

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: November 21, 2006 <input checked="" type="checkbox"/>	Consent <input type="checkbox"/>	Regular
<input type="checkbox"/>	Workshop <input type="checkbox"/>	Public Hearing

Department:
Submitted By: Engineering & Public Works
Submitted For: Streetscape Section

I. EXECUTIVE BRIEF

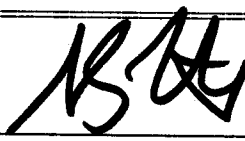
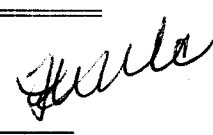
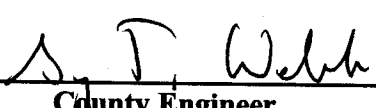
Motion and Title: Staff recommends motion to approve: A Second Amendment to the Financial Assistance Agreement (R2004-1687) with the City of Palm Beach Gardens (City) for an extension of the completion date for the installation of improvements.

Summary: The original Agreement provides for a reimbursement, in an amount not to exceed \$66,679, to the City for the City's effort to install improvements on Military Trail from I-95 north to the EPB-3 Canal. This Second Amendment with the City will extend the completion date from June 30, 2006, to June 30, 2007, as requested by the City. The completion of the improvements has been delayed by utility conflicts with the project.

District: 1 (ME)

Background and Justification: On September 23, 2003, the Board approved allocating reimbursement grants to various organizations, based upon the application process and recommendations of Keep Palm Beach County Beautiful, Inc., a non-profit organization. The City was allocated up to \$66,679. The attached Second Amendment to the standard Reimbursement Grant Agreement, which accomplishes the time extension, has been executed by the City.

- Attachments:**
1. Location Sketch.
 2. Second Amendment to Financial Assistance Agreements (2).
 3. Financial Assistance Agreement of August 17, 2004 (2004-1687).
 4. First Amendment to the Financial Assistance Agreement of November 15, 2005 (2005-2209).

Recommended by: 	10/6/06 
Division Director	Date
Approved By: 	10/25/06
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 _____

No _____

Budget Acct No.: Fund _____ Dept. _____ Unit _____ Object _____
Program _____

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

This item has no additional fiscal impact.

C. Departmental Fiscal Review: R.D. Ward 10/5/06

III. REVIEW COMMENTS

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

[Signature] 10/30/06
OFMB

[Signature] 11/1/06
Contract Dev. and Control
E. Jones 11/1/06

B. Approved as to Form and Legal Sufficiency:

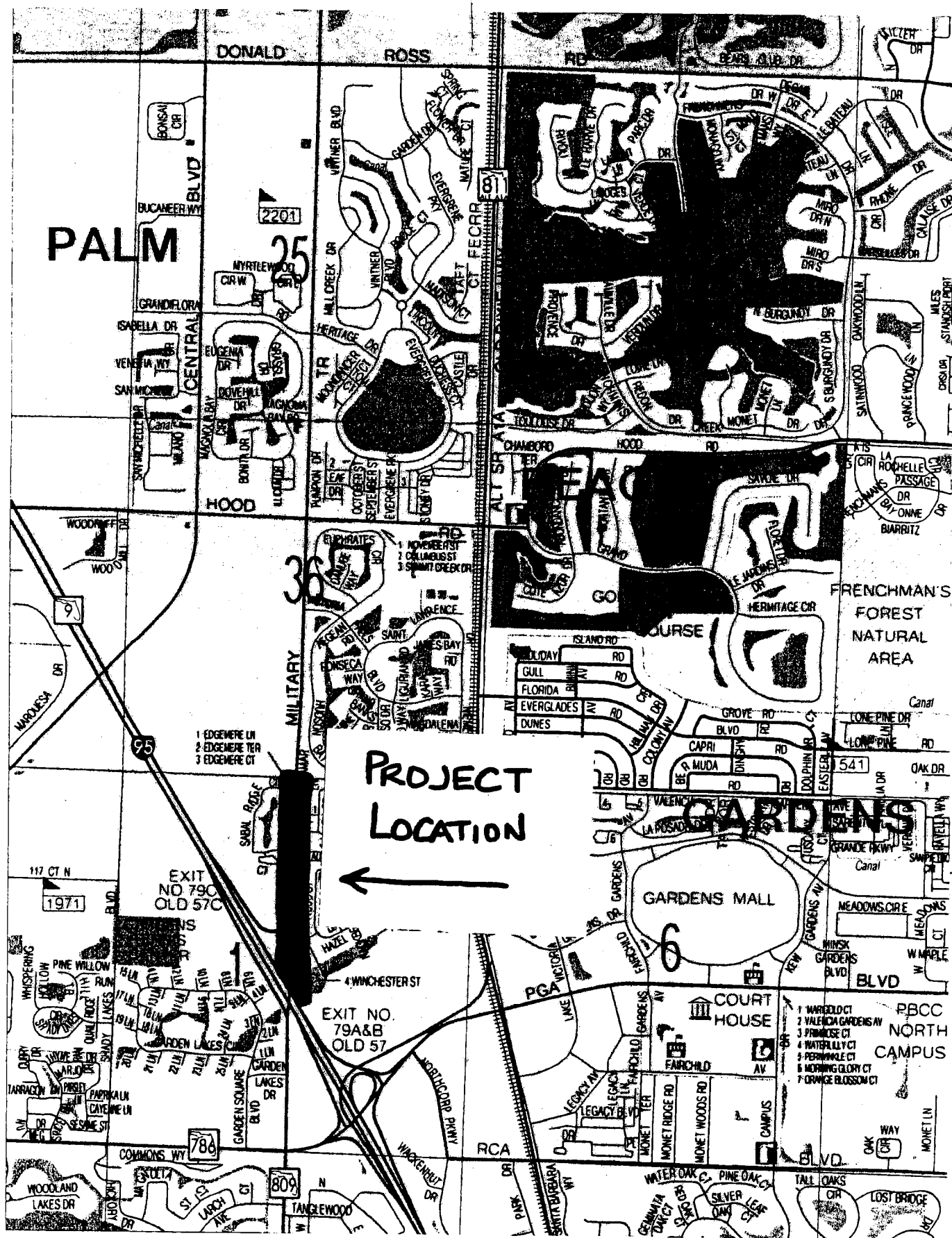
[Signature] 11/02/06
Assistant County Attorney

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.



LOCATION SKETCH

2ND AMENDMENT TO FINANCIAL ASSISTANCE AGREEMENT DATED AUGUST 17,
2004 WITH THE CITY OF PALM BEACH GARDENS FOR MILITARY TRAIL
BEAUTIFICATION IMPROVEMENTS

THIS AMENDMENT is made to the Financial Assistance Agreement (R2004-1687) dated August 17, 2004, by and between the CITY OF PALM BEACH GARDENS, a municipal corporation of the State of Florida, hereinafter "CITY", and the BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter "COUNTY".

W I T N E S S E T H:

WHEREAS, on August 17, 2004, CITY and COUNTY entered into a financial assistance agreement (R2004-1687) providing for reimbursement funding of the cost of CITY's planned IMPROVEMENTS on COUNTY's Military Trail from I-95 north to EPB-3 Canal, in an amount not to exceed SIXTY SIX THOUSAND SIX HUNDRED SEVENTY NINE AND 00/100 DOLLARS (\$66,679.00); and

WHEREAS, R2004-1687 provided for a completion date of September 30, 2005; and

WHEREAS, the completion date of the IMPROVEMENTS was delayed due to plant material availability and contract delays; and

WHEREAS, R2005-2209 provided for extension of the completion date until June 30, 2006; and

WHEREAS, the completion date of the improvements has been further delayed by utility conflicts with the project; and

WHEREAS, COUNTY and CITY desire that this amendment shall relate back to August 17, 2004, and the Contract continued without interruption nor lapse and its term extended for an additional twelve (12) month period.

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

1. the Financial Assistance Agreement dated August 17, 2004, by and between CITY and COUNTY shall be continued, without

1 interruption nor lapse in its term or effect, for an additional twelve (12)
2 month period commencing on June 30, 2006, and expiring June 30,
3 2007. Accordingly, the Agreement is hereby amended to revise paragraph 9 as
4 follows:
5

6 9. All installation of these IMPROVEMENTS shall be completed and
7 final invoices submitted to COUNTY no later than June 30, 2007, and
8 COUNTY shall have no obligation to CITY or any other entity or person
9 for any cost incurred thereafter.

10 2. It is the intent of the parties hereto that this AMENDMENT shall
11 not become binding until the date executed by the Board of County
12 Commissioners of Palm Beach County.

13 3. All other provisions of the Financial Assistance Agreement dated
14 August 17, 2004, shall remain in full force and effect.
15
16
17
18
19

20 (INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have executed this Agreement and it is
effective on the day first above written.

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

CITY OF PALM BEACH GARDENS,

BY ITS CITY COUNCIL

By: _____
TONY MASILOTTI, CHAIRMAN

By: _____
MAYOR

(COUNTY SEAL)

(CITY SEAL)

ATTEST:

ATTEST:

SHARON R. BOCK, CLERK &
COMPTROLLER

By: _____
DEPUTY CLERK

By: _____
CITY CLERK

By: _____
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY
ASSISTANT COUNTY ATTORNEY

By: Christine P. Tatum
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY
CITY ATTORNEY

By: MacConnell
APPROVED AS TO TERMS AND
CONDITIONS

**FINANCIAL ASSISTANCE AGREEMENT WITH CITY OF PALM BEACH GARDENS
FOR MILITARY TRAIL BEAUTIFICATION IMPROVEMENTS**

THIS INTER-LOCAL AGREEMENT is made and entered into this AUG 17 2004
day of _____, 2004, by and between the CITY OF PALM BEACH GARDENS, a
municipal corporation of the State of Florida, hereinafter "CITY", and PALM BEACH
COUNTY, a political subdivision of the State of Florida, hereinafter "COUNTY."

WITNESSETH:

WHEREAS, CITY is undertaking the installation of beautification
improvements, including, but not limited to, landscaping and irrigation, on
COUNTY's Military Trail from I-95 north to EPB-3 Canal, hereinafter
"IMPROVEMENTS"; and

WHEREAS, CITY applied for this county funded grant thru Keep Palm Beach
County Beautiful; and

WHEREAS, COUNTY believes that the IMPROVEMENTS serve a public
purpose in the enhancement of the appearance of the right of way and wishes to
support those efforts by providing a reimbursement contribution for fifty percent
(50%) of the cost of improvements, such contribution not to exceed a maximum of
SIXTY SIX THOUSAND SIX HUNDRED SEVENTY NINE and 00/100 DOLLARS
(\$66,679.00) to CITY for the installation of the IMPROVEMENTS; and

WHEREAS, during and after installation, CITY will be responsible for the
perpetual maintenance of the IMPROVEMENTS; and

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

1. The above recitations are true, correct, and are incorporated herein.
2. COUNTY agrees to reimburse CITY for fifty percent (50%) of the costs
of the IMPROVEMENTS, not to exceed a maximum amount of SIXTY SIX THOUSAND
SIX HUNDRED SEVENTY NINE and 00/100 DOLLARS (\$66,679.00), whichever is less,
of the cost for the initial installation, to be used exclusively for the IMPROVEMENTS.
3. COUNTY agrees to reimburse CITY the amount established in paragraph

2 for costs (materials and labor) associated with installation of the IMPROVEMENTS, upon CITY's submission of acceptable documentation needed to substantiate their costs for the IMPROVEMENTS. COUNTY will use its best efforts to provide said funds to CITY on a reimbursement basis within forty-five (45) days of receipt of all information required in Paragraph 6, below.

4. COUNTY's obligation is limited to its payment obligation and shall have no obligation to any other person or entity.

5. CITY agrees to assume all responsibility for design, bidding, contract preparation, and contract administration for the installation of the IMPROVEMENTS, including payment(s) to contractor(s), pursuant to all applicable governmental laws and regulations and will comply with all applicable governmental landscaping codes and permitting requirements in the selection and installation of the IMPROVEMENTS. CITY agrees to install the IMPROVEMENTS substantially in accordance with the plans, specifications and costs as approved in the permitting process by COUNTY. CITY also agrees to assume financial responsibility for the completion of any portions of the IMPROVEMENTS that are not fully-funded by the amount set forth in Paragraph 2, above. Otherwise, COUNTY will have final determination of the eligibility for reimbursement of any changes. Substantial variations from the permitted plans shall require prior written approval from County Engineer's Office. The final drawings must be signed and sealed by a Florida Registered Landscape Architect experienced in roadway planting and familiar with the COUNTY'S Streetscape Standards.

6. CITY will obtain or provide all labor and materials necessary for the design and installation of the IMPROVEMENTS. COUNTY shall have the final determination of eligibility for reimbursement. CITY shall furnish the Manager, Streetscape Section, of COUNTY'S Department of Engineering and Public Works with a request for payment supported by the following:

- a. A statement from a Florida Registered Landscape Architect that the IMPROVEMENTS have been inspected and were installed substantially in

accordance with the permitted plans for the IMPROVEMENTS, and;

b. A Contract Payment Request Form and a Contractual Services Purchases Schedule Form, attached hereto and incorporated herein as Exhibit "A" (pages 1 and 2) which are required for each and every reimbursement requested by the CITY. Said information shall list each invoice paid by CITY and shall include the vendor invoice number, invoice date, and the amount payable by CITY. CITY shall attach a copy of each vendor invoice paid by CITY 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 CITY shall also certify that each vendor invoice listed on the Contractual Services Purchases Schedule Form was paid by CITY as indicated.

7. CITY shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the IMPROVEMENTS for at least three (3) years after the completion of such IMPROVEMENTS. 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.

8. CITY agrees to be responsible for the perpetual maintenance of the IMPROVEMENTS following the installation and shall be solely responsible for obtaining and complying with all necessary permits, approvals, and authorizations from any federal, state, regional, or COUNTY agency which are required for the subsequent maintenance of the IMPROVEMENTS.

9. All installation of these IMPROVEMENTS shall be completed and final invoices submitted to the COUNTY no later than September 30, 2005, and the COUNTY shall have no obligation to the CITY or any other entity or person for any cost incurred thereafter unless the time for completion is extended by modifications of this Agreement as provided herein.

10. CITY recognizes that it is an independent contractor, and not an agent

or servant of COUNTY or its Board of County Commissioners. In the event a claim or lawsuit is brought against COUNTY, its officers, employees, servants or agents, relating to the IMPROVEMENTS or any item which is the responsibility of CITY, CITY hereby agrees to indemnify, save and hold harmless COUNTY, its officers, employees, servants or agents, and to defend said persons from any such claims, liabilities, causes of action and judgements of any type whatsoever arising out of or relating to existence of the IMPROVEMENTS or the performance by TOWN as may relate to this Agreement. CITY agrees to pay all costs, reasonable attorney's fees and expenses incurred by COUNTY, its officers, employees, servants or agents in connections with such claims, liabilities or suits except as may be incurred due to the negligence of COUNTY. The indemnification herein is subject to F.S. 768.28.

11. CITY shall, at all times during the term of this Agreement (the installation and existence of the IMPROVEMENTS), maintain in force its status as an insured municipal corporation, and shall provide evidence of this insurance prior to COUNTY's execution of this Agreement.

12. As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CITY 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(3)(a).

13. CITY shall require each contractor engaged by CITY for work associated with this Agreement to maintain:

- a. Workers' Compensation coverage in accordance with Florida Statutes, and;
- b. Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00). COUNTY shall be included in the coverage as an additional insured.

c. A payment and performance bond for the total amount of the improvements in accordance with Florida Statute 255.05.

14. In the event of termination, CITY shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the contract by CITY; and COUNTY may withhold any payment to CITY for the purpose of set-off until such time as the exact amount of damages due COUNTY is determined. In the event CITY elects to discontinue its maintenance obligation for the IMPROVEMENTS under this Agreement, it shall be the obligation of the CITY to restore, if necessary, the area of the IMPROVEMENTS in COUNTY's right-of-way to a condition acceptable to County Engineer, which shall be in accordance with Federal, State and COUNTY standards for road construction and/or maintenance. In the event CITY fails to restore the area of the IMPROVEMENTS to a condition acceptable to the County Engineer, COUNTY may undertake such restoration and CITY shall be liable for the costs of such restoration.

15. CITY's termination of this Agreement shall result in all obligations of COUNTY for funding contemplated herein to be canceled.

16. COUNTY and CITY agree that no person shall, on the grounds of race, color, national origin, sexual orientation, religion or creed, sex, age, or handicap be discriminated against in performance of the Agreement.

17. In the event that any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

(INTENTIONALLY LEFT BLANK)

18. All notices required to be given under this Agreement shall be writing, and deemed sufficient to each party when sent by United States Mail, postage prepaid, to the following:

COUNTY

Manager, Streetscape Section
Palm Beach County Department of
Engineering and Public Works
Post Office Box 21229
West Palm Beach, Florida 33416-1229

AS TO CITY

City Manager
City of Palm Beach Gardens
10500 North Military Trail
Palm Beach Gardens, FL 33410

19. This Agreement shall be construed and governed by the laws of the State of Florida. 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 other 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 shall preclude any other or further exercise thereof.

20. Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of 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.

21. 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.

22. Each party agrees to abide by all laws, orders, rules and regulations and

CITY will comply with all applicable governmental landscaping codes in the maintenance and replacement of the IMPROVEMENTS.

23. The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party (or parties). Nothing contained herein shall be construed as a waiver by COUNTY, by any of the parties, of the liability limits established in Section 768.28, Florida Statutes.

24. CITY shall promptly notify COUNTY of any lawsuit-related complaint, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.

25. The parties expressly covenant and agree that in the event any of the parties is in default of its obligations under this Agreement, the parties not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of their rights.

26. 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.

27. This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.


28. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

29. This Agreement shall take effect upon execution and the effective date shall be the date of execution.

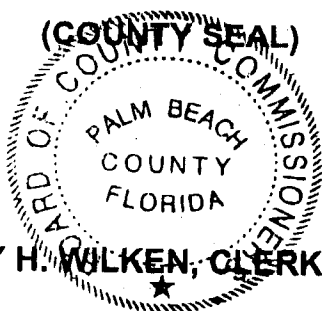
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IN WITNESS WHEREOF, the parties have executed this Agreement and it is effective on the day first above written.

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

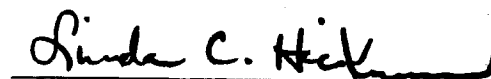
By: 
KAREN T. MARCUS, CHAIR AUG 17 2004


R2004 1687




ATTEST:


DOROTHY H. WILKEN, CLERK

By: 
DEPUTY CLERK

By: 
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY
ASSISTANT COUNTY ATTORNEY

By: 
APPROVED AS TO TERMS AND
CONDITIONS

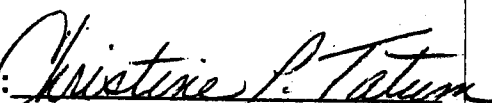
CITY OF PALM BEACH GARDENS,
BY ITS CITY COMMISSION

By: 
MAYOR

(CITY SEAL)

ATTEST:

By: 
CITY CLERK

By: 
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY
CITY ATTORNEY

1 FIRST AMENDMENT TO THE FINANCIAL ASSISTANCE AGREEMENT WITH CITY
2 OF PALM BEACH GARDENS
3 FOR MILITARY TRAIL BEAUTIFICATION IMPROVEMENTS

4 THIS AMENDMENT is made to the Financial Assistance Agreement (R2004-
5 1687) dated August 17, 2004, by and between CITY OF PALM BEACH GARDENS, a
6 municipal corporation of the State of Florida, hereinafter "CITY", and BOARD OF
7 COUNTY COMMISSIONERS OF PALM BEACH COUNTY, a political subdivision of the
8 State of Florida, hereinafter "COUNTY".

9 WITNESSETH:

10 WHEREAS, on August 17, 2004, CITY and COUNTY entered into a financial
11 assistance agreement providing for reimbursement funding for a portion of the cost
12 of CITY's planned IMPROVEMENTS on COUNTY's Military Trail from I-95 north to
13 EPB-3 Canal; and

14 WHEREAS, unexpected delays completing the design have impacted the
15 CITY's schedule for the implementation of their IMPROVEMENTS, it is necessary to
16 extend the completion date contained in Paragraph 9 of the Agreement from
17 September 30, 2005 to June 30, 2006; and

18 WHEREAS, COUNTY supports CITY's request for an extension of the current
19 required completion date until June 30, 2006.

20 NOW, THEREFORE, in consideration of the mutual covenants, promises, and
21 agreements herein contained, the parties agree as follows:

- 22 1. The Financial Assistance Agreement dated August 17, 2004, by and
23 between CITY and COUNTY shall be amended to provide a new project
24 completion date of June 30, 2006. Accordingly, the Agreement is hereby
25 amended to revise paragraph 9 as follows:

- 1 9. All installation of these IMPROVEMENTS shall be completed and
2 final invoices submitted to the COUNTY no later than June 30,
3 2006, and COUNTY shall have no obligation to CITY or any other
4 entity or person for any cost incurred thereafter unless the time
5 for completion is extended by modifications of this Agreement as
6 provided herein.
- 7 2. It is the intent of the parties hereto that this AMENDMENT shall not
8 become binding until the date executed by the Board of County
9 Commissioners of Palm Beach County.
- 10 3. All other provisions of the Financial Assistance Agreement dated August
11 17, 2004, shall remain in full force and effect.

12

(INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have executed this Agreement and it is effective on the day first above written.

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

CITY OF PALM BEACH GARDENS,
BY ITS CITY COMMISSION

By: Tony Masiotti
TONY MASILOTTI, CHAIRMAN

By: [Signature]
MAYOR

R2005 2209
NOV 15 2005

(COUNTY SEAL)

ATTEST:

SHARON R. BOCK
CLERK AND COMPTROLLER

By: Judith Craker
DEPUTY CLERK

ATTEST:

By: [Signature]
CITY CLERK

By: Marlene R. [Signature]
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY
ASSISTANT COUNTY ATTORNEY

By: Christie P. Tatum
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY
CITY ATTORNEY

By: [Signature]
APPROVED AS TO TERMS AND
CONDITIONS

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