

TAB 8



City of Palmetto Agenda Item

Meeting Date

3/15/2010

Presenter: Jim Freeman

Department: City Clerk's Office

Title:

CDBG Grant Application

On February 15, 2010 Commission approved CCI, Inc. to provide CDBG grant administration services for the upcoming CDBG funding cycle offered via the Florida Department of Community Affairs. Representatives from CCI, Inc will be present to outline the timeframes and process to apply for the upcoming grant cycle. During their discussion, they will provide details about a variety of steps that need to be completed as part of the application process. This includes things such as Community meetings, neighborhood surveys, etc. The City anticipates applying for the maximum award of \$750,000 to assist with construction of Ward I Phase II infrastructure improvements. The construction dollars for this project are currently budgeted in the CRA account (#6905596300-Improvements not building). CCI, Inc. will be responsible for the application and administration of the grant for the City of Palmetto. The City of Palmetto will provide support as needed to help ensure a successful grant application and administration. The fee for the grant administration services is 8% of the grant award (i.e., we may or may not get the entire \$750,000) up to a maximum of \$60,000. The grant administration expenses will be paid for using CRA budgeted funds.

The contract between the City of Palmetto and CCI, Inc. is on the 7:00 pm agenda for approval.

Budgeted Amount:	Approx. \$3M for construction of Ward 1 Phase II	Budget Page No(s):	Pg. 185 of FY-09/10	Available Amount:	\$0.00	Expenditure Amount:	Max. of \$60,000
-------------------------	--	---------------------------	---------------------	--------------------------	--------	----------------------------	------------------

Additional Budgetary Information:

The costs for grant administration will be paid for as part of the CRA dollars that are budgeted for this project.

Funding Source(s):	CRA 6905596300	Sufficient Funds Available:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Budget Amendment Required:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Source:	
---------------------------	----------------	------------------------------------	--	-----------------------------------	--	----------------	--

City Attorney Reviewed:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Advisory Board Recommendation:	<input type="checkbox"/> For <input type="checkbox"/> Against <input checked="" type="checkbox"/> N/A	Consistent With:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
--------------------------------	--	---------------------------------------	---	-------------------------	---	--

Potential Motion/ Direction Requested:

Motion to approve the standard form of agreement between Clark Communities Inc. (CCI) and the City of Palmetto for 8% of the CDBG grant up to a maximum of \$60,000 and which payment is contingent upon the City being awarded CDBG funding by the DCA for the application submittal.

Staff Contact: Jim Freeman, Jeff Burton and Allen Tusing

Attachments: Contract for grant administration services.

AGREEMENT
BETWEEN THE CITY OF
PALMETTO, FL
AND
CCI

*Florida Small Cities Community Development Block Grant Program
Neighborhood Revitalization Category
FY 2010*

AGREEMENT

**BETWEEN
THE CITY OF PALMETTO, FL
AND
CCI**

THIS IS AN AGREEMENT between The City of Palmetto, FL (OWNER) and CCI (Clark Communities, Inc.).

OWNER intends to assist CCI with preparing and submitting a Florida Small Cities Community Development Block Grant (CDBG) Neighborhood Revitalization Category FY 2010 application to the Florida Department of Community Affairs (DCA) for the City of Palmetto, Florida.

SECTION 1- DEFINITIONS

Wherever used in this Agreement, the following terms have the meaning indicated which are applicable to both the singular and the plural thereof:

1.1. Additional Services

Additional Services means the services to be performed or furnished to OWNER by CCI described in Section 4.1 of this Agreement.

1.2. Agreement

Agreement means this Standard Form of Agreement for Professional Services.

1.3. Application

A written request created by CCI pursuant to the Administrative Rules in Section 9B.43, Florida Administrative Code, for funding from the Department of Community Affairs, Florida Small Cities Community Development Block Grant Program, for one of the funding categories in which the OWNER is eligible.

1.4. Basic Services

Basic Services means the services to be performed for or furnished to OWNER by CCI described in Section 2.1 of this Agreement.

1.5. Consultant

Consultant means a person or entity having a contract with OWNER to perform or furnish Basic or Additional Services engaged directly on the PROJECT.

1.6. Hourly Rates

Hourly Rate(s), as necessary for any Additional Services pursuant to Section 4.1 means services performed by CCI billed at the following hourly rates:

Bud Clarke	\$195.00
Casey Simmons	\$95.00
Lauren Clarke	\$55.00

1.7 Project

Projects means the application for a Community Development Block Grant (CDBG), and if approved by the Florida Department of Community Affairs the administration of the grant.

1.8. Project Status Report

Project Status Report (PSR) means a monthly report of accomplishments by CCI to OWNER.

1.9. Reimbursable Expenses

Reimbursable Expenses means the actual expenses incurred by CCI directly or indirectly in connection with the PROJECT such as: expenses for transportation and subsistence incidental thereto; toll telephone calls and facsimiles, reproduction of reports, drawings, and similar items; postage, overnight or private delivery; and overtime work requiring higher than regular rates if authorized in advance by OWNER.

SECTION 2 - CCI'S RESPONSIBILITIES

2.1. Basic Services

CCI shall provide to OWNER professional services in all phases of the PROJECT to which this Agreement applies as hereinafter provided. These services shall include serving as OWNER'S professional representative for the PROJECT, providing consultation and advice to OWNER as to the grant category to which the OWNER should apply and the application content, providing administration of the grant and furnishing customary services included thereto. All contracts entered into with contractors shall be between OWNER and the particular contractor. CCI shall not enter into, or be bound by, any contracts with a third party other than OWNER in connection with this PROJECT.

2.2. Application Phase

CCI shall provide coordination between all professional parties necessary for a successful PROJECT (ex., OWNER, Engineer/Architect, Funding Agency Staff,

Community Liaisons, etc.). CCI shall assist with collaboration of all said parties. CCI shall prepare the PROJECT application and submit it to the Florida Department of Community Affairs (DCA).

CCI has been procured pursuant to 24 CFR Section 85.36 as it existed on the day of advertising for the Request for Proposals. This contract for CCI's grant writing services has been executed before the Application deadline. Invoices or other documentation to justify the amount requested shall be included in the Appendices to the OWNER's FY 2010 CDBG application.

2.3. Administration Phase

CCI shall provide all necessary and required Administrative Duties until completion of the PROJECT. CCI shall be the primary responder to the Florida Department of Community Affairs – CDBG staff – for all administrative functions. CCI shall report to Mr. Jim Freeman – Palmetto City Clerk – and shall coordinate all administrative duties through his office.

2.4 Notice

Give written notice to OWNER whenever CCI becomes aware of any development that affects the scope or timing of services related to the PROJECT or any non-conformance in the work of any Contractor which materially affects the PROJECT.

SECTION 3 - OWNER'S RESPONSIBILITIES

- 3.1. Designate, in writing, a person to act as OWNER'S representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to CRA's services for the PROJECT.
- 3.2. Subject to limitations of the Public Records Act and any other applicable law, assist CCI by placing at CCI's disposal all available information pertinent to the PROJECT including previous reports and any other data relative to design or construction of the PROJECT.
- 3.3. Arrange for access and make all provisions for CCI to enter upon public and private property as required for CCI to perform services under this Agreement.
- 3.4. Provide accounting, cost estimating and insurance counseling services as required for the PROJECT; such legal services as OWNER may require or CCI may reasonably request with regard to legal issues pertaining to the PROJECT, including any that may be raised by Contractor(s); such auditing services as OWNER may require to ascertain how or for what purpose any contractor has

used the monies paid under the construction contract; and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, or ordinance, code or order applicable to their furnishing and performing the work. CCI does not undertake in this Agreement to perform services referred to in this paragraph.

- 3.5. Give written notice to CCI whenever OWNER becomes aware of any development that affects the scope or timing of CCI's services or any defect or non-conformance in the work of any Contractor.
- 3.6. Furnish or direct CCI to provide Additional Services as stipulated under Section 4.1 of this Agreement or other services as required.

SECTION 4 – OTHER CLAUSES

4.1 Additional Services

If authorized in writing by OWNER, CCI shall furnish or obtain from others Additional Services. Additional Services may be sought when OWNER desires an exceptional amount of additional research, follow-up, or preparation of documents than what was originally agreed upon per this Contract. Payment of Additional Services will also be required if/when OWNER does not adhere to its responsibilities described in this Contract thus impairing the PROJECT to continue in a timely manner. Prior to charging Additional Services, CCI shall notify OWNER in writing and shall not charge for such Additional Services until the OWNER has acknowledged in writing the scope and estimated amount of the Additional Services. Such Additional Services shall be charged based on the Hourly Rate.

These services are not included as a part of Basic Services or Application Services or Administration Services and shall be included as an Amendment to this contract. An additional Scope of Services, with corresponding fee, will be proposed to OWNER at that time.

4.2. Standard of Care

The standard of care for all professional services performed or furnished by CCI under this Agreement will be the care and skill ordinarily used by professionals practicing under similar conditions at the time and in the same locality. CCI makes no warranties, expressed or implied, under this Agreement or otherwise in connection with CCI's services.

4.3. Termination (Cause and/or Convenience)

- (a) This contract may be terminated in whole or in part in writing by either party in

the event of failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination and cure the failure.

- (b) This contract may be terminated in whole or in part in writing by the local government for its convenience, provided that the other party is afforded the same notice and consultation opportunity specified in (a) above.
- (c) If termination for default is effected by the local government, an equitable adjustment in the price for this contract shall be made, but no amount shall be allowed for anticipated profit on unperformed services or other work, and any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the local government because of the contractor's default.

If termination for convenience is effected by the local government, CCI shall be paid for full amount due and owing under the Agreement plus any partial month remaining prior to the next payment due date

For any termination, OWNER shall provide for payment to the contractor for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate. OWNER shall be entitled to any goods or the product of any services which are to be provided based on commitments which had become firm as set forth above.

- (d) Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall promptly discontinue all affected work (unless the notice directs otherwise) and deliver or otherwise make available to the local government all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the contractor in performing this contract, whether completed or in process.
- (e) Upon termination, the local government may take over the work and may award another party the contract to complete the work described in this contract.
- (f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the local government. In such event, adjustment of the contract price shall be made as provided in paragraph (c) above.

4.3. Prohibition Against Contingent Fees

CCI warrants that it has not employed or retained any company or person other than a bona fide employee of CCI to solicit or secure this Agreement and that CCI has not paid or agreed to pay any person or company other than a bona fide employee of CCI any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

4.4. Remedies

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration if the parties mutually agree or in a Circuit Court in Manatee County, Florida.

4.5. Access to Records

CCI shall comply with the Public Records Act. The local government, the Florida Department of Community Affairs, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

4.6. Retention of Records

CCI shall return all records relating to this contract to the local government after final payment for administration and all other pending matters are closed.

4.7. Environmental Compliance

If this contract exceeds \$100,000, the contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 C.F.R. Part 15). The contractor shall include this clause in any subcontracts over \$100,000.

4.8. Energy Efficiency

The contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

4.9. Conflicts with Other Clauses

If this contract contains any clauses which conflict with the above clauses, then this contract will be governed by the clause(s) in this section.

4.10. Notices and Contact

The Representative of OWNER responsible for this Contract is Mr. Jim Freeman, City Clerk, P O. Box 1209, Palmetto, FL 34220-1209.

The Representative of CCI responsible for this Contract is Mr. William H. 'Bud' Clark, President, CCI, 1400 Metropolitan Boulevard, Suite 211, Tallahassee, Florida, 32308.

SECTION 5- AMOUNT AND TIMES OF PAYMENT

- 5.1. All payments are to be made to CCI at its Tallahassee, Florida, office where, if such payments or any are not made, such default shall occur within 45 days of their due date.

As payment for services in Section 2 (Administration Services), OWNER shall pay CCI a total of Eight Percent of the total grant amount awarded for the project payable in 12 equal monthly payments. The maximum amount of the fee shall not exceed Sixty Thousand Dollars (\$60,000.00)]. Such payments shall be made from CDBG-NR Administration Funds on a 12 month schedule starting with the beginning date of the contract pre-agreement cost waiver between OWNER and DCA-CDBG. In the event that no grant is awarded by DCA for any part of the PROJECT, then CCI shall not be entitled to any fee pursuant to this Agreement.

- 5.2. In the event of non-payment of fees for services or costs according to this agreement, CCI shall have the right to cease all further services and shall be relieved of any further obligations.
- 5.3. Should the FY 2010 Application for the CDBG neighborhood category not be funded by the Department of Community Affairs, CCI will undertake any necessary modifications at no cost to OWNER and assist OWNER in a resubmission of the modified application in a subsequent application cycle.

SECTION 6- SUCCESSORS AND ASSIGNS

- 6.1. OWNER and CCI are each hereby bound and the partners, successors, executors, administrators, and legal representatives of OWNER and CCI are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- 6.2. Neither OWNER nor CCI shall assign, sublet or transfer any rights under interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the

contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- 6.3 In the event that key personnel of CCI are no longer with CCI or otherwise no longer assigned to the PROJECT, the OWNER may terminate this Agreement for cause. Key personnel for the purpose of this Agreement shall be:

William H. "Bud" Clarke
Casey Simmons
Lauren Clarke

SECTION 7- ADDITIONAL TERMS

- 7.1 All express representations, indemnifications, or limitations made or given in this Agreement shall survive the completion of all services of CCI under this Agreement.
- 7.2. Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon OWNER and CCI who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 7.3. In the event that either party designates different representatives after execution of this Contract, notice of the name and address of the new representative will be rendered in writing to the party and said notification attached to the original of this Contract.
- 7.4. This Agreement constitutes the entire Agreement between OWNER and CCI and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this 15th Day in the Month of March, 2010.

OWNER:

CCI:

**Shirley Groover-Bryant
Mayor, City of Palmetto
Palmetto, FL 34221**

**Mr. William H. Bud Clark
President
CCI**