

Agenda Item #: **3-C-9**

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: December 18, 2007

Consent

Regular

Workshop

Public Hearing

Department:

Submitted By: Engineering and Public Works

Submitted For: Right-of-Way Acquisition Section

Project No. 1998504

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A License Agreement with the School Board of Palm Beach County (School Board) for work associated with Lyons Road from Glades Road to Yamato Road.

SUMMARY: This item will approve a License Agreement with the School Board to allow work to be done on Olympic Heights High School property in conjunction with the County's construction of Lyons Road.

District: 5 (PK)

Background and Justification: The plans for the Lyons Road from Glades Road to Yamato Road project require two right turn lanes at two driveways at Olympic Heights High School. The School Board has approved the conveyance of the additional right-of-way needed for the turn lanes. However, there will be additional work done outside of the right-of-way to be conveyed.

Therefore, the School Board has prepared a License Agreement to allow Palm Beach County to do work outside of the right-of-way on School Board property. This Agreement needs to be approved by the Board of County Commissioners (Board). Staff recommends that the Board approve the License Agreement for the work on school property as part of the construction of Lyons Road from Glades Road to Yamato Road.

Attachments:

1. Location Map
2. License Agreement with Exhibit "A" (3)

Recommended by:

Division Director

Date

Approved by:

Sy J. 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 _____ 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 11/14/07

III. REVIEW COMMENTS

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

Jan Dml 11-29-07
 OFMB
 (WD) 11/29/07 SN 11/29/07 CN 11/29/07

Jan J. Jacobs 11/29/07
 Contract Dev and Control
 @ Jones 11/29/07
 This License Agreement complies with our review requirements.

B. Approved as to Form and Legal Sufficiency:

Paul F. J. 11/30/07
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

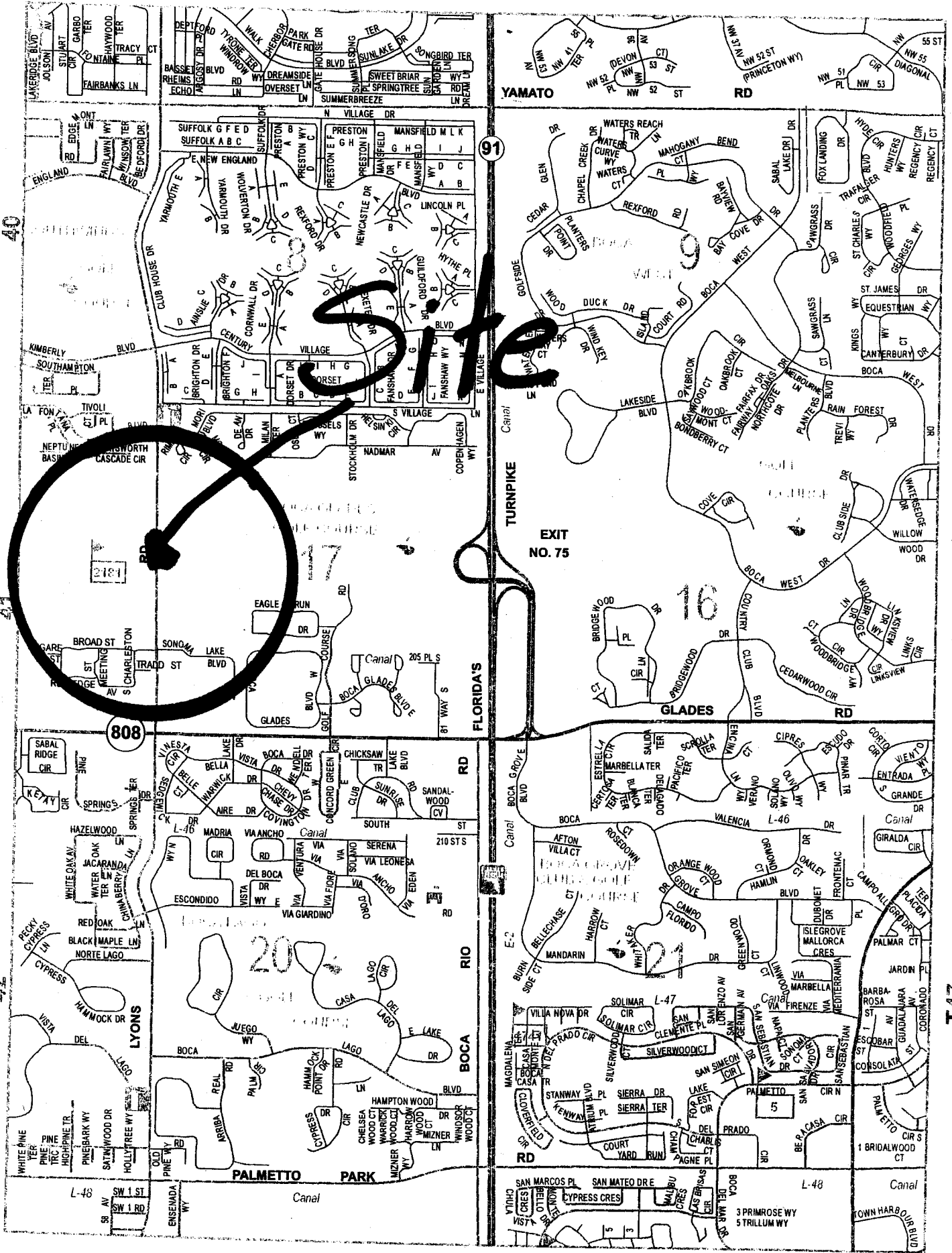
Location Map

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R42

See pg 115

R42



SITE

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T47

T47

T47

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LICENSE AGREEMENT

THIS IS A LICENSE AGREEMENT (the "Agreement") made _____, and granted by the SCHOOL BOARD OF PALM BEACH COUNTY, a corporate body politic of the State of Florida, hereinafter referred to as "School Board", in favor of PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County".

RECITALS

WHEREAS, School Board owns certain real property known as Olympic Heights High School located at 20101 Lyons Road, Boca Raton, FL 33434;

WHEREAS, County has requested a license from School Board to give County certain rights as described hereinafter to utilize the School Board Property (or a portion thereof) to facilitate the construction of a project to be undertaken by the County and its authorized contractors to construct Lyons Road from Glades Road to Yamato Road (hereinafter referred to as the "Project");

NOW THEREFORE, in consideration of the grants, agreements and covenants contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein.
2. The School Board hereby grants to County and its authorized contractors a non-exclusive license in and to the School Board Property as depicted on Exhibit "A" attached hereto by reference (the "License Property"). County shall be entitled to utilize the License Property during construction of the Project for the following purpose: to construct right-turn lanes (2) into the school property. The County shall coordinate with the School Board in the event material changes are made to the Plans and Specifications. The County shall obtain, or cause to be obtained, permits from all applicable regulatory agencies prior to commencement of Project construction. The County shall diligently pursue the Project to completion. This Agreement shall automatically terminate upon the earlier of completion of the Project or two years from the date of this License. Notwithstanding the foregoing, the County shall promptly deliver to the School Board a release of Agreement if so requested by School Board at any time after automatic termination hereof as aforesaid.
3. Prior to exercising the rights conferred hereunder, County shall locate any utility facilities within the License Property and shall contact and coordinate with all utilities providers that have facilities within the License Property. The County shall be solely responsible for and shall, at its sole cost and expense, promptly repair any damage arising out of County's exercise of the rights granted hereby and restore any improvements or landscaping now existing or constructed or installed hereinafter to the condition it was in prior to such damage, using materials of like kind and quality.

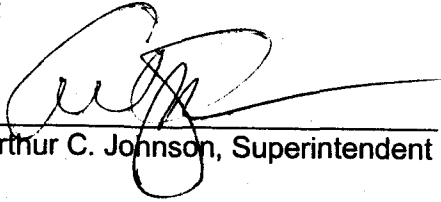
4. The County shall ensure that pedestrians, including students, teachers and parents, and vehicles, including school buses, shall have open and uninterrupted access to and from the School Board Property during school hours. The school hours shall mean during the times of day beginning when the early morning commute to school occurs continuing through when the afternoon commute from school occurs. Additionally, because of special events, athletics and extracurricular activities, any Project activities that may cause an interruption to such access outside of the aforementioned school hours shall be coordinated with the Principal of the impacted School by providing written notice at least three (3) working days prior to the start of the proposed activities. Notice of any emergency involving the County's exercise of the rights granted hereby shall be given to the Principal as soon as practicable. The County shall make its best efforts to conduct the Project activities that affect access to Olympic Heights High School during the portion of the year when Palm Beach County schools are not in session.
5. The County acknowledges and agrees that the rights granted by this Agreement are and shall be strictly limited to those specifically granted herein and that the County may not utilize the License Property for any purpose not specifically permitted hereby. The County further agrees to exercise the rights granted hereunder in a manner which minimizes the impact upon the School Board's use and enjoyment of the School Board Property. The County's exercise of the rights granted by this Agreement is at the County's sole risk.
6. School Board hereby retains all rights relating to the License Property not specifically granted by this Agreement including the right to use the License Property and any improvements now existing or constructed hereinafter therein. School Board also retains the right to grant to third parties additional rights in the License Property or the right to use the improvements therein, so long as the grant of such additional rights will not interfere with the rights granted to County hereunder.
7. The School Board's interest in the School Board Property shall not be subject to liens arising from County's use of the License Property, or exercise of the rights granted hereunder. The County shall promptly cause any lien imposed against the School Board Property relating to the Project to be discharged or transferred to bond. Nothing herein shall be construed as granting to County a real property interest in the School Board Property.
8. School Board and County acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. School Board and County agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.


9. The County shall require its contractors and subcontractors to maintain and keep in full force and effect General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate, bodily injury and property damage liability coverage and Workers Compensation covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for the Recreation Field, Operations, Contractual Liability, Independent Contractors Contractual Liability, and Broad Form Property Damage Liability coverages. In addition, County shall require its contractors and subcontractors to maintain Business Automobile Liability at a limit of liability not less than One Million Dollars (\$1,000,000) Each Occurrence for all owned, non-owned and hired automobiles. In the event the County's contractors or subcontractors do not own any automobiles, they shall maintain Hired & Non-Owned Auto Liability in such amount. Coverage shall be provided on a primary basis. Except for Workers Compensation and Automobile Liability, all insurance policies shall name the School Board as Additional Insured. Such insurance shall be issued by an insurance company licensed to do business in the State of Florida and approved by the School Board. A Certificate of Insurance evidencing such insurance coverage shall be provided to the School Board prior to the commencement of any work by the County's contractors and subcontractors pursuant to this Agreement. Such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage. In no event shall the limits of said insurance policies be considered as limiting the liability of the County's contractors and subcontractors under this Agreement.
10. County hereby accepts the License Property "As Is", without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the License Property, and all easements, restrictions, conditions, encumbrances and other matters of record.
11. This Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.
12. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not effect the remaining portions of this Agreement and the same shall remain in full force and effect.
13. This Agreement contains the entire understanding and agreement of the parties with respect to the subject matter hereof. No amendment shall be effective unless the same is in writing and signed by all parties.
14. No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document so as to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not effect the remaining portions of this Agreement and the same shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth hereinabove.

ATTEST:

SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA

By: 
Arthur C. Johnson, Superintendent

By: 
William G. Graham, Chairman

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:  9/29/07
School Board Attorney

ATTEST:

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

Sharon R. Bock, Clerk and Comptroller

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: 
Department Director