
5. The CONTRACTOR is responsible for all safety aspects of the job and his employees, including all lower tier subcontractors on the job site. The CONTRACTOR and all subcontractors must comply with Occupational Safety and Health Administration (OSHA) standards at all times. The CONTRACTOR must exercise safe practices at all times for the protection of all persons and property. Walkways and work areas must remain clean and unobstructed at all times.
 - 5.1 The CITY'S Project Manager may, without prior notice, inspect work sites to ensure compliance with the terms and conditions of the Agreement and with safety and health standards and requirements. In the event the CONTRACTOR fails to comply with health and safety standards or requirements, the CITY'S Project Manager may issue an order stopping all or any part of the work. Claims by the CONTRACTOR for additional compensation related to a stop work order will not be considered or accepted by the CITY. Any costs, direct or indirect, arising out of or resulting from the stop work order, will be the responsibility of the CONTRACTOR.
 - 5.2 The CONTRACTOR must: i) immediately report to the CITY'S Project Manager any work-related illness or injury which requires more than first aid treatment, or any loss or damage to CITY property, ii) develop and post in the construction area a list of emergency phone numbers, iii) prior to commencement of the work, make provisions for prompt medical attention in case of serious injury; and iv) provide a standard first aid kit in a location readily accessible by all persons.

5.3 All construction employees must be suitably dressed for protection against injury. Hard hats are required and must be used in all construction areas during the course of work activity.

6. The CONTRACTOR will at all times protect its work from damage and will protect the CITY'S property against injury or loss arising in connection with this PROJECT. The CONTRACTOR will correct any such damage, injury or loss except such as may be directly due to errors caused by the employees of the CITY. The CONTRACTOR will protect and maintain all passage ways, guard fences, lights and other facilities for safety protection required by any public authority or local conditions. The CONTRACTOR will, at all times, protect public and privately owned property in and around the PROJECT site, structures, utilities, and work of any kind against damage or interruption of service which may result from the operations of the CONTRACTOR. Damage or interruption to service resulting from the CONTRACTOR'S failure to provide such protection will be promptly repaired or restored at the sole expense of the CONTRACTOR.

7. Except in an emergency endangering life or property, no extra work or change will be made unless in compliance with a written Change Order issued by the CITY'S Project Manager, and no claim for an addition to the compensation will be valid unless so ordered. Correction of faulty or inadequate design by the CONTRACTOR is not grounds for initiation of a Change Order and the CONTRACTOR agrees to remedy such flaws at its own expense.

The CITY may order extra work or request changes by altering, adding to, or deducting from the original Scope of Work or Final Plans via written Change Order agreed to by both parties. The compensation shall be adjusted accordingly. When requested by the CITY'S Project Manager, the CONTRACTOR will submit a cost and performance proposal for changes in the work within 15 workdays after receipt of the request. The proposal will include an itemized breakdown for labor, materials, equipment and the time considerations for completing the change. All such work will be executed under the conditions of the original Agreement except that any claim for an extension of time caused thereby will be adjusted at the time of ordering such change. In giving instructions, the CITY'S Project Manager will have authority to make minor changes in the work, not involving extra time or cost, and not inconsistent with the purpose of the work.

8. If the CONTRACTOR is delayed at any time, in the progress of the work by an act of neglect of the CITY, its employees, agents or consultants, or by changes ordered by the CITY or by strikes, lock-outs, fire, unavoidable casualties or any other causes beyond the CONTRACTOR'S control, then the time of completion will be extended for such reasonable time as the CITY'S Project Manager may decide. This is the CONTRACTOR'S sole remedy for the delays set forth in this paragraph.

9. If the CONTRACTOR should be adjudged bankrupt, or if CONTRACTOR should make a general assignment for the benefit of CONTRACTOR'S creditors or declare insolvency, or if CONTRACTOR should persistently or repeatedly refuse or should fail, except in cases in which extension of time is provided, to supply enough properly skilled labor or proper material, or if CONTRACTOR should fail to make prompt payment to subcontractors or for material or labor, or disregard laws, ordinances or the instructions of the CITY'S Project Manager, or otherwise be guilty of a substantial violation of any provision of this Agreement, then the CITY, upon certification by the

CITY'S Project Manager that sufficient cause exists to justify such action, may without prejudice to any other right or remedy, and after giving the CONTRACTOR seven (7) days written notice, terminate the employment of the CONTRACTOR, take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it may deem expedient. In such case, the CONTRACTOR will not be entitled to receive any further payment until the work is completed pursuant to the terms and conditions of the Agreement. If the unpaid balance of the contract price exceeds the expense of completing the work, including compensation for additional material and administrative services, such excess will be paid to the CONTRACTOR. If such expense exceeds such unpaid balance, the CONTRACTOR will pay the difference to the CITY. The CITY'S Project Manager will certify the damage and expenses incurred by the CITY as a result of the CONTRACTOR'S default.

10. If the work should be stopped under an order of any court, or other public authority for a period of three (3) months, through no act or fault of the CONTRACTOR or of anyone under the CONTRACTOR'S control, or if the CITY fails to pay the CONTRACTOR in accordance with the Local Government Prompt Payment Act, Part VII of Chapter 218, F.S., then the CONTRACTOR may, upon giving seven (7) days written notice to the CITY, stop work and recover from the CITY payment for all work completed to date in accordance with this Agreement. The CITY will have the option of suspending or terminating the Agreement.
11. In the case of termination of the Agreement before PROJECT completion, for any cause whatever, the CONTRACTOR, if notified to do so by the CITY, will promptly remove any part or all of his equipment and supplies from the project site. If the CONTRACTOR fails to do so, the CITY will have the right to remove such equipment and supplies at the expense of the CONTRACTOR.
12. The CITY will have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the fact that the time for completing the entire work or such portions may not have expired. However, such possession and use will not be deemed an acceptance of any work not completed in accordance with this Agreement. If such prior use increases the cost or delays the work, the CONTRACTOR may be entitled to such extra compensation, or extension of time, or both, as determined by the sole discretion of the CITY'S Project Manager.
13. The CONTRACTOR will invoice the CITY for progress made in each activity in accordance with the CONTRACTOR'S Response to RFB # 14-100.
14. The CONTRACTOR is as fully responsible to the CITY for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by the subcontractors, as CONTRACTOR is for the acts and omissions or persons directly employed by CONTRACTOR. Prior to commencing work, the CONTRACTOR will provide the CITY with a photocopy of its Contractor's license and photocopies of licenses for all of its subcontractors. Said licenses must be for the trade to be performed and provide that the entities to which they are issued are authorized to do business in Highlands County, Florida. State of Florida certification alone will not be acceptable, the CONTRACTOR and all subcontractors must register with Highlands County, Florida, and be granted an occupational license. Nothing contained in this Agreement will be construed to create any contractual relation between any subcontractors and the CITY.

15. The CONTRACTOR and the CITY will develop a single list of items required to render the services purchased by the CITY under this Agreement, complete, satisfactory, and acceptable to the CITY within 30 calendar days after reaching substantial completion of the project according to the following process. CONTRACTOR will contact the CITY'S Project Manager to schedule a joint inspection of the project to occur after reaching substantial completion. The CONTRACTOR will provide the CITY with a proposed list of items to be completed and the completion date for each item, within 7 calendar days from the date of inspection. Within 7 calendar days of receipt of the proposed list, the CITY will either approve or revise the list to comply with the terms of this Agreement. If CONTRACTOR disputes any item, CONTRACTOR must provide supporting documentation for the disputed item within 7 days of receipt of the revised list. The CITY will review CONTRACTOR'S supporting documentation and, in its sole discretion, make a final determination regarding the list of items required to render the services complete as set forth in this paragraph.

15.1 All items that require correction under this Agreement and that are identified after the preparation and delivery of the list remain the obligation of the CONTRACTOR. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the CONTRACTOR to complete all the services purchased pursuant to this Agreement.

15.2 If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to this Agreement, the CITY will continue to withhold 150 percent of the total costs to complete such items.

16. The CITY'S Project Manager will recommend final acceptance of the work performed pursuant to the PROJECT when it is completed and finished in all respects in accordance with the Agreement, including all its attachments. The CONTRACTOR will notify the CITY'S Project Manager in writing fifteen days prior to the date on which the work will be ready for final inspection. Should it develop that the work installed does not justify such inspection at that time, or that the character of materials or workmanship is such that reinspection is found necessary, the cost of such reinspection including the salary, traveling expense and other expenses of the inspector(s) will be borne by the CONTRACTOR and will be deducted from any money due the CONTRACTOR.

FINAL RELEASE OF LIEN

KNOWN TO ALL MEN BY THE PRESENTS, that EXCAVATION POINTE, INC., 7944 SOUTH GEORGE BOULEVARD, SEBRING, FLORIDA, 33875 for and in consideration of the sum of Five Hundred Nine Thousand Three Hundred Twenty-Nine Dollars (\$509,329.00) by the CITY OF AVON PARK, AVON PARK, STATE OF FLORIDA, receipt of which is hereby acknowledged, except the sum of _____ representing the total unpaid balance under the Contract, do hereby release and quitclaim to said District, and the Owner, its successors or assigned, all liens, lien right, claims or demands of any kind whatsoever which _____ now has or might have against the property, building, and improvements, on account of labor performed, material furnished, or for any incidental expense for the construction of _____

Thereon or in otherwise improving said property situation as above described.

IN WITNESS WHEREOF, I, _____

have hereunto set my hand and seal, this _____ day of _____, _____.

WITNESS:

OFFICER:

_____ (SEAL)

SWORN AND SUBSCRIBED TO BEFORE ME THIS _____ day of _____, _____.

Notary Public, State of Florida at Large

My Commission Expires: _____

E-14

Resolution No. 14-13

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF AVON PARK,
HIGHLANDS COUNTY, FLORIDA.
ALLOWING FOR SIGNATURE AUTHORITY
TO THE CITY CLERK
FOR SUBGRANT DOCUMENTS RELATIVE TO
CDBG # 15DB-OJ-07-38-02-C02**

WHEREAS, the City of Avon Park wishes to have the City Clerk submit for Subgrant Documents relative to CDBG # 15DB-OJ-07—38-02-C02

WHEREAS, the City Clerk has the authority to sign said Subgrant(s) on behalf of the City of Avon Park; and

NOW THEREFORE BE IT RESOLVED THAT the City Clerk has the signature authority to submit Department of Economic Opportunity (DEO) Subgrants for the City of Avon Park.

Passed and Resolved in a regular meeting this 11th day of August, 2014.

Sharon Schuler
Mayor

ATTEST:

Julian Deleon
City Manager

Agenda Item Summary

Subject: Annexation and Utility Service Agreement with BHG

Item No.

E15

Placed on Agenda by: City Manager

Total Amount of Project:

Staff Review: Yes

Attorney Review: N/A

Recommended Motion(s):

Motion to approve the developer's agreement with BHG as provided in Exhibit-1.

Background:

For your consideration, please find an annexation and utility service agreement to annex over 200 acres currently owned by BHG.

As part of the agreement, we would assist the property owner in attaining the suitable zoning for development, and also agree to build water distribution transmission to provide utility service to the Little Red Lake Service area.

The property owner is providing the City with a 25 ft easement for utility construction. This simplifies our permitting, and minimizes our construction costs. This is a typical project which could be done in-house.

If we perform the construction improvements in-house, the projected costs would be \$54,000, versus if we out-sourced the work, the projected costs would be \$130,000.

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made and entered into this _____, 2014, by and between BEN HILL GRIFFIN INC, a Florida corporation, whose business address is P O BOX 127, FROSTPROOF, FL 33843, for themselves and their successors and assigns (hereinafter collectively referred to as "Owner"), and the City of Avon Park, a municipal corporation, whose business address is 110 East Main Street, Avon Park, Florida 33825, and its successors and assigns (hereinafter referred to as "City").

PURPOSE & INTENT

A. Owner is desirous of developing Owner's property described on Exhibit "A" attached hereto and made a part hereof (the "Property") someday in the future, and obtaining water service from the City when the Property is developed.

B. City is willing to provide such water service in the manner described herein, but in exchange requires that the annexation of the Property be performed as soon as legally possible.

AGREEMENT

OWNER and CITY therefore agree as follows:

1. Purpose & Intent and Exhibits Are Part of Agreement. The above recitations are true and correct, are hereby incorporated herein by reference, and form a material part of this Agreement. All exhibits to this Agreement and statements therein are hereby deemed a part of this Agreement.

2. Agreements between the Parties as to Annexation. Owner irrevocably agrees to voluntarily annex the Property within the City. City agrees to annex the Property.

3. Agreements as to Extension of Water Service.

a. The City agrees to perform or contract for all professional engineering services for design and FDEP permitting necessary to extend:

i. A water main of 8" in diameter with an estimated length of 7,700 feet in length, aligned along the proposed easements, or dedicated public right of way as illustrated on Exhibit-B.

b. The City will permit and construct the above described project (the "Utility Project") within 48 months of the execution of this Agreement.

4. Commencement of City Duties. The City's obligation to perform its duties regarding the Utility Project will be initiated upon annexation, and completed within a 48 month period.

5. Zoning change during the Annexation Process. As part of the annexation process, and at no cost to the Owner, the City and Owner will jointly initiate the rezoning of the property.

6. Dedication of Easement. Owner will provide the City with an easement 25 ft wide by 7,800 ft long for the purposes of installing utilities. The City shall not remove any citrus trees within the easement area. The City shall make any needed irrigation repairs within 24 hours or sooner. The approximate area is shown in Exhibit-B. The easement may be utilized by the owner to meet the City's Land Development regulations setbacks.

7. Laws of Florida to Govern; Venue; Waiver of Jury Trial. This Agreement shall be governed by the laws of the State of Florida, and the proper venue shall be state court in Highlands County, Florida, and the parties agree to waive any right to jury trial.

8. Waiver; Remedies. No failure or delay on the part of either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any waiver on the part of either party of any right, power, or privilege hereunder operate as a waiver of any other right, power, or privilege hereunder, nor will any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

9. Document is the Result of Mutual Draftsmanship. The terms and conditions in this Agreement are the product of mutual draftsmanship by both parties, each being represented by counsel, and any ambiguities in this Agreement or any documentation prepared pursuant to it shall not be construed against any of the parties because of authorship. The parties acknowledge that all the terms of this Agreement were negotiated at arms' length, and that each party, being represented by counsel, is acting to protect its, his, her, or their own interest.

10. Prior Agreements; Amendments. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Owner and City, made with respect to the matters herein contained, and when duly executed constitutes the entire Agreement between Owner and City. No additions, alterations or variations of the terms of this Agreement shall be valid, nor provisions of this Agreement be deemed waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed by the party to be bound thereby.

11. Conflict With Laws. In the event of a conflict between provisions in this Agreement and the provisions in any federal or state law, or any City ordinance, resolution, rules and regulations or code, the parties shall first attempt to read the provisions in reasonable harmony, and if no agreement can be reached, the provision of federal law, then state law, then City ordinance (Code), resolution, rules & regulations shall prevail over the provisions in the Agreement, in that order, however, the City shall pass no future ordinance that will invalidate this Agreement or eliminate the City's duties under this Agreement.

12. Agreement Recorded as Covenant on the Property. A copy of this Agreement shall be duly recorded in the county records by the City as a covenant binding the Owner of the Property and any subsequent owners of the Property, and the benefits and burdens of this Agreement shall become a covenant, running, touching, building and concerning the title to the Property, and all parts and parcels thereof.

13. Attorney Fees. In the event of any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover actual and reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in a pre-litigation negotiation, litigation at the trial level, or upon appeal.

IN WITNESS WHEREOF, Owner and City have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed.

[signatures on attached pages]

OWNER

Signed, sealed and delivered before these witnesses:	
	BEN HILL GRIFFIN INC
	By: <u>BH Griffin</u> Chief Executive Officer
<u>Gene Mooney</u> (Signed)	
<u>Gene Mooney</u> (Printed)	
<u>Donna H. Respress</u> (Signed)	
<u>Donna H. Respress</u> (Printed)	

State of Florida
County of ~~Highlands~~ Polk

This instrument was acknowledged before me this August 1, 2014, by BH GISSON as president of BEN HILL GRIFFIN INC, a Florida corporation. She is personally known to me or [] produced a driver's license as identification. He



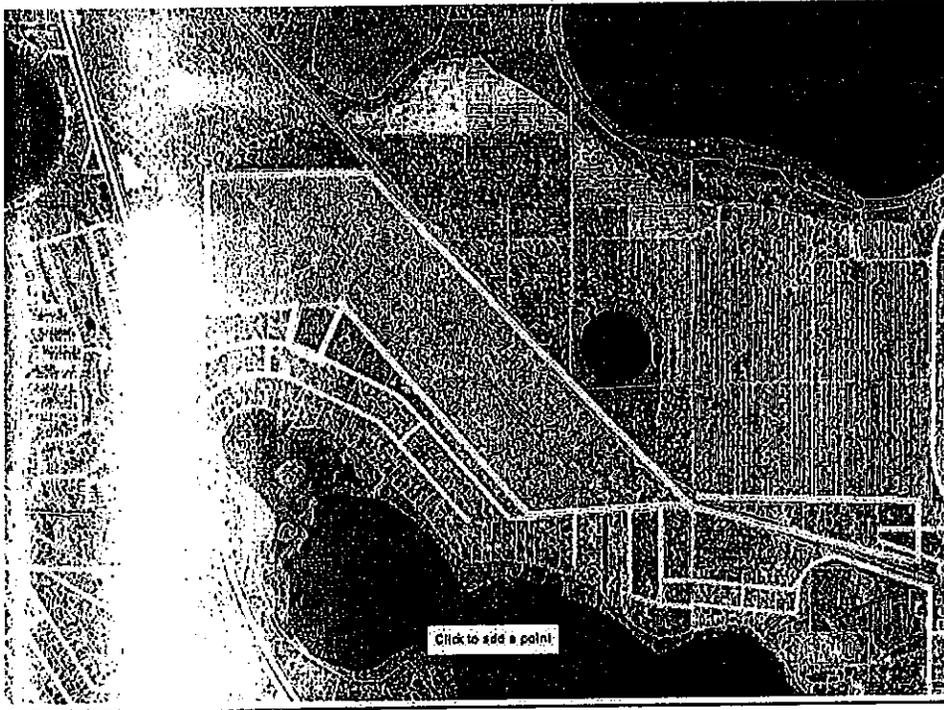
Donna H. Respress
Notary Public
Print Name: Donna H. Respress
My Commission Expires: Oct 26, 2017

CITY OF AVON PARK

<p>[SEAL]</p> <p>ATTEST: _____ Maria Sutherland, City Clerk</p> <p>APPROVED AS TO FORM: _____ Gerald T. Buhr, City Attorney</p>	<p>CITY OF AVON PARK, FLORIDA,</p> <p>By: _____ Sharon Schuler, Mayor</p>
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EXHIBIT A

DESCRIPTION OF OWNER'S PROPERTY TO BE ANNEXED



C-01-34-29-00-00-0000 valued at \$735,571 Taxes = $735.6 * 0.30 = \$220/\text{year}$

<http://www.ppmiser.co.highlands.fl.us/perl/re2html.pl?strap=283401A0000400000C&c0=1&c1=1&c2=1&c3=1&c4=1&c5=1&c6=0>

C-01-34-29-00-00G0-0000 valued at \$36,372 Taxes = $36.4 * 0.30 = \$11/\text{year}$

<http://www.ppmiser.co.highlands.fl.us/perl/re2html.pl?strap=28340102000G00000C&c0=1&c1=1&c2=1&c3=1&c4=1&c5=1&c6=0>

C-07-34-29-00-0020-0000 valued at \$39,858 Taxes = $39.9 * 0.30 = \$12/\text{year}$

<http://www.ppmiser.co.highlands.fl.us/perl/re2html.pl?strap=293407A0000200000C&c0=1&c1=1&c2=1&c3=1&c4=1&c5=1&c6=0>

C-07-34-29-00-00C0-0060 valued at \$16,293 Taxes = $16.3 * 0.30 = \$4.89/\text{year}$

<http://www.appraiser.co.highlands.fl.us/perl/re2html.pl?strap=29340702000C00060C&c0=1&c1=1&c2=1&c3=1&c4=1&c5=1&c6=0>

C-01-34-28-020-00H0-0000 valued at \$25,080 Taxes = 25.1 * .30 = \$8/year
<http://www.appraiser.co.highlands.fl.us/perl/re2html.pl?strap=28340102000H00000C&c0=1&c1=1&c2=1&c3=1&c4=1&c5=1&c6=0>

Exhibit-B Proposed City Work.

Red shows 25-ft easement

Blue shows 7,700 ft of 8" drinking water.

