

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: November 21, 2006

[X] Consent [] Regular
[] Ordinance [] Public Hearing

Department:

Submitted By: Engineering & Public Works Department

Submitted For: Traffic Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: The First Amendment to an Agreement with Communities Finance Company, LLC (CFC) for intersection improvements at Military Trail and Hood Road to provide turn lanes at the intersection.

Summary: The Agreement provides funding up to \$180,000 for construction of intersection improvements at Military Trail and Hood Road by CFC. CFC is already making improvements to Hood Road between Central Boulevard and Alternate A1A as a condition of its Evergrene Residential Development. The Amendment will extend the date for completion of the work from December 31, 2005 to December 31, 2006.

District: Countywide (L.B.)

Background and Justification: CFC is making improvements to Hood Road as a condition of its Evergrene Residential Development. The Agreement added intersection improvements at Military Trail and Hood Road to the existing project and would reimburse CFC for the added design and construction. The time extension is necessary due to delay in completion of the work.

Attachments:

1. Agreements (2)
2. Original Agreement R2004- 2473

Recommended by: _____
Division Director
Date

Approved by: Sgt. J. Wahl 10/28/06
County Engineer
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes X No _____
 Budget Acct No.: Fund 3500 Dept. 361 Unit 1133 Object 6551
 Program

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Transportation Improvement Fund
 Hood Road & Military Trail

This item has no additional fiscal impact.

C. Departmental Fiscal Review: R. S. Ward 9/26/06

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

[Signature] 10-30-06
 OFMB

[Signature] 11/11/06
 Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

[Signature]
 Assistant County Attorney

This amendment complies with our review requirements.

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

**FIRST AMENDMENT TO A JOINT PROJECT AGREEMENT
BETWEEN
PALM BEACH COUNTY AND COMMUNITIES FINANCE COMPANY, LLC**

This First Amendment to A Joint Project Agreement is made as of _____, between Palm Beach County, Florida, a political subdivision of the State of Florida (hereinafter County), and Communities Finance Company, LLC, A Delaware limited liability company (hereinafter CFC).

RECITALS

WHEREAS, the County and CFC entered into a Joint Project Agreement for intersection improvements (hereinafter Improvements) on November 10, 2004 (R2004 2473) to make improvements to the intersection of Hood Road and Military Trail; and

WHEREAS, the County and CFC desire to amend the completion date of that Agreement to allow work to continue until December 31, 2006.

NOW, THEREFORE, in consideration of their mutual covenants contained herein, the County and Consultant hereby agree to amend the Contract as follows:

Article 1. Section 4 of the Agreement, regarding the submittal of invoices for final payment, is hereby amended to change the date from December 2005 to December 31, 2006.

Article 2. This amendment shall be retroactive to December 31, 2005.

Article 3. Except as specifically set forth herein, all terms and conditions of the Contract shall remain in full force and effect.

[Remainder of page left blank.]

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day and year first written above.

COUNTY:
PALM BEACH COUNTY, FLORIDA,
a Political Subdivision
of the State of Florida
BOARD OF COUNTY COMMISSIONERS

BY: _____
~~Tony Masilotti, Chairman~~

ATTEST:
Sharon R. Bock,
Clerk & Comptroller
Circuit Court

BY: _____
Deputy Clerk

SEAL

APPROVED AS TO TERMS
AND CONDITIONS:

BY: Don Marsh

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

BY: [Signature]
COUNTY ATTORNEY

F:\TRAFFIC\DIW\JPA\Hood Road Amendment

CFC:
COMMUNITIES FINANCE COMPANY
LLC.,
a Delaware Limited Liability Company

BY: [Signature]
John Carter,
Vice President

CORPORATE SEAL

WITNESS:
BY: [Signature]
Sima Nareus
(Printed Name)

BY: [Signature]
Lauren Domania
(Printed Name)

R2004 2473
DEC 07 2004

JOINT PROJECT AGREEMENT BETWEEN PALM BEACH COUNTY AND
COMMUNITIES FINANCE COMPANY, LLC FOR IMPROVEMENTS TO THE
MILITARY TRAIL AND HOOD ROAD INTERSECTION

THIS AGREEMENT, made and entered into this 10th day of Nov, 2004, by and between:

THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY"; and Communities Finance Company, LLC, a Delaware limited liability company, hereinafter referred to as "CFC".

WITNESSETH

WHEREAS, the COUNTY desires to widen Military Trail, a COUNTY road, by adding northbound and southbound dual left turn lanes and a northbound right turn lane at its intersection with Hood Road, hereinafter referred to as "INTERSECTION IMPROVEMENTS"; and

WHEREAS, CFC is constructing a residential development on Hood Road, a COUNTY road, and as a condition of that development, CFC is required by the COUNTY to construct certain improvements to Hood Road, depicted in the plans designed by The Wantman Group, Inc. and reviewed by Palm Beach County as Palm Beach County Project #2001607; and

WHEREAS, the location of the INTERSECTION IMPROVEMENTS is within the project limits of the developers aforementioned Project #2001607; and

WHEREAS, the COUNTY wishes to incorporate the INTERSECTION IMPROVEMENTS into the developers aforementioned Project #2001607 and utilize the same designer and construction contractor for the INTERSECTION IMPROVEMENTS as for Project #2001607; and

WHEREAS, the COUNTY wishes to reimburse CFC for their documented costs of the INTERSECTION IMPROVEMENTS in an amount not to exceed \$180,000; and

WHEREAS, the COUNTY and CFC believe it is in their best interests to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein made, the parties agree as follows:

1. The above recitations are true and correct and are incorporated herein and made a part hereof by this reference.

2. CFC agrees to incorporate the INTERSECTION IMPROVEMENTS into the developers plans reviewed by Palm Beach County as Palm Beach County Project #2001607, including design and construction to all appropriate COUNTY standards and specifications.
3. The COUNTY agrees to fund the INTERSECTION IMPROVEMENTS including design, contract preparation, bidding, award, construction, contract administration, and inspection pursuant to all applicable state and local laws and regulations. These costs are estimated to be \$140,000, however, the COUNTY shall be responsible for all costs described in this section up to a maximum of \$180,000. In no event shall the COUNTY have any obligation to any other entity or person.
4. A Contract Payment Request Form and a Contractual Services Purchases Schedule Form, attached hereto and incorporated herein as Exhibit "A" which are required for each and every reimbursement requested by CFC. Said information shall list each invoice payable by CFC and shall include the vendor invoice number, invoice date and the amount payable to CFC. CFC shall attach a copy of each vendor invoice paid by CFC along with a copy of the respective check and shall make reference thereof to the applicable item listed on the Contractual Services Purchases Schedule Form. Further, the Program Administrator and the Program Financial Officer for CFC shall certify the total funds payable by CFC on the project and shall also certify that each vendor invoice listed on the Contractual Services Purchases Schedule Form was paid by CFC as indicated. Invoices received from CFC will be reviewed and approved by the COUNTY indicating that the expenditures have been made in conformity with requirements of this Agreement. Thereafter, they will be sent to the COUNTY'S Finance Department for final approval and payment. Unless the terms of this Agreement is extended, CFC shall submit all invoices for final payment by December 2005. The COUNTY shall have no obligations for any costs incurred after the above-referenced date.
5. This effective date of this Agreement shall be the date of full execution by both parties and upon filing with the Clerk of the Courts for Palm Beach County, Florida.
6. CFC shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the project for at least three (3) years after its completion. The COUNTY shall have access to all books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours.

7. CFC recognizes that it is an independent contractor and not an agent or servant of the COUNTY. No person employed by any party to this Agreement, shall in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.
8. The COUNTY shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of CFC. Nothing contained herein shall be construed as a waiver, by the COUNTY, of the liability limits established in Section 768.28, Florida Statutes.
9. CFC shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during performance of the terms of this Agreement or due to the acts or omissions of CFC.
10. CFC shall maintain and require its Contractor to maintain workers compensation coverage in accordance with Florida Statutes. CFC and Contractor shall carry insurance naming County as an Additional Insured Party with the minimum limits of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) General Aggregate Insurance and shall carry automobile liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limits. Finally, Contractor and CFC shall provide a Florida Statute Payment and Performance Bond in the amount of Two Million Seven Hundred Nineteen Thousand Dollars and 00/100 (\$2,719,000.00).
11. After receipt of payment, CFC shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the contract or negligence by CFC.
12. CFC acknowledges that no person, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, or sexual orientation, will be excluded

from the benefits of, or will be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

13. The parties expressly covenant and agree that in the event either party is in default of its obligations under this Agreement, the party not in default shall provide to the defaulting party thirty (30) days written notice exercising any of its rights.
14. Any costs or expenses (including attorney's fees) associated with the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to the Agreement.
15. Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.
16. As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CFC certifies that its affiliates, suppliers, sub-contractors, and consultants who perform work hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(a).
17. All notices required to be given under this Agreement shall be addressed to:

COUNTY

Palm Beach County Traffic Division
Attention: Daniel I. Weisberg, P.E., Director
160 Australian Avenue #303
West Palm Beach, FL 33406

With copy to:

Palm Beach County Attorney's Office
Attention: Marlene Everitt, Assistant County Attorney
301 N. Olive Avenue
West Palm Beach, FL 33401

CFC

Communities Finance Company, LLC
Attention: Roger Dyess, Vice President
11631 Kew Gardens Ave.
Palm Beach Gardens, FL 33410

With copies to:

WCI Communities, Inc.
Attn: Nicole Swartz, Esq.
24301 Walden Center Dr.
Bonita Springs, FL 33134

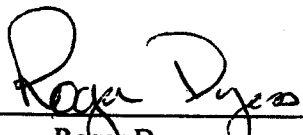
18. By entering into this Agreement, CFC and COUNTY represent that each has full right and lawful authority to enter into and perform this Agreement. The validity, interpretation, construction, and effort of this Agreement shall be in accordance with and governed by the laws of the State of Florida. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of the Agreement, which shall remain in full force and effect.
19. This Agreement, including attachments hereto, constitutes the entire agreement between the parties, and shall supersede and replace all prior agreements or understandings, written or oral, relating to the matters set forth herein.
20. This Agreement may be amended or modified only by written addendum or amendment signed by the parties and authorized by their respective elected officials.
21. CFC will promptly notify the COUNTY of any citizen complaint, claim, suit, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.
22. The COUNTY'S performance and obligation under this Agreement is contingent upon an annual budgetary appropriation by its governing body for the purposes hereunder.
23. Any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
24. The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.
25. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.
26. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date and year first above written.

R2004-2473
DEC 07 2004

COMMUNITIES FINANCE COMPANY, LLC
BY ITS VICE PRESIDENT

PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY COMMISSIONERS

By: 
Roger Dyess

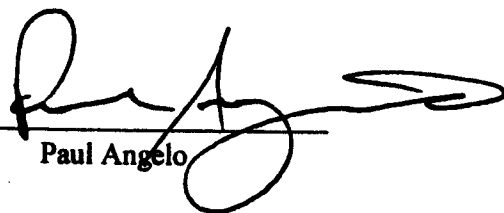
By: 
Tony Masilotti, Chairman

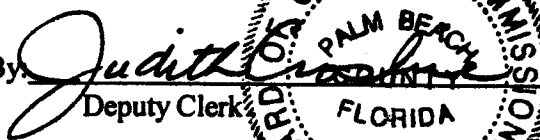
ATTEST:

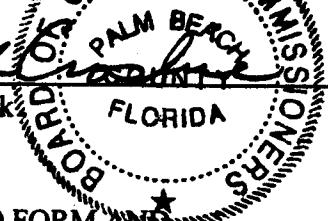
PAUL ANGELO, ASSISTANT SECRETARY

ATTEST:

DOROTHY H. WILKEN, CLERK

By: 
Paul Angelo

By: 
Deputy Clerk



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
County Attorney

Approved as to Terms and Conditions

By: 