#### PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

#### **AGENDA ITEM SUMMARY**

Meeting Date:  Department:	July 8, 2008	[X]	Consent Workshop	[]	Regular Public Hearing
Submitted By: Submitted For:	Engineering & Publi Streetscape Section	ic Work	S		

#### I. EXECUTIVE BRIEF

# Motion and Title: Staff recommends motion to approve:

- A) A Financial Assistance Agreement with Baywinds Community Association, Inc. (Association), to provide reimbursement funding not to exceed \$150,000.
- B) A Budget Transfer of \$150,000 in the Transportation Improvement Fund from Reserve for District 2 to Acreage Access Road beautification from 1,100 feet north of Okeechobee Boulevard to 2,300 feet north of Okeechobee Boulevard.

**SUMMARY:** This item provides funding in an amount up to \$150,000 for the Association's installation of beautification adjacent to (within 25 feet of and visible from) Acreage Access Road right of way on Association property. After the installation, the Association will be responsible for perpetual maintenance of the beautification improvements.

District 2 (MRE)

**Background and Justification:** This project is deemed to be eligible for gas tax funding, and will enhance the appearance of this public roadway. The District 2 Commissioner has agreed to the use of District 2 Reserves for this purpose.

#### Attachments:

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

Recommended By:_	SA-40 Division Director	6/6/08-	L
Approved By:	County Engineer	6/11/08 Date	

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## 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	2008 \$150,000 -0- -0- -0- \$150,000	2009 -0- -0- -0- -0- -0- -0-	2010 -0- -0- -0- -0- -0-	2011 -0- -0- -0- -0- -0-	2012 -0- -0- -0- -0- -0- -0-
# ADDITIONAL FTE POSITIONS (Cumulative)					
Is Item Included in Current Budget Acct No.: Fund_ D Progr	ept Unit_	Yes Object		No <u>X</u> .	

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

Transportation Improvement Fund
Reserve for District 2
Acreage Access Rd Beaut/1,100' N of Okeechobee to 2,300' N

C.	Departmental Fiscal Review:	Olufo	
		UN	

### III. REVIEW COMMENTS

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

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OFMB SUND CN/100	Gontract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

This Contract complies with our contract review requirements.

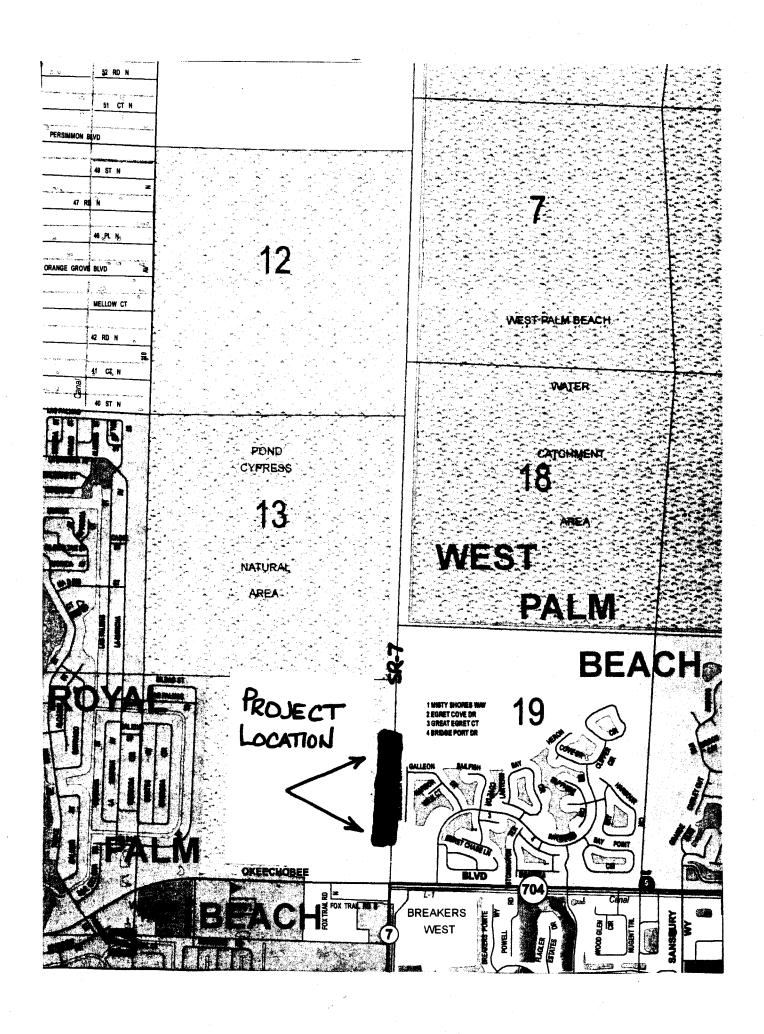
Morlone	Patt	6/23/08
Assistant C	ounty Attorney	- / - / - 0

C. Other Department Review:

Department	Director

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

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LOCATION SKETCH

	A	CORD CERTIFICER (954)315-5000	CATE OF LIAB	ILITY IN	SURANO	CE		ATE (MM/DD/YYYY)
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l		5200 Baywinds Drive	Group	INSURER B:	Travelers In	surance Company	$\dashv$	
		West Palm Beach, FL 334	417	INSURER C:			+	<del></del>
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©ACORD CORPORATION 1988

ATTACHMENT#

From:

Kim Ciklin

To:

Andrew Hertel, Owen Miley, Robert Ward

Date:

5/13/08 9:36 AM

Subject:

Baywinds /SR 7 Buffer

This will serve as Commissioner Koons' authorization to transfer \$150,000 from the District 2 Transportation Improvement Funds to the Baywinds Buffer project (as earmarked in 2006).

Thank you.

# FINANCIAL ASSISTANCE AGREEMENT WITH BAYWINDS COMMUNITY ASSOCIATION, INC., FOR BEAUTIFICATION ALONG ACREAGE ACCESS ROAD

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between BAYWINDS COMMUNITY ASSOCIATION, INC., a not-for-profit corporation of the State of Florida (Federal I.D. No.650963619), hereinafter "ASSOCIATION", and PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter "COUNTY".

#### WITNESSETH:

WHEREAS, ASSOCIATION wishes to install beautification on ASSOCIATION property, along (within 25 feet of and visible from) the east side of the right of way for Acreage Access Road, from approximately 1,100 feet north of Okeechobee Boulevard to approximately 2,300 feet north of Okeechobee Boulevard (a distance of approximately 1,200 feet), hereinafter "IMPROVEMENTS"; and

WHEREAS, COUNTY believes that these efforts by ASSOCIATION serve a public purpose in the enhancement of 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 2, in an amount not to exceed ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00); and

WHEREAS, after installation, ASSOCIATION will be responsible for the perpetual maintenance of the IMPROVEMENTS.

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

- 1. The above recitals are true, correct and are incorporated herein.
- 2. COUNTY agrees to provide to ASSOCIATION reimbursement funding from Board of County Commissioners Reserve for District 2, in an amount not to exceed ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00).

- 3. COUNTY agrees to reimburse ASSOCIATION the amount established in paragraph 2 for costs (materials and labor) associated with the installation of the IMPROVEMENTS, upon ASSOCIATION's submission of acceptable documentation 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 7, below.
- 4. COUNTY's obligation is limited to its payment obligation and COUNTY shall have no obligation to any other person or entity.
- 5. ASSOCIATION 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. ASSOCIATION agrees to install the IMPROVEMENTS substantially in accordance with the plans, specifications and costs as approved by COUNTY and by the City of West Palm Beach (hereinafter, "CITY"). ASSOCIATION 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 the final determination of the eligibility for reimbursement of any changes. Substantial variations from the approved plans shall require prior written approval from COUNTY Engineer's Office.
- 6. If prior to the commencement of the IMPROVEMENTS, ASSOCIATION determines that the cost of said IMPROVEMENTS will exceed COUNTY's reimbursement, ASSOCIATION shall have the right to not construct the IMPROVEMENTS and may terminate this AGREEMENT without prejudice, upon proper written notice to COUNTY as provided for herein.

7. 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 that the IMPROVEMENTS have been inspected and were installed substantially in accordance with the approved 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 ASSOCIATION. Said information shall list each invoice paid by ASSOCIATION and shall include the vendor invoice number, invoice date, and the amount paid by ASSOCIATION. ASSOCIATION shall attach a copy of each vendor invoice paid by ASSOCIATION 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 President of the 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.
- 8. 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 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.

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- 9. ASSOCIATION agrees to be responsible for the perpetual maintenance of the IMPROVEMENTS following their installation and shall be solely responsible for obtaining and complying with all necessary permits, approvals, and authorizations from any federal, state, regional, COUNTY or CITY agency which are required for the subsequent maintenance of the IMPROVEMENTS.
- 10. All installation of these IMPROVEMENTS shall be completed and final invoices submitted to COUNTY no later than June 30, 2009, 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.
- 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 ASSOCIATION, ASSOCIATION 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 judgments of any type whatsoever arising out of or relating to the existence of the IMPROVEMENTS or the performance by ASSOCIATION as may relate to this Agreement. ASSOCIATION agrees to pay all costs, attorney's fees and expenses incurred by COUNTY, its officers, employees, servants or agents in connection with such claims, liabilities or suits except as may be incurred due to the negligence of COUNTY.
- 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. 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).
- 14. 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.
- 15. 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.
- 16. ASSOCIATION's termination of this AGREEMENT shall result all obligations of COUNTY for funding contemplated herein to be canceled.
- 17. 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.
- 18. COUNTY may, at COUNTY's discretion and for the duration of IMPROVEMENTS, install signs within the public property or easement, notifying the public that the IMPROVEMENTS were funded with COUNTY dollars.

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- 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.
- 20. 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:

### 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, Baywinds Community Association, Inc. C/O Dicker, Krivok and Stoloff, P.A. 1818 Australian Avenue Suite 400 West Palm Beach, FL 33409

This Agreement shall be construed and governed by the laws of the

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or further exercise thereof.

State of Florida. Any and all legal action necessary to enforce this Agreement shall 24 be held in Palm Beach County. No remedy herein conferred upon any party is 25 intended to be exclusive of any other remedy, and each and every other remedy shall 26 be cumulative and shall be in addition to every other remedy given hereunder or now 27 or hereafter existing at law or in equity or by statute or otherwise. No single or 28 partial exercise by any party of any right, power, or remedy shall preclude any other 29

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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.

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- Except as expressly permitted herein to the contrary, no modification, 23. 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.
- Each party agrees to abide by all laws, orders, rules and regulations and 24. ASSOCIATION will comply with all applicable governmental landscaping codes in the maintenance and replacement of the IMPROVEMENTS.
- The parties to this Agreement shall not be deemed to assume any 25. 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.
- ASSOCIATION shall promptly notify COUNTY of any lawsuit-related 26. 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.
- The parties expressly covenant and agree that in the event any of the 27. 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.
- The preparation of this Agreement has been a joint effort of the parties, 28. 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.
- ASSOCIATION has the authority to enter into this Agreement, and to 29. perform the obligations contained herein.
- This Agreement represents the entire understanding among the parties, 30. and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.
- A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

32. This Agreement shall take effect upon execution and the effective date

shall be the date of execution.

INTENTIONALLY LEFT BLANK

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

(ASSOCIATION SEAL)  BAYWINDS COMMUNITY ASSOCIATION, INC. BY ITS BOARD OF DIRECTORS  ATTEST:  By: ASSOCIATION SECRETARY  APPROVED AS TO FORM AND LEGAL SUFFICIENCY  By: ASSOCIATION ATTORNEY  PALM BEACH COUNTY  (COUNTY SEAL)  PALM BEACH COUNTY COMMISSIONE  ATTEST:  SHARON R. BOCK, CLERK & COMPTROLLER	
(ASSOCIATION SEAL)  BAYWINDS COMMUNITY ASSOCIATION, INC. BY ITS BOARD OF DIRECTORS  ATTEST:  By: ASSOCIATION SECRETARY  APPROVED AS TO FORM AND LEGAL SUFFICIENCY  By: ASSOCIATION ATTORNEY  PALM BEACH COUNTY  (COUNTY SEAL)  PALM BEACH COUNTY, FLORIDA, E BOARD OF COUNTY COMMISSIONE  ATTEST: SHARON R. BOCK, CLERK	
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By:	
DEPUTY CLERK ADDIE L. GREENE, CHAIRPERSO	4
APPROVED AS TO FORM AND LEGAL SUFFICIENCY	
у:	
ASSISTANT COUNTY ATTORNEY	
APPROVED AS TO TERMS AND CONDITIONS	
BY: ME DELLE CONDITIONS	

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Exhibit A

# PALM BEACH COUNTY ENGINEERING & PUBLIC WORKS DEPARTMENT CONTRACT PAYMENT REQUEST

	(Project)						
Grantee	Request Date						
Billing #	Billing	Billing Period					
PR	OJECT PAYMENT S	UMMARY					
Item	Project Costs This Billing	Cumulative Project Costs	Total				
Consulting Services			Project Costs				
Contractual Services		-					
Materials, Supplies, Direct Purchases							
Grantee Stock							
Equipment, Furniture							
TOTAL PROJECT COSTS		_					
Certification: I hereby certify that the above were incurred for the work identified as being accomplished in the attached progress reports.	tation h the proj	Certification: I hereby certi as been maintained as requi ect expenses reported above able for audit upon request.	red to support				
Administrator/Date		Financial Officer/Date					
		<u> </u>					
Administrator/Date PBC USE ONLY		<u> </u>					
PBC USE ONLY		Financial Officer/Date					
PBC USE ONLY  County Funding Participation		<u> </u>					
		Financial Officer/Date					
PBC USE ONLY  County Funding Participation  Total Project Cost  Total project costs to date		Financial Officer/Date					
PBC USE ONLY  County Funding Participation  Total Project Cost  Total project costs to date  County obligation to date		Financial Officer/Date  S  S  S  S					
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PBC USE ONLY  County Funding Participation  Fotal Project Cost  Fotal project costs to date  County obligation to date  County retainage (%)  County funds previously disbursed  County funds due this billing		Financial Officer/Date					
PBC USE ONLY  County Funding Participation  Total Project Cost  Total project costs to date  County obligation to date  County retainage (%)  County funds previously disbursed  County funds due this billing	oject Administrator/Dat	S					
PBC USE ONLY  County Funding Participation  Total Project Cost  Total project costs to date  County obligation to date  County retainage (%)  County funds previously disbursed  County funds due this billing  Reviewed and Approved by:  PBC Pro		S					

# PALM BEACH COUNTY ENGINEERING & PUBLIC WORKS DEPARTMENT CONTRACTUAL SERVICES PURCHASE SCHEDULE

		(Project)			
	Grantee		Billing Date		
	Billing #		Billing Period	<del></del>	
Contractor Name	Contractor Invoice Number and date	City Check or Voucher Number and date	Project Amount Paid this period	General Description	
		TOTAL			
Certification: I hereby certify that the purchase bove were used in accomplishing the project.	e(s) noted	· · · · ·	icces, and other purchasing doci	nt bid tabulations, executed contract can umentation have been maintained as re we and are available for audit upon requ	arrivad
dministrator/Date		Fi	nancial Officer/Date		

2008				•		·	Page <u>1</u> of <u>1</u>	
		В	OARD OF COUNTY PALM BEAC BUDGET		RS		BGEX 051408-	.2742
			FUND Transpor	<u>tation Improvement</u>			DGE21 031400-	-
ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 05/14/08	REMAINING BALANCE
ACREAGE ACCESS RD B 3500-368-1282-8201 Contr	BEAUT/1,100' N OF OKEE ributions-Non-Govtl-Agncy	0	0	150,000	0	150,000	0	150,00
RESERVES FOR DISTRIC 3500-368-9112-9907 Res-F		1,778,489	278,725	0	<u>150,000</u>	128,725		
				150,000	150,000			
		SIGNATURE		DATE		By Board	d of County Commis	
Engineering & Public W	vorks	6	Tuff		129/08	THE TYROUGH	ug 0107/08/08	
Administration / Budget	Approval		U					
OFMB Department – Po	osted					Danutr	Cloub 40 4b	

# ATTACHMENT #5

Deputy Clerk to the Board of County Commissioners