Agenda Item #: **3-C-8**

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	June 19, 2007	[X] []	Consent Workshop	[]	Regular Public Hearing	
Department: Submitted By: Submitted For:	Engineering & P Streetscape Sect	ublic W ion	orks			

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A. A Financial Assistance Agreement with Valencia Isles Homeowners Association, Inc. (Association), to provide reimbursement funding not to exceed \$170,000.
- **B.** A Budget Transfer of \$170,000 in the Transportation Improvement Fund from Reserve for District 5 to Woolbright Road, for irrigation and sod in and along the Lake Worth Drainage District (LWDD) right of way for Canal L-26, and in and along the County's right of way for Woolbright Road.

Summary: This Agreement provides funding to reimburse the Association up to a maximum of \$170,000 of the cost to install the improvements in and along the LWDD right of way, and in and along the County's south right of way for Woolbright Road from Hagen Ranch Road to a point approximately 4,100 feet east of Hagen Ranch Road. The LWDD will be responsible for the perpetual maintenance of the sod portion of the improvements located within its right of way, and the Association will be responsible for the perpetual maintenance of the sod portion of the improvements located within the County's right of way.

District: 5 (ME)

Background and Justification: This project is deemed to be an eligible project for gas tax funding that will enhance the appearance of a public thoroughfare roadway and the District 5 Commissioner has agreed to the use of District 5 Reserves for this purpose.

Attachments:

- 1. Location Sketch.
- 2. Insurance Certificate.
- 3. Commissioner Authorization.
- 4. Agreements (2).
- 5. Budget Transfer.

Recommended By

Division Director

Approved By: County Engineer

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Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years Grant Expenditures Operating Costs External Revenues Program Income (County) In-Kind Match (County) NET FISCAL IMPACT	2007 <u>\$170,000</u> <u>-0-</u> <u>-0-</u> <u>-0-</u> <u>\$170,000</u>	2008 0- 0- -0- -0- -0- -0-	2009 0- 0- -0- -0- -0- -0-	2010 0- 0- 0- 0- -0- -0-	2011 0- 0- 0- 0- -0- -0-
# ADDITIONAL FTE POSITIONS (Cumulative) Is Item Included in Current Budget Acct No.: Fund Progr	Budget? Dept l	Yes		 No <u>X</u> .	

B. Recommended Sources of Funds/Summary of Fiscal Impact: Transportation Improvement Fund Reserve for District 5 LWDD Canal L-26 Beaut Woolbright Rd-Dist 5

C. Departmental Fiscal Review: ___

III. REVIEW COMMENTS

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

5-22.0 osbilot

Β. Approved as to Form and Legal Sufficiency:

9/07 Assistant County Attorney

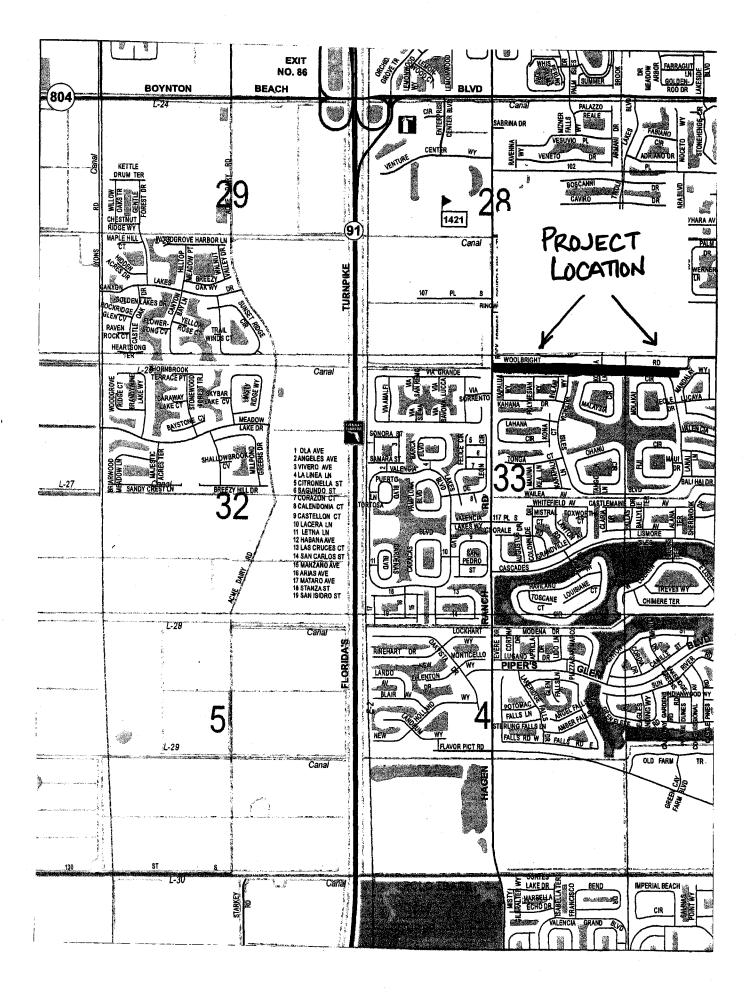
- C. Other Department Review:
 - **Department Director**

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

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ろ ntract De tro 5125107

This Contract complies with our contract review requirements.



OCATION SKETCH

ATTACHMENT # 1

A	CORD. CERTIFIC	ATE OF LIABI	LITY INSU	RANCE	CPID MN	DATE (MM/DD/YYYY)		
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	Valencia Isles 11200 Valencia Isl	1.0.A.	INSURER C:					
	Boynton Beach FL 3	3437	INSURER D:					
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					EACH OCCURRIINCE	\$1,000,000		
		PHPK198177	10/26/06	10/26/07	PREMISES (Ea courence)	\$,000		
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A	ANY PROPRIETOR/PARTNER/EXECUTIVE				E.L. EACH ACC DENT	\$		
11	OFFICER/MEMBER EXCLUDED?	~			E.L. DISEASE - EA EMPLOYEE	\$		
_	PECIAL PROVISIONS below				E.L. DISEASE - POLICY LIMIT	\$		
	x							
SCR	IPTION OF OPERATIONS / LOCATIONS / VEHIC	LES / EXCLUSIONS ADDED BY ENDOR		SIONS				
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	West Palm Beach FI		AUTHORIZED REF	\sim	Whael Obe	rlande		

Andrew Hertel - Valencia Isles

From:	Vivian Leiva		
To: Date:	Andrew Hertel 5/8/2007 11:18 AM		
Subject:	Valencia Isles		

Please prepare a budget transfer in the amount of \$170,000. for sod and irrigation along the south side of Woolbright Road, in County and LWDD right of way in front of Valencia Isles.

Thank you.

Vivian E. Leiva Senior Administrative Assistant to Commissioner Burt Aaronson

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5/8/2007



FINANCIAL ASSISTANCE AGREEMENT WITH VALENCIA ISLES HOMEOWNERS' ASSOCIATION, INC., FOR IRRIGATION AND SOD IN THE LAKE WORTH DRAINAGE DISTRICT'S (LWDD) RIGHT OF WAY FOR CANAL L-26, AND IN AND ALONG THE COUNTY'S RIGHT OF WAY FOR WOOLBRIGHT ROAD

THIS AGREEMENT, is made and entered into this _____ day of _____, 2007, by and between VALENCIA ISLES HOMEOWNERS' ASSOCIATION, INC., (Federal I. D. No. 650858894), a not-for-profit corporation of the State of Florida, hereinafter "ASSOCIATION", and PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter "COUNTY".

WITNESSETH:

WHEREAS, ASSOCIATION desires to install irrigation and sod in and along
 LWDD's right of way for its Canal L-26, and in and along the south right of way of
 COUNTY's Woolbright Road from Hagen Ranch Road to a point approximately 4,100' east
 of Hagen Ranch Road, hereinafter "IMPROVEMENTS"; and

WHEREAS, COUNTY believes that these efforts by ASSOCIATION serve a public
 purpose by enhancing the appearance of the right of way and wishes to support
 ASSOCIATION's efforts to install the IMPROVEMENTS by providing reimbursement
 funding from Board of County Commissioners Reserve for District 5, in an amount not to
 exceed ONE HUNDRED SEVENTY THOUSAND AND 00/100 DOLLARS (\$170,000.00);
 and

WHEREAS, after installation, LWDD will be responsible for the perpetual
 maintenance of the sod portion of the IMPROVEMENTS located within its right of way, and
 ASSOCIATION will be responsible for the perpetual maintenance of the irrigation portion of
 the IMPROVEMENTS and for the sod portion of the IMPROVEMENTS located within the
 COUNTY's right of way.

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

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1. The above recitals are true, correct and are incorporated herein.

2. COUNTY agrees to provide to ASSOCIATION reimbursement funding for the
 IMPROVEMENTS from Board of County Commissioners Reserve for District 5 in an
 amount not to exceed ONE HUNDRED SEVENTY THOUSAND AND 00/100 DOLLARS
 (\$170,000.00).

33 3. COUNTY agrees to reimburse ASSOCIATION up to the amount established 34 in paragraph 2 for costs (materials and labor) associated with the installation of the 35 IMPROVEMENTS, upon ASSOCIATION's submission of acceptable documentation

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needed to substantiate their costs for the **IMPROVEMENTS**. **COUNTY** will use its best efforts to provide said funds to **ASSOCIATION** 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 **COUNTY** shall have no obligation to any other person or entity.

ASSOCIATION agrees to assume all responsibility for design, bidding, 5. 6 7 contract preparation, and contract administration for the installation of the IMPROVEMENTS, including payment(s) to contractor(s), pursuant to all applicable 8 governmental laws and regulations and will comply with all applicable governmental 9 landscaping codes and permitting requirements (including, but not limited to LWDD's and 10 COUNTY's) in the selection and installation of the IMPROVEMENTS. ASSOCIATION 11 agrees to install the IMPROVEMENTS substantially in accordance with the plans, 12 specifications and costs as permitted by LWDD and COUNTY. ASSOCIATION also agrees 13 to assume financial responsibility for the completion of any portions of the 14 **IMPROVEMENTS** that are not fully-funded by the amount set forth in Paragraph 2, above. 15 Otherwise, COUNTY will have the final determination of the eligibility for reimbursement of 16 any changes. Substantial variations from the approved plans shall require prior written 17 approval from LWDD and COUNTY Engineer's Office. The final plans for the 18 IMPROVEMENTS must be signed and sealed by a Florida Registered Landscape Architect 19 20 or Engineer.

6. ASSOCIATION 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. ASSOCIATION 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 or Engineer that the **IMPROVEMENTS** have been inspected and were installed substantially in accordance with the permitted plans for the **IMPROVEMENTS**, and;

30 b. A Contract Payment Request Form and a Contractual Services Purchases Schedule Form, attached hereto and incorporated herein as 31 Exhibit "A" (pages 1 and 2) which are required for each and every 32 33 reimbursement requested by ASSOCIATION. Said information shall list each invoice paid by ASSOCIATION and shall include the vendor invoice number, 34 35 invoice date, and the amount paid by ASSOCIATION. ASSOCIATION shall 36 attach a copy of each vendor invoice paid by ASSOCIATION along with a 37 copy of the respective check and shall make reference thereof to the applicable item listed on the Contractual Services Purchases Schedule 38 Form. Further, the Program Administrator and the President of 39

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ASSOCIATION, or his designee shall also certify that each vendor invoice listed on the Contractual Services Purchases Schedule Form was paid by **ASSOCIATION** as indicated.

7. **ASSOCIATION** 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 the **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. ASSOCIATION agrees to be responsible for the perpetual maintenance of
 the irrigation portion of the IMPROVEMENTS and for the sod portion of the
 IMPROVEMENTS located within the COUNTY's right of way following their 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 the IMPROVEMENTS shall be completed and final invoices
 submitted to COUNTY no later than June 30, 2008, and COUNTY shall have no obligation
 to ASSOCIATION or any other entity or person for any cost incurred thereafter unless the
 time for completion is extended by modification of this Agreement as provided herein.

10. 19 ASSOCIATION 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 20 lawsuit is brought against COUNTY, its officers, employees, servants or agents, relating to 21 the IMPROVEMENTS or any item which is the responsibility of ASSOCIATION, 22 ASSOCIATION hereby agrees to indemnify, save and hold harmless COUNTY, its 23 officers, employees, servants or agents, and to defend said persons from any such claims, 24 liabilities, causes of action and judgments of any type whatsoever arising out of or relating 25 to the existence of the IMPROVEMENTS or the performance by ASSOCIATION as may 26 relate to this Agreement. ASSOCIATION agrees to pay all costs, attorney's fees and 27 expenses incurred by COUNTY, its officers, employees, servants or agents in connection 28 with such claims, liabilities or suits except as may be incurred due to the negligence of 29 COUNTY. Furthermore, ASSOCIATION agrees that the extent of COUNTY's liability 30 pursuant to this Agreement shall be limited solely to the aforementioned payment 31 obligation 32

11. As provided in F.S. 287.132-133, by entering into this Agreement or
 performing any work in furtherance hereof, ASSOCIATION 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).

12. ASSOCIATION 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 corporation, and shall provide evidence of this insurance prior to COUNTY's
 execution of this Agreement.
 13. ASSOCIATION shall require each contractor engaged by ASSOCIATION for

13. **ASSOCIATION** shall require each contractor engaged by **ASSOCIATION** 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.

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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, ASSOCIATION shall not be relieved of liability to
 COUNTY for damages sustained by COUNTY by virtue of any breach of the contract by
 ASSOCIATION; and COUNTY may withhold any payment to ASSOCIATION for the
 purpose of set-off until such time as the exact amount of damages due COUNTY is
 determined.

15. ASSOCIATION's termination of this AGREEMENT shall result all obligations
 of COUNTY for funding contemplated herein to be canceled.

16. COUNTY and ASSOCIATION 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. COUNTY may, at COUNTY's discretion and for the duration of the
 IMPROVEMENTS, install signs within the public property or easement, notifying the public
 that the IMPROVEMENTS were funded with COUNTY dollars.

18. 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.

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

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AS TO 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 ASSOCIATION

President, Valencia Isles Homeowners' Association, Inc. 11200 Valencia Isles Boulevard Boynton Beach, FL 33437

20. This Agreement shall be construed and governed by the laws of the State of 5 Florida. Any and all legal action necessary to enforce this Agreement shall be held in Palm 6 Beach County. No remedy herein conferred upon any party is intended to be exclusive of 7 any other remedy, and each and every other remedy shall be cumulative and shall be in 8 addition to every other remedy given hereunder or now or hereafter existing at law or in 9 equity or by statute or otherwise. No single or partial exercise by any party of any right, 10 power, or remedy shall preclude any other or further exercise thereof. 11

12 21. 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 13 respective parties; provided, however, that this clause pertains only to the parties to the 14 15 Agreement.

22. Except as expressly permitted herein to the contrary, no modification, 16 amendment, or alteration in the terms or conditions contained herein shall be effective 17 unless contained in a written document executed with the same formality and equality of 18 dignity herewith. 19

Each party agrees to abide by all laws, orders, rules and regulations and 20 23. ASSOCIATION will comply with all applicable governmental landscaping codes in the 21 22 maintenance and replacement of the IMPROVEMENTS.

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24. 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 24 contained herein shall be construed as a waiver, by any of the parties, of the liability limits 25 established in Section 768.28, Florida Statutes. 26

27 25. ASSOCIATION shall promptly notify COUNTY of any lawsuit-related complaint, or cause of action threatened or commenced against it which arises out of or 28 29 relates, in any manner, to the performance of this Agreement.

30 26. 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 31 to the defaulting party thirty (30) days written notice before exercising any of their rights. 32

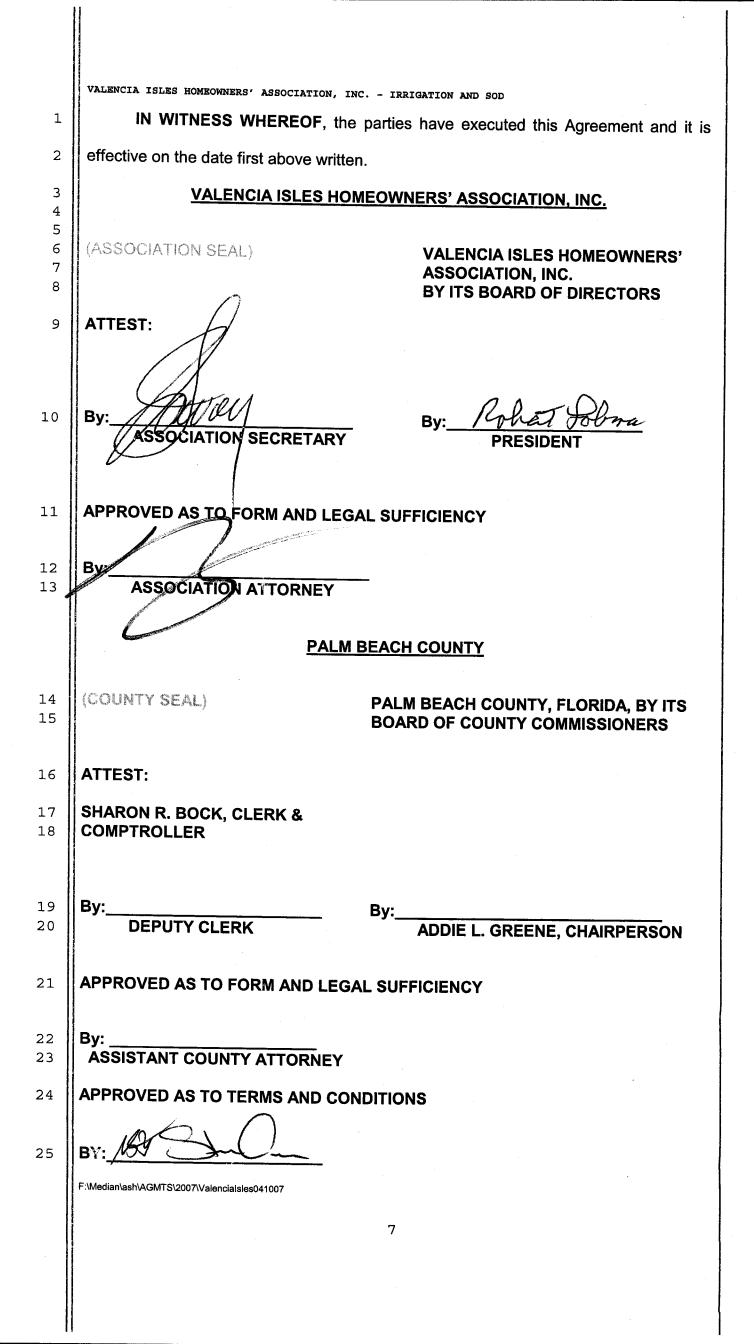
The preparation of this Agreement has been a joint effort of the parties, and 33 27. the resulting document shall not, solely as a matter of judicial constraint, be construed 34 35 more severely against one of the parties than the other.

28. **ASSOCIATION** has the authority to enter into this Agreement, and to perform the obligations contained herein.

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

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

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



Page <u>1</u> of <u>1</u>

BOARD OF COUNTY COMMISSIONERS PALM BEACH COUNTY BUDGET_Transfer

FUND <u>Transportation Improvement</u>

BGEX043007-1611

	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 04/30/07	REMAINING BALANCE
	T WOOLBRIGHT RD-DIST 5 ributions-Non-Govtl Agncy	0	0	170,000	0	170,000	0	170,000
RESERVE FOR DISTRICT 3500-368-9115-9907 Res-		4,613,160	2,523,419	0	170,000	2,353,419		
				170,000	170,000			
		SIGNATURE		DATE	C	By Board At Meeti	d of County Comming of06/19/0'	
Engineering & Public V	Works	R.D.1	word	<u></u>	30/07			· · · · · · · · · · · · · · · · · · ·
Administration / Budge	et Approval				······································	·	·	
OFMB Department – Posted			· · ·				Clerk to the f County Commissi	oners

ATTACHMENT #5