

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: February 5, 2008

☒ Consent ☐ Regular
☐ Public Hearing

Department:

Submitted By: Engineering and Public Works

Submitted For: Right-of-Way Acquisition Section

Project No. 2001505B

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: Approve a License Agreement with the School Board of Palm Beach County (School Board), which is required for the construction of a right turn lane on Jog Road at the Omni Middle School.

Summary: This action approves a License Agreement with the School Board that is required for the construction of a right turn lane on Jog Road at Omni Middle School. This turn lane is part of the widening and construction of improvements on Jog Road, from Yamato Road to Clint Moore Road.

District: 4 (PK)

Background and Justification: The School Board has prepared and executed a License Agreement that will allow Palm Beach County (County), and/or its agents to enter upon School Board property to perform any grading, sloping, milling or asphaltting that is required to construct a right turn lane on Jog Road at Omni Middle School. The construction of this right turn lane is part of the six lane widening and construction of other improvements on the Jog Road, from Yamato Road to Clint Moore Road project, which is part of the current Five-Year Road Program.

Attachments:

1. Location Map
2. License Agreement (Three (3) Originals)

Recommended by:

Division Director

Date _____

Approved by:

County Engineer

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 Cost	-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

ADDITIONAL FTE POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes ___ No ___
Budget Account No.: Fund _____ Agency _____ Org. _____ Object _____
Reporting Category _____

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

THIS ITEM HAS NO FISCAL IMPACT

C. Departmental Fiscal Review:

[Signature]

III. REVIEW COMMENTS

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

[Signature] 1-23-08
OFMB
SN 1/23/08 CN 1/22/08

[Signature] 1/24/08
Contract Dev. and Control
1/24/08

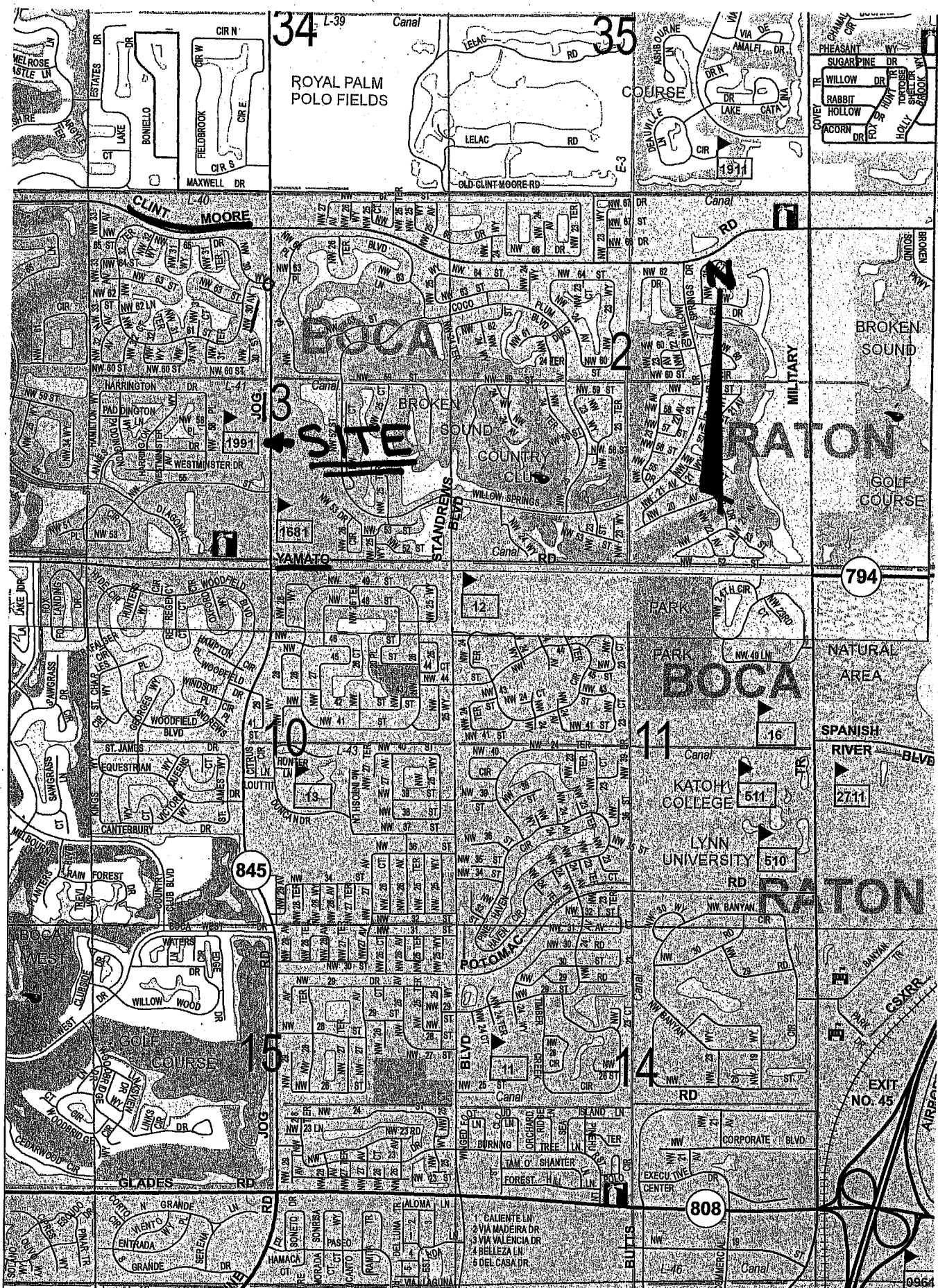
B. Legal Sufficiency:

[Signature] 1/25/08
Assistant County Attorney

C. Other Department Review:

Department Director

LOCATION MAP



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 Omni Middle School located at 5775 Jog Road, Boca Raton, FL 33496;

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 Jog Road from Yamato Road to Clint Moore 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 a right-turn lane 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 Omni Middle 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.

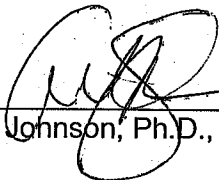
9. The County shall require its contractors and subcontractors to maintain and keep in full force and effect General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate, bodily injury and property damage 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.

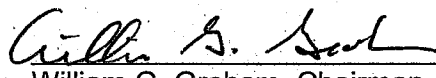
ATTEST:

SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA

By:


Arthur C. Johnson, Ph.D., Superintendent

By:


William G. Graham, Chairman

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By:

 11/12/07
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:

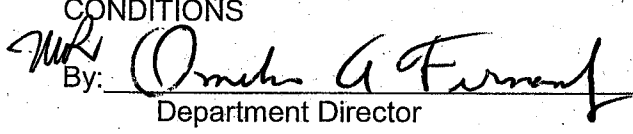

Department Director

EXHIBIT "A"

RESTORATION AGREEMENT 301

A RESTORATION AGREEMENT IN SECTION 3, TOWNSHIP 47 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, LYING IN TRACT Y-4 OF THE PLAT OF MIDDLE SCHOOL "GG", RECORDED IN PLAT BOOK 67, PAGE 74 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, 5.00 FEET WIDE, ABUTTING AND LYING 5.00 FEET WESTERLY, OF THE FOLLOWING DESCRIBED LINE:

COMMENCE AT THE NORTHEAST CORNER OF SAID PLAT;
THENCE ALONG THE EAST LINE OF SAID TRACT Y-4,
S00°56'52"E FOR 897.12 FEET;
THENCE CONTINUE ALONG SAID EAST LINE, S01°54'53"W FOR 420.52 FEET;
THENCE CONTINUE ALONG SAID EAST LINE, S00°56'52"E FOR 73.34 FEET TO
THE NORTH LINE OF TRACT Y-5 OF SAID PLAT;
THENCE ALONG SAID NORTH LINE, N21°16'52"W FOR 11.51 FEET;
THENCE N00°56'52"W FOR 99.00 FEET;
THENCE N04°11'42"E FOR 100.40 FEET;
THENCE N00°56'52"W FOR 426.98 FEET;
THENCE S89°03'08"W FOR 10.00 FEET;
THENCE N00°56'52"W FOR 94.37 FEET;
THENCE N00°00'23"W FOR 362.70 FEET;
THENCE N11°15'57"E FOR 51.16 FEET;
THENCE N00°00'23"W FOR 246.71 FEET TO THE NORTH BOUNDARY OF SAID PLAT
AND THE END OF SAID LINE.

IT IS THE INTENT OF THIS DESCRIPTION FOR SAID 5.00' RESTORATION AGREEMENT
TO TERMINATE SOUTHERLY AT THE NORTH LINE OF SAID TRACT Y-5, AND
TERMINATE NORTHERLY AT THE NORTH BOUNDARY OF SAID PLAT OF MIDDLE
SCHOOL "GG".

CONTAINING 6,923 SQUARE FEET, MORE OR LESS.

BEARING BASIS: S00°56'52"E ALONG THE EAST BOUNDARY OF THE PLAT OF MIDDLE SCHOOL "GG".



BROWN & PHILLIPS, INC.

PROFESSIONAL SURVEYING SERVICES

CERTIFICATE OF AUTHORIZATION # LB 6473

901 NORTHPOINT PARKWAY, SUITE 305, W. PALM BEACH, FL 33407
(561) 615-3988, (561) 615-3986 FAX

LEGAL DESCRIPTION

DRAWN:	MDB	PROJ. No. 01-048
CHECKED:	JEP	SCALE: NONE
JOG ROAD		DATE: 8/14/07
Project No. 2001505		SHEET 2 OF 4