

REQUEST FOR BOARD ACTION / CONTRACT CONTROL FORM

Date of Request: August 6, 2007

Board Meeting Date Requested: August 20, 2007

Short Title: Resolution To Approve Contract Amendment With Holland Consulting Planners.

Background: Holland Consulting Planners has been providing contracted administrative services for three (3) Pender County housing grant programs: FY04 CDBG Concentrated Needs-Fuller Lane; FY05 CDBG Scattered Site Housing Program; and 2005 Crisis Housing Assistance Programs.

Each of these programs have encountered unexpected issues that have required additional consultant time and effort in order to resolve. The consultant has proposed a contract amendment to cover the additional compensation due.

The additional total compensation of \$9600 will be covered within the existing budgets of all three active grant programs. No local funds or match is required.

Specific Action Requested: Approve contract amendment.

Requested by: Joey Raczkowski
Department: Planning
Title: Planning Director
Contact Phone: 910-259-1529
Contact Fax: 910-259-3735

Tracking Number: 10.

Date Request Received: August 6, 2007

Board Meeting Date Assigned: 8/20/07

Request Status:

- Request is proceeding to Board of Commissioners
- More information is needed – see attached
- Request on hold – no further information needed
- Other:

(Administrative Use Only)

CONTRACT TYPE

- Renewal
- For Service(s)
- Intergovernmental – County as Grantee
 - Federal Grantor
 - State Grantor
 - Grant or
- County as Grantor
 - County Funds
 - Other Funds:
- Revision
- For Equipment

PURCHASING

Date Rec'd: Budgeted Item: Yes No
 Reviewed and Approved
 Comments on Reverse

Date Sent:

Signed:

ATTORNEY

Date Rec'd: Reviewed and Approved
 Legal Problem(s)
 Comments on Reverse

Date Sent:

Signed:

FINANCE

Date Rec'd: Sufficient Funds Available Not Available
8/16/07 Budget Amendment Necessary
 Budgeted Amendment is Attached
 Comments on Reverse

Date Sent:

8/16/07

Signed:

[Handwritten Signature]

CLERK

Signature(s) Required:
 Board Chairman/County Manager
 Other:

Date Rec'd

Approved by Board: Yes No
At meeting on



Memorandum

To: Joey Raczkowski, Pender County Planning Director

From: J. Reed Whitesell, AICP
Community Development Manager, Holland Consulting Planners, Inc.

Re: CHAF/CDBG Contract Amendment

Date: July 31, 2007

Attached are three (3) original contracts that will authorize HCP to complete all remaining work for the Pender County FY04 CDBG-CN, FY05 CDBG-SS, and 2005 Crisis Housing Assistance programs. As you are aware, we have been providing services *pro bono* for the two CDBG projects for several months while we have attempted to resolve septic tank installation problems. Now that we have identified solutions to these problems, we have set a proposed completion date of October 31, 2007 for installation of all remaining replacement housing and submittal of closeout documents for all three projects.

This \$9,600 contract (\$3,200 per month for August, September, and October) can be paid with service delivery funds available in all three project budgets. Chip Bartlett and Jessie Miars can direct the Finance Officer how to requisition funds for these services.

Please contact me directly if you have questions or concerns.

CONTRACT FOR CONSULTANT SERVICES

THIS AGREEMENT made this 1st day of August, 2007, between PENDER COUNTY, NORTH CAROLINA, hereinafter called the Owner, and HOLLAND CONSULTING PLANNERS, INC., Wilmington, North Carolina, hereinafter referred to as the Consultant.

The Consultant agrees to provide the Owner with management services to administer and ensure completion of the final construction activities and closeout of the Pender County 2005 Crisis Housing Assistance Program, FY05 CDBG Scattered Site Program and FY04 CDBG Concentrated Needs Program. The Consultant's and Owner's separate and joint responsibilities are set forth in Attachment "A."

The Owner agrees to pay the Consultant an amount not-to-exceed \$9,600.00 for all services rendered. Payments shall be made monthly at the following hourly rates:

Reed Whitesell, Community Development Manager	\$90.00
Chip Bartlett, Project Manager	\$60.00
Chuck Blackwelder, Program Admin/Housing Inspector	\$48.00
Word Processing/Administrative Support	\$40.00

The Consultant may request in writing and the Owner will consider granting time extensions for reasons of delay which are beyond the control of the Consultant. Delays may not necessarily be the result of any action or lack of action by the Owner.

If the Project is terminated, abandoned, or indefinitely postponed by the Owner prior to completion of the work by the Consultant; or if this contract is terminated by the Consultant as the result of inaction by the Owner, the Owner shall pay the Consultant an amount equal to payroll costs accrued, plus reimbursable expenses for work on activities which have not been completed.

If Owner fails to make any payment due Consultant for services and expenses within thirty days after receipt of Consultant's bill therefore, the amounts due Consultant shall include a charge at the rate of 1% per month from said thirtieth day for balance past due, and in addition, Consultant may, after giving seven days' written notice to Owner, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.

No deletions, additions, changes or revisions shall be made to the scope of services or related fees under this Agreement except by written agreement of the parties hereto. Should the Consultant be required to render additional services not included in the scope of work, the Owner shall pay the Consultant for such services at an amount equal to the expenses incurred in connection with the rendering of such services.

The Consultant shall provide the Owner with reproducible and bound copies of all printed materials produced, and to the extent that any such work may be subject to Consultant's copyright, gives Owner license and permission to make whatever use of the final report that Owner deems appropriate.

The Consultant covenants that he presently has no interest and shall not acquire any interest, direct or indirect, nor employ any persons having such interests which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

The Consultant shall ensure that all of the services required herein shall be completed and all required maps and data submitted by October 31, 2007. A specific schedule outlining the time frame for completion of each individual task will be provided to the County Planning Director on a semi-monthly basis.

The Owner shall designate a representative authorized to act on its behalf with respect to the Project. The Owner or the Owner's Representative shall examine documents submitted by the Consultant and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of work. The Owner's representative is the Pender County Director of Planning.

The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and shall take affirmative action to ensure equal opportunity in its employment practices.

It is mutually agreed that this Agreement is not transferable by any signatory to a third party without the consent of the other party.

Original documents, tracings, and reports shall be retained by the Consultant, and reproducible copies shall be furnished to the Owner.

Termination and Legal Remedies:

The Consultant and Owner mutually agree as follows:

(a) The Consultant may terminate this Agreement immediately in the event Owner fails to make payment of any amount due to the Consultant within sixty (60) days of its due date.

(b) Either party may terminate this Agreement in the event the other party materially breaches this Agreement or fails to perform in any material respect its obligations hereunder; provided that if a party believes that the other party has materially defaulted under or breached this Agreement (other than a breach of a payment obligation) and desires to terminate this Agreement because of such breach or default, such party ("Aggrieved Party") shall give written notice of such intent to the breaching party ("Defaulting Party") and shall grant the Defaulting Party thirty (30) days in which to remedy the cause for termination. During such period, the parties shall make a good-faith effort to assist each other to remedy the breach. If the breach is not remedied or waived by the end of such period, then the Aggrieved Party may terminate this Agreement, effective as of the last day of such period.

(c) This Agreement may be terminated by one party, if the other party (i) shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; (ii) apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the other party and such appointment shall not

be dismissed within thirty (30) days of the date of such appointment; (iii) shall institute any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding related to it under the laws of any jurisdiction; or, any such proceeding shall be instituted (by petition, application or otherwise) against the other party and the same shall not be dismissed within thirty (30) days of the date of its institution; or (iv) shall liquidate, dissolve, terminate or suspend its business operations.

(d) Either party may voluntarily terminate this Agreement by giving the other party at least sixty (60) days advanced written notice of such termination.

Upon receipt of a notice of termination from Owner, (i) the Consultant shall promptly discontinue all services (unless the notice directs otherwise) and deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process, and (ii) Owner shall pay Consultant all fees and expenses due for services rendered through the date of termination, and reimburse the Consultant for all costs and expenses relating to commitments made by the Consultant prior to receipt of notice of termination.

Key Personnel: The Consultant shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Owner and the grantor agency, the North Carolina Department of Commerce, Division of Community Assistance. Individuals designated as key personnel for purposes of this Contract are those specified in the Consultant's proposal.

Subcontracting: Work proposed to be performed under this Contract by the Consultant or its employees shall not be subcontracted without prior written approval by the Owner and the grantor agency, the North Carolina Department of Commerce, Division of Community Assistance. Acceptance of an offeror's proposal shall include any subcontractor(s) specified therein.

Special Provisions:

During the performance of this Contract, the Consultant and the Owner, for themselves, their assignees and successors in interest, agree as follows:

(1) Solicitation for Subcontracts, including Procurement of Material and Equipment: In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, the Consultant shall notify each potential subcontractor or supplier of the Consultant's obligations under this Contract and the State and Federal regulations included herein; when such Federal regulations are applicable.

(2) Interest of Members, Officers, or Employees of the Owner: No member, officer, or employee of the Owner, or its agents, no member of the Owner's governing body, and no other public official of the Owner who exercises any functions or responsibilities with respect to the community development program during his tenure or for one year thereafter, shall have any financial interest, direct or indirect, in this Contract or any subcontracts thereof, or the proceeds thereof, for work to be performed in connection with this Contract. Immediate family members of said members, officers, employees, and

officials are similarly barred from having any financial interest in this Contract. However, violation of this paragraph shall not be a default or breach of the Owner.

(3) Non-Discrimination and Affirmative Action Clauses: During the performance of this Contract, the Consultant and the Owner agree to abide by the regulations set forth in the following four clauses:

(a) Non-discrimination Clause

It is specifically agreed as part of the consideration of the signing of this Contract that the parties hereto, their agents, officials, employees, or servants will not discriminate in any manner on the basis of race, color, creed, sex or national origin or other legally protected status with reference to the subject matter of this Contract, no matter how remote. This provision shall be enforced by action for specific performance, injunctive relief, or other remedy provided by law; and this provision shall be construed to such manner as to prevent and eradicate all discrimination based on race, color, creed, sex or national origin.

(b) Executive Order 11246 Clause

(i) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(ii) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(iii) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Consultants' commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(iv) The Consultant will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(v) The Consultant will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting

agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(vi) In the event of the Consultant's non-compliance with the non-discrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

(vii) The Consultant will include the provisions of Paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event the Consultant becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

(c) Section 3 Affirmative Action Clause

(i) The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

(ii) The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

(iii) The Consultant will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(iv) The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the

subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

(v) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

(d) Non-Discrimination Clause Concerning Handicap and Age

The Consultant will not discriminate on the basis of age under the Age Discrimination in Employment Act of 1975, as amended (42 U.S.C. 6101 et seq.), or with respect to any otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), or as otherwise prohibited by state or federal law.

(4) Project Documents: The Owner, the Federal and State Grantor Agencies, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, plans, papers, and records of the Consultant which are directly pertinent to this Contract, for the purpose of making audit, examination, excerpts, and transcriptions.

The Consultant shall maintain the records outlined above for five years after the Owner has received a Certificate of Completion from the State Grantor Agency.

All documents including drawings and specifications prepared by Consultant pursuant to this Contract are instruments of service in respect of the Contract. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the project or on any other project. Any reuse without written verifications or adaptation by Consultant for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Consultant; and Owner shall indemnify and hold harmless Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from any third party claim relating thereto. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Owner and Consultant.

(5) Lobbying Clauses - Required by Section 1352, Title 31, U. S. Code

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person by the undersigned 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

(6) Sanctions for Noncompliance: In the event of Consultant's non-compliance with the special provisions of this Contract, the Owner shall impose such contract sanctions as it or the State of North Carolina or the Department of Housing and Urban Development may determine to be appropriate, including, but not limited to:

- (a) withholding of payment(s) to the Consultant under the Contract until the Consultant complies, and/or
- (b) cancellation, termination or suspension of the Contract, in whole or in part.

The Owner and the Consultant each binds himself, his partners, successors, executors, administrators and assigns to the other party to the agreements, and to the partners, successors, executors, administrators, and assigns of each other party in respect to all covenants of the Contract.

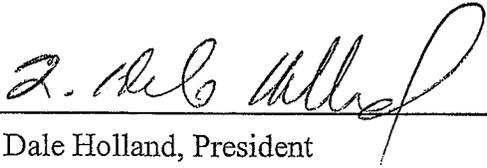
This Contract is governed by North Carolina law. Any action or proceeding arising from or relating to this Contract shall be commenced and prosecuted in Hyde County, North Carolina, or the federal district court nearest thereto.

The Owner and the Consultant hereby agree to the full performance of the covenants contained herein.

IN WITNESS HEREOF, they have executed this Agreement, this day and year first above written.

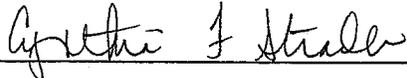
HOLLAND CONSULTING PLANNERS, INC.

PENDER COUNTY, NORTH CAROLINA



T. Dale Holland, President

F. D Rivenbark, Chairman



Witness

Witness

(SEAL)

ATTACHMENT A

SCOPE OF SERVICES

1. Contract administration and resident inspection services required to complete replacement housing assistance activities in the County's 2005 CHAF, FY05 CDBG-SS and FY04 CDBG-CN Programs.
2. Submittal of all documents required for closeout of the three above referenced programs.