### PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

#### **AGENDA ITEM SUMMARY**

Meeting Date:	August 18, 2009	[x]	Consent Workshop	[]	Regular Public Hearing
Submitted By: Submitted For:	Engineering and County Engineer		c Works		

#### **I.EXECUTIVE BRIEF**

Motion and Title: Staff recommends motion to approve:

- A) A Financial Assistance Agreement with the Village of North Palm Beach (VILLAGE) regarding the beautification of Prosperity Farms Road from Northlake Boulevard to Burns Road; and
- B) A Budget Transfer of \$10,000 in the Transportation Improvement Fund from Reserve for District 1 to Prosperity Farms Road from Northlake Boulevard to Burns Road.

**SUMMARY:** Approval of this Financial Assistance Agreement and Budget Transfer will provide one-time funds to offset costs for the maintenance of Prosperity Farms Road from Northlake Boulevard to Burns Road.

District 1 (MRE)

**Background and Justification:** Palm Beach County and the VILLAGE have entered into various Financial Assistance Agreements and amendments for various phases of landscape beautification for Prosperity Farms Road from Northlake Boulevard to Burns Road. The amended Financial Assistance Agreements has expired, but several provisions survive expiration and require that the VILLAGE continue to meet certain ongoing obligations such as the perpetual maintenance of the landscape beautification. The District 1 Commissioner has agreed to assist the VILLAGE's maintenance efforts on a one-time basis in an amount not to exceed \$10,000. The District 1 Commissioner believes this will serve the public's best interest.

#### Attachments:

I.	Location	мар
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- 2. Project Authorization
- 3. Agreement w/Exhibit "A"
- 4. Budget Transfer

Recommended by:	Alle Coursell Division Director	6/26/09
•	Division Director	Date
Approved by:	County Engineer	フ / 2 フ / 0 9 Date

#### II. FISCAL IMPACT ANALYSIS

#### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Grant Expenditures	\$10,000	0	0-	0	<u>-0-</u>
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	<u>\$10,000</u>	-0-	-0-	0	0-
# ADDITIONAL FTE					
POSITIONS (Cumulative)					
Is Item Included in Current Budget Acct No.: Fund Progr	No <u>X</u> .				

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

Transportation Improvement Fund Reserve For District 1 Prosperity Farms Rd/Burns Rd to Northlake Blvd

C.	Departmental Fiscal Review:	aprollhite	

#### III. REVIEW COMMENTS

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

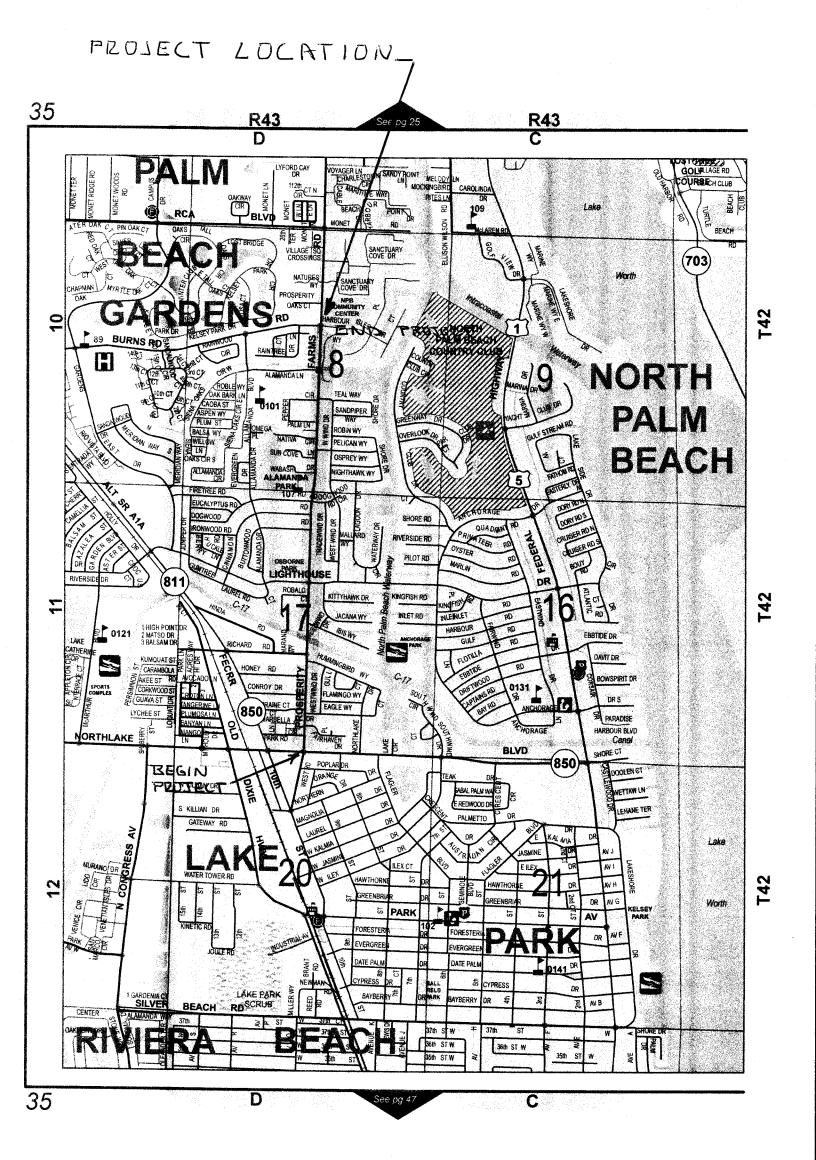
The Original research and the Contract Dev. and Co	ontroi Comments:
201 50 1301 30 201-29-09 OFMB WAY 1/28/09	Contract Deve and Control
B. Approved as to Form and Legal Sufficiency:	This Contract complies with our contract review requirements.

C. Other Department Review:

**Department Director** 

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

I:\WP\AGENDAPAGE2\AGNPGTWO2009\00237.DOC



#### **Owen Miley**

From:

Patricia Weaver

Sent:

Monday, April 27, 2009 8:24 AM Owen Miley

To:

Cc: Subject: Joseph Doucette; Andrew Hertel; Marlene Everitt R.

Authorization

Commissioner Marcus has authorized the expenditure of \$10,000 to the Village of North Palm Beach to assist toward the Village's maintenance of landscaping on Prosperity Farms Road from Northlake Boulevard north to Burns Road.

Trish Weaver Administrative Assistant to Commissioner Karen T. Marcus

## FINANCIAL ASSISTANCE AGREEMENT WITH THE 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 \_\_\_\_\_\_, 2009, 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, The VILLAGE has completed roadway improvements on the COUNTY'S Prosperity Farms Road from Northlake Boulevard to Burns Road including conceptual planning, design, construction, and landscaping hereinafter "PROJECT" and has been maintaining the road and landscaping hereinafter "IMPROVEMENTS" since completion of the PROJECT; and

WHEREAS, the COUNTY, through various Financial Assistance Agreements and amendments has contributed monetarily to the various phases of the PROJECT; and

WHEREAS, the Financial Assistance Agreements as amended has expired, but several provisions survive expiration and require that the VILLAGE continue to meet certain ongoing obligations; and

WHEREAS, perpetual maintenance of the IMPROVEMENTS is a responsibility of the VILLAGE under prior agreements as amended; and

WHEREAS, the VILLAGE has requested and the COUNTY has agreed to assist the VILLAGE'S maintenance efforts on a one time basis in an amount not to exceed TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00); and

WHEREAS, this funding is in addition to the previously reimbursed PROJECT funding of approximately ONE MILLION THREE HUNDRED FIVE THOUSAND AND 00/100 (\$1,305,000.00) DOLLARS; and

WHEREAS, VILLAGE and COUNTY now wish to enter into an Agreement to provide for the COUNTY'S contribution to the VILLAGE toward the maintenance cost of the IMPROVEMENTS incurred within one year from the date of execution of this Agreement; and

WHEREAS, the COUNTY considers such IMPROVEMENTS an enhancement to the

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COUNTY right-of-way and their maintenance in the best interest of the health, safety, and welfare of the public; and

NOW, THEREFORE, in consideration of the mutual terms, conditions, covenants, promises and agreements hereinafter set forth, the parties agree as follows:

- 1. The above recitals are true, correct and incorporated herein.
- 2. The COUNTY agrees to provide to the VILLAGE reimbursement funding on a one time basis for documented maintenance costs of the IMPROVEMENTS in an amount not to exceed TEN THOUSAND DOLLARS (\$10,000.00).
- The COUNTY agrees to reimburse the VILLAGE the amount established in paragraph 2 for maintenance costs associated with the IMPROVEMENTS, upon the VILLAGE'S submission of acceptable documentation needed to substantiate its cost for maintenance of the IMPROVEMENTS. The COUNTY will use its best efforts to provide said funds to the VILLAGE on a reimbursement basis within forty-five (45) days of receipt of all information required in paragraph 6, below.
- 4. The COUNTY'S obligation is limited to its payment obligation and shall have no obligation to any other person or entity.
- 5. The VILLAGE agrees to assume all responsibility for, bidding, contract preparation, and contract administration necessary for maintaining the IMPROVEMENTS, including payment(s) to contractor(s) pursuant to all applicable governmental laws and regulations.
- 6. Notwithstanding the forgoing the VILLAGE acknowledges ongoing maintenance responsibility for the IMPPROVEMENTS under original agreements and amendments dated February 24, 2004, April 5, 2005, July 24, 2007 and March 11, 2008 hereinafter "Prior Agreements" and agrees that the reimbursement amount established in paragraph 2 constitutes a one-time contribution for maintenance of the IMPROVEMENTS for a period of one (1) year from the date of execution. Thereafter the VILLAGE shall continue maintenance of the IMPROVEMENTS and budget the funds required to meet its obligations under the Prior Agreements. The VILLAGE further acknowledges that this contribution by the COUNTY does not relieve the VILLAGE of compliance with any of the provisions, covenants, terms and conditions of the Prior Agreements. In the event a conflict

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arises between this Agreement and the Prior Agreements, except as it pertains to the onetime contribution of \$10,000.00, the Prior Agreements govern.

- 7. The VILLAGE and the COUNTY agree that entering into this Agreement does not constitute a waiver of COUNTY'S ability to enforce obligation set forth in Prior Agreements and that the COUNTY and the VILLAGE acknowledge and affirm that the obligation of the VILLAGE to maintain the IMPROVEMENTS survive and continue in spite of this one time contribution of \$10,000.00.
- 8. The VILLAGE will obtain or provide all labor and materials necessary for maintenance of the IMPROVEMENTS. The VILLAGE shall furnish to the COUNTY'S representative a request for payment supported by the following:

A 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 VILLAGE. Said information shall list each invoice payable by the VILLAGE and shall include the vendor invoice number, invoice date, and the amount payable by the COUNTY. The VILLAGE shall attach a copy of each vendor invoice paid by the VILLAGE 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 VILLAGE'S Financial Officer shall also certify that each invoice listed on the Contractual Services Purchases Schedule Form was paid by the VILLAGE as indicated.

- 9. As it relates to this Agreement, the COUNTY may initiate a financial systems analysis and/or an internal fiscal control evaluation of the VILLAGE by an independent auditing firm employed by the COUNTY or by the County Internal Audit Department at any time the COUNTY deems necessary.
- 10. The VILLAGE shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations from any federal, state, regional, county or agencies which are required for the maintenance of the IMPROVEMENTS.
- Each party shall be liable for its own actions and negligence and to the extent 11. permitted by law; the VILLAGE shall indemnify, defend and hold harmless the COUNTY against any actions, claims or damages arising out of the VILLAGE'S negligence in

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connection with this Agreement or the performance by the VILLAGE as it may relate to this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 786.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligence, willful or intentional acts or omissions or for any amount over the limits set forth in FL Statute 768.28 despite any case law to the contrary.

12. Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, VILLAGE acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event that the VILLAGE maintains third-party commercial General Liability and Business Auto Liability in lieu of exclusive reliance on self-insurance under Section 768.28, Florida Statutes, VILLAGE shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. VILLAGE agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statutes 440. Prior to execution of this AGREEMENT by the County VILLAGE shall deliver to the County an affidavit or Certificate of Insurance evidencing insurance, selfinsurance, and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverages. Certificate holder's address shall read Palm Beach County, c/o Department of Engineering and Public Works, 2300 N. Jog Road, 3E-13, West Palm Beach, Florida 33411, Attention: Special Projects Coordinator. Compliance with the foregoing requirements shall not relieve VILLAGE of its liability and obligations under this AGREEMENT.

13. As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the VILLAGE 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. The VILLAGE shall require each contractor engaged by the VILLAGE for work associated with this Agreement to maintain:
  - Workers' Compensation coverage in accordance with Florida
     Statutes;
  - b. Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00). The COUNTY shall be included in the coverage as an additional insured; and
  - c. Name the COUNTY as an additional insured party.
- 15. In the event of termination, the VILLAGE 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 VILLAGE; and the COUNTY may withhold any payment to the VILLAGE for the purpose of set-off until such time as the exact amount of damages due the COUNTY is determined. However, under no circumstances shall termination relieve the VILLAGE of maintenance set forth in Prior Agreements.
- 16. The VILLAGE'S termination of this Agreement shall result in all obligations of the COUNTY for funding contemplated herein to be cancelled.
- 17. The COUNTY and VILLAGE agree that no person shall, on the grounds of race, color, national origin, sexual orientation, gender identify and expression, religion or creed, sex, age, or handicap be discriminated against in performance of this Agreement.
- 18. In the event that any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
- 19. All notices required to be given under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States Mail, postage 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 VILLAGE**

Village of North Palm Beach Jimmy Knight, Village Manager 501 US Highway One North Palm Beach, Florida 33408-4906 561-841-3355 Fax 561-881-7469

- 20. 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.
- 21. Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to the Agreement.
- 22. 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.
- 23. Each party agrees to abide by all laws, orders, rules and regulations and the VILLAGE will comply with all applicable governmental codes during the IMPROVEMENTS.
- 24. 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 any of the parties, of the liability limits established in Section 768.28, Florida Statutes.
- 25. 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.
  - 26. The parties expressly covenant and agree that in the event any of the

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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.

- 27. 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.
- 28. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.
- 29. This Agreement shall take effect upon execution and the effective date shall be the date of execution.

#### [THE REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

	in withess whereor, the parties i	iave executed this Agreement and it i
2	effective on the day first above written.	
3 4	PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS	VILLAGE OF NORTH PALM BEACH BY ITS VILLAGE COMMISSION
5 6 7	By:	By: MAYOR
8 9 10 11	(COUNTY SEAL)	(VILLAGE SEAL)
13 14	ATTEST:	ATTEST:
15 16	SHARON R. BOCK, CLERK & COMPTROLLER	
17 18	By: DEPUTY CLERK	By: Melisia Teal VILLAGE CLERK
19 20 21 22	By:APPROVED AS TO FORM AND LEGAL SUFFICIENCY ASSISTANT COUNTY ATTORNEY	By: APPROVED AS TO FORM AND LEGAL SUFFICENCY VILLAGE ATTORNEY
	Date:	Date:
23 24 25	By: Mullbuill APPROVED AS TO TERMS AND CONDITIONS	
26 27 28 29	G:\WPDATA\ENG\MRE\STREETSCAPE\AGR AMD NPB PROSPERITY	∕ 5.doc

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

	(PROJ	ECT)	
Grantee	Req	uest Date	
Billing #	Billi	ng Period	
P	ROJECT PAYME	ENT 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 was incurred for the work identified accomplished in the attached programmer.	d as being ha ess reports. ex	ertification: I hereby certify is been maintained as required penses reported above, and is quest.	d to support the project
Administrator/Date	Fi	nancial Officer/Date	
PBC USE ONLY			
County Funding Participati	on	\$	
<b>Total Project Costs</b>		\$	
<b>Total Project Costs to Date</b>		\$	
<b>County Obligation to Date</b>		\$	
County Retainage (%)		(\$	
County Funds Previously D	isbursed	(\$	
County Funds Due this Billi	ng	\$	
Reviewed and Approved by:			
wa and Approved by		C Project Administrator	·/Date

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

		(PROJECT)	·	
	Grantee	Billin		
	Billing #	Billin	· · · · · · · · · · · · · · · · · · ·	
Contractor Name	Contractor Invoice Number and Date	City Check or Voucher Number and Date	Project Amount Paid this Period	General Description
		TOT	TAL	_
Certification: I hereby certify that above was used in accomplishing		checks, a	nd other purchasing documentation	ulations, executed contract, cancelled on have been maintained as required a available for audit upon request.
Administrator/Date	·	Financial	Officer/Date	

2009	
	BOARD OF COUNTY COMMISSIONERS
	PALM BEACH COUNTY
	BUDGET Transfer
	FUND Transportation Improvement

BGEX 042809-1640

Page \_\_1\_\_ of \_\_1\_\_

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 04/28/09	REMAINING BALANCE
PROSPERITY FARMS RE 3500-361-0791-8101 Conf	<u>D IMPROVEMENTS</u> tributions Othr Govtl Agncy	74,461	74,461	10,000	0	84,461	73,721	10,74
RESERVE FOR DISTRICT 3500-368-9111-9907 Res-		410,145	22,810	0	10,000	12,810		
				10,000	10,000			
		SIGNATURE		DATE		By Board At Meeti	d of County Commis	
Engineering & Public V	Works	apri	Ulite		18/09			
Administration / Budge	et Approval							
OFMB Department – P	Posted						Clerk to the f County Commission	oners