

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
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:

Transportation Improvement Fund (3500)
Office Depot-Off Site Roadway Improvements (361-1175)

This item has no additional fiscal impact.

Funding was provided for in the Agreement with State of Florida Office of Tourism, Trade & Economic Development (OTTED) to receive \$2,000,000 for these off-site roadway improvements. This agreement and resulting Budget Amendment was approved by the Board on February 27, 2007. It was noted at that time that there would be a fiscal impact associated with the agreement to accept maintenance responsibilities for these improvements; however, it was not determinable at this time.

C. Departmental Fiscal Review: R. D. Wain 5/2/07

III. REVIEW COMMENTS

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

[Signature] 6-14-07
OFMB
CN 6/12/07

[Signature] 6/15/07
Contract Dev. and Control
6/15/07

B. Approved as to Form and Legal Sufficiency:

[Signature] 6/29/07
Assistant County Attorney

C. Other Department Review:

Department Director

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

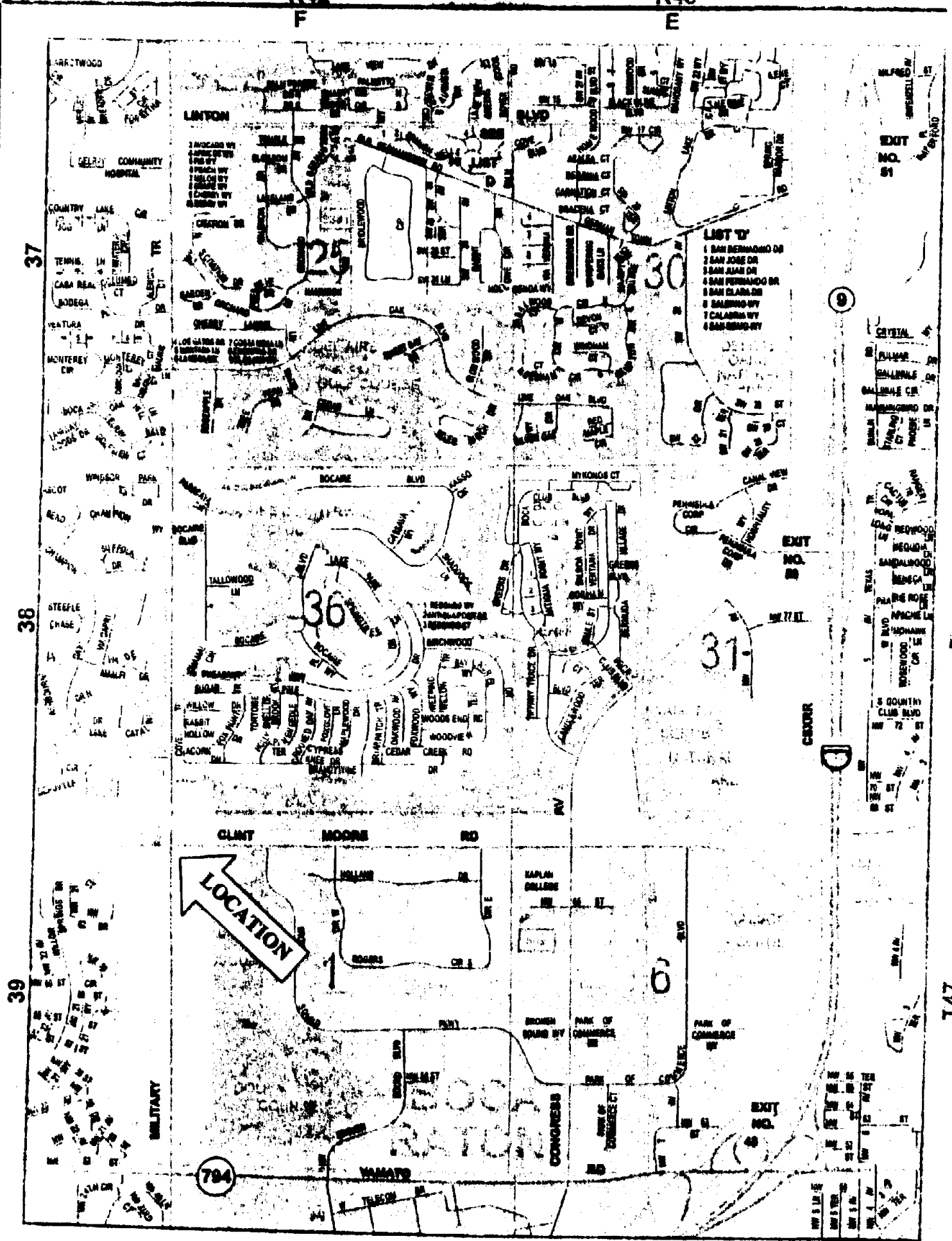
Background and Justification (Continued)

The developer of Office Depot will design and construct the roadway improvements. The developer of Office Depot will provide all documents required by OTTED for reimbursement. Palm Beach County will reimburse the developer of Office Depot and then receive reimbursement from OTTED. The Agreement with OTTED was approved on February 27, 2007.

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**JOINT PROJECT AGREEMENT BETWEEN PALM BEACH COUNTY AND BOCA 54
NORTH LLC FOR OFF-SITE ROADWAY IMPROVEMENTS**

THIS AGREEMENT, made and entered into this ____ day of _____, 2007, by and between THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY" and BOCA 54 NORTH LLC, a limited liability company existing under the laws of the State of Delaware and authorized to transact business in the Sate of Florida, hereinafter referred to as the "BOCA 54".

WITNESSETH

WHEREAS, BOCA 54 is developing new corporate office buildings for Office Depot at the southeast corner of Clint Moore Road and Military Trail hereinafter referred to as the "DEVELOPMENT"; and

WHEREAS, the City of Boca Raton has required certain off-site roadway improvements in connection with DEVELOPMENT , as detailed in Attachment A, hereinafter referred to as the "IMPROVEMENTS"; and

WHEREAS, the COUNTY has received or will receive a \$2,000,000 grant for Economic Development Transportation Funds (EDTF) from the State of Florida Office of Tourism, Trade, and Economic Development (OTTED) to pay for the IMPROVEMENTS; and

WHEREAS, OTTED will reimburse the COUNTY for the IMPROVEMENTS only after the COUNTY reimburses BOCA 54 for the IMPROVEMENTS; and

WHEREAS, BOCA 54 plans on constructing the IMPROVEMENTS.

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

1. The above recitations are true and correct and are incorporated herein and are a part hereof by this reference.
2. BOCA 54 agrees to:
 - a. If required, BOCA 54 shall provide, at no cost to the COUNTY, the necessary Right-of-Way for turn lanes located on Military Trail and Clint Moore Road, which shall be dedicated to the COUNTY.
 - b. BOCA 54 shall be responsible for causing the design and construction of the IMPROVEMENTS.
 - c. BOCA 54 shall be responsible for the administration of consultant services for the design of the IMPROVEMENTS.
 - d. BOCA 54 shall be solely responsible for causing its contractor to obtain and comply with all necessary permits, approvals, and authorizations required for the IMPROVEMENTS from any federal, state, regional or local agency.
 - e. To the extent applicable, BOCA 54 shall provide all construction drawings, specifications, and contract documents necessary to award the contracts for the IMPROVEMENTS; it being acknowledged that the plans for the utility lines are being designed by the respective utility companies and delivered by BOCA 54's consultants to the COUNTY.
 - f. BOCA 54 shall supervise and administer construction of the IMPROVEMENTS including disbursement of funds associated with the work.

- g. BOCA 54 shall contract for and obtain or provide all labor and materials necessary for the IMPROVEMENTS.
- h. BOCA 54 shall require each contractor engaged by BOCA 54 for work associated with this Agreement to maintain:
 - i. Workers' Compensation coverage in accordance with Florida Statutes; and
 - ii. Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000). The CITY and COUNTY shall be included in the coverage as an additional insured; and
 - iii. A payment and performance bond by the subcontractor performing the work for the total amount of the IMPROVEMENTS in accordance with Florida Statute 255.05.
- i. The COUNTY agrees to:
 - i. The COUNTY shall submit all approved payment requests from BOCA 54 to OTTED for IMPROVEMENTS including design, contract preparation, bidding, award, construction, contract administration, and inspection pursuant to all applicable state and local laws and regulations.
 - ii. The COUNTY shall pay BOCA 54 the reimbursement funds received from OTTED as stated in Paragraph 3 of this Agreement. County Engineer shall have the right, but not the obligation, to inspect and approve the construction. BOCA 54 shall submit proof of payment to County's contract monitor or his designee in a form deemed satisfactory by County.

In no event shall County have any payment obligation to any other entity or person.

3. BOCA 54 shall cause to be completed and delivered, not more than once a month, (i) a Contract Payment Request Form and a Contractual Services Purchases Schedule Form (hereinafter "County Forms"), copies of which are attached hereto and incorporated herein as Exhibit "A" and (ii) a Certificate of Payment, all of which are required for each and every reimbursement requested by BOCA 54. County Forms shall list: (i) each invoice payable by BOCA 54; (ii) the vendor invoice number; and (iii) the invoice date. BOCA 54 shall attach a copy of each vendor invoice to be paid by BOCA 54 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 project engineer shall certify the total funds payable by BOCA 54 for the IMPROVEMENTS and shall also certify that each vendor invoice listed on the Contractual Services Purchases Schedule Form was paid by BOCA 54 as indicated. The Certificate for Payment shall certify: (i) that all of the invoices are true, accurate and complete copies of the originals; (ii) that BOCA 54 is current with regard to the payment of the invoices; (iii) a certification by BOCA 54's engineer that all of the work for which invoices have been submitted has been completed; and (iv) the total and aggregate dollar amount of all of the invoices attached to the Certificate for Payment. Invoices received from BOCA 54 will be reviewed and approved by County indicating that the expenditures have been made in conformity with the requirements of this Agreement. Copies of the documents will be sent to OTTED for a pre-audit for technical accuracy. Upon acceptance by OTTED, the invoices will be sent to County's Finance Department for final approval and

payment within thirty (30) days following receipt of an acceptable Contract Payment Request Form and a Contractual Services Purchase Schedule Form.

4. BOCA 54 shall use its commercially reasonable efforts to complete construction of the IMPROVEMENTS prior to August 1, 2008. Should construction not be completed prior to that date, this Agreement will terminate unless extended by the parties.
5. All notices, requests, consents and other communications required and permitted under this Agreement shall be in writing and shall be by registered or certified mail to the following:

As to BOCA 54: Jose Hevia
 Vice President
 Boca 54 North LLC
 c/o Flagler Development Group, Inc.
 2855 LeJeune Road, 4th Floor
 Coral Gables, FL 33134
 Attention: Jose Hevia
 Phone: 305-520-2300
 Fax: 305-520-2400

With a Copy to: Kolleen O.P. Cobb, Esq.
 General Counsel
 Flagler Development Group, Inc.
 2855 LeJeune Road, 4th Floor
 Coral Gables, FL 33134
 Phone: 305-520-2300
 Fax: 305-520-2400

And Brent A. Levison
 Corporate - Real Estate Attorney
 Office Depot, Inc.
 2200 Old Germantown Road
 Mail Code: LEGL
 Delray Beach, FL 33445
 Phone: 561 438-5081
 Fax: 561 438-2946

As to COUNTY: Daniel Weisberg, P.E.
Traffic Division
Palm Beach County
2300 N. Jog Road
West Palm Beach, FL 33411
Phone: (561) 684-4030
Fax: (561) 478-5770

With a Copy to: Marlene Everitt, Assistant County Attorney
County Attorney's Office
301 N. Olive Avenue
West Palm Beach, FL 33401
Phone: (561) 355-2225
Fax: (561) 355-4398

6. The effective date of this Agreement shall be the date of full execution by all parties and upon filing with the Clerk of the Courts for Palm Beach County, Florida.
7. The COUNTY and BOCA 54 recognize that each is an independent contractor and not an agent or servant of the other. No person employed by any party to this Agreement, shall in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, workers' compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.
8. The parties to the Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party. Nothing contained herein shall be construed as a waiver by either party, of the liability limits established in Section 768.28, Florida Statutes.

9. Each party will promptly notify the other of any citizen complaint, claim, suit, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.
10. Each party's performance and obligation under this Agreement is contingent upon an annual budgetary appropriation by its respective governing body for the purposes hereunder. The COUNTY agrees to budget and appropriate funds if available.
11. The COUNTY and BOCA 54 agree that no person shall on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, or sexual orientation be excluded from the benefits of, or be subjected to any form of this Agreement. BOCA 54 will ensure that all contracts let for the IMPROVEMENTS pursuant to the terms of this Agreement will contain similar non-discrimination and equal opportunity clause.
12. The parties expressly covenant and agree that in the event either party is in default of its obligations under this Agreement, the party not in default shall provide to the defaulting party thirty (30) days written notice exercising any of its rights.
13. Any costs or expenses (including attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provide, however, that this clause pertained only to the parties to the Agreement.
14. Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein certify 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).

15. This Agreement shall be construed by and governed by the laws for the State of Florida. Any and all 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 or 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 hereunder shall preclude any other of further exercise thereof.
16. The preparation of the Agreement has been a joint effort of the parties, and the resulting document shall not, solely as matter of judicial constraint, be construed more severely against one of the parties than the other.
17. 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.
18. This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.


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IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first above written.

BOCA 54 NORTH LLC, a Delaware limited liability company

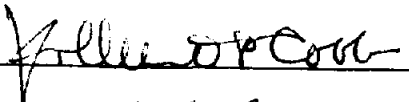
By: Boca 54 Land Associates LLC, a Delaware limited liability company

By: Flagler Boca 54 LLC, a Florida limited liability company

By: 
Jose Heyia, Vice President

Date: 6-5-07

ATTEST:


Date: 6-5-07

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____

ATTEST:

Sharon R. Bock,
County Clerk and Comptroller

Date: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
County Attorney

PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Chair

Date: _____

APPROVED AS TO TERMS AND CONDITIONS

By: 

ATTACHMENT "A"
LIST OF OFF-SITE ROADWAY IMPROVEMENTS

1. Military Trail at Clint Moore – addition of right turn lane from Military Trail (North) onto Clint Moore Road (East).
2. Military Trail North Entrance – construct Right Turn Lane
3. Military Trail Center Entrance – construct Right Turn Lane
4. Military Trail South Entrance – construct Right Turn Lane
5. Clint Moore Road Entrance – construct Channelized Median
6. Military Trail South Entrance – Close the existing median on Military Trail just South of the Southern most entrance to the site
7. Clint Moore Entrance - Right Turn Lane for rear entrance to site. Extend the existing double left turn lane from Clint Moore (West) onto Military Trail (South)
8. Install ITS (including CCTV cameras and cable) along Military Trail from Clint Moore Road to Yamato Road ⁽¹⁾
9. Traffic Signal at the Center site entrance along Military Trail ⁽¹⁾
10. Relocate Utility poles that impede roadway construction

Note: (1) – Items 8 and 9 will eventually be turned over to City of Boca Raton for maintenance.