

Agenda Item #:

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: July 24, 2007 [] **Consent** [X] **Regular**
[] **Workshop** [] **Public Hearing**

Department:

Submitted By: Engineering & Public Works

Submitted For: Streetscape Section

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A. The Second Amendment to the Financial Assistance Agreement (R2004-0303) with the Village of North Palm Beach (Village) for an extension of the completion date for improvements on Prosperity Farms Road from Northlake Boulevard to Burns Road.
- B. A Budget Transfer of \$175,000 in the Transportation Improvement Fund from Reserve for District 1 to Prosperity Farms Road Improvements – District 1.

Summary: This Second Amendment will increase the County's funding (from District 1 Gas Tax Reserves) to the Village by \$175,000. The County's maximum reimbursement amount will then be \$1,222,500. When added to the prior County contribution of \$82,500, this brings the total County funding to \$1,305,000 in financial assistance to the Village for this Prosperity Farms Road project. This Second Amendment also extends the completion date from December 31, 2006 to December 31, 2007. The completion date of the improvements has been delayed due to contractor performance problems.

District: 1 (ME)

Background and Justification: Funding under this Agreement, in an amount not to exceed a maximum of \$1,305,000 (\$175,000 of which is new funding that will be approved with this Amendment), comes from the District 1 Gas Tax Reserves. The District 1 Commissioner has agreed to the use of District 1 Reserves for this purpose. The Village has already executed this Amendment, and will be responsible for the perpetual maintenance of these improvements.

Attachments:

1. Location Sketch.
2. Commissioner Authorization for this Additional Funding and Time Extension
3. Second Amendment to Financial Assistance Agreement (2).
4. Financial Assistance Agreement of February 24, 2004 (R2004-0303).
5. First Amendment to Financial Assistance Agreement of April 5, 2005 (R2005-0703).
6. Budget Transfer

Recommended By:

Division Director

7/13/07
Date

Approved By:

County Engineer

7/13/07
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	\$175,000	-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	\$175,000	-0-	-0-	-0-	-0-

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No X .

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

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

Transportation Improvement Fund

Reserve for District 1

Prosperity Farms Road Improvements-Dist 1

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

Jim Dink 7-18-07 OFMB
Jim J. Jacob 7/19/07 Contract Dev. and Control
7/19/07
7/19/07

B. Approved as to Form and Legal Sufficiency:

Marken R. Pitt 7/19/07
Assistant County Attorney

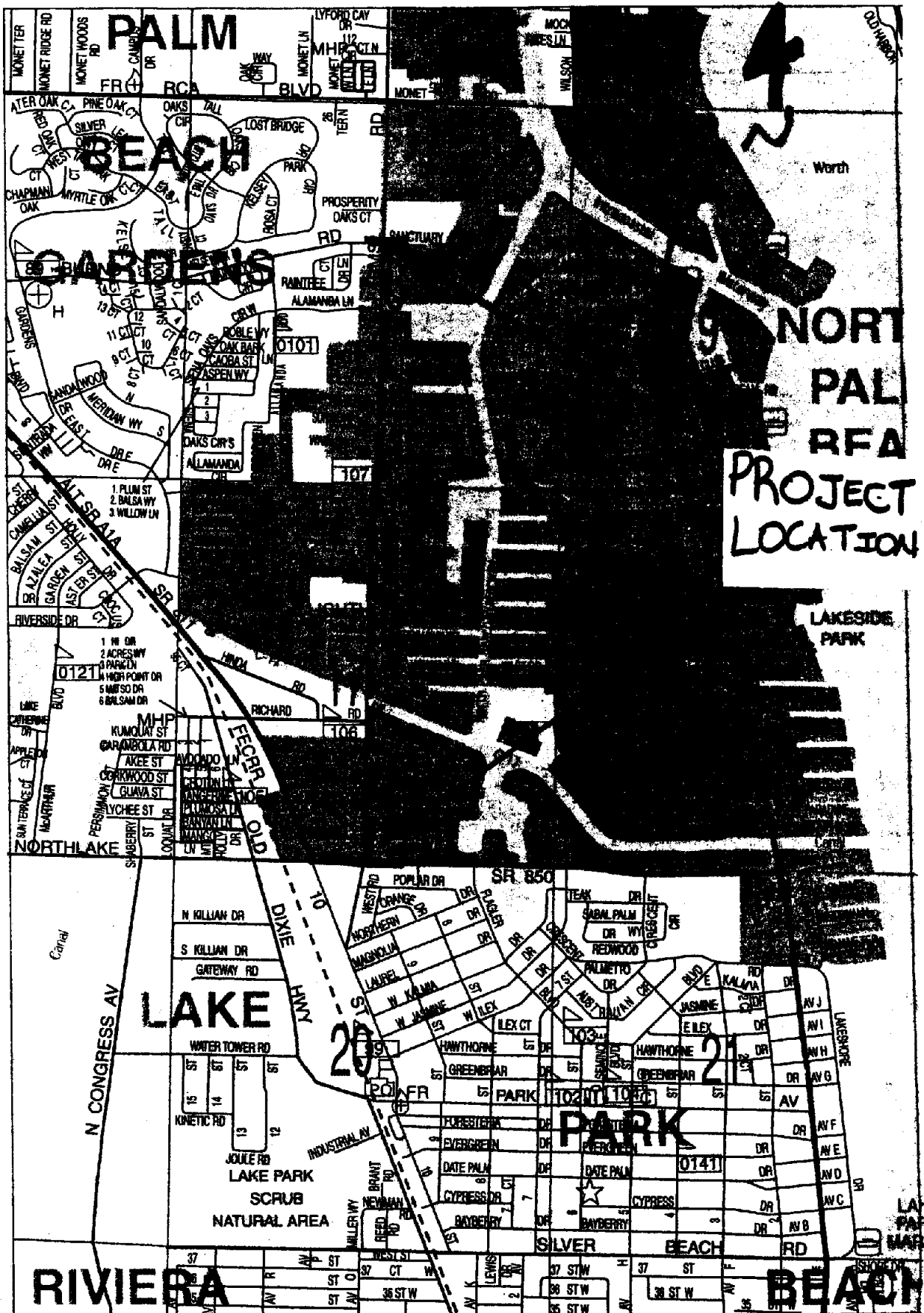
This amendment complies with
our review requirements.

C. Other Department Review:

Department Director

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

PROJECT LIMITS:
PROSPERITY FARMS ROAD
FROM NORTHLAKE BOULEVARD TO BURNS ROAD



LOCATION SKETCH

**COMMISSIONER AUTHORIZATION
FOR ADDITIONAL FUNDING AND TIME EXTENSION**

From: Patricia Weaver
To: Andrew Hertel
Date: 7/12/2007 9:58:12 AM
Subject: Prosperity Farms Road

Commissioner Marcus has authorized the extension of the agreement with the Village of North Palm Beach from December 31, 2006 to December 31, 2007 and the expenditure of \$175,000 from the District 1 Gas Tax Reserves account to complete the landscaping project on Prosperity Farms Road from Northlake Boulevard south to Burns Road.

Thank you.

Trish Weaver
Administrative Assistant to
Commissioner Karen T. Marcus

CC: Kerry Henry

**AMENDMENT #2 TO FINANCIAL ASSISTANCE AGREEMENT R2004-0303 DATED
FEBRUARY 24, 2004 WITH THE VILLAGE OF NORTH PALM BEACH REGARDING
PROSPERITY FARMS ROAD (NORTHLAKE BOULEVARD TO BURNS ROAD)
BEAUTIFICATION**

THIS AMENDMENT is made to the Financial Assistance Agreement (R2004-0303) dated February 24, 2004, by and between the VILLAGE OF NORTH PALM BEACH, a municipal corporation of the State of Florida, hereinafter "VILLAGE", and BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter "COUNTY".

WITNESSETH:

WHEREAS, on February 24 2004, VILLAGE and COUNTY entered into a Financial Assistance Agreement (AGREEMENT) providing for reimbursement funding of the cost of VILLAGE's planned IMPROVEMENTS (as defined in AGREEMENT) on COUNTY's Prosperity Farms Road from Northlake Boulevard to Burns Road, in an amount not to exceed NINE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$917,500.00); and

WHEREAS, that funding was is in addition to the previously reimbursed funding of EIGHTY-TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$82,500.00) toward the cost of the IMPROVEMENTS for preparation of the study in accordance with Agreement R2001-0182; and

WHEREAS, on April 5, 2005, the parties entered into the First Amendment to the AGREEMENT wherein COUNTY provided additional funding for the cost of the IMPROVEMENTS in an amount not to exceed ONE HUNDRED THIRTY THOUSAND AND 00/100 DOLLARS (\$130,000.00) with the VILLAGE which brought the total available funding to ONE MILLION ONE HUNDRED THIRTY THOUSAND AND 00/100 (\$1,130,000.00) DOLLARS; and

AMENDMENT #2 TO FINANCIAL ASSISTANCE AGREEMENT WITH THE VILLAGE OF NORTH PALM BEACH FOR
PROSPERITY FARMS ROAD BEAUTIFICATION

1 **WHEREAS, COUNTY wishes to provide additional funding for the**
2 **IMPROVEMENTS in an amount not to exceed ONE HUNDRED SEVENTY-FIVE**
3 **THOUSAND AND 00/100 DOLLARS (\$175,000.00) bringing total funding to ONE**
4 **MILLION THREE HUNDRED FIVE THOUSAND DOLLARS AND 00/100 (\$1,305,000.00);**
5 **and**

6 **WHEREAS, the completion date of the IMPROVEMENTS has been further**
7 **delayed due to contractor performance with the construction of the project; and**

8 **WHEREAS, VILLAGE and COUNTY desire to extend the existing deadline by**
9 **which the IMPROVEMENTS are to be completed, and final paid invoices submitted to**
10 **COUNTY to a date no later than December 31, 2007; and**

11 **WHEREAS, VILLAGE and COUNTY desire that this amendment shall relate**
12 **back to December 31, 2006, and the Contract continued without interruption nor**
13 **lapse and its term extended for an additional twelve (12) month period until**
14 **December 31, 2007.**

15 **NOW, THEREFORE, in consideration of the promises contained in the**
16 **AGREEMENT, the First Amendment, and this Second Amendment, the parties agree**
17 **as follows:**

- 18 **1. Paragraph 3(A) of the AGREEMENT is amended to read as follows:**
19 **A. Funding. VILLAGE acknowledges and agrees that COUNTY has**
20 **reimbursed VILLAGE the amount of Eighty Two Thousand Five**
21 **Hundred Dollars and 00/100 (\$82,500.00) toward the cost of the**
22 **IMPROVEMENTS for the preparation of the STUDY in accordance with**
23 **AGREEMENT 1. COUNTY agrees to reimburse VILLAGE, subject to the**
24 **terms and conditions of this AGREEMENT, an additional amount not to**
25 **exceed One Million, Two Hundred Twenty Two Thousand, Five Hundred**
26 **and 00/100 Dollars (\$1,222,500.00), toward the cost of the**
27 **IMPROVEMENTS. Of this amount, Eight Thousand, Sixty Nine and**
28 **00/100 Dollars (\$8,069.00) is to fund increased costs to complete the**

1 original scope of the IMPROVEMENTS. The VILLAGE agrees that it shall
2 be responsible for all costs necessary to complete the IMPROVEMENTS
3 in excess of the funding provided or to be provided by COUNTY for the
4 IMPROVEMENTS.

- 5 2. The last sentence of Paragraph 3(B).2 of the AGREEMENT is amended
6 to read as follows:

7 VILLAGE shall complete the construction of the IMPROVEMENTS on
8 or before December 31, 2007.

- 9 3. The last Sentence of Paragraph 4 of the AGREEMENT is amended to
10 read as follows:

11 VILLAGE shall submit all requests for reimbursement on or before
12 December 31, 2007.

- 13 4. All provisions, covenants, terms and conditions of the AGREEMENT
14 between the parties heretofore entered into under the date of February 24,
15 2004, Amendment One dated April 5, 2005, as originally set forth therein,
16 which are not hereby expressly amended or modified and not in conflict with
17 the terms hereof, are hereby ratified and confirmed and shall remain the same
18 and be unaffected by these presents.

19
20
21 (INTENTIONALLY LEFT BLANK)

AMENDMENT #2 TO FINANCIAL ASSISTANCE AGREEMENT WITH THE VILLAGE OF NORTH PALM BEACH FOR
PROSPERITY FARMS ROAD BEAUTIFICATION

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

PALM BEACH COUNTY, FLORIDA, BY VILLAGE OF NORTH PALM BEACH
ITS BOARD OF COUNTY COMMISSIONERS BY ITS VILLAGE COMMISSION

By: _____
ADDIE L. GREENE, CHAIRPERSON

By: Edward M. Eisey
MAYOR

(COUNTY SEAL)

(VILLAGE SEAL)

ATTEST:

ATTEST:

SHARON R. BOCK, CLERK &
COMPTROLLER

By: _____
DEPUTY CLERK

By: Melissa Teal
VILLAGE CLERK

By: Marlene R. O'Connell
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY
ASSISTANT COUNTY ATTORNEY

By: Edward R.
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY
VILLAGE ATTORNEY

By: Stan C.
APPROVED AS TO TERMS AND
CONDITIONS

22004-0303

**FINANCIAL ASSISTANCE AGREEMENT WITH THE ATTACHMENT 4
VILLAGE OF NORTH PALM BEACH REGARDING
PROSPERITY FARMS ROAD (NORTHLAKE BOULEVARD
TO BURNS ROAD) BEAUTIFICATION**

THIS INTERLOCAL AGREEMENT is made and entered into this ____ day of FEB 24 2004, 2003, by and between **PALM BEACH COUNTY, FLORIDA**, a political subdivision of the State of Florida ("COUNTY"), and the **VILLAGE OF NORTH PALM BEACH**, a political subdivision of the State of Florida ("VILLAGE").

WITNESSETH:

WHEREAS, the **VILLAGE** decided to beautify Prosperity Farms Road from Northlake Boulevard to Burns Road and requested the support of the District Commissioner for the funding of the conceptual plan, design and construction of the roadway improvements and the installation of landscaping; and

WHEREAS, the District Commissioner supported beautification of the roadway and the **COUNTY** agreed to fund certain roadway improvements to enhance the appearance and function of the road; and

WHEREAS, on February 6, 2001, the **VILLAGE** and **COUNTY** entered into an interlocal agreement providing for funding of certain roadway improvements; and

WHEREAS, the **VILLAGE** caused a study of improvement options to be completed and the **COUNTY** reimbursed the **VILLAGE** for the costs of that study; and

WHEREAS, the **VILLAGE** failed to comply with the terms of the prior interlocal agreement; and

WHEREAS, the COUNTY and VILLAGE desire to terminate the prior interlocal agreement and enter into a new interlocal agreement for the funding, design and construction of certain roadway improvements.

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

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein.
2. **Definitions.** The following words, phrases or terms used in this Agreement shall have the following meaning:

A. **"COUNTY ROAD"** means that portion of Prosperity Farms Road from Northlake Boulevard to Burns Road.

B. **"IMPROVEMENTS"** means the roadway improvements to be constructed and installed by the VILLAGE on the COUNTY ROAD, which includes, but is not limited to project design and construction of: landscaping; a continuous curb and gutter for improved drainage and safety; and the improvements as approved by VILLAGE Council for the BEATUIFICATION PROJECT as shown on Exhibit "A" amended. The term "IMPROVEMENTS" shall not include any inspection or administrative costs incurred by the VILLAGE or any roadway improvements made for the purpose of expanding the COUNTY ROAD to include additional lanes.

C. **"AGREEMENT 1"** means that certain Financial Assistance Agreement for the Village of North Palm Beach Prosperity Farms Road (Northlake Boulevard to Burns Road) Beautification by and between the COUNTY and the VILLAGE dated February 6, 2001 (R#2001-0182).

D. "BEAUTIFICATION PROJECT" means VILLAGE Council approved recommendation from the Prosperity Farms Road Ad-Hoc Committee which is the Beautification & Safety Improvements shown on Exhibit "A" amended.

E. "STUDY" means Preliminary Planning, Design and Engineering Services study prepared by Kimley-Horn and Associates dated November 1, 2001.

F. "PROJECT DESIGN" means the planning and final design of the IMPROVEMENTS.

3. Improvements.

A. Funding. The VILLAGE acknowledges and agrees that COUNTY has reimbursed the VILLAGE in the amount of Eighty-two Thousand Five Hundred Dollars (\$82,500.00) toward the cost of the IMPROVEMENTS for preparation of the STUDY in accordance with AGREEMENT 1. The COUNTY agrees to reimburse the VILLAGE, subject to the terms and conditions of this Agreement, an additional amount not to exceed Nine Hundred Seventeen Thousand Five Hundred Dollars (\$917,500.00) toward the cost of the IMPROVEMENTS. The VILLAGE agrees that it shall be responsible for all costs necessary to complete the IMPROVEMENTS in excess of the funding provided or to be provided by the COUNTY for the IMPROVEMENTS.

B. Schedule. Construction of the IMPROVEMENTS by the VILLAGE shall be in accordance with the following schedule:

1. The VILLAGE shall complete or cause to be completed the PROJECT DESIGN in accordance with the BEAUTIFICATION PROJECT on or before December 31, 2004.

2. The VILLAGE shall commence construction/installation of the IMPROVEMENTS in accordance with the PROJECT DESIGN on or before April 30, 2005.

The VILLAGE shall complete construction of the IMPROVEMENTS on or before December 31, 2006.

3. The time frames set forth in this Section 3(B) may be extended with the prior written consent of the County Engineer, which consent shall not be unreasonably withheld. The COUNTY shall extend written consent for extension of time frame set forth in this Section 3B by the amount of time delay caused by fires, floods, or acts of God beyond the control of the VILLAGE.

4. Reimbursement by the COUNTY. The VILLAGE acknowledges and agrees that all payments by the COUNTY shall be made on a reimbursement basis and that the VILLAGE shall be primarily responsible for the design and construction of the IMPROVEMENTS, which responsibilities include, but are not limited to: the conceptual planning; design; permitting; contract solicitation, preparation and administration; construction and installation of the IMPROVEMENTS; and any and all payment(s) to its contractor(s). The VILLAGE shall submit all requests for reimbursement to the County Engineer with supporting documentation in a form and detail acceptable to the COUNTY, which shall include, but shall not be limited to, copies of all invoices and receipts. The VILLAGE shall also include with a request for reimbursement: (i) a statement from a Florida Registered Landscape Architect when requesting reimbursement for landscaping costs and (ii) documentation acceptable to the COUNTY indicating that the IMPROVEMENTS were inspected, installed and constructed substantially in accordance with the PROJECT DESIGN. The VILLAGE shall reasonably document any in-kind materials and/or labor that the VILLAGE intends to request the COUNTY to reimburse. The COUNTY may provide reimbursement to the VILLAGE for in-kind

materials and/or labor costs, but the COUNTY shall have no obligation to reimburse such costs to the VILLAGE. The VILLAGE shall submit all requests for reimbursement on or before June 30, 2007.

5. PROJECT DESIGN Approval. The VILLAGE agrees to construct, install and maintain the IMPROVEMENTS substantially in accordance with this Agreement. Upon completion of the PROJECT DESIGN, the VILLAGE shall submit the PROJECT DESIGN to the County Engineer for approval prior to construction or installation of the IMPROVEMENTS. The County Engineer shall have thirty (30) days to review the PROJECT DESIGN to determine conformance with the requirements of this Agreement. Approval by the County Engineer may be withheld for a failure to conform with the provisions of this Agreement. Substantial variations from the approved PROJECT DESIGN shall require prior written approval of the County Engineer. The COUNTY shall have the final determination of the eligibility for reimbursement of any changes to the approved PROJECT DESIGN. The final landscaping permit drawings must be signed and sealed by a Florida Registered Landscape Architect experienced in roadway planting and familiar with the COUNTY's Streetscape Standards Manual.

6. Labor and Materials. The VILLAGE shall obtain or provide all labor and materials necessary for the construction and installation of the IMPROVEMENTS. The minimum requirement for any plant stock shall be Florida Grade No. 1, as defined in Florida Department of Consumer Services Grades and Standards for Nursery Plants (most current edition), with the exception of certain Grade No. 2 plant materials which are specified on the approved PROJECT DESIGN for the IMPROVEMENTS. The County Engineer shall have the final determination of eligibility for reimbursement of all plant materials.

7. Annual Appropriation. The COUNTY's performance and obligation to pay under this Agreement is agreed to by the Board of County Commissioners. Any additional transfers or allocations necessary to complete the IMPORVEMENTS shall be subject to approval by the Board of County Commissioners in future budgets.

8. Governmental Approval and Compliance. The VILLAGE agrees to obtain, all permits required for the construction, installation, maintenance or replacement of the IMPROVEMENTS, including, but not limited to, any required COUNTY permits. COUNTY agrees to waive any and all fees associated with required County permits. The VILLAGE agrees to comply with all federal, state, regional and local laws, orders, rules and regulations applicable to the construction, installation, maintenance and replacement of the IMPROVEMENTS.

9. Maintenance. The VILLAGE shall be responsible for the perpetual maintenance of the median landscaping if installed, and shall be solely responsible for obtaining and complying with all necessary permits, approvals, and authorizations from any federal, state, regional or local governmental agency which are required for the subsequent maintenance of the medians, if installed. Maintenance of all landscaping along the right-of-way of Prosperity Farms Road is the responsibility of the resident/property owner per VILLAGE Code.

10. Repairs. The VILLAGE shall be responsible for repairing any damage to sidewalks, curbing, roadway pavement, drainage facilities and utilities resulting from the construction or installation of IMPROVEMENTS. The VILLAGE shall commence repairs within sixty (60) days after written notice from the COUNTY and shall prosecute such repairs to completion. In the event the VILLAGE fails to commence repairs within the sixty (60) day period or the repairs are of an urgent nature, the COUNTY may cause the repairs to be completed and the VILLAGE shall

reimburse the COUNTY for all costs incurred by the COUNTY for the repairs within sixty (60) days after receipt of an invoice from the COUNTY.

11. Audit. The VILLAGE shall maintain adequate records to justify all charges, expenses and costs incurred by the VILLAGE for the IMPROVEMENTS for at least three (3) years after final payment by the COUNTY. The COUNTY shall have the right to audit and examine all such books and records during normal business hours of the VILLAGE.

12. Relationship of the Parties. VILLAGE acknowledges it is an independent contractor and operator, not an agent or servant of the COUNTY or its Board of County Commissioners. The VILLAGE shall be solely responsible to all parties for its respective acts or omissions, and COUNTY shall in no way be responsible therefore.

13. Indemnification. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the VILLAGE shall indemnify, defend and hold harmless COUNTY against any actions, claims, or damages arising out of VILLAGE's negligence in connection with this Agreement or the performance by the VILLAGE as it may relate to the IMPROVEMENTS. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions. This paragraph shall survive termination of this Agreement.

14. Insurance.

A. Without waiving the right to sovereign immunity, the VILLAGE reserves the right to self-insure for general liability with coverage limits of One Hundred Thousand Dollars (\$100,000) per person and Two Hundred Thousand Dollars (\$200,000) per occurrence, or such monetary waiver

limits as set forth by the Florida legislature. In the event the VILLAGE maintains third-party commercial general liability insurance, the VILLAGE agrees to maintain coverage at a limit not less than One Million Dollars (\$1,000,000) per occurrence. The VILLAGE agrees to endorse PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS as an "Additional Insured" to the commercial general liability insurance, but only with respect to negligence arising out of this Agreement other than the COUNTY's negligence. This paragraph does not apply to liability policies affording indemnity based claims-bill coverage only. The VILLAGE shall deliver the COUNTY a Certificate of Insurance or statement of self-insurance to Palm Beach County, Engineering and Public Works, Attn: County Engineer, P.O. BOX 21229, West Palm Beach, FL 33416-1229.

B. The VILLAGE shall require each contractor engaged by the VILLAGE for work associated with this Agreement to maintain:

1. Workers' Compensation coverage in accordance with Florida Statutes and commercial general liability insurance at a limit of liability not less than One Million Dollars (\$1,000,000) per occurrence. Each contractor shall endorse its commercial general liability insurance with a CG 2010 Additional Insured endorsement in favor of the VILLAGE and PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS. When requested, the VILLAGE shall deliver to the COUNTY a Certificate of Insurance, evidencing the contractor's coverage, with a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage to Palm Beach County, Engineering and Public Works, Attn: Asst. County Engineer, P.O. Box 21229, West Palm Beach, FL 33416-1229.

2. A payment and performance bond for the total amount of the contract in accordance with Florida Statute 255.05, as may be amended from time to time.

15. Termination by VILLAGE. This Agreement may be terminated by the VILLAGE, with or without cause, immediately upon written notice to the COUNTY and the COUNTY shall be released and discharged upon termination from all further reimbursement obligations hereunder. If the VILLAGE fails to use the PROJECT DESIGN or construct the IMPROVEMENTS to completion, the VILLAGE shall be required to fully reimburse the COUNTY for any and all financial assistance provided to the VILLAGE by the COUNTY for the IMPROVEMENTS prior to termination of this Agreement by the VILLAGE, including, but not limited, any funding provided to the VILLAGE in accordance with AGREEMENT 1. This paragraph shall not act or be construed as a waiver of any rights COUNTY may have against the VILLAGE for breach of this Agreement, including, but not limited to, the right to bring an action for damages.

16. Termination by COUNTY. This Agreement may be terminated in whole or in part, by the COUNTY, with cause, upon written notice to the VILLAGE. Unless the VILLAGE is in breach of this Agreement, the VILLAGE shall be paid for those portions of the IMPROVEMENTS completed to the COUNTY's satisfaction through the date of termination by the COUNTY. After receipt of a termination notice, and except as otherwise directed by the COUNTY, the VILLAGE shall:

- A. Stop work on the date and to the extent specified;
- B. Terminate and settle all orders and contracts relating to the performance of the terminated work;
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY; and
- D. Continue and complete all parts of the work that have not been terminated.

17. Default by the COUNTY. COUNTY shall not be in default unless COUNTY fails to perform obligations imposed upon COUNTY hereunder within a reasonable time, but in no event later than thirty (30) days after written notice by VILLAGE to COUNTY; provided, however, that if the nature of COUNTY's obligations is such that more than thirty (30) days are required for performance then COUNTY shall not be in default if COUNTY commences performance within the thirty (30) day period and thereafter diligently prosecutes the same to completion.

18. Default by VILLAGE. The occurrence of any one (1) or more of the following events shall constitute a material default and breach of this Agreement by the VILLAGE:

A. The failure to construct and install the IMPROVEMENTS within the time frames set forth in Section 3(B) above.

B. The failure to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by the VILLAGE, except as described in Section 18(A) above, where such failure continues for a period of thirty (30) days after written notice from the COUNTY to the VILLAGE; provided, however, if the nature of the VILLAGE's default is such that more than thirty (30) days are reasonably required for its cure, then the VILLAGE shall not be deemed to be in default if the VILLAGE commences to cure the default within the thirty (30) day period and diligently pursues to cure the default to completion.

19. Remedies. In the event of a material default or breach by the VILLAGE, the VILLAGE agrees that the COUNTY may, without limiting any other right or remedy which the COUNTY may have under the law or at equity by reason of such default or breach, elect to exercise any one (1) or more of the following remedies:

A. Immediately terminate this Agreement and all further funding obligations to

the VILLAGE under this Agreement.

B. Require the VILLAGE to fully reimburse the COUNTY for any and all financial assistance provided by the COUNTY to the VILLAGE under this Agreement and AGREEMENT 1.

C. Require the VILLAGE to restore the area in where the IMPROVEMENTS were installed and/or constructed to a condition acceptable to the COUNTY.

D. Pursue any other remedy now or hereinafter available to COUNTY under the laws of the State of Florida.

Notwithstanding any provision of this Agreement to the contrary, the COUNTY shall have the right to bring an action for damages upon the occurrence of a default by the VILLAGE.

20. Discrimination. The COUNTY and VILLAGE 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 this Agreement.

21. Severability. 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 portion of this Agreement and same shall remain in full force and effect.

22. Notices. 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:

TO THE COUNTY:
County Engineer
Palm Beach County Department of
Engineering and Public Works

TO THE VILLAGE:
Village Manager
Village of North Palm Beach
501 U.S. Highway 1

23. Complaints. Each party will promptly notify the other 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.

24. Governing Law and Venue. 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.

25. Attorney's Fees. 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 this Agreement.

26. Time of the Essence. The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

27. Remedies Cumulative. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every 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.

28. Public Entity Crimes. As provided in Florida Statute 287.133, by entering into this Agreement or performing any work in furtherance hereof, the VILLAGE certifies that its affiliates, suppliers, subcontractors, 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 thirty-six (36) months immediately preceding the date hereof.

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

30. Construction of the Agreement. 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 restraint, be construed more severely against one of the parties than the other.

31. Entirety of the Agreement. This Agreement represents the entire understanding between the parties, and supercedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.

32. Waiver. No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

33. Headings/Captions. The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

34. Incorporation by Reference. Exhibits attached hereto and referenced herein shall be

deemed to be incorporated in this Agreement by such reference.

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

36. Termination of Prior Agreement. AGREEMENT 1 is hereby terminated and replaced in its entirety by this Agreement.

37. Effective Date. This Agreement shall take effect upon execution and the effective date shall be the date of execution.

{Remainder of page intentionally left blank.}

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date written above.

ATTEST:

VILLAGE OF NORTH PALM BEACH,
BY ITS VILLAGE COUNCIL

By: [Signature]
Village Clerk

By: [Signature]
Mayor

David B. Norris
Typed or Printed Name

R2004 0303

ATTEST:

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

DOROTHY H. WILKEN, CLERK

By: [Signature]
Deputy Clerk

By: [Signature]
Chair

FEB 24 2004

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: Nancy J. Doler
Assistant County Attorney

Approved as to Terms
and Conditions

By: S. T. Wildt

EXHIBIT "A"

PROSPERITY FARMS ROAD ESTIMATE

Item No.	Item Description	Unit	Quantity	Beautification		Beautification & Safety Improvements		
				Unit Cost	Total Cost	Quantity	Unit Cost	Total Cost
1	Mobilization (8%)	LS	1	\$55,000.00	\$55,000.00	1	\$80,000.00	\$80,000.00
2	Maintenance of Traffic (4%)	LS	1	\$28,000.00	\$28,000.00	1	\$30,000.00	\$30,000.00
3	Clearing & Grubbing	Acre	8	\$5,000.00	\$40,000.00	8	\$5,000.00	\$40,000.00
4	Curb & Gutter (Roadway)	LF	18,500	\$10.00	\$185,000.00	18,500	\$10.00	\$185,000.00
5	Curb & Gutter Side Street	LF	2,000	\$10.00	\$20,000.00	2,000	\$10.00	\$20,000.00
6	Curb (median)	LF	0	\$10.00	\$0.00	954	\$10.00	\$9,540.00
7	Drainage Flumes	EA	40	\$1,000.00	\$40,000.00	40	\$1,000.00	\$40,000.00
8	Remove Asphalt from medians	SY	0	\$4.00	\$0.00	488	\$4.00	\$1,952.00
9	Add soil to medians	CY	0	\$5.00	\$0.00	140	\$5.00	\$700.00
10	Add soil to swales	CY	7,400	\$5.00	\$37,000.00	7,400	\$5.00	\$37,000.00
11	Reset signs	EA	10	\$100.00	\$1,000.00	10	\$100.00	\$1,000.00
12	Pavement Markings	LF	0	\$1.00	\$0.00	14,000	\$1.00	\$14,000.00
13	Trees (median)	EA	0	\$1,000.00	\$0.00	16	\$1,000.00	\$16,000.00
14	Trees (swales)	EA	140	\$600.00	\$84,000.00	140	\$600.00	\$84,000.00
15	Sod (including water/fertilizer)	SY	14,000	\$4.00	\$56,000.00	14,500	\$4.00	\$58,000.00
16	Irrigation (swales)	LF	17,000	\$15.00	\$255,000.00	17,000	\$15.00	\$255,000.00
17	Irrigation (medians)	LF	0	\$25.00	\$0.00	800	\$25.00	\$15,000.00
18	Miscellaneous Items (10%)	LS	1	\$70,000.00	\$70,000.00	1	\$75,000.00	\$75,000.00
Subtotal					\$851,000.00			\$922,192.00
19	Engineering (10%)				\$85,000.00			\$92,000.00
20	Survey				\$25,000.00			\$25,000.00
21	Construction Inspection (5%)				\$42,000.00			\$42,000.00
22	Contingency (10%)				\$100,000.00			\$100,000.00
TOTAL					\$1,103,000.00			\$1,193,192.00

Council approved Beautification & Safety option with the stipulation that swale irrigation be eliminated and that safety median improvements be an alternate in the bid. The medians may or may not be constructed based on the bids received.

**FIRST AMENDMENT TO
FINANCIAL ASSISTANCE AGREEMENT WITH THE VILLAGE OF NORTH
PALM BEACH REGARDING PROSPERITY FARMS ROAD (NORTHLAKE
BOULEVARD TO BURNS ROAD) BEAUTIFICATION**

APR 05 2005

This First Amendment is made this _____ day of _____, 2005,
amending that Financial Assistance Agreement with the Village of North Palm Beach
Regarding Prosperity Farms Road (Northlake Boulevard to Burns Road) Beautification
dated February 24, 2004, recorded in the official records of Palm Beach County as item
R2004 0303, and hereinafter referred to as the "Agreement".

WITNESSETH:

Whereas, the parties hereto previous entered into the Agreement and,

Whereas, the project which is the subject of the Agreement will cost more than
originally estimated and,

Whereas, the parties remain willing to pursue the project subject to the terms of
the Agreement as amended hereby,

Now, Therefore, in consideration of the promises contained in the Agreement and
this First Amendment, the parties agree as follows:

1. Paragraph 3(A.) of the Agreement is amended to read as follows:

A. Funding. The VILLAGE acknowledges and agrees that COUNTY has reimbursed the VILLAGE in the amount of Eighty-two Thousand Five Hundred Dollars (\$82,500) toward the cost of the IMPROVEMENTS for the preparation of the STUDY in accordance with the AGREEMENT 1. The COUNTY agrees to reimburse the VILLAGE, subject to the terms and conditions of this AGREEMENT, an additional amount not to exceed One Million Forty-seven Thousand Five Hundred Dollars (\$1,047,500) toward the cost of the IMPROVEMENTS. The VILLAGE agrees that it shall be responsible for all costs necessary to complete the

IMPROVEMENTS in excess of the funding provided or to be provided by the COUNTY for the IMPROVEMENTS.

2. Except as modified hereby, all other terms of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date written above.

ATTEST:

VILLAGE OF NORTH PALM BEACH,
BY ITS VILLAGE COUNCIL

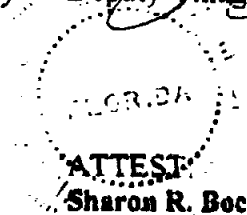

Deputy Village Clerk

By:


Mayor

EDWARD M. EISSEY, Ph.D.
Typed or printed name

ATTEST:


Sharon R. Bock,
Clerk and Comptroller

PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY COMMISSIONERS
R2005 0703
APR 05 2005

By:


Deputy Clerk


Tony Masfotti, Chairman

Approved as to Form and Legal Sufficiency


Assistant County Attorney

Approved as to Terms
and Conditions

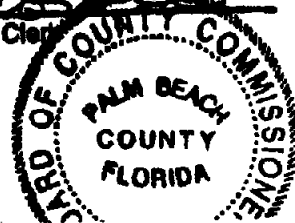
By: 
T. Wade

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk & Comptroller certify
this to be a true and correct copy of the original
filed in my office on APR 05 2005

dated at West Palm Beach, FL on 4-11-2005

By:


Deputy Clerk



2007 _____

Page 1 of 1

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
BUDGET Transfer

BGEX071207-1930

FUND Transportation Improvement

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 07/12/07	REMAINING BALANCE
<u>PROSPERITY FARMS RD IMPROVEMENTS – DIST 1</u>								
3500-361-0791-8101	Contributions Othr Govtl Agency	1,047,500	1,047,500	175,000	0	1,222,500	1,047,500	175,000
<u>RESERVE FOR DISTRICT 1</u>								
3500-368-9111-9907	Res-Future Construction	1,863,324	755,569	<u>0</u>	<u>175,000</u>	580,569		
				175,000	175,000			

SIGNATURE

DATE

By Board of County Commissioners
At Meeting of 07/24/07

Engineering & Public Works



7/12/07

Administration / Budget Approval

OFMB Department – Posted

Deputy Clerk to the
Board of County Commissioners