

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
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-	-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 additional fiscal impact.

C. Departmental Fiscal Review: R.D. Ward 7/5/06

III. REVIEW COMMENTS

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

James Bunt 7-18-06
 OFMB
 7-18-06
 7-18-06

Ann J. Joes 7/19/06
 Contract Dev. and Control
 7/19/06

B. Approved as to Form and Legal Sufficiency:

Mark R. Pitts 7/24/06
 Assistant County Attorney

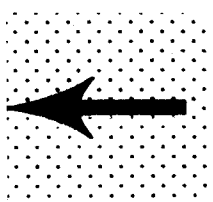
This amendment complies with our review requirements.

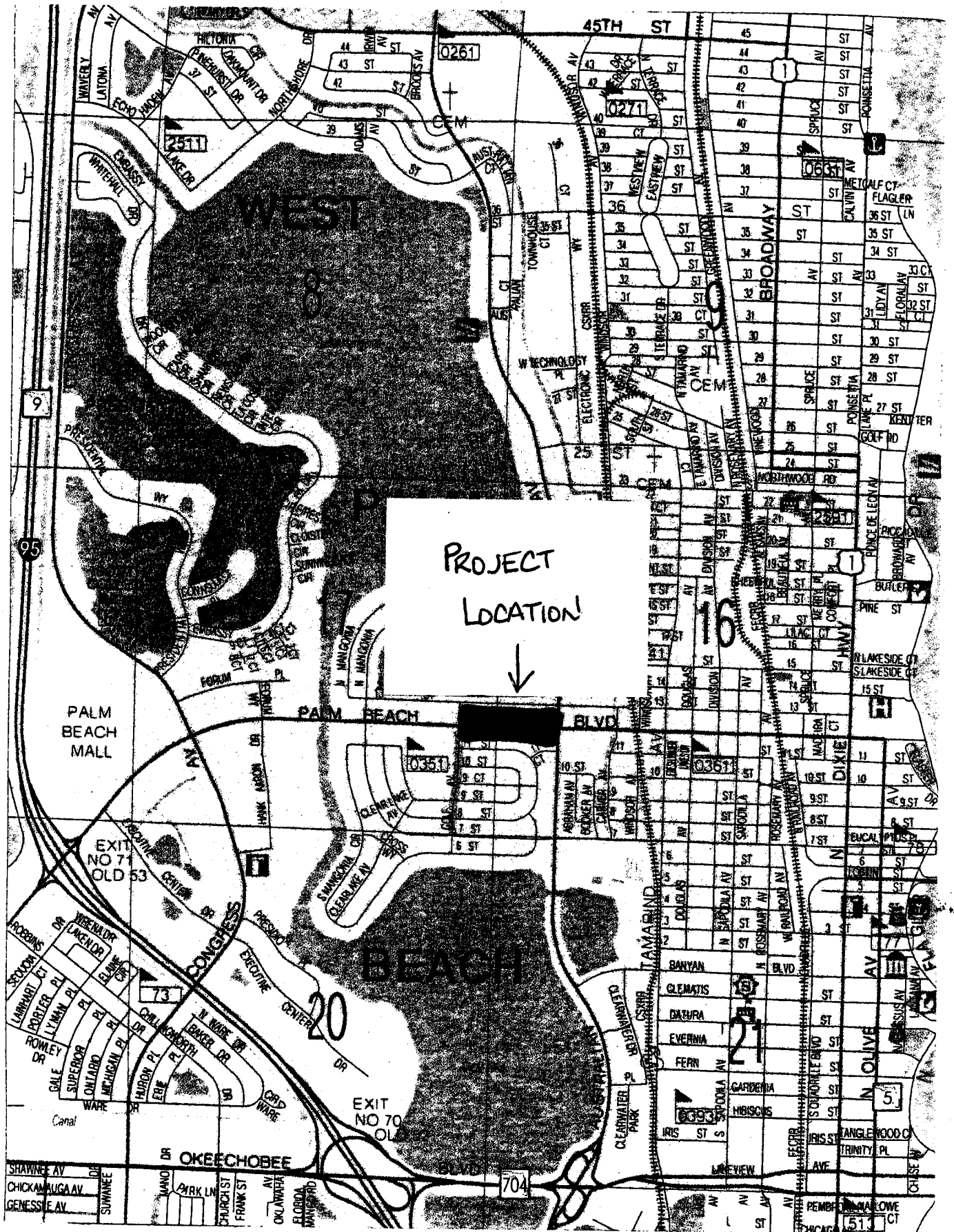
The Amendment retroactively extends the term of the contract.

C. Other Department Review:

 Department Director

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





LOCATION SKETCH

1 **FIRST AMENDMENT TO THE FINANCIAL ASSISTANCE AGREEMENT FOR CITY**
2 **OF WEST PALM BEACH FOR PALM BEACH LAKES BOULEVARD**
3 **(PHASE 3) - BEAUTIFICATION**
4

5 **THIS FIRST AMENDMENT TO THE INTER-LOCAL AGREEMENT is made and**
6 **entered into this _____ day of _____, 2006, by and between the CITY OF**
7 **WEST PALM BEACH, a municipal corporation of the State of Florida, hereinafter**
8 **"CITY", and PALM BEACH COUNTY, a political subdivision of the State of Florida,**
9 **hereinafter "COUNTY".**
10

11 **WITNESSETH:**

12 **WHEREAS, on July 13, 2004, CITY and COUNTY entered into a Financial**
13 **Assistance Agreement (R2004-1531) providing for reimbursement funding in an**
14 **amount not to exceed FIFTY TWO THOUSAND SEVEN HUNDRED ONE and 00/100**
15 **DOLLARS (\$52,701.00) for the CITY's "IMPROVEMENTS" (beautification on Palm**
16 **Beach Lakes Boulevard from Australian Avenue to west of Golf Drive); and**

17 **WHEREAS, that Agreement provided for a completion deadline of September**
18 **30, 2005 for the CITY's completion of their IMPROVEMENTS; and**

19 **WHEREAS, due to delays encountered by CITY in its efforts to accomplish the**
20 **IMPROVEMENTS, the September 30, 2005 completion deadline was exceeded; and**

21 **WHEREAS COUNTY and CITY desire that this amendment shall relate back to**
22 **July 13, 2004, and the Agreement continued without interruption or lapse and its**
23 **term extended until March 31, 2007.**

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

26 **1. The Financial Assistance Agreement dated July 13, 2004, by and**
27 **between CITY and COUNTY shall be continued, without interruption or lapse in its**
28 **term or effect. Accordingly, the Agreement is hereby amended to revise paragraph 9**
29 **as follows:**

30 **9. All installation of the IMPROVEMENTS shall be completed and**
31 **final invoices submitted to the COUNTY no later than March 31,**
32 **2007, and COUNTY shall have no obligation to CITY or any other**
33 **entity or person for any cost incurred thereafter unless the time**
34 **frame for completion is extended by modification of this**
35 **Agreement as provided herein.**

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2. It is the intent of the parties hereto that this AMENDMENT shall not become binding until the date executed by both parties.

3. All other provisions of the Financial Assistance Agreement dated July 13, 2004, shall remain in full force and effect.

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

CITY OF WEST PALM BEACH

(CITY SEAL)

CITY OF WEST PALM BEACH,
BY ITS CITY COMMISSION

ATTEST:

By: *Florence Hudson*
Deputy CITY CLERK

By: *[Signature]*
MAYOR

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: *WSA* *2/8/06*
CITY ATTORNEY

PALM BEACH COUNTY

(COUNTY SEAL)

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

ATTEST:

Sharon R. Bock
Clerk and Comptroller

By: _____
DEPUTY CLERK

By: _____
Tony Masilotti, Chairman

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
ASSISTANT COUNTY ATTORNEY

APPROVED AS TO TERMS AND CONDITIONS

BY: *AT Trakes*

FINANCIAL ASSISTANCE AGREEMENT WITH CITY OF WEST PALM BEACH FOR PALM BEACH LAKES BOULEVARD BEAUTIFICATION IMPROVEMENTS

THIS INTER-LOCAL AGREEMENT is made and entered into this JUL 13 2004 day of _____, 2004, by and between the CITY OF WEST PALM BEACH, a municipal corporation of the State of Florida, hereinafter "CITY", and PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter "COUNTY."

WITNESSETH:

WHEREAS, CITY is undertaking the installation of beautification improvements, including, but not limited to, landscaping and irrigation, on COUNTY's Palm Beach Lakes Boulevard from Australian Avenue to west of Golf Road, hereinafter "IMPROVEMENTS"; and

WHEREAS, CITY applied for this County funded grant thru Keep Palm Beach County Beautiful; and

WHEREAS, COUNTY believes that the IMPROVEMENTS serve a public purpose in the enhancement of the appearance of the right of way and wishes to support those efforts by providing a reimbursement contribution for forty three percent (43%) of the cost of improvements, such contribution not to exceed a maximum of FIFTY TWO THOUSAND SEVEN HUNDRED ONE and 00/100 DOLLARS (\$52,701.00) to CITY for the installation of the IMPROVEMENTS; and

WHEREAS, during and after installation, CITY will be responsible for the perpetual maintenance of the IMPROVEMENTS; and

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

1. The above recitations are true, correct, and are incorporated herein.
2. COUNTY agrees to reimburse CITY for forty three percent (43%) of the costs of the IMPROVEMENTS, not to exceed a maximum amount of FIFTY TWO THOUSAND SEVEN HUNDRED ONE and 00/100 DOLLARS (\$52,701.00), whichever is less, of the cost for the initial installation, to be used exclusively for the IMPROVEMENTS.

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

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

9 5. **CITY agrees to assume all responsibility for design, bidding, contract**
10 **preparation, and contract administration for the installation of the IMPROVEMENTS,**
11 **including payment(s) to contractor(s), pursuant to all applicable governmental laws**
12 **and regulations and will comply with all applicable governmental landscaping codes**
13 **and permitting requirements in the selection and installation of the IMPROVEMENTS.**
14 **CITY agrees to install the IMPROVEMENTS substantially in accordance with the**
15 **plans, specifications and costs as approved in the permitting process by COUNTY.**
16 **CITY also agrees to assume financial responsibility for the completion of any**
17 **portions of the IMPROVEMENTS that are not fully-funded by the amount set forth in**
18 **Paragraph 2, above. Otherwise, COUNTY will have final determination of the**
19 **eligibility for reimbursement of any changes. Substantial variations from the**
20 **permitted plans shall require prior written approval from County Engineer's Office.**
21 **The final drawings must be signed and sealed by a Florida Registered Landscape**
22 **Architect experienced in roadway planting and familiar with the COUNTY'S**
23 **Streetscape Standards.**

24 6. **CITY will obtain or provide all labor and materials necessary for the**
25 **design and installation of the IMPROVEMENTS. COUNTY shall have the final**
26 **determination of eligibility for reimbursement. CITY shall furnish the Manager,**
27 **Streetscape Section, of COUNTY'S Department of Engineering and Public Works**
28 **with a request for payment supported by the following:**

29 a. **A statement from a Florida Registered Landscape Architect that the**

1 **IMPROVEMENTS** have been inspected and were installed substantially in
2 accordance with the permitted plans for the **IMPROVEMENTS**, and;

3 **b. A Contract Payment Request Form and a Contractual Services Purchases**
4 **Schedule Form**, attached hereto and incorporated herein as **Exhibit "A"**
5 **(pages 1 and 2)** which are required for each and every reimbursement
6 requested by the **CITY**. Said information shall list each invoice paid by **CITY**
7 and shall include the vendor invoice number, invoice date, and the amount
8 payable by **CITY**. **CITY** shall attach a copy of each vendor invoice paid by
9 **CITY** along with a copy of the respective check and shall make reference
10 thereof to the applicable item listed on the **Contractual Services Purchases**
11 **Schedule Form**. Further, the **Program Administrator** and the **Program**
12 **Financial Officer** for **CITY** shall also certify that each vendor invoice listed on
13 the **Contractual Services Purchases Schedule Form** was paid by **CITY** as
14 indicated.

15 **7. CITY shall maintain adequate records to justify all charges, expenses,**
16 **and costs incurred in performing the IMPROVEMENTS for at least three (3) years**
17 **after the completion of such IMPROVEMENTS. COUNTY shall have access to all**
18 **books, records and documents as required in this Section for the purpose of**
19 **inspection or audit during normal business hours.**

20 **8. CITY agrees to be responsible for the perpetual maintenance of the**
21 **IMPROVEMENTS following the installation and shall be solely responsible for**
22 **obtaining and complying with all necessary permits, approvals, and authorizations**
23 **from any federal, state, regional, or COUNTY agency which are required for the**
24 **subsequent maintenance of the IMPROVEMENTS.**

25 **9. All installation of these IMPROVEMENTS shall be completed and final**
26 **invoices submitted to the COUNTY no later than September 30, 2005, and the**
27 **COUNTY shall have no obligation to the CITY or any other entity or person for any**
28 **cost incurred thereafter unless the time for completion is extended by modifications**
29 **of this Agreement as provided herein.**

1 **10. CITY recognizes that it is an independent contractor, and not an agent**
2 **or servant of COUNTY or its Board of County Commissioners. In the event a claim**
3 **or lawsuit is brought against COUNTY, its officers, employees, servants or agents,**
4 **relating to the IMPROVEMENTS or any item which is the responsibility of CITY, CITY**
5 **hereby agrees to indemnify, save and hold harmless COUNTY, its officers,**
6 **employees, servants or agents, and to defend said persons from any such claims,**
7 **liabilities, causes of action and judgements of any type whatsoever arising out of or**
8 **relating to existence of the IMPROVEMENTS or the performance by CITY as may**
9 **relate to this Agreement. CITY agrees to pay all costs, attorney's fees and expenses**
10 **incurred by COUNTY, its officers, employees, servants or agents in connections with**
11 **such claims, liabilities or suits except as may be incurred due to the negligence of**
12 **COUNTY.**

13 **11. CITY shall, at all times during the term of this Agreement (the installation**
14 **and existence of the IMPROVEMENTS), maintain in force its status as an insured**
15 **municipal corporation, and shall provide evidence of this insurance prior to**
16 **COUNTY's execution of this Agreement.**

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

23 **13. CITY shall require each contractor engaged by CITY for work associated**
24 **with this Agreement to maintain:**

- 25 **a. Workers' Compensation coverage in accordance with Florida**
26 **Statutes, and;**
27 **b. Commercial General Liability coverage, including vehicle coverage,**
28 **in combined single limits of not less than ONE MILLION AND 00/100**
29 **DOLLARS (\$1,000,000.00). COUNTY shall be included in the coverage**

1 as an additional insured.

2 c. A payment and performance bond for the total amount of the
3 improvements in accordance with Florida Statute 255.05.

4 14. In the event of termination, CITY shall not be relieved of liability to
5 COUNTY for damages sustained by COUNTY by virtue of any breach of the contract
6 by CITY; and COUNTY may withhold any payment to CITY for the purpose of set-off
7 until such time as the exact amount of damages due COUNTY is determined. In the
8 event CITY elects to discontinue its maintenance obligation for the IMPROVEMENTS
9 under this Agreement, it shall be the obligation of the CITY to restore, if necessary,
10 the area of the IMPROVEMENTS in COUNTY's right-of-way to a condition acceptable
11 to County Engineer, which shall be in accordance with Federal, State and COUNTY
12 standards for road construction and/or maintenance. In the event CITY fails to
13 restore the area of the IMPROVEMENTS to a condition acceptable to the County
14 Engineer, COUNTY may undertake such restoration and CITY shall be liable for the
15 costs of such restoration.

16 15. CITY's termination of this Agreement shall result in all obligations of
17 COUNTY for funding contemplated herein to be canceled.

18 16. COUNTY and CITY agree that no person shall, on the grounds of race,
19 color, national origin, sexual orientation, religion or creed, sex, age, or handicap be
20 discriminated against in performance of the Agreement.

21 17. In the event that any section, paragraph, sentence, clause or provision
22 hereof is held invalid by a court of competent jurisdiction, such holding shall not
23 affect the remaining portions of this Agreement and the same shall remain in full
24 force and effect.

25 (INTENTIONALLY LEFT BLANK)

1 **18. All notices required to be given under this Agreement shall be writing,**
2 **and deemed sufficient to each party when sent by United States Mail, postage**
3 **prepaid, to the following:**

4 **COUNTY**

5 **Manager, Streetscape Section**
6 **Palm Beach County Department of**
7 **Engineering and Public Works**
8 **Post Office Box 21229**
9 **West Palm Beach, Florida 33416-1229**

10 **AS TO CITY**

11 **Capital and Bond Fund Manager**
12 **City of West Palm Beach**
13 **1000 45th Street, Suite 15**
14 **West Palm Beach, FL 33407**
15

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

24 **20. Any costs or expenses (including reasonable attorney's fees)**
25 **associated with the enforcement of the terms and conditions of this Agreement shall**
26 **be borne by the respective parties; provided, however, that this clause pertains only**
27 **to the parties to the Agreement.**

28 **21. Except as expressly permitted herein to the contrary, no modification,**
29 **amendment, or alteration in the terms or conditions contained herein shall be**
30 **effective unless contained in a written document executed with the same formality**
31 **and equality of dignity herewith.**

32 **22. Each party agrees to abide by all laws, orders, rules and regulations and**
33 **CITY will comply with all applicable governmental landscaping codes in the**

1 maintenance and replacement of the IMPROVEMENTS.

2 23. The parties to this Agreement shall not be deemed to assume any
3 liability for the negligent or wrongful acts, or omissions of the other party (or
4 parties). Nothing contained herein shall be construed as a waiver by COUNTY, by
5 any of the parties, of the liability limits established in Section 768.28, Florida
6 Statutes.

7 24. CITY shall promptly notify COUNTY of any lawsuit-related complaint,
8 or cause of action threatened or commenced against it which arises out of or
9 relates, in any manner, to the performance of this Agreement.

10 25. The parties expressly covenant and agree that in the event any of the
11 parties is in default of its obligations under this Agreement, the parties not in default
12 shall provide to the defaulting party thirty (30) days written notice before exercising
13 any of their rights.

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

17 27. This Agreement represents the entire understanding between the
18 parties, and supersedes all other negotiations, representations, or agreements,
19 either written or oral, relating to this Agreement.

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

22 29. This Agreement shall take affect upon execution and the effective date
23 shall be the date of execution.

24 (INTENTIONALLY LEFT BLANK)

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

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

CITY OF WEST PALM BEACH, BY ITS CITY COMMISSION

By: [Signature]
KAREN T. MARCUS, CHAIR JUL 13 2004

By: [Signature]
MAYOR

R2004 1531

(COUNTY SEAL)

(CITY SEAL)

ATTEST:

ATTEST:

DOROTHY H. WILKEN, CLERK

By: [Signature]
DEPUTY CLERK

By: [Signature]
CITY CLERK

By: [Signature]
APPROVED AS TO FORM AND LEGAL SUFFICIENCY
ASSISTANT COUNTY ATTORNEY

By: [Signature] 5/5/04
APPROVED AS TO FORM AND LEGAL SUFFICIENCY
CITY ATTORNEY

By: [Signature]
APPROVED AS TO TERMS AND CONDITIONS