

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: January 11, 2011 ☒ Consent ☐ Regular
 ☐ Workshop ☐ Public Hearing

Department:

Submitted By: Engineering & Public Works

Submitted For: Streetscape Section

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Financial Assistance Agreement with the School Board of Palm Beach County (School Board) for West Boca Raton Community High School buffer landscaping on school property along the school's perimeter within 25 feet of, and visible from Palm Beach County's (County) Glades Road.

SUMMARY: Approval of this Agreement will provide for a reimbursement to the School Board in an amount not to exceed \$100,000, for improvements along the County's Glades Road from approximately 1,300 feet west of Boca Falls Drive to approximately 4,600 feet west of Boca Falls Drive. Funding for this Agreement came from the District 5 Gas Tax Reserves, which was previously approved and encumbered by Agreement R2006-0308 which has expired. The School Board has completed the improvements and final invoices shall be submitted no later than September 30, 2011. The School Board will be responsible for the perpetual maintenance of these improvements. This Agreement is necessary since the final invoice was not submitted in a timely manner.

District 5 (MRE)

Background and Justification: The encumbered funding for this Agreement, in an amount not to exceed \$100,000, came from the District 5 Gas Tax Reserves via the recently expired Agreement R2006-0308. That Agreement and funding were approved prior to the Grand Jury's recommendations to the County concerning such allocations. Therefore, there is no additional fiscal impact.

Attachments:

1. Location Sketch
 2. Financial Assistance Agreements, with Exhibit "A" (3)
-
-

Recommended by: _____

Division Director

Date

Approved By: _____

County Engineer

Date

S. J. Webb

12/7/10

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	\$100,000	-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	\$100,000	-0-	-0-	-0-	-0-

ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes X No
Budget Acct No.: Fund 3500 Dept. 368 Unit 1191 Object 8101
Program

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

Transportation Improvement Fund
District Improvement Program
W. Boca Raton Comm HS Buffer Landscaping-Dis 5

Funding is available and encumbered to the School Board.

C. Departmental Fiscal Review: atwillhite

III. REVIEW COMMENTS

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

 N. H. H. 12/8/2010
OFMB
50
12/2/10
12/15/10

 Dr. J. J. J. 12/9/10
Contract Dev. and Control

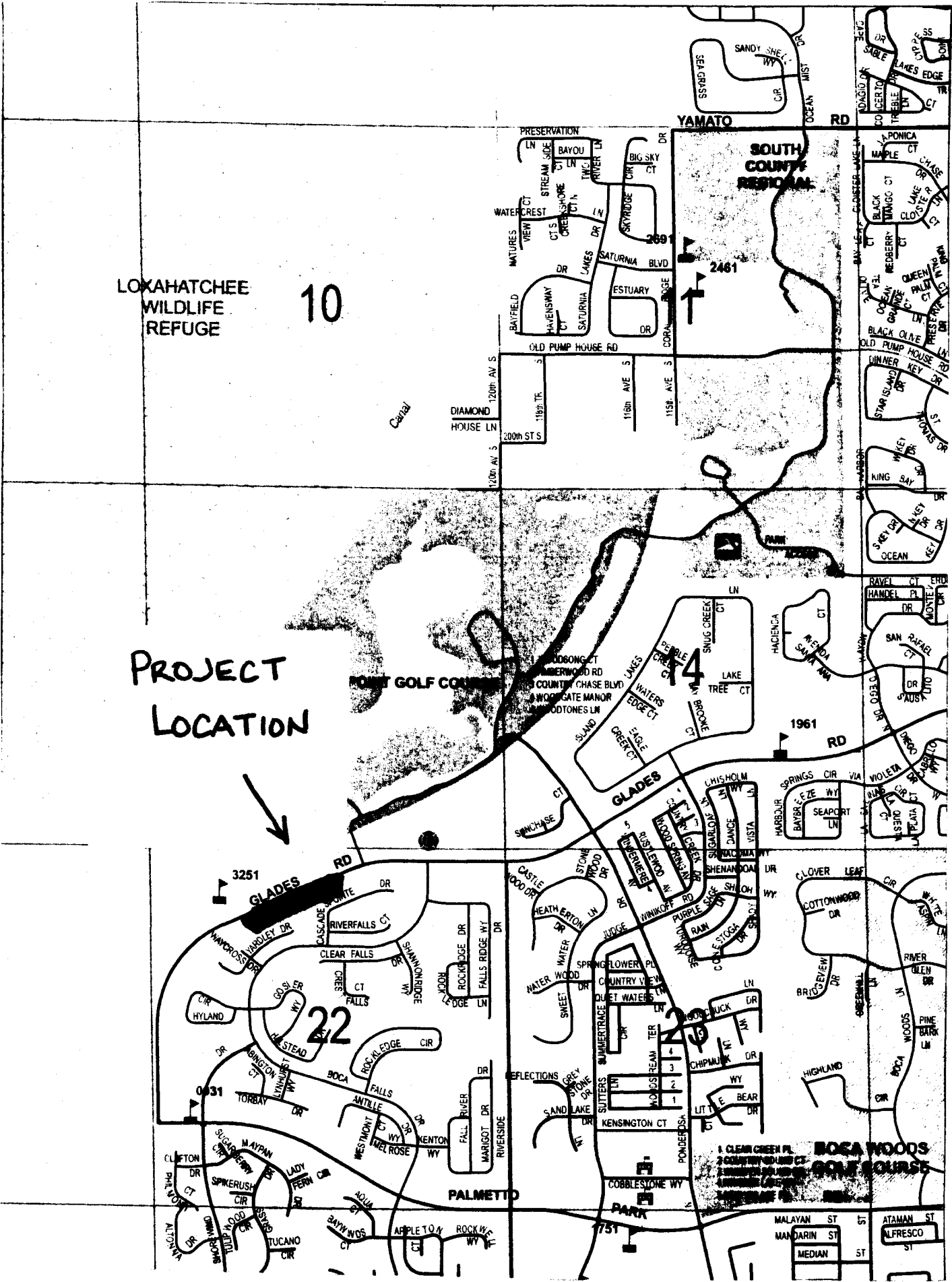
B. Approved as to Form and Legal Sufficiency:

 Monica R. R. 12/15/10
Assistant County Attorney

This Contract complies with our
contract review requirements.

C. Other Department Review:

Department Director



LOCATION SKETCH

FINANCIAL ASSISTANCE AGREEMENT FOR THE SCHOOL BOARD OF PALM BEACH COUNTY – (WEST BOCA RATON COMMUNITY HIGH SCHOOL BUFFER LANDSCAPING)

THIS AGREEMENT is made and entered into this _____ day of _____, 2010, by and between the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, hereinafter "BOARD", and PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter "COUNTY".

WITNESSETH:

WHEREAS, on November 18, 2008, the BOARD and COUNTY entered into Financial Assistance Agreement R2008-2026 to provide funding in an amount not to exceed ONE HUNDRED THOUSAND and 00/100 DOLLARS (\$100,000.00) to the BOARD to install buffer landscaping for its West Boca Raton Community High School, on school property, along the school's perimeter (within 25 feet of, and visible from) the COUNTY's Glades Road from approximately 1300 feet west of Boca Falls Drive to approximately 4600 feet west of Boca Falls Drive, hereinafter "IMPROVEMENTS"; and

WHEREAS, Financial Assistance Agreement R2008-2026 expired on September 30, 2009, after which the BOARD requested that the expiration date be extended, to allow more time for the submittal of invoices for the completed IMPROVEMENTS; and

WHEREAS, the BOARD and COUNTY agree that due to the expiration of Financial Assistance Agreement R2008-2026, a new agreement is required in order to allow more time for the submittal of invoices for the IMPROVEMENTS that have been completed by the BOARD; and

WHEREAS, COUNTY believes that these efforts by BOARD serve a public purpose in the enhancement of the appearance of the right of way and wishes to support BOARD's efforts to install the IMPROVEMENTS by providing reimbursement funding from Board of County Commissioners Reserve for District 5, in an amount not to exceed ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00); and

1 **WHEREAS, the funding contemplated in this Agreement was previously**
2 **approved and encumbered for the IMPROVEMENTS, prior to the Grand Jury's**
3 **recommendations to the COUNTY concerning such funding allocations; and**

4 **WHEREAS, the BOARD will be responsible for the perpetual maintenance**
5 **of the IMPROVEMENTS.**

6
7 **NOW, THEREFORE, in consideration of the mutual covenants, promises,**
8 **and agreements herein contained, the parties agree as follows:**

9 1. **The above recitals are true, correct and are incorporated herein.**

10 2. **COUNTY agrees to reimburse BOARD for the cost of the initial**
11 **installation of the IMPROVEMENTS, not to exceed a maximum amount of ONE**
12 **HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00).**

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

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

21 5. **BOARD assumes all responsibility for design, bidding, contract**
22 **preparation, and contract administration for the installation of the**
23 **IMPROVEMENTS, including payment(s) to contractor(s), pursuant to all**
24 **applicable governmental laws and regulations and will comply with all applicable**
25 **governmental landscaping codes and permitting requirements in the selection**
26 **and installation of the IMPROVEMENTS. BOARD agrees to install the**
27 **IMPROVEMENTS substantially in accordance with the plans, specifications and**
28 **costs as approved by COUNTY. BOARD also agrees to assume financial**
29 **responsibility for the completion of any portions of the IMPROVEMENTS that are**
30 **not fully-funded by the amount set forth in Paragraph 2, above. Otherwise,**
31 **COUNTY will have the final determination of the eligibility for reimbursement of**

1 any changes. Substantial variations from the approved plans shall require prior
2 written approval from COUNTY Engineer's Office. The final drawings must be
3 signed and sealed by a Florida Registered Landscape Architect.

4 6. BOARD has obtained or provided all labor and materials necessary
5 for the design and installation of the IMPROVEMENTS. COUNTY shall have the
6 final determination of eligibility for reimbursement. BOARD shall furnish the
7 Manager, Streetscape Section, of COUNTY's Department of Engineering and
8 Public Works with a request for payment supported by the following:

9 a. A statement from a Florida Registered Landscape Architect that
10 the IMPROVEMENTS have been inspected and were installed
11 substantially in accordance with the approved plans for the
12 IMPROVEMENTS, and;

13 b. A Contract Payment Request Form and a Contractual Services
14 Purchases Schedule Form, attached hereto and incorporated herein
15 as Exhibit "A" (pages 1 and 2) which are required for each and every
16 reimbursement requested by BOARD. Said information shall list each
17 invoice paid by BOARD and shall include the vendor invoice number,
18 invoice date, and the amount paid by BOARD. BOARD shall attach a
19 copy of each vendor invoice paid by BOARD along with a copy of the
20 respective advice or check and shall make reference thereof to the
21 applicable item listed on the Contractual Services Purchases
22 Schedule Form. Further, the Program Administrator and the Chief
23 Financial Officer of BOARD, or his designee shall also certify that
24 each vendor invoice listed on the Contractual Services Purchases
25 Schedule Form was paid by BOARD as indicated.

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

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

6 9. All installation of the IMPROVEMENTS has been completed and final
7 invoices shall be submitted to COUNTY no later than September 30, 2011, and
8 COUNTY shall have no obligation to BOARD or any other entity or person for any
9 cost incurred thereafter unless the time for completion is extended by
10 modification of this Agreement as provided herein.

11 10. The BOARD acknowledges that the County's sole responsibility
12 under this Agreement is to provide funding for the BOARD's project in
13 accordance with the terms and conditions of this Agreement. The BOARD
14 recognizes its liability for certain tortuous acts of its agents, officers, employees
15 and invitees to the extent and limits provided in Section 768.28, Florida Statutes.
16 To the extent permitted by law, the BOARD shall indemnify, defend and hold the
17 COUNTY harmless against any actions, claims and damages arising out of the
18 BOARD's negligence in connection with the use of the funds provided under this
19 Agreement. The foregoing indemnification shall not constitute a waiver of
20 sovereign immunity beyond the limits set forth in Section 768.28, Florida
21 Statutes, nor shall the same be construed to constitute an agreement by the
22 BOARD to indemnify the COUNTY for the COUNTY's sole negligence, or willful or
23 intentional acts. The foregoing indemnification shall survive termination of this
24 Agreement.

25 11. BOARD shall, at all times during the term of this Agreement (the
26 installation and existence of the IMPROVEMENTS, maintain in force its status as
27 a self-insured school board.
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1 **12. As provided in F.S. 287.132-133, by entering into this Agreement or**
2 **performing any work in furtherance hereof, BOARD certifies that its affiliates,**
3 **suppliers, sub-contractors, and consultants who perform work hereunder, have**
4 **not been placed on the convicted vendor list maintained by the State of Florida**
5 **Department of Management Services within 36 months immediately preceding**
6 **the date hereof. This notice is required by F.S. 287.133(3)(a).**

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

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

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

15 **c. A payment and performance bond for the total amount of the**
16 **improvements in accordance with Florida Statute 255.05.**

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

22 **15. BOARD's termination of this AGREEMENT shall result all**
23 **obligations of COUNTY for funding contemplated herein to be canceled.**

24 **16. The BOARD and COUNTY agree that no person shall on the grounds**
25 **of race, color, religion, disability, sex, age, national origin, ancestry, ethnicity,**
26 **marital status, familial status, sexual orientation, gender, gender identity and**
27 **expression be excluded from the benefits of, or be subjected to any form of**
28 **discrimination under any activity carried out by the performance of this**
29 **Agreement. The BOARD will ensure that all contracts let for the projects**

pursuant to the terms of this Agreement will contain similar non-discrimination and equal opportunity clauses.

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

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 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 BOARD

Chief of Facilities Management
Palm Beach County School Board
3300 Forest Hill Boulevard
West Palm Beach, FL 33406

WITH COPY TO

Principal, West Boca Raton Community High School
12811 Glades Road
Boca Raton, FL 33428

1 **20. This Agreement shall be construed and governed by the laws of the**
2 **State of Florida. Any and all legal action necessary to enforce this Agreement**
3 **shall be held in Palm Beach County. No remedy herein conferred upon any party**
4 **is intended to be exclusive of any other remedy, and each and every other**
5 **remedy shall be cumulative and shall be in addition to every other remedy given**
6 **hereunder or now or hereafter existing at law or in equity or by statute or**
7 **otherwise. No single or partial exercise by any party of any right, power, or**
8 **remedy shall preclude any other or further exercise thereof.**

9 **21. Any costs or expenses (including reasonable attorney's fees)**
10 **associated with the enforcement of the terms and conditions of this Agreement**
11 **shall be borne by the respective parties; provided, however, that this clause**
12 **pertains only to the parties to the Agreement.**

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

17 **23. Each party agrees to abide by all laws, orders, rules and regulations**
18 **and BOARD will comply with all applicable governmental landscaping codes in**
19 **the maintenance and replacement of the IMPROVEMENTS.**

20 **24. The parties to this Agreement shall not be deemed to assume any**
21 **liability for the negligent or wrongful acts, or omissions of the other party (or**
22 **parties). Nothing contained herein shall be construed as a waiver by any of the**
23 **parties, of the liability limits established in Section 768.28, Florida Statutes.**

24 **25. Notwithstanding any other provision in this Agreement, all**
25 **documents, records, reports and any other materials produced hereunder shall**
26 **be subject to disclosure, inspection and audit, pursuant to the Palm Beach**
27 **County Office of the Inspector General Ordinance 2009-049, as may be amended.**
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29
30

1 The COUNTY has established the Office of the Inspector General in
2 Ordinance 2009-049, as may be amended, which is authorized and empowered to
3 review past, present and proposed County contracts, transactions, accounts and
4 records. The Inspector General has the power to subpoena witnesses, administer
5 oaths and require the production of records, and audit, investigate, monitor, and
6 inspect the activities of the BOARD, its officers, agents, employees, and lobbyists
7 in order to ensure compliance with contract requirements and detect corruption
8 and fraud.

9 Failure to cooperate with the Inspector General or interference or impeding
10 any investigation shall be in violation of Ordinance 2009-049, and punished
11 pursuant to Section 125.69, Florida Statutes, in the same manner as a second
12 degree misdemeanor.

13 26. BOARD shall promptly notify COUNTY of any lawsuit-related
14 complaint, or cause of action threatened or commenced against it which arises
15 out 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
18 default shall provide to the defaulting party thirty (30) days written notice before
19 exercising any of their rights.

20 28. This Agreement is made solely and specifically among and for the
21 benefit of the parties hereto, and their respective successors and assigns subject
22 to the express provisions hereof relating to successors and assigns, and no
23 other person shall have any rights, interest, or claims hereunder or be entitled to
24 any benefits under or on account of this Agreement as a third-party beneficiary or
25 otherwise.

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

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

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

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

3

4

INTENTIONALLY LEFT BLANK

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

THE SCHOOL BOARD OF PALM BEACH COUNTY

(BOARD SEAL)

ATTEST:

By: [Signature]
BOARD SUPERINTENDENT

By: [Signature]
CHAIRMAN

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature] 10/4/10
BOARD'S ATTORNEY

PALM BEACH COUNTY

(COUNTY SEAL)

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

ATTEST:

SHARON R. BOCK, CLERK &
COMPTROLLER

By: _____
DEPUTY CLERK

By: _____
~~BURT AARONSON~~, CHAIRMAN

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
ASSISTANT COUNTY ATTORNEY

BY: [Signature]

**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	_____	_____	_____
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.

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 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 Project Administrator/Date

Assistant County Engineer or Fiscal Manager/Date

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(s) noted
above were used in accomplishing the project.

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.

Administrator/Date

Financial Officer/Date