

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	100,000	\$0	\$0	\$0	\$0
Operating Costs	0	0	0	0	0
External Revenues	(100,000)	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	\$0
# Additional FTE Positions (Cumulative)	0	0	0	0	0
Is Item Included in Current Budget:	Yes	_____	No	_____	<u>X</u>

Budget Account No: _____

Reporting Category _____

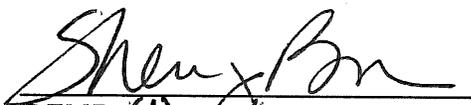
B. Recommended Sources of Funds/Summary of Fiscal Impact:

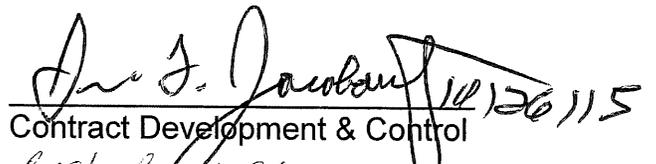
Indeterminable at this time

Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development & Control Comments:


 OFMB ^{AD} _{10/22/15}


 Contract Development & Control _{10/26/15}
 B. Wheeler 10-26-15

A. Legal Sufficiency:


 Assistant County Attorney _{10/28/15}

A. Other Department Review:

 Department Director

**AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
KH ALTON LLC
REGARDING
EMERGENCY HURRICANE SHELTER CAPACITY**

THIS AGREEMENT (“Agreement”) is made and entered into as of this ____ day of _____, 2015, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (“County”) and KH Alton LLC, a Florida limited liability company (“KH Alton”), both being hereinafter referred to collectively as “the parties”.

WITNESSETH

WHEREAS, KH Alton is the developer of certain real property located in the City of Palm Beach Gardens, Florida, which property is subject to that certain Resolution 80, 2009 of the City of Palm Beach Gardens, Florida (the “Development Order”);

WHEREAS, Condition 62, Hurricane Preparedness, of the Development Order requires that KH Alton obtain confirmation from the Palm Beach County Division of Emergency Management that adequate emergency general population and special needs shelter capacities are available for the property subject to the Development Order;

WHEREAS, contingent upon this agreement, the County acknowledges that with payment of the Reserve Funds (as defined hereinafter) adequate emergency general population and special needs shelter capacities will be available for up to 1,800 residential units within the Scripps Florida – Phase II/Briger Tract DRI and the parties desire to enter into this Agreement with respect to ensuring that adequate emergency general population and special needs shelter capacity will be available.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, the parties hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct and are deemed incorporated herein.
2. Purpose of this Agreement. The purpose of this Agreement is to set forth the County’s agreement to provide written confirmation of the emergency hurricane shelter capacity with respect to the property subject to the Development Order, and for KH Alton to provide Reserve Funds to the County.
3. Emergency Hurricane Shelter Capacity. The County acknowledges that based on this agreement and with payment of the Reserve Funds adequate emergency general population and special needs shelter capacity will be available for up to 1,800 residential units within the Scripps Florida – Phase II/Briger Tract DRI. The County agrees to cause the Palm Beach County Division of Emergency Management to issue written confirmation to the City of Palm Beach

Gardens, Florida (the "City") of such capacity, which confirmation shall be in the form attached hereto as Exhibit "A". The County shall provide such confirmation for the first 360 residential units as of the date of this Agreement, and shall continue to provide such written confirmation within five (5) business days after request therefor by KH Alton, up to a cumulative total of 1,800 residential units. Upon request, the County agrees to revise such written confirmation such that the City accepts it in satisfaction of Condition 62 of the Development Order.

4. Reserve Funds for Additional Capacity. KH Alton agrees to pay to the County a sum of money (the "Reserve Funds") to be used by the County for emergency general population or special needs hurricane shelter capacity purposes. The Reserve Funds shall equal a total of One Hundred Thousand and No/100 Dollars (\$100,000), which amount shall be paid to the County in four (4) equal installments of Twenty Five Thousand and No/100 Dollars (\$25,000) each. The first installment shall be paid to the County within five (5) business days after the date of this Agreement, with the remaining installments paid once per year, one installment paid upon each of the first three (3) anniversaries of the date of this Agreement. The County agrees that upon payment of the Reserve Funds to the County, KH Alton shall have fulfilled all of its obligations with respect to emergency general population or special needs hurricane shelter capacity related to 1,800 residential units within the Scripps Florida – Phase II/Briger Tract DRI. KH Alton (a) acknowledges and agrees that there is a nexus and rough proportionality between the Reserve Funds and the impacts of this project/development, and that such Reserve Funds are necessary to ensure compliance with the criteria of the City of Palm Beach Gardens Development Order Resolution that are applicable to this project/development, and (b) waives any claims based on payment of such Reserve Funds.

5. Payments. All payments made by KH Alton to the County shall be by check made payable to the Palm Beach County Board of County Commissioners, which shall be mailed to the address provided in paragraph 10 below to the attention of the Director of the Division of Emergency Management.

6. Titles and Subtitles. The titles of the sections and paragraphs of this Agreement are for convenience only and are not to be considered in construing this Agreement.

7. Term and Effective Date. This Agreement shall commence upon execution by both parties and shall continue in effect and remain binding on the parties until such time as the County has delivered to the City the written confirmations referenced in paragraph 3 hereof and KH Alton has paid the County all amounts due under this Agreement.

8. Default & Remedy.

(a) KH Alton shall not be deemed in breach of this Agreement unless it has failed to make payment to the County of the sums required to be paid as set forth in paragraph 4 of this Agreement and it has failed to cure the same within ten (10) days after written notice from the County that it is in default with respect to such payment. If KH Alton fails to correct the breach within such time, the County shall be entitled, as its sole remedy, to specific performance of this Agreement.

(b) The County shall not be deemed in breach of this Agreement unless it fails to issue any of the written confirmations referenced in paragraph 3 hereof within the time period specified in paragraph 3. Upon such breach, KH Alton shall have the right to bring an action for specific performance of this Agreement by giving the County written notice of the deficiency and KH Alton's intent to bring an action for breach as provided herein. The County shall have ten (10) days from receipt of notice to correct the stated deficiency. If the County fails to correct the deficiency within such time, KH Alton shall be entitled, as its sole remedy, to specific performance of this Agreement.

9. Exclusive Remedy. The remedy of specific performance is intended to be exclusive of any other remedy, and no remedy other than the remedy of specific performance shall be available to parties for a default of this Agreement by the other party.

10. Notices. All notices and communications under this Agreement shall be in writing and shall be given by either (a) hand delivery, (b) certified mail, return receipt requested (postage prepaid), (c) reliable overnight commercial courier (charges prepaid), or (d) facsimile (with confirmation of transmission) to each of the parties as follows:

If to County:

Director
Palm Beach County Division of Emergency Management
20 South Military Trail
West Palm Beach, Florida 33415
Fax: 561-712-6464

With a copy to:

Shannon LaRocque, Assistant County Administrator Palm Beach County
301 N. Olive Avenue, 11th Floor
West Palm Beach, Florida 33401
Fax: 561-355-3982

With a copy to:

County Attorney's Office (Attn: Howard J. Falcon III)
301 North Olive Avenue, 6th Floor
West Palm Beach, Florida 33401
Fax: 561-355-6461

If to KH Alton:

KH Alton LLC
Attn: John C. Csapo
701 S. Olive Avenue, Suite 104
West Palm Beach, Florida 33401
Phone: 561-682-9500
Fax: 561-682-1050

With a copy to:

H. William Perry, Esq.
Gunster, Yoakley & Stewart, P.A.
777 S. Flagler Drive, Suite 500
West Palm Beach, Florida 33401
Phone: 561-655-1980
Fax: 561-655-5677

Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by certified mail, three (3) calendar days after the date first deposited in the United States mail; (iii) if by overnight courier, on the date shown on the courier's receipt as the date of actual delivery; and (iv) if by facsimile, upon the date of confirmed transmission. A party may change its address or contact information by giving written notice to the other party as specified herein.

11. Records. Records related to this Agreement shall be maintained by the parties and made available upon request at all times during the period of this Agreement and for five (5) years after final payment is made or after termination as otherwise provided herein. Copies of documents and records related to this Agreement shall be furnished or made available to a party upon request. In the event that either or both of the parties should become involved in a legal dispute with a third party arising from performance under this Agreement, the parties shall extend the period of maintenance for all records relating to the Agreement until the final disposition of the legal dispute, and all such records shall be made readily available to the parties.

12. No Implied Waiver. Failure(s) to insist on strict performance of any covenant, condition, or provision of this Agreement by a party shall not be deemed a waiver of any of such party's rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such written waiver shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision of this Agreement. No waiver shall constitute a continuing waiver unless the written waiver states otherwise.

13. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by applicable law. If any provisions of this Agreement or the application thereof to any party or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the agreement between the parties as contained herein, the remainder of this Agreement shall be enforced to the greatest extent permitted by law.

14. Binding Effect. The covenants, conditions, and agreements contained in this Agreement shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns.

15. Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with, the substantive laws of the State of Florida. Venue for any lawsuit filed in connection with this Agreement shall be in Palm Beach County, Florida.

16. Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party, and any purported or attempted assignment without such consent shall be void and of no force or effect. Notwithstanding the foregoing, KH Alton may, without the County's consent, assign its rights under this Agreement in whole or in part to (i) one or more affiliates, or (ii) one or more owners of any real property subject to the Development Order. In no event, however, shall KH Alton be released from its obligations hereunder. As used in this Agreement, an "affiliate" shall mean any person or entity that (i) directly or indirectly controls, is controlled by, or is under common control with KH Alton, or (ii) directly or indirectly owns or controls ten percent (10%) or more of the outstanding voting interests of KH Alton.

17. No Partnership. Nothing contained herein shall be deemed to create a partnership or joint venture between the parties.

18. Attorneys' Fees. In the event that any dispute between the parties should result in litigation relating to this Agreement, each party shall be responsible for its own attorneys' fees and costs. For the purposes of this paragraph, attorneys' fees shall include, without limitation, fees incurred in the following: (i) post-judgment motions; (ii) appeals; (iii) contempt proceedings; (iv) garnishment, levy, and debtor and third party examinations; (v) discovery; (vi) bankruptcy litigation; and (vii) any enforcement proceedings, interlocutory relief or prejudgment proceedings.

19. Third Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

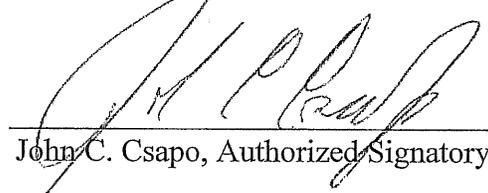
21. Entire Agreement. This Agreement, including any exhibits attached hereto, constitutes the entire agreement between County and KH Alton with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No party hereto shall be liable or bound to the other in any manner by any warranties, representations or covenants with respect to the subject matter hereof except as specifically set forth herein.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day set forth on the first page of this Agreement.

KH ALTON LLC, a Florida limited liability company

By: The Kolter Group LLC, a Florida limited liability company, its Manager

By: 
John C. Csapo, Authorized Signatory

ATTEST:

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK,
CLERK AND COMPTROLLER

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
County Attorney

By: _____
Vince Bonvento, Director
Palm Beach County Public Safety Department

Exhibit "A"

Sample Letter Regarding Emergency Hurricane Shelter Capacity

Date _____

Natalie M. Crowley, AICP
Director of Planning & Zoning
City of Palm Beach Gardens
10500 North Military Trail
Palm Beach Gardens, FL 33410

Re: Briger Development of Regional Impact (aka ALTON)
Condition No. 62, Hurricane Preparedness

Natalie,

Please allow this letter to serve as verification that contingent upon the executed agreement between the COUNTY and ALTON regarding emergency hurricane shelter capacity, Palm Beach County will have adequate emergency general population and special needs shelter capacity to meet the needs of the _____ unit residential subdivision being proposed by KH Alton LLC. The above agreement stipulates payment of fees by ALTON to the COUNTY for the development, construction, and/or expansion of said shelters.

Best Regards,

Director
Palm Beach County
Division of Emergency Management
20 South Military Trail
West Palm Beach, Florida 33415

2016 - 0137

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET AMENDMENT

FUND 3900 -Capital Outlay

BGRV 101615*015
BGEX 101615*147

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 10/16/2015	REMAINING BALANCE
Revenues							
3900-661-PS02-6693 Developer Contributions	0	0	100,000	0	100,000		
TOTAL RECEIPTS & BALANCES	14,014,061	13,996,954	100,000	0	14,096,954		
Expenditures							
3900-661-PS02-6502 Building Construction	0	0	100,000	0	100,000	0	100,000
TOTAL APPROPRIATIONS & EXPENDITURES	14,014,061	13,996,954	100,000	0	14,096,954		

Office of Financial Management and Budget

Signatures & Dates

BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF

INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

[Signature] 10/23/15

Deputy Clerk to the
Board of County Commissioners