

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: September 23, 2008	<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: County Engineer

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Subject to receipt of appropriate insurance documents.

- A) A Financial Assistance Agreement with Arborwood Villas Homeowners Association to provide reimbursement funding not to exceed \$6,000 for repair of its portion of the Palmetto Park Road safety/noise barrier wall.
- B) A Financial Assistance Agreement with Arborwood Homeowners Association to provide reimbursement funding not to exceed \$40,000 for repair of its portion of the Palmetto Park Road safety/noise barrier wall.
- C) A Financial Assistance Agreement with Cricklewood Property Owners Association to provide reimbursement funding not to exceed \$20,000 for repair of its portion of the Palmetto Park Road safety/noise barrier wall; and
- D) A Budget Transfer of \$66,000 in the Transportation Improvement Fund from Reserves – Road Program Sweeps to Palmetto Park Road Safety Barrier/Noise Wall Repair. Florida Power and Light provided \$125,000 in FY2004 for Palmetto Park Road projects in District 5 and the funds were rolled into Sweeps Reserves.

SUMMARY: These Agreements replace an agreement with the Palmetto Park Road Civic Association (PPRCA) dated August 11, 1987 (R-87-1224) and provide funding to reimburse the Associations a maximum of \$6,000 to Arborwood Villas; \$40,000 to Arborwood; and \$20,000 to Cricklewood for the cost to repair the safety/noise barrier wall (Wall) within the Palm Beach County's (County) right-of-way for Palmetto Park Road adjacent to each Association's property. Each Association will be responsible for the repair and perpetual maintenance of the Wall.


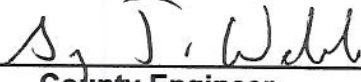
District 5 (MRE)

Background and Justification: In order to promote the health, safety and welfare of the public, the Palmetto Park Road Civic Association (PPRCA), with approval and financial assistance from the County, installed the Wall in 1987 within the right-of-way of Palmetto Park

(Continued on Page 3)

Attachments:

- 1. Location Sketch
 - 2. Commissioner Authorization
 - 3. 1987 Agreement
 - 4. Insurance Certificate
 - 5. Agreements with Exhibit "A" (9)
 - 6. Budget Transfer
- =====

Recommended By: _____		for	9/10/08
	Division Director		Date
Approved By: _____			9/15/08
	County Engineer		Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Grant Expenditures	\$66,000	-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	\$66,000	-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
Reserves-Road Program Sweeps
Palmetto Park Road Safety Barrier/Noise Wall Repair

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

 9-17-08
OFMB SD 9/14/08 EN 9/15/08

 9/19/08
Contract Dev. and Control
E. Jones 9/18/08

B. Approved as to Form and Legal Sufficiency:

 9/22/08
Assistant County Attorney

These contracts comply
with our review requirements.
At the time of our review
the contracts were not
executed - the certificates
of insurance will be
obtained by Engineering.

C. Other Department Review:

Department Director

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

Background and Justification (Continued from Page 1)

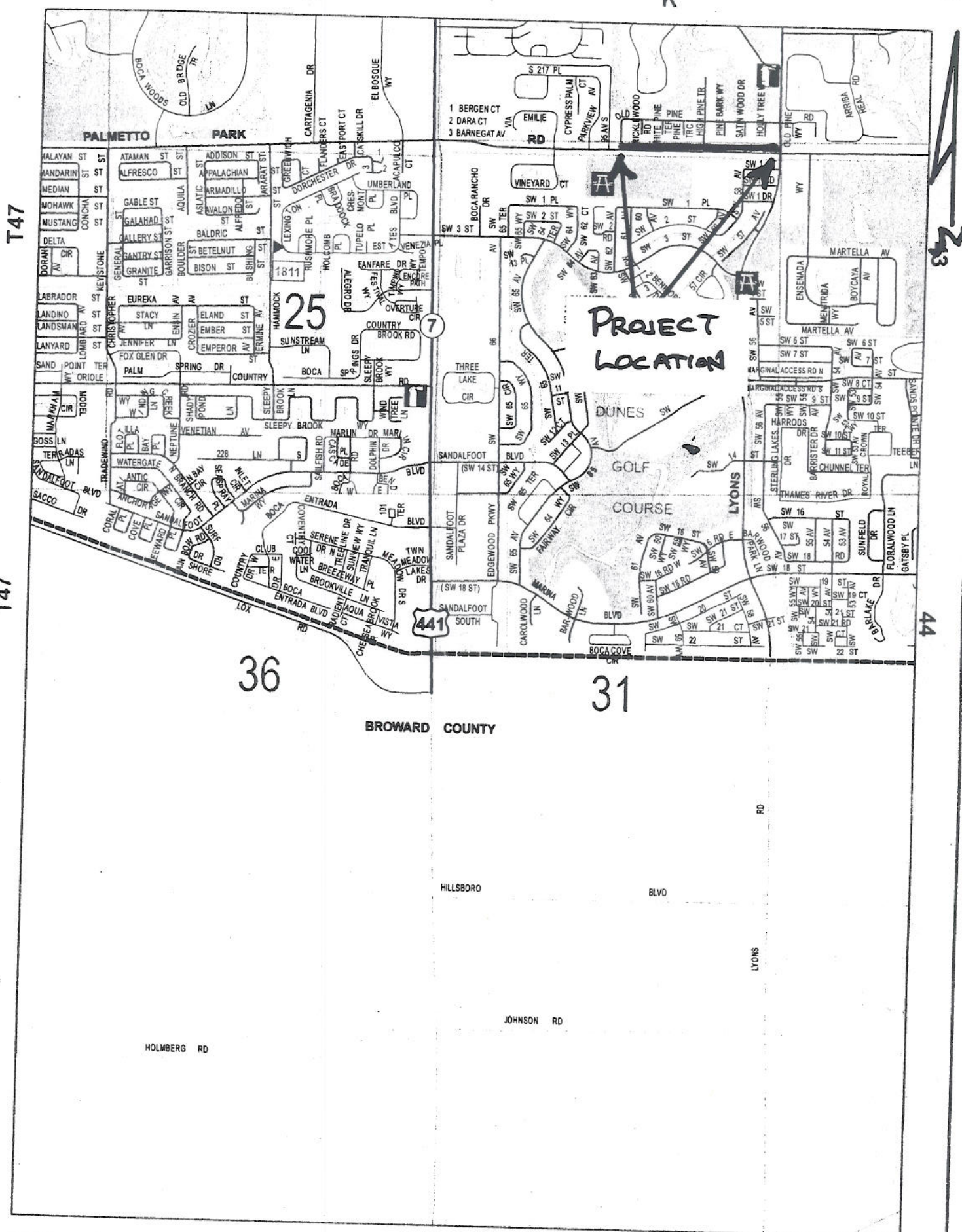
Road pursuant to an Agreement with the County. During the 2004 hurricane season, the Wall was severely damaged. The three Associations that comprised the PPRCA approached the County for assistance to repair the Wall. They also proposed that the agreement with the PPRCA be converted into separate agreements with each of the three developments, Arborwood Villas, Arborwood and Cricklewood, to repair and maintain the portion of the Wall adjacent to each of the developments. These agreements provide for each Association to assume the responsibilities of the PPRCA and to repair and perpetually maintain the Wall as three separate entities. This project is eligible for reimbursement from FPL funds contributed to enhance the appearance of this public roadway.

R41

See pg 120

R42

K



BROWARD COUNTY

HILLSBORO

BLVD

JOHNSON RD

HOLMBERG RD

No Cont. map

K

LOCATION SKETCH

Andrew Hertel

From: Vivian Leiva
Sent: Wednesday, September 10, 2008 2:29 PM
To: Andrew Hertel
Subject: FPL/Palmetto Park Road

Andy,

Commissioner Aaronson has authorized the transfer of \$66,000 from District Five Gas Tax for the FPL mitigation funds/District 5-Palmetto Park Road beautification project.

Thanks.

Vivian E. Leiva

Senior Administrative Assistant
to Commissioner Burt Aaronson

COMMISSIONER AUTHORIZATION

S.D. TRACee; "RES PALMETTO BARRIER WALL AGMT"

RESOLUTION NO. R-87-1224

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION
R-87-838, PROVIDING FOR GRANTING OF A LICENSE
AGREEMENT, PROVIDING FOR FUNDING TO THE PALMETTO PARK
ROAD CIVIC ASSOCIATION FOR THE ERECTION OF A SAFETY
BARRIER/NOISE WALL ALONG PALMETTO PARK ROAD

*Palmetto
Park Barrier
Wall*

WHEREAS, the Board of County Commissioners of Palm Beach County has determined that it is in the best interest of the health, safety, and welfare of the citizens of Palm Beach County to provide for the safety of the motoring public as well as the safety of the residents within Palmetto Park Road Civic Association, Inc.; and

WHEREAS, the Board of County Commissioners adopted Resolution No. R-87-838 on June 18, 1987 approving an agreement with the Palmetto Park Road Civic Association, Inc.; and

WHEREAS, it is appropriate to amend said agreement in the form annexed; and

WHEREAS, the County Engineer has determined that it will result in a cost saving to the County by granting a license to the Palmetto Park Road Civic Association, Inc. to construct a safety/noise barrier wall and that the public safety will be best served by granting a license to the Palmetto Park Road Civic Association, Inc. for the erection of a safety/noise barrier wall within the northernmost four (4) feet of the public right-of-way for Palmetto Park Road, running approximately 3,700 feet along the northern perimeter of the Palmetto Park Road extension abutting the Arborwood, Arborwood Villas and Cricklewood subdivision plats, west of the Florida Turnpike; and

WHEREAS, the Palmetto Park Road Civic Association, Inc. a not-for-profit Florida corporation, has been established to represent the interests of residents of the Arborwood, Arborwood Villas and Cricklewood subdivisions for the purpose of constructing, maintaining and insuring the Palmetto Park Road safety/noise barrier; and

WHEREAS, the Association will enter into a contract with a private contractor for the construction of the wall in accordance with the design, plans and specifications prepared by and for the Association; and

WHEREAS, the Association has agreed to require that the contractor selected will indemnify, save and hold harmless Palm Beach County from and against any and all claims, liability, suits and

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SEP 10 2008

E.S. TRACES; "PALMETTO BARRIER WALL AGMT"

judgments and legal expenses arising as a result of construction of said wall; and

WHEREAS, the Association has agreed independently to provide that its insurance coverage or insurance obtained by it will run to the benefit of Palm Beach County as an additional insured or as a named

insured for any and all liability arising out of construction of said barrier wall and will maintain adequate liability insurance on the County's behalf so long as the wall remains on County right-of-way; and

WHEREAS, Palm Beach County will make available the sum of \$180,000.00 for the construction of the wall, and desires to enter into an agreement providing for said funding as well as for progress payments during the course of construction; and

WHEREAS, the Board of County Commissioners has or will initiate an assessment procedure wherein each of the lot owners of the Arborwood, Arborwood Villas and Cricklewood subdivisions will be assessed uniformly within each subdivision to reimburse the County for \$90,000 of the cost of constructing the safety/noise barrier; and

WHEREAS, the Board of County Commissioners has determined that a valid public purpose will be served by permitting the construction and maintenance of said wall on its right-of-way.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that the Chairman and Clerk are authorized, in their respective capacities, to execute the agreement attached hereto, for the construction of the safety/noise barrier wall along Palmetto Park Road.

The foregoing resolution was offered by Commissioner Adams who moved its adoption. The motion was seconded by Commissioner Marcus and upon being put to a vote, the vote was as follows:

CAROL A. ROBERTS	-	NAY
KEN ADAMS	-	AYE
KAREN MARCUS	-	AYE
CAROL ELMQUIST	-	NAY
DOROTHY H. WILKEN	-	AYE

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8.5.7RACmej "RES PALMETTO BARRIER WALL AGMT"

The Chair thereupon declared the resolution duly passed and adopted this 11th day of August, 1987.

APPROVED-AS TO FORM AND
LEGAL SUFFICIENCY

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

John B. Dunkle, Clerk

By _____
County Attorney

By Lisa E. Dancy
Deputy Clerk

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8.5.7RAC "PALMETTO LICENSE/FUNDING AGMT"

LICENSE AND FUNDING AGREEMENT

THIS AGREEMENT which is entered into this 11th day of August, 1987, by and between PALM BEACH COUNTY (COUNTY) having its principal place of business at 301 North Olive Avenue, West Palm Beach, Florida 33401 and the PALMETTO PARK ROAD CIVIC ASSOCIATION, INC. having its principal place of business at 2000 Palm Beach Lakes Boulevard, Suite 800, West Palm Beach, Florida 33409.

WHEREAS, the Board of County Commissioners of Palm Beach County has determined that it is in the best interest of the health, safety, and welfare of the citizens of Palm Beach County to provide for the safety of the motoring public as well as the safety of the residents within Palmetto Park Road Civic Association, Inc. to construct a safety/noise barrier and said safety is a valid public purpose; and

WHEREAS, the County Engineer has determined that it will result in a cost saving to the County to have the Palmetto Park Road Civic Association, Inc. to construct the safety/noise barrier wall and that the public safety will be best served by granting a license to the Palmetto Park Road Civic Association, Inc. for the erection of a safety/noise barrier wall within the northernmost four (4) feet of the public right-of-way for Palmetto Park Road, running approximately 3,700 feet along the northern perimeter of the Palmetto Park Road extension abutting the Arborwood, Arborwood Villas and Cricklewood subdivision plats, west of the Florida Turnpike; and

WHEREAS, the Palmetto Park Road Civic Association, Inc. a not-for-profit Florida corporation, has been established to represent the interests of residents of the Arborwood, Arborwood Villas and Cricklewood subdivisions for the purpose of constructing, maintaining and insuring the Palmetto Park Road safety/noise barrier; and

WHEREAS, the Association intends to enter into a contract with a private contractor for the construction of the wall in accordance with the design, plans and specifications prepared by and for the Association; and

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8.5.7RAG "PALMETTO LICENSE/FUNDING AGMT"

WHEREAS, the Association has agreed to require that the contractor selected will indemnify, save and hold harmless Palm Beach County from and against any and all claims, liability, suits, judgments and legal expenses arising as a result of construction of said wall; and

WHEREAS, the Association has agreed independently to provide that its insurance coverage or insurance obtained by it will run to the benefit of Palm Beach County as an additional insured or as a named insured for any and all liability arising out of construction of said barrier wall and to maintain adequate liability insurance coverage so long as the wall remains on COUNTY right-of-way; and

WHEREAS, Palm Beach County will make available the sum of \$180,000 for the construction of the wall, and desires to enter into an agreement providing for said funding as well as for progress payments during the course of construction.

WHEREAS, the Board of County Commissioner has or will initiate an assessment procedure wherein each of the lot owners of the Arborwood, Arborwood Villas and Cricklewood subdivisions will be assessed uniformly by subdivision to reimburse the County for \$90,000 of the cost of constructing the safety/noise barrier.

NOW, THEREFORE, in consideration of \$10.00 paid by ASSOCIATION to COUNTY and the mutual premises and covenants contained herein, the parties agree as follows:

1. The recitals hereinabove set forth are incorporated by reference herein.

2. PALM BEACH COUNTY (COUNTY) hereby grants to the ASSOCIATION a license to construct and maintain a 3,700± foot wall within the public right-of-way for Palmetto Park Road described in paragraph 3 below.

3. ~~PALMETTO PARK ROAD CIVIC ASSOCIATION, INC. (ASSOCIATION)~~ immediately upon execution of this agreement will undertake to contract for the construction and erection of a safety/noise barrier wall within the last or northernmost four (4) feet of the public right-of-way for Palmetto Park Road, running along approximately 3,700 feet along the northern perimeter of the Palmetto Park Road extension west of the Florida Turnpike abutting the Arborwood, Arborwood Villas and Cricklewood plats.

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B.5.1RAG "PALMETTO LICENSE/FUNDING AGMT"

4. The ASSOCIATION shall be responsible for the design as well as the preparation of the plans and specification for the wall to be constructed pursuant to this agreement.

5. ASSOCIATION acknowledges that there are certain utility easements existing along the northerly line of the Arborwood, Arborwood Villas and Cricklewood subdivisions plats and agrees to accommodate all utilities in the placement and maintenance of all equipment within said utilities including placement of equipment on, under or above the wall to be constructed and shall be responsible for making arrangements to permit said utilities to utilize the easement so granted.

6. ASSOCIATION shall require that any contractor entering into a contract with it for the construction of the wall will enter into an agreement with ASSOCIATION whereby contractor agrees to indemnify, save and hold harmless PALM BEACH COUNTY from and against any and all claims, liability, suits, judgments and legal expenses arising out of or as a result of construction of the wall.

7. ASSOCIATION agrees that it will take out, maintain and keep in effect a policy of comprehensive general liability insurance with coverage running to the benefit of PALM BEACH COUNTY either independently or as an additional insured party in single limits no less than One Million Dollars (\$1,000,000.00) for damages, including personal injury and property damage for any and all liability arising out of construction of the barrier wall. Evidence of the required insurance coverages must be furnished to the County Engineer prior to the commencement of any work pursuant to this contract.

8. Upon final completion of the wall the ASSOCIATION shall take out and maintain combined single limit comprehensive general liability insurance naming PALM BEACH COUNTY as an additional insured party for damages, including personal injury and property damage in an amount no less than One Million Dollars (\$1,000,000.00) and shall continue to maintain and pay for said policy for the period of time that the wall remains on the COUNTY right-of-way. COUNTY reserves the right to require that the limits of insurance be increased from time to time in the discretion of the Director of Risk Management of Palm Beach County. Evidence of the required insurance must be furnished to the County Engineer upon the issuance of substantial completion of the wall or its

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8.5.7RAG "PALMETTO LICENSE/FUNDING AGMT"

equivalent and shall thereafter be furnished to the Director of Risk Management within ten (10) days of demand.

9. All insurance policies required hereunder must be endorsed so that thirty (30) days notification of cancellation and any material changes in coverage shall be provided to the Board of County

Commissioners of Palm Beach County. All insurance policies shall be in such form and with such insurer as may be acceptable to COUNTY. In the event the coverages required hereunder lapse or are terminated, the COUNTY shall have the right but not the obligation to purchase similar insurance and ASSOCIATION agrees to indemnify COUNTY for the cost of any premium together with administrative expenses. ASSOCIATION agrees to be sued for any premium paid by COUNTY and unreimbursed by ASSOCIATION for a period of sixty (60) days and shall pay any judgment rendered.

10. COUNTY shall have the right to remove, relocate, or demolish the wall constructed hereunder without cause upon the giving of sixty (60) days written notice to ASSOCIATION. ASSOCIATION agrees to pay the cost of removal, relocation or demolition.

11. This agreement and license may not be assigned without prior written consent of the COUNTY.

12. COUNTY shall make available the sum of One Hundred Eighty Thousand Dollars (\$180,000.00) toward the construction of the wall and shall honor progress payments for said construction after first being approved by the County Engineer.

13. In the event the cost of the construction of said wall exceed the sum of One Hundred Eighty Thousand Dollars (\$180,000.00) the ASSOCIATION agrees to fund the additional costs in its entirety and further agrees that it will complete the wall. In the event the ASSOCIATION fails to complete the wall, it agrees to indemnify COUNTY for any costs incurred by COUNTY in completion of same.

14. ASSOCIATION shall in its contract with contractor provide that contractor will conform to all federal, state, and local laws and ordinances and observe and obtain the necessary permits for the construction of said wall.

15. This agreement constitutes the entire agreement between the parties and the parties hereby agree that it shall be interpreted in accordance with the laws of the State of Florida.

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8.5.7RAC "PALMETTO LICENSE/FUNDING AGMT"

IN WITNESS WHEREOF the parties hereto have set their hands and official seals on the date first above written.

ATTEST:

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

John B. Dunkle, Clerk

By John E. Doney
Deputy Clerk
(SEAL)

By Carol A. Hester
Chair
AUG 11 1987

ATTEST:

PALMETTO PARK ROAD CIVIC ASSOCIATION, INC.

By Abraham L. Kaufman
Corporation Secretary
(SEAL)

By W. D. Hill vice president
President

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY _____
County Attorney

DRAFT

DRAFT

**REIMBURSEMENT AGREEMENT
BETWEEN PALM BEACH COUNTY AND
ARBORWOOD HOMEOWNERS ASSOCIATION, INC.
FOR REPAIR OF A SAFETY BARRIER/NOISE WALL
WITHIN THE COUNTY RIGHT OF WAY OF
PALMETTO PARK ROAD ADJACENT TO THE
ARBORWOOD SUBDIVISION**

THIS REIMBURSEMENT AGREEMENT is made and entered into this _____ day of _____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "**COUNTY**", the **ARBORWOOD HOMEOWNER'S ASSOCIATION**, a Florida non-profit corporation hereinafter referred to as "**ASSOCIATION**".

DRAFT
WITNESSETH:

WHEREAS, The Palmetto Park Road Civic Association, a not-for-profit Florida Corporation was established to represent the interests of the residents of Arborwood, Arborwood Villas and Cricklewood subdivisions, hereinafter collectively referred to as "Subdivisions", for the purpose of funding , constructing, maintaining and insuring the Palmetto Park Road safety/noise barrier wall, hereinafter "Barrier Wall": and

WHEREAS, On June 18, 1987, the **COUNTY** and the Palmetto Park Road Civic Association entered into an agreement addressing the parties responsibilities regarding the Barrier Wall hereinafter "Original Agreement"; and

WHEREAS, The **ASSOCIATION** represents the interests of the residents of Arborwood and is authorized to enter into this agreement for the purpose of funding, repairing, maintaining and insuring the "Barrier Wall"; and

WHEREAS, The Palmetto Park Road Civic Association requested and the **COUNTY** agreed that the Original Agreement be replaced and superseded and that each Subdivision be allowed to enter into a separate agreement and assume responsibility for the Barrier Wall adjacent to its Subdivision; and

WHEREAS, the **COUNTY** has now determined that replacing the Original Agreement with a separate agreement with the individual Subdivisions will result in cost savings and more efficient use of time and resources for the County; and

WHEREAS, the **ASSOCIATION** in addition to the obligations set forth herein, is willing to be responsible for the obligations of the Palmetto Park Road Civic Association under the Original Agreement as restated here and undertake hurricane related repairs to the Barrier Wall in the **COUNTY** right of way along Palmetto Park Road adjacent to Arborwood, hereinafter "Repairs"; and

WHEREAS, the **COUNTY** believes that these efforts by the **ASSOCIATION** serve a public purpose in the enhancement of driver safety and wishes to support the **ASSOCIATION'S** efforts to make the Repairs by providing a one-time reimbursement using funds contributed by Florida Power and Light Company for the documented cost of Repairs in an amount not to exceed **FORTY THOUSAND DOLLARS (\$40,000)**; and

WHEREAS, after making the Repairs, the **ASSOCIATION** will be responsible for the perpetual maintenance, repair, replacement or removal of the Barrier Wall.

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 incorporated herein.
2. This agreement supersedes any and all prior agreements pertaining to the subject matter of this agreement, including, without limitation The Original Agreement entered into on June 18, 1997 (R-87-1224) and sets forth the parties respective responsibilities as it relates to the funding, repair and maintenance of the Barrier Wall.

3. **COUNTY'S Obligations:**

A. The **COUNTY** hereby grants the Association permission to repair the Barrier Wall located within the northernmost four (4) feet of the **COUNTY** right of way running approximately 1267 feet along the northern perimeter of Palmetto Park Road and abutting to the **ASSOCIATION'S** property.

B. The **COUNTY** agrees to provide to the **ASSOCIATION** reimbursement funding for documented costs of the Repairs using Florida Power and Light Company provided funds in an amount not to exceed **FORTY THOUSAND DOLLARS (\$40,000)**. In the event the cost of the Repair of said wall exceeds this amount, the **ASSOCIATION** agrees to fund the additional costs in its entirety and further agrees that it will complete

the repair of the Barrier Wall. Should the **ASSOCIATION** fail to complete the wall, it agrees to pay any additional costs incurred by the **COUNTY** to remove or repair (at its sole option) the Barrier Wall.

C. The **COUNTY** agrees to reimburse the **ASSOCIATION** the amount established in paragraph 3B for costs (material and labor) associated with the Repairs, whether performed prior to or after execution of this agreement, upon the **ASSOCIATIONS'** submission of acceptable documentation needed to substantiate its costs for the Repairs. The **COUNTY** will use its best efforts to provide said funds to the **ASSOCIATION** on a reimbursement basis within forty-five (45) days of receipt of all information required in paragraph 4C, below.

D. The **COUNTY'S** obligation is limited to its payment obligation and shall have no obligation to any other person or entity.

E. As it relates to this agreement, the **COUNTY** may initiate a financial systems analysis and/or an internal fiscal control evaluation of the **ASSOCIATION** by an independent auditing firm employed by the **COUNTY** or by the **COUNTY'S** Internal Audit Department at any time the **COUNTY** deems necessary.

F. **COUNTY** shall have the right to remove, relocate, or demolish the wall constructed hereunder without cause, upon giving sixty (60) days written notice to the **ASSOCIATION**.

4. **ASSOCIATIONS' Obligations:**

A. The **ASSOCIATION** acknowledges that it is the authorized representative and governing body of the Arborwood Homeowner's Association pursuant to the Declarations of Covenants, Bylaws and Restrictions for the **ASSOCIATION** hereinafter "Documents" and that nothing in the Documents or at law prevents the Association from assuming the obligations of this agreement.

B. The **ASSOCIATION** agrees to assume all responsibility for design, bidding, contract preparation, and contract administration for the

Repairs, including payment(s) to contractor(s) pursuant to all applicable governmental laws and regulations.

C. The **ASSOCIATION** will obtain or provide all labor and materials necessary for the Repair. The **ASSOCIATION** shall furnish to the **COUNTY'S** representative a request for payment supported by the following:

1. Contract Payment Request Form and a Contractual Services Purchases Schedule Form, attached hereto and incorporated herein as Exhibit "A" (pages 1 & 2), which are required for each and every reimbursement to the **ASSOCIATION**. Said information shall list each invoice payable by the **ASSOCIATION** and shall include the vendor invoice number, invoice date, and the amount payable by the **COUNTY**. The **ASSOCIATION** shall attach a copy of each vendor invoice paid by the **ASSOCIATION** along with a copy of the respective cancelled check and shall make reference thereof to the applicable item listed on the Contractual Services Purchases Schedule Form. Further, the **ASSOCIATION's** Financial Officer shall also certify that each invoice listed on the Contractual Services Purchases Schedule Form was paid by the **ASSOCIATION** as indicated.

2. The **ASSOCIATION** shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations from any federal, state, regional, county or agency which are required for installation of the Repairs and agrees to be responsible for the perpetual maintenance of the Barrier Wall following the Repairs.

D. The **ASSOCIATION** acknowledges that there are certain utility easements existing along the Northerly line of Association property and agrees to accommodate all utilities in the placement and maintenance of all equipment within said utilities easements, including the placement of equipment under or above the Barrier Wall to be

repaired and shall be responsible for making arrangements to permit said utilities to utilize the easement so granted.

E. **Insurance.**

1. The **ASSOCIATION** shall, at its sole expense, agree to maintain in full force and effect at all times during the existence of the Barrier Wall and the life of this agreement, insurance coverage and limits (including endorsements), as described herein and prior to execution by the Board of County Commissioners of Palm Beach County, provide evidence of the insurance required herein. **ASSOCIATION** shall agree to provide the **COUNTY** with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverage. The requirements contained herein, as well as **COUNTY'S** review or acceptance of insurance maintained by **ASSOCIATION** are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the **ASSOCIATION**.
2. **ASSOCIATION** shall maintain Commercial General Liability at a limit of liability not less than \$500,000 each occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by the **COUNTY'S** Risk Management Department. **ASSOCIATION** shall provide this coverage on a primary basis.
3. **ASSOCIATION** shall endorse the **COUNTY** as an Additional Insured with a CG 2026 Additional Insured – Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents". **ASSOCIATION** shall provide the Additional Insured endorsements coverage on a primary basis.

4. In addition to the above insurance requirement, the **ASSOCIATION** shall require each contractor engaged by the **ASSOCIATION** for work associated with this agreement to maintain:
 - (a) Workers' Compensation and Employers Liability coverage in accordance with Florida Statutes Chapter 440, and;
 - (b) Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than \$1,000,000.00. The **COUNTY** shall be included in the coverage as an additional insured;
 - (c) Business Auto Insurance with limits of not less than \$1,000,000.00 each accident.
 - (d) A payment and performance bond for the total amount of the Repairs in accordance with Section 255.05, Florida Statute.
5. The **COUNTY** reserves the right to require that the limits of the insurance required hereunder be increased from time to time in the discretion of the Director of the **COUNTY'S** Risk Management Department.
6. All insurance policies required hereunder, must be endorsed so that thirty (30) days notification of cancellation and any material changes in coverage shall be provided to the **COUNTY**.

5. **Public Entity Crimes.** As provided in Section 287.132-133, Florida Statutes, by entering into this agreement or performing any work in furtherance hereof, the **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 Section 287.133(3)(a), Florida Statutes.

6. **Third Party Beneficiaries.** This agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns,

and no other person shall have any rights, interests, or claims hereunder or be entitled to any benefits under or on account of this agreement as a third-party beneficiary or otherwise.

7. **Compliance With Regulations.** The **ASSOCIATION** shall comply with all laws, ordinances and regulations applicable to the provisions of this agreement. **ASSOCIATION** is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the performance of the obligations under this agreement.

8. **Independent Contractor Relationship.** The **ASSOCIATION** is, and shall be, in the performance of all work services and activities, under this agreement, an Independent Contractor, and not an employee, agent, or servant of the **COUNTY**. All persons engaged in any of the work or services performed pursuant to this agreement, shall at all times, and in all places, be subject to the **ASSOCIATION'S** sole direction, supervision, and control. The **ASSOCIATION** shall exercise control over the means and manner in which it and its employees, agents or contractor perform the work, and in all respects the **ASSOCIATION'S** relationship and the relationship of its employees, agents, or contractor to the **COUNTY** shall be that of an Independent Contractor and not as employees or agent to the **COUNTY**. The **ASSOCIATION** does not have the power or authority to bind the **COUNTY** in any promise, agreement or representation.

9. **Indemnity.** In the event a claim or lawsuit is brought against **COUNTY** or any of its officers, agents, employees, **ASSOCIATION** shall indemnify, save and hold harmless and defend **COUNTY**, its officers, agents, and/or employees from and against any and all claims, liabilities, losses, judgments and/or causes of action of any type arising out of or relating to any intentional or negligent act or omission of **ASSOCIATION**, its agents, servants, and/or employees in the performance of this agreement. The foregoing indemnification shall survive termination of this agreement. In consideration for reimbursement of costs incurred prior to the term of this agreement, the foregoing indemnification shall apply not only during the term of this agreement but also apply for the period prior to the agreement for which **ASSOCIATION** is eligible to receive reimbursement from **COUNTY**.

10. **Successors and Assigns.** The Association shall not assign, sublet, convey or transfer its interest in this agreement without the prior written consent of the **COUNTY**.

11. **Severability.** If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this agreement, or the application of such term or provision, to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this agreement shall be deemed valid and enforceable to the extent permitted by law.

12. **Access and Audits.** The **ASSOCIATION** shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the Repairs for at least three (3) years after completion or termination of the agreement. The **COUNTY** shall have access to such books, records and documents as required in this section for the purpose of inspection or audit during normal business hours.

13. **Termination.** In the event of termination, the **ASSOCIATION** shall not be relieved of liability to the **COUNTY** for damages sustained by the **COUNTY** by virtue of any breach of the agreement by the **ASSOCIATION**; and the **COUNTY** may withhold any payment to the **ASSOCIATION** for the purpose of set-off until such time as the exact amount of damages due the **COUNTY** is determined. The **ASSOCIATION'S** termination of this agreement will require removal of the Barrier Wall by the **ASSOCIATION** and will result in all obligations of the **COUNTY** for funding contemplated herein to be cancelled.

14. **Non-Discrimination.** The **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 this agreement.

15. **Completion Date.** Completion of the Repairs shall be completed and final invoices submitted to the **COUNTY** no later than September 30, 2010, and the **COUNTY** shall have no obligation to the **ASSOCIATION** or any other entity or person for any cost incurred thereafter unless the time for completion is extended by modification of this agreement.

16. **Notice.** 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 paid, to the following:

AS TO THE COUNTY

Engineering and Public Works Department
Tanya N. McConnell, P.E.
Deputy County Engineer
P.O. Box 21229
West Palm Beach, Florida 33416-1229

AS TO THE ASSOCIATION

Arborwood Homeowner's Association, Inc.
Mr. Steven Ciano, President
21893 High Pine Trail
Boca Raton, Florida 33428

17. **Remedies.** This agreement shall be construed and governed by the laws of the State of Florida. Any 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 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.

18. **Costs.** 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.

19. **Modifications.** 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.

20. **Limitations on County Liability:** The **COUNTY** 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 the COUNTY, of the liability limits established in Section 768.28, Florida Statutes.

21. **Notice of Lawsuits.** Each party shall promptly notify the other 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.

22. **Default.** The parties expressly covenant and agree that in the event any of the parties are 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.

23. **Construction.** 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.

24. **Entirety of Contractual Agreement.** This agreement represents the entire understanding among the parties, and supercedes all other negotiations, or agreements, either written or oral, relating to this agreement.

25. **Filing.** A copy of this agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

26. **Effective Date.** This agreement shall take effect upon execution and the effective date shall be the date of execution.

REMAINDER OF PAGE LEFT BLANK

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

ATTEST:	PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS
SHARON R. BOCK CLERK & COMPTROLLER	

By: _____ Deputy Clerk	By: _____ Chair
---------------------------	--------------------

ATTEST:	ARBORWOOD HOMEOWNERS ASSOCIATION, INC.
---------	---

By: _____ Corporation Secretary	By: _____ President
------------------------------------	------------------------

APPROVED AS TO FORM AND LEGAL SUFFICIENCY	APPROVED AS TO FORM AND LEGAL SUFFICIENCY
--	--

By: _____ Assistant County Attorney	By: _____ Association Attorney
--	-----------------------------------

Date: _____	Date: _____
-------------	-------------

APPROVED AS TO TERMS
AND CONDITIONS

By: _____

Date: _____

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

Exhibit A

(PROJECT)

Grantee _____

Request Date _____

Billing # _____

Billing Period _____

PROJECT PAYMENT SUMMARY

Item	Project Costs this Billing	Cumulative Project Costs	Total Project Costs
Consulting Services	_____	_____	_____
Contractual Services	_____	_____	_____
Material, Supplies, Direct Purchases	_____	_____	_____
Grantee Stock	_____	_____	_____
Equipment, Furniture	_____	_____	_____
TOTAL PROJECT COSTS	=====	=====	=====

Certification: I hereby certify that the above was incurred for the work identified as being accomplished in the attached progress reports.

Certification: I hereby certify that the documentation has been maintained as required to support the project expenses reported above, and is available for audit upon request.

Administrator/Date

Financial Officer/Date

PBC USE ONLY

County Funding Participation	\$ _____
Total Project Costs	\$ _____
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 Project Administrator/Date

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

(PROJECT)

Grantee _____

Billing Date _____

Billing # _____

Billing Period _____

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 noted above was used in accomplishing the project.

Administrator/Date

Certification: I hereby certify that bid tabulations, executed contract, cancelled checks, and other purchasing documentation have been maintained as required to support the costs reported above, and are available for audit upon request.

Financial Officer/Date

2008 _____

Page 1 of 1

**BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
BUDGET Transfer**

BGEX 090908-3380

FUND Transportation Improvement

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 09/09/08	REMAINING BALANCE
<u>PALMETTO PK SAFETY BARRIER/NOISE WALL REP</u>								
3500-368-1293-8201	Contributions-Non Govtl Agency	0	0	66,000	0	66,000	0	66,000
<u>RESERVES-ROAD PROGRAM SWEEPS</u>								
3500-361-9997-9901	Contingency Reserves	16,381,209	14,310,184	<u>0</u>	<u>66,000</u>	14,244,184		
				66,000	66,000			

SIGNATURE

DATE

By Board of County Commissioners
At Meeting of 09/23/08

Engineering & Public Works

_____ *Chiff* _____

_____ 9/9/08 _____

Administration / Budget Approval

OFMB Department – Posted

Deputy Clerk to the
Board of County Commissioners

ATTACHMENT 6