

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	\$ -0-	-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	\$ *	-0-	-0-	-0-	-0-

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No ____
 Budget Acct No.: Fund ___ Dept. ___ Unit ___ Object ___
 Program

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

* This item has no fiscal impact.

C. Departmental Fiscal Review: atwillhite

III. REVIEW COMMENTS

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

 mljll 8/12/09
 na OFMB NO CN 8/5/09
 8-6-09 8/11/09

 John J. Lawrence 8/13/09
 Contract Dev. and Control

This amendment complies with our review requirements.

B. Approved as to Form and Legal Sufficiency:
 Markus 8/28/09
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

Gary Gregory

From: Andrew Hertel
Sent: Friday, May 15, 2009 6:36 AM
To: Gary Gregory
Subject: FW: RE: Persimmons Blvd. /Acreage Access Beautification

Gary,

Please work up an amendment to give Baywinds a 12 month extension.

Thanks a lot.

From: Kim Ciklin
Sent: Thursday, May 14, 2009 4:49 PM
To: Andrew Hertel
Subject: RE: RE: Persimmons Blvd. /Acreage Access Beautification

JK is okay with the time extension as you have suggested.

From: Andrew Hertel
Sent: Wednesday, May 13, 2009 1:07 PM
To: Kim Ciklin
Cc: Steve Carrier
Subject: FW: RE: Persimmons Blvd. /Acreage Access Beautification

Kim,

Let me know if the Commissioner wants us to move forward to prepare an amendment for a time extension. If we are going to do an extension, I'd recommend doing one for 12 months (instead of the requested 6 months) so we don't have to do another amendment if they run a little late.

Let me know.

Thanks, Andy

From: Bill & Laura [mailto:billlauraboothe@comcast.net]
Sent: Wednesday, May 13, 2009 12:41 PM
To: Andrew Hertel
Cc: Vicki Thomas; Marvin Levine; Irv Sommers; Howard Engel; George Singer; Gary Schwartz; DAVID KAISER; bernard barnett; Berenice Liberta; Barry Topf; Nick Cifuni; Steve Carrier; Kim Ciklin
Subject: Re: RE: Persimmons Blvd. /Acreage Access Beautification

Hi Andy:

Just spoke with the City. There is a 15' wide utility easement that covers our western border. It includes approximately seven feet on either side of our border fencing. The area outside the fence is the intended beautification area. The City is in discussions with FPL and other utilities in requesting an abandonment of the easement. However, FPL apparently has plans to use the easement in the near future, and may not be willing to abandon. These discussions are taking time, and we are concerned that we will not conclude them in time to meet the June 30, 2009 project completion deadline set by the agreement with the County. We are formally requesting a six-month extension of that completion deadline to allow us the needed time to work through these complex issues. Please let me know if such an extension is feasible, and what we need to do to affect such an extension.

Thanks. Bill

----- Original Message -----

From: Andrew Hertel
To: Bill & Laura
Cc: Kim Ciklin ; Steve Carrier
Sent: Friday, May 08, 2009 11:01 AM
Subject: RE: RE: Persimmons Blvd. /Acreage Access Beautification

Bill,

The required completion date (June 30, 2009) is in Paragraph 10 of the agreement, on Page 4. Please let me know as soon as possible if you will be unable to meet that deadline.

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

3
4 BAYWINDS COMMUNITY ASSOCIATION, INC.

5
6
7 (ASSOCIATION SEAL)

8 BAYWINDS COMMUNITY
9 ASSOCIATION, INC. BY ITS BOARD
10 OF DIRECTORS

11 ATTEST:

12
13
14 By: 
15 ASSOCIATION SECRETARY

16
17 By: 
18 PRESIDENT

19 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

20
21 By: 
22 ASSOCIATION ATTORNEY

23
24
25 PALM BEACH COUNTY

26
27 (COUNTY SEAL)

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

30 ATTEST:

31
32
33 SHARON R. BOCK
34 CLERK AND COMPTROLLER

35
36
37 By: _____
38 DEPUTY CLERK

39
40 By: _____
41 JOHN F. KOONS, CHAIRMAN

42 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

43 By: _____
44 ASSISTANT COUNTY ATTORNEY

45 APPROVED AS TO TERMS AND CONDITIONS

46
47 BY: 
48

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

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

THIS AGREEMENT is made and entered into this _____ day of 11 08 2008, 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).**

1 **3. COUNTY agrees to reimburse ASSOCIATION the amount established in**
2 **paragraph 2 for costs (materials and labor) associated with the installation of the**
3 **IMPROVEMENTS, upon ASSOCIATION's submission of acceptable documentation**
4 **needed to substantiate their costs for the IMPROVEMENTS. COUNTY will use its**
5 **best efforts to provide said funds to ASSOCIATION on a reimbursement basis within**
6 **forty-five (45) days of receipt of all information required in Paragraph 7, below.**

7 **4. COUNTY's obligation is limited to its payment obligation and COUNTY**
8 **shall have no obligation to any other person or entity.**

9 **5. ASSOCIATION agrees to assume all responsibility for design, bidding,**
10 **contract preparation, and contract administration for the installation of the**
11 **IMPROVEMENTS, including payment(s) to contractor(s), pursuant to all applicable**
12 **governmental laws and regulations and will comply with all applicable governmental**
13 **landscaping codes and permitting requirements in the selection and installation of**
14 **the IMPROVEMENTS. ASSOCIATION agrees to install the IMPROVEMENTS**
15 **substantially in accordance with the plans, specifications and costs as approved by**
16 **COUNTY and by the City of West Palm Beach (hereinafter, "CITY"). ASSOCIATION**
17 **also agrees to assume financial responsibility for the completion of any portions of**
18 **the IMPROVEMENTS that are not fully-funded by the amount set forth in Paragraph 2,**
19 **above. Otherwise, COUNTY will have the final determination of the eligibility for**
20 **reimbursement of any changes. Substantial variations from the approved plans shall**
21 **require prior written approval from COUNTY Engineer's Office.**

22 **6. If prior to the commencement of the IMPROVEMENTS, ASSOCIATION**
23 **determines that the cost of said IMPROVEMENTS will exceed COUNTY's**
24 **reimbursement, ASSOCIATION shall have the right to not construct the**
25 **IMPROVEMENTS and may terminate this AGREEMENT without prejudice, upon**
26 **proper written notice to COUNTY as provided for herein.**

27
28

1 **7. ASSOCIATION will obtain or provide all labor and materials necessary**
2 **for the design and installation of the IMPROVEMENTS. COUNTY shall have the final**
3 **determination of eligibility for reimbursement. ASSOCIATION shall furnish the**
4 **Manager, Streetscape Section, of COUNTY's Department of Engineering and Public**
5 **Works with a request for payment supported by the following:**

6 **a. A statement from a Florida Registered Landscape Architect that the**
7 **IMPROVEMENTS have been inspected and were installed substantially**
8 **in accordance with the approved plans for the IMPROVEMENTS, and;**
9 **b. A Contract Payment Request Form and a Contractual Services**
10 **Purchases Schedule Form, attached hereto and incorporated herein as**
11 **Exhibit "A" (pages 1 and 2) which are required for each and every**
12 **reimbursement requested by ASSOCIATION. Said information shall list**
13 **each invoice paid by ASSOCIATION and shall include the vendor**
14 **invoice number, invoice date, and the amount paid by ASSOCIATION.**
15 **ASSOCIATION shall attach a copy of each vendor invoice paid by**
16 **ASSOCIATION along with a copy of the respective check and shall**
17 **make reference thereof to the applicable item listed on the Contractual**
18 **Services Purchases Schedule Form. Further, the Program**
19 **Administrator and the President of the ASSOCIATION, or his designee**
20 **shall also certify that each vendor invoice listed on the Contractual**
21 **Services Purchases Schedule Form was paid by ASSOCIATION as**
22 **indicated.**

23 **8. ASSOCIATION shall maintain adequate records to justify all charges,**
24 **expenses, and costs incurred in performing the IMPROVEMENTS for at least three**
25 **(3) years after the completion of such IMPROVEMENTS. COUNTY shall have access**
26 **to all books, records and documents as required in this Section for the purpose of**
27 **inspection or audit during normal business hours.**

28

1 **9. ASSOCIATION agrees to be responsible for the perpetual maintenance**
2 **of the IMPROVEMENTS following their installation and shall be solely responsible**
3 **for obtaining and complying with all necessary permits, approvals, and**
4 **authorizations from any federal, state, regional, COUNTY or CITY agency which are**
5 **required for the subsequent maintenance of the IMPROVEMENTS.**

6 **10. All installation of these IMPROVEMENTS shall be completed and final**
7 **invoices submitted to COUNTY no later than June 30, 2009, and COUNTY shall have**
8 **no obligation to ASSOCIATION or any other entity or person for any cost incurred**
9 **thereafter unless the time for completion is extended by modification of this**
10 **Agreement as provided herein.**

11 **11. ASSOCIATION recognizes that it is an independent contractor, and not**
12 **an agent or servant of COUNTY or its Board of County Commissioners. In the event a**
13 **claim or lawsuit is brought against COUNTY, its officers, employees, servants or**
14 **agents, relating to the IMPROVEMENTS or any item which is the responsibility of**
15 **ASSOCIATION, ASSOCIATION hereby agrees to indemnify, save and hold harmless**
16 **COUNTY, its officers, employees, servants or agents, and to defend said persons**
17 **from any such claims, liabilities, causes of action and judgments of any type**
18 **whatsoever arising out of or relating to the existence of the IMPROVEMENTS or the**
19 **performance by ASSOCIATION as may relate to this Agreement. ASSOCIATION**
20 **agrees to pay all costs, attorney's fees and expenses incurred by COUNTY, its**
21 **officers, employees, servants or agents in connection with such claims, liabilities or**
22 **suits except as may be incurred due to the negligence of COUNTY.**

23 **12. ASSOCIATION shall, at all times during the term of this Agreement (the**
24 **installation and existence of the IMPROVEMENTS), maintain in force its status as an**
25 **insured corporation, and shall provide evidence of this insurance prior to COUNTY's**
26 **execution of this Agreement.**

27

28

29

1 **13. As provided in F.S. 287.132-133, by entering into this Agreement or**
2 **performing any work in furtherance hereof, ASSOCIATION certifies that its affiliates,**
3 **suppliers, sub-contractors, and consultants who perform work hereunder, have not**
4 **been placed on the convicted vendor list maintained by the State of Florida**
5 **Department of Management Services within 36 months immediately preceding the**
6 **date hereof. This notice is required by F.S. 287.133(3)(a).**

7 **14. ASSOCIATION shall require each contractor engaged by ASSOCIATION**
8 **for work associated with this Agreement to maintain:**

9 **a. Workers' Compensation coverage in accordance with Florida**
10 **Statutes, and;**

11 **b. Commercial General Liability coverage, including vehicle coverage,**
12 **in combined single limits of not less than ONE MILLION AND 00/100**
13 **DOLLARS (\$1,000,000.00). COUNTY shall be included in the coverage**
14 **as an additional insured.**

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

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

22 **17. COUNTY and ASSOCIATION agree that no person shall, on the grounds**
23 **of race, color, national origin, sexual orientation, religion or creed, sex, age, or**
24 **handicap be discriminated against in performance of the Agreement.**

25 **18. COUNTY may, at COUNTY's discretion and for the duration of**
26 **IMPROVEMENTS, install signs within the public property or easement, notifying the**
27 **public that the IMPROVEMENTS were funded with COUNTY dollars.**

28

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

5 **24. Each party agrees to abide by all laws, orders, rules and regulations and**
6 **ASSOCIATION will comply with all applicable governmental landscaping codes in**
7 **the maintenance and replacement of the IMPROVEMENTS.**

8 **25. The parties to this Agreement shall not be deemed to assume any**
9 **liability for the negligent or wrongful acts, or omissions of the other party (or**
10 **parties). Nothing contained herein shall be construed as a waiver by COUNTY, by**
11 **any of the parties, of the liability limits established in Section 768.28, Florida**
12 **Statutes.**

13 **26. ASSOCIATION shall promptly notify COUNTY of any lawsuit-related**
14 **complaint, or cause of action threatened or commenced against it which arises out**
15 **of or relates, in any manner, to the performance of this Agreement.**

16 **27. The parties expressly covenant and agree that in the event any of the**
17 **parties is in default of its obligations under this Agreement, the parties not in default**
18 **shall provide to the defaulting party thirty (30) days written notice before exercising**
19 **any of their rights.**

20 **28. The preparation of this Agreement has been a joint effort of the parties,**
21 **and the resulting document shall not, solely as a matter of judicial constraint, be**
22 **construed more severely against one of the parties than the other.**

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

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

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

1 **32. This Agreement shall take effect upon execution and the effective date**
2 **shall be the date of execution.**

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTENTIONALLY LEFT BLANK

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

3
4 BAYWINDS COMMUNITY ASSOCIATION, INC.

5
6
7 (ASSOCIATION SEAL)

BAYWINDS COMMUNITY
ASSOCIATION, INC.
BY ITS BOARD OF DIRECTORS

8
9
10
11 ATTEST:

12
13
14 By: *Doug Topf* *Vice President*
15 ASSOCIATION SECRETARY

16 By: *Scott Green*
17 PRESIDENT

18
19
20
21 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

22
23
24 By: _____
25 ASSOCIATION ATTORNEY

26
27
28 PALM BEACH COUNTY

29 R2008-1152 JUL 08 2008
30 PALM BEACH COUNTY, FLORIDA, BY ITS
31 BOARD OF COUNTY COMMISSIONERS

32 (COUNTY SEAL)

33
34
35 ATTEST:

36
37 SHARON R. BOCK, CLERK
38 & COMPTROLLER

39
40
41 By: *Sharon R. Bock*
42 DEPUTY CLERK

43 By: *Addie L. Greene*
44 ADDIE L. GREENE, CHAIRPERSON



45
46 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

47
48
49
50 By: *Malcolm ...*
51 ASSISTANT COUNTY ATTORNEY

52
53 APPROVED AS TO TERMS AND CONDITIONS

54
55 BY: *Malcolm ...*