

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: December 18, 2007	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Workshop

Department:
Submitted By: Engineering and Public Works
Submitted For: Engineering Services Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: A Resolution authorizing the transfer of the Florida East Coast Railway (FEC) License Agreement from the City of Boynton Beach (City) to Palm Beach County (County) for SE 23RD Avenue also known as Golf Road, DOT#272485-X, Milepost 313+848 and to recognize the City's Resolution R-07-133 for transfer of the FEC License Agreement to the County.

Summary: SE 23RD Avenue is a County maintained roadway for which the City currently holds the License Agreement. The City wishes to transfer the FEC License Agreement for SE 23RD Avenue to the County. The City has passed a Resolution authorizing the transfer of the License Agreement to the County. The City does not maintain SE 23RD Avenue and in the interest of uniformity the County should assume responsibility of the FEC railway crossing. Although there is no immediate fiscal impact, the County will eventually be required to fund the reconstruction and/or relocation of the railway crossing.

District: 7 (MRE)

Background and Justification: The City has held the License Agreement for this railway crossing since June 18, 1952. On April 21, 1981, the County took over maintenance of SE 23RD Ave. from the City through functional classification. The License Agreement with the FEC was not transferred at that time. In the interest of uniformity the County is willing to accept transfer of the License Agreement at this time.

This office, having reviewed the License Agreement, recommends that the Board of County Commissioners adopt the Resolution authorizing the transfer of the existing License Agreement.

Attachments:

1. Location Map
2. Resolution (3)
3. License agreement
4. Resolution from City of Boynton Beach

Recommended By: Don F. J. Charles Rich
Division Director

11/26/07 [Signature]
Date

Approved By: A. T. Webb
County Engineer

11/27/07
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
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 1201 Dept. 360 Unit 2270 Object 4607
Program

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

County Transportation Trust Fund
Railroad Crossing Maintenance

This item has no immediate fiscal impact.

Palm Beach County will eventually be required to fund the reconstruction or relocation of this railway crossing. The cost of this is not determinable at this time.

C. Departmental Fiscal Review: R. J. Ward 11/26/07

III. REVIEW COMMENTS

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

John D. ... 12-4-07
OFMB
12-4-07
12/4/07
12/3/07

Jim J. ... 12/4/07
Contract Dev. and Control
12/4/07

B. Approved as to Form and Legal Sufficiency:

Malcolm R. ... 12/07/07
Assistant County Attorney

C. Other Department Review:

Department Director

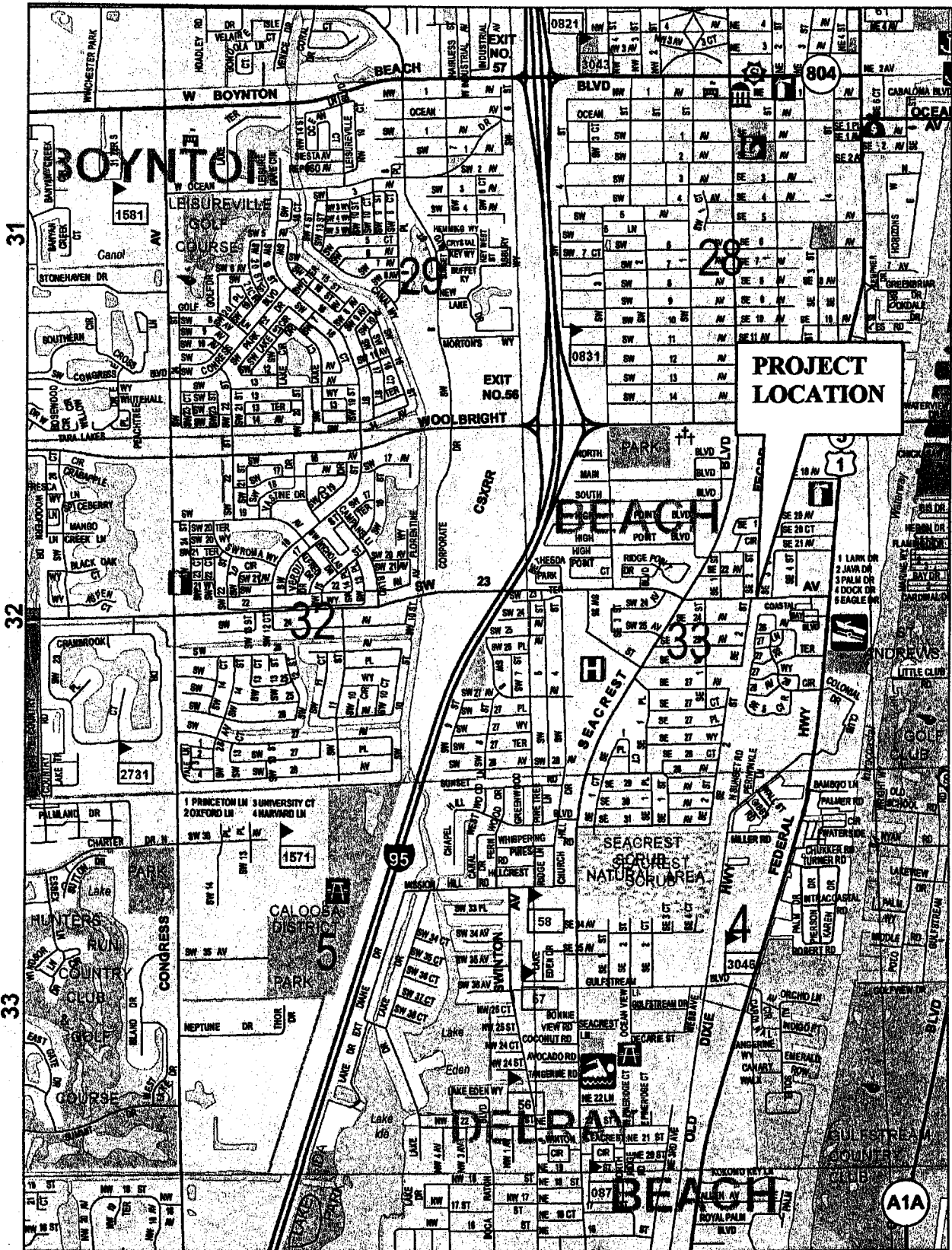
This summary is not to be used as a basis for payment.

105

R43
D

See pg 99

R43
C



T45

T45

T46

105

D

See pg 111

C

LOCATION MAP

ATTACHMENT NO. 1

RESOLUTION NO. R-2007 _____

**RESOLUTION OF THE BOARD OF COUNTY
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA
AUTHORIZING THE TRANSFER OF THE EXISTING
LICENSE AGREEMENT FOR SE 23RD AVENUE, FROM
THE CITY OF BOYNTON BEACH, TO PALM BEACH
COUNTY.**

WHEREAS, on July 18, 1952 the City of Boynton Beach (CITY) obtained a license agreement for SE 23RD Avenue from the Florida East Coast Railway (FEC), and

WHEREAS, on April 21, 1981, Palm Beach County (County) acquired maintenance responsibility for SE 23RD Avenue through functional classification, and

WHEREAS, the COUNTY has maintained SE 23RD Avenue since it obtained maintenance responsibility since April 21, 1981, and

WHEREAS, the license agreement remains the responsibility of the CITY, and

WHEREAS, the COUNTY is willing to accept the transfer of the license agreement for the Florida East Coast Railway crossing at SE 23RD Avenue (Crossing Number 272485-X) from the CITY; and

WHEREAS, the CITY is willing to grant the transfer of the license agreement for the Florida East Coast Railway crossing at SE 23RD Avenue to the COUNTY, and

WHEREAS, Palm Beach County will fund the costs associated with the crossing surface at SE 23Rd Avenue.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF PALM BEACH COUNTY FLORIDA:**

That Palm Beach County accept the license agreement for the crossing of SE 23RD Avenue, Crossing Number 272485-X, from the City of Boynton Beach along with all associated costs, and

That the Chairman of the Board of County Commissioners be authorized to accept such agreements from the City of Boynton Beach, as herein described: and

That this RESOLUTION shall take effect immediately upon adoption.

RESOLUTION NO. 2007-
December 18, 2007

The foregoing Resolution was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote was as follows:

ADDIE L. GREENE, Chairperson

JOHN F. KOONS, Vice Chair

KAREN T. MARCUS

ROBERT J. KANJIAN

MARY McCARTY

BURT AARONSON

JESS R. SANTAMARIA

The Chairperson thereupon declared the resolution duly passed and adopted _____.

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
Deputy Clerk

S E A L

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
(County Attorney)

FAENG_SER\RAILWAY 2003-06\SE 23RD AVE fec surface_resolution.DOC

THIS AGREEMENT, Made in duplicate this 18th day of June, A.D. 1963, by and between SCOTT E. LOFTIN and JOHN W. MARTIN, as Trustees of the property of Florida East Coast Railway Company, and not individually, hereinafter called "Trustees", and said Railway Company being hereinafter called "Railway", and CITY OF BOYNTON BEACH, a municipal corporation of the State of Florida (Address: Boynton Beach, Florida), hereinafter called "Second Party",

WITNESSETH: That the said Trustees for and in consideration of the covenants and agreements herein contained to be performed and kept by the Second Party, do hereby give and license unto the said Second Party the right and privilege to use as a crossing for road crossing purposes, that part of the right of way and property of said Railway in the City of Boynton Beach, Palm Beach County, Florida, at the locations described as follows:

A parcel of land with uniform width of 75.0 feet northerly and southerly extending easterly and westerly across the right of way and tracks of the Florida East Coast Railway Company at Boynton Beach, Florida, with longitudinal center line located 4100 feet southerly from the Railway's Mile Post No. 515 from Jacksonville, Florida, said right of way of the Railway having a total width of 100.0 feet at this location, being 50.0 feet in width on each side of the center line of the Railway's northbound main track; also

A parcel of land with uniform width of 50.0 feet northerly and southerly extending easterly and westerly across the right of way and tracks of the Florida East Coast Railway Company at Robinson Street in Boynton Beach, Florida, with longitudinal center line located 5017 feet southerly from the Railway's Mile Post No. 515 from Jacksonville, Florida, said right of way of the Railway having a total width of 100.0 feet at this location, being 50.0 feet in width on each side of the center line of the Railway's northbound main track.

All as shown colored yellow upon blueprint of the Railway's plan Corr. File 515-58, dated 6-15-62, attached hereto and made a part hereof.

SE 23rd

TO HAVE AND TO USE the said rights, privileges and licenses solely unto the Second Party for the term of one year from date hereof, subject to renewal as provided in paragraph XII hereof, or until terminated as hereinafter provided.

In consideration of the rights, privileges and licenses hereby given by the Trustees unto the Second Party, the Second Party covenants and agrees with Trustees as follows:

I

That said crossings hereby created and the easements hereby granted shall be used for crossing purposes only, and no pipe, wire, rail, or other line or structure, shall be placed in or on Railway's right of way or on the crossings, except as herein provided, without previous consent in writing of the Trustees.

II

All expense of opening and extending the crossings from right of way line to right of way line, including any expense to the Trustees, or the Trusteeship Estate in their custody, in changing its tracks, automatic block signal transmission line and signals, or in changing any other pole and wire lines now located on Railway's right of way, whether owned by the Railway or otherwise, shall be wholly borne by the City of Boynton Beach; all such costs incurred by the Railway or its tenants, or corporations holding contingent or statutory easements for such wires and poles on account of the crossings hereby created shall be wholly paid by the City of Boynton Beach promptly upon receipt of bill or bills from the Trustees for such costs. All work of grading, paving, planking, drainage and maintenance upon the right of way of the Railway shall be performed by the forces of the City of Boynton Beach at the sole expense of the City, but all such work shall be done under the supervision and control and to the satisfaction of

the Trustees or their duly appointed representative, and the City of Daytona Beach does hereby agree to accept and pay the bills rendered by the Trustees for such supervision.

III

All cost of maintenance work performed upon the crossings established hereby shall be done by Second Party or by Railway and paid for by the City of Daytona Beach, except that the Trustees will maintain at their own expense that part of the crossings over the ties and rails of its existing and future additional tracks.

IV

The Trustees for themselves and the Railway Company hereby reserve and shall have the right of changing their existing track or tracks, and of constructing, maintaining and operating additional track or tracks across the crossings hereby established, and the City of Daytona Beach agrees to bear the entire expense of all work required to be performed on the crossings hereby established on account of changes in or additions to the existing track facilities.

V

If to comply with the requirements and orders of the laws of the State of Florida, or any governing body having power to promulgate or enforce regulations, or any agreement of the Trustees thereto, it becomes necessary hereafter to modify or change the number, elevation, alignment or otherwise modify or change the location of Railway's tracks, works or operations on its right of way, all costs and expense that may be required by such changes, modifications or additions by the presence of the crossings hereby established shall be paid for solely and entirely by the City of Daytona Beach, and the maintenance and operation of such crossings under such modified or changed conditions will be borne solely and entirely by the City of Daytona

Beech, excepting the cost of maintaining the crossings over the ties and rails of the tracks of the Railway, which cost of maintenance will be borne by the Trustees.

VI

Crossing protection of any type or class whatsoever which may be required by ordinance or other regulation of the City of Boynton Beach shall be provided and maintained by the Trustees at the sole cost and expense of the City of Boynton Beach, and the Second Party hereby agrees to accept and pay promptly the bills rendered by the Trustees for the labor and material furnished by them for such installation and maintenance; the Second Party hereby also agrees to accept and pay promptly the bills of the Trustees for material and labor and for changes required to be made in the crossing protections aforesaid, whether such changes be required by regulations above described or to conform with any changes, modifications or additions to the tracks, works or operation of the Trustees or Railway across or contiguous to the crossings hereby established.

VII

The Second Party shall not take any action that will prevent or tend to prevent the operation of trains over the crossings hereby established.

VIII

In the event the Second Party shall fail to comply with any of the covenants and conditions herein on its part to be kept or performed, and all of which are part of the consideration of the execution of this agreement by Trustees, then in any such event this agreement will be null and void and Trustees and Railway are to have the right to re-enter and repossess the property upon which the crossings are hereby established upon five days notice in writing to Mayor or

the Second Party.

IX

This agreement may be terminated by the Trustees upon giving thirty days notice in writing to the Second Party.

X

No assessments or other charge of any kind whatsoever, shall be made by the Second Party, its successors or assigns, against the Trustees or any of the Trusteeship Deeds in their hands, for any public improvements now installed or hereafter to be installed by the City of Daytona Beach upon the land on which the crossings are hereby established.

XI

The Second Party hereby grants unto Trustees all necessary permits for the installation, construction, repair and maintenance of any of the facilities, work or fixtures, mentioned or contemplated in and by this agreement, and the Trustees shall give Second Party forty-eight hours' notice of intention to perform any such installation, construction, erection, repair and maintenance, except emergency work necessary to protect and insure the running of trains of the Florida East Coast Railway Company.

XII

It is further mutually agreed by and between the parties hereto that as this agreement is for the term of one year, if said Second Party holds over and remains in possession of the hereby licensed privileges after the expiration of such term, or of any renewal thereof, this agreement shall be considered as renewed, unless thirty days' written notice of termination of the same has been or is given by said Trustees and shall continue in effect from year to year, subject to the same terms and conditions as herein contained, or un-

til terminated by said Trustees by giving thirty days notice in writing, to the Second Party of their intention to terminate the same as herein provided, or as provided in paragraphs IX and XIII hereof.

XIII

This agreement is terminable by the Trustees, or their successors, or the assigns of the Trusteeship Estate, at their option, upon the discharge of the Trustees as such, any fixed period of time or any other thing herein to the contrary notwithstanding, and in the absence of such cancellation, all rights of said Trustees hereunder shall inure to the benefit of their successors or the assigns of the Trusteeship Estate.

XIV

Second Party agrees to pay, upon the execution and delivery of this agreement, the full amount of any State of Florida documentary stamp tax computed by Trustees as being necessary to be affixed to this agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed in duplicate the day and year first herein written.

Signed, sealed and delivered

in the presence of:

(s) Robbie E. Weaver
(s) William J. De Hoff
As to Trustees

(s) Robert F. Griffith Jr.
(s) Anna Marie Lehn
As to Second Party

ROBERT M. LOFTIN and JOHN W. MARTIN,
as Trustees of the property of
Florida East Coast Railway Company
(Seal)

By John W. Martin (s)
Trustee

CITY OF MIAMI BEACH (Seal)

By L. L. Purinton (s)
Mayor

Attest: D. J. Williams (s)
Clerk

(Seal)

RESOLUTION NO. _____

Upon motion duly made and seconded, the following resolution was unanimously adopted:

BE IT RESOLVED by the City Commission of the City of Daytona Beach, a municipal corporation of the State of Florida, as follows:

(1) That the City of Daytona Beach, a municipal corporation of the State of Florida, does hereby contract and agree to enter into an agreement with Scott M. Loftin and John W. Martin, as Trustees of the property of Florida East Coast Railway Company, and not individually, wherein and whereby the said City of Daytona Beach is given the right and privilege to construct and maintain two public crossings over and across that part of the right of way and property of said Florida East Coast Railway Company in the City of Daytona Beach at the locations described as follows:

A parcel of land with uniform width of 75.0 feet northerly and southerly extending easterly and westerly across the right of way and tracks of the Florida East Coast Railway Company at Daytona Beach, Florida, with longitudinal center line located 4102 feet southerly from the Railway's Mile Post No. 510 from Jacksonville, Florida, said right of way of the Railway having a total width of 100.0 feet at this location, being 50.0 feet in width on each side of the center line of the Railway's northbound main track; also

A parcel of land with uniform width of 50.0 feet northerly and southerly extending easterly and westerly across the right of way and tracks of the Florida East Coast Railway Company at Robinson Street in Daytona Beach, Florida, with longitudinal center line located 5517 feet southerly from the Railway's Mile Post No. 510 from Jacksonville, Florida, said right of way of the Railway having a total width of 100.0 feet at this location, being 50.0 feet in width on each side of the center line of the Railway's northbound main track.

All as shown colored yellow upon blueprint of the Railway's plan C-11-43, dated 6-18-52, attached to said agreement and by this reference thereto is made a part hereof.

all as more fully described and under the further terms and conditions each and every in copy of proposed agreement now on file with the City Commission of Daytona Beach, Florida, and by reference thereto made a part hereof.

(2) That the Mayor, with the attestation of the City Clerk, be and they are hereby authorized and directed to execute said agreement for and on behalf of said City of Daytona Beach.

(3) That this resolution shall take effect immediately upon its passage.

STATE OF FLORIDA
COUNTY OF PALM BEACH
CITY OF DAYTONA BEACH

I, D. V. Trice, City Clerk of the City of Daytona Beach, a municipal corporation of the State of Florida, do hereby certify that the foregoing is a true copy of resolution unanimously adopted at a regular meeting of the City Commission of the City of Daytona Beach, held on the day of August, A.D. 1952, and as said resolution appears in Minute Book page No. 60 of the minutes of the said City Commission of the City of Daytona Beach in my official custody.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of the City of Daytona Beach.

501 D. V. Trice (5)
City Clerk of the City of Daytona Beach

RESOLUTION NO. R-07- 133

A RESOLUTION OF THE CITY OF BOYNTON BEACH, FLORIDA, APPROVING AND AUTHORIZING THE TRANSFER OF THE EXISTING LICENSE AGREEMENT WITH THE FLORIDA EAST COAST RAILWAY FOR THE GRADE CROSSING AT SE 23RD AVENUE, WHICH IS CURRENTLY HELD BY THE CITY OF BOYNTON BEACH TO PALM BEACH COUNTY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Boynton Beach is willing to transfer the License Agreement with Florida East Coast Railway regarding the rail grade crossing at Southeast 23rd Avenue to Palm Beach County; and

WHEREAS, Palm Beach County wishes to accept the transfer of the License Agreement for the Florida East Coast Railway crossing at Southeast 23RD Avenue (Crossing Number 272485-X) from the City of Boynton Beach; and

WHEREAS, Palm Beach County agrees to fund the costs associated with the crossing surface at Southeast 23Rd Avenue according to a new License Agreement with the Florida East Coast Railway Company.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH FLORIDA:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

Section 2. That the City Commission of the City of Boynton Beach approves and authorizes transfer and Palm Beach County accepts the transfer of the License Agreement for the

Southeast 23rd Avenue crossing from the City of Boynton Beach to Palm Beach County along with the associated costs.

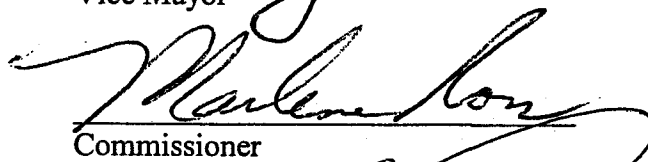
Section 3. That this Resolution shall take effect immediately upon adoption.

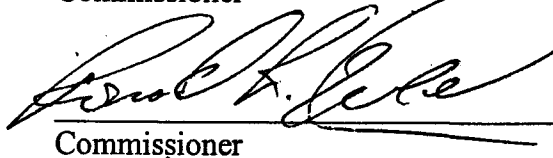
PASSED AND ADOPTED this 13 day of November, 2007.

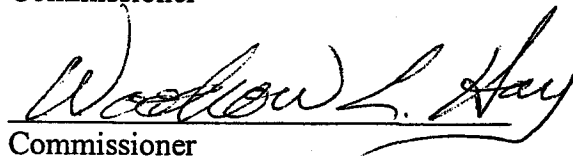
CITY OF BOYNTON BEACH, FLORIDA


Mayor

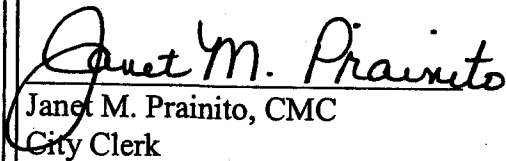

Vice Mayor

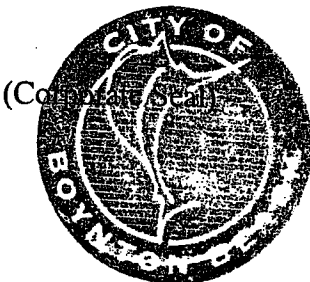

Commissioner


Commissioner


Commissioner

Attest:


Janet M. Prainito, CMC
City Clerk



The City of Boynton Beach

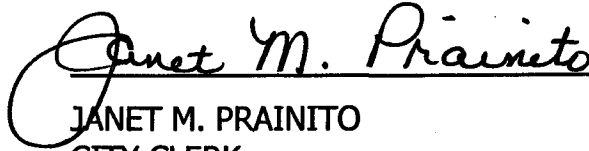


City Clerk's Office
100 E BOYNTON BEACH BLVD
BOYNTON BEACH FL 33435
(561) 742-6060
FAX: (561) 742-6090
e-mail: prainitoj@ci.boynton-beach.fl.us
www.boynton-beach.org

CERTIFICATION

I, **JANET M. PRAINITO**, City Clerk of the City of Boynton Beach, Florida, do hereby certify that the attached copy of Resolution No. R07-133, consisting of two (2) pages, is a true and correct copy as it appears in the records of the City of Boynton Beach, Florida.

WITNESS, my hand and the corporate seal of the CITY OF BOYNTON BEACH, FLORIDA, dated this 15th day of November, 2007.


JANET M. PRAINITO
CITY CLERK



S:\CC\WP\certifications\certification - R07-133 - JMP Signature.doc

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