

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

Meeting Date: May 21, 2013 **Consent** **Regular**
 Ordinance **Public Hearing**

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Amended, Restated and Reinstated License Agreement with the School Board of Palm Beach County for use of School Board property to provide temporary customer service and a maintenance facility area for the Water Utilities Department's (WUD) operations and maintenance crews in Belle Glade.

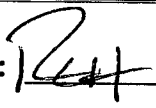
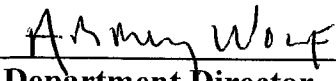
Summary: WUD and the Glades Utility Authority (GUA) have been using 3.8 acres of the School Board's property adjacent to the Glades Regional Water Treatment facility and the School Board's West Tech campus in Belle Glade since 2006, the substantial majority of time without a formal agreement. This Amended, Restated and Reinstated License Agreement provides for WUD's continued use of the School Board property until December 31, 2014, for modular buildings, a parking area, fuel storage, and a lay down area for storage of utility materials and equipment. WUD will compensate the School Board a total of \$123,500 based on eight years of use. This will resolve a long standing issue with the School Board regarding compensation for the extended use of this property by WUD and the GUA. **(PREM) District 6 (HJF)**

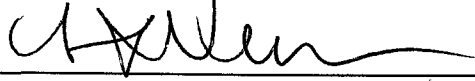
Background and Justification: WUD and the Glades Utility Authority (GUA) have continuously used 3.8 acres of property owned by the School Board which is adjacent to the Glades Regional Water Treatment facility located in Belle Glade. Commencing in 2006, the property was used as a staging area for construction of the water treatment facility until it was completed in 2008. On June 16, 2009 (R2009-1034), the Board approved an Interlocal Agreement with the City of Belle Glade, the City of Pahokee and the City of South Bay establishing the Glades Utility Authority (GUA) for the purpose of providing water, wastewater and reclaimed water services to the residents of Belle Glade, Pahokee, South Bay and surrounding areas. The Interlocal Agreement established a transition period for the transfer of assets, systems and utility service from the Cities to the GUA. During the transition period, WUD provided services to the GUA which included operations, maintenance, replacement and construction services for the utility systems. On August 18, 2009, (R2009-1289), the Board approved a license agreement with the School Board for WUD's temporary use of the School Board property as a staging area for WUD's operation and maintenance crews and the term ended on August 18, 2010. In 2010, the GUA's Board of Directors authorized the assignment of the agreement from the County to the GUA and the negotiation of a one year extension for the continued temporary use of the School Board property as a staging area for GUA's operation and maintenance crews and the term ended on August 18, 2011.

continued on page 3

Attachments:

- 1. Location Map
- 2. Amended, Restated and Reinstated License Agreement
- 3. Budget Availability Statement

Recommended By:   4/24/13
Department Director **Date**

Approved By:  5/17/13
County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>104,500</u>	<u>19,000</u>	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>104,500</u>	<u>19,000</u>	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes No _____

Budget Account No: Fund 4001 Dept 720 Unit 1GUA Object 4414
 Program _____

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

WUD will compensate the School Board for the long standing and continued use of the property by WUD and GUA a total of \$123,500. WUD will pay \$104,500, representing compensation for the County's use through the end of 2013, within 30 days of the execution of this Amended, Restated and Reinstated License Agreement. On January 1, 2014, WUD will pay \$19,000, representing compensation for the County's use through December 31, 2014.

C. Departmental Fiscal Review: _____ *4/26/13*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

Not signed
 OFMB 3/21/13 *3/21/13* *4/1/13* *4/1/13* *4/1/13* Contract Development and Control *5/19/13*
5-13 B. Wheeler

B. Legal Sufficiency:

H. J. Al 5/13/13
 Assistant County Attorney

C. Other Department Review: *Agreement not signed by School Board at time of CAO review.*

Beverly A. Beaudin
 Department Director

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

Background & Justification (Cont'd): The land area being utilized is 3.8 acres. For valuation purposes, Staff used the \$50,000 acre cost paid by the School Board to demuck, fill, grade and compact the land, while this exceeds the assessed value of \$3,762/acre, WUD would have paid a similar amount to prepare any other vacant parcel of land in this area for WUD/GUA's use. The total value of the property is calculated as \$50,000/acre x 3.8 acres = \$190,000. Using a capitalization rate of 10% yields an annual lease rate of \$19,000. During the initial three year use as a staging area, a 50% discount has been applied similar to a temporary construction easement. The calculations of the compensation are summarized below.

(2006-2009) 3 years at TCE rate - 3.8 acres x \$9,500/acre x 3 = \$28,500
(2009-2012) 3 years at full license rate - 3.8 acres x \$19,000/acre x 3 = \$57,000
(Through 2014) 2 additional years at full license rate - 3.8 acres x \$19,000/acre x 2 = \$38,000
Total Compensation = \$123,500

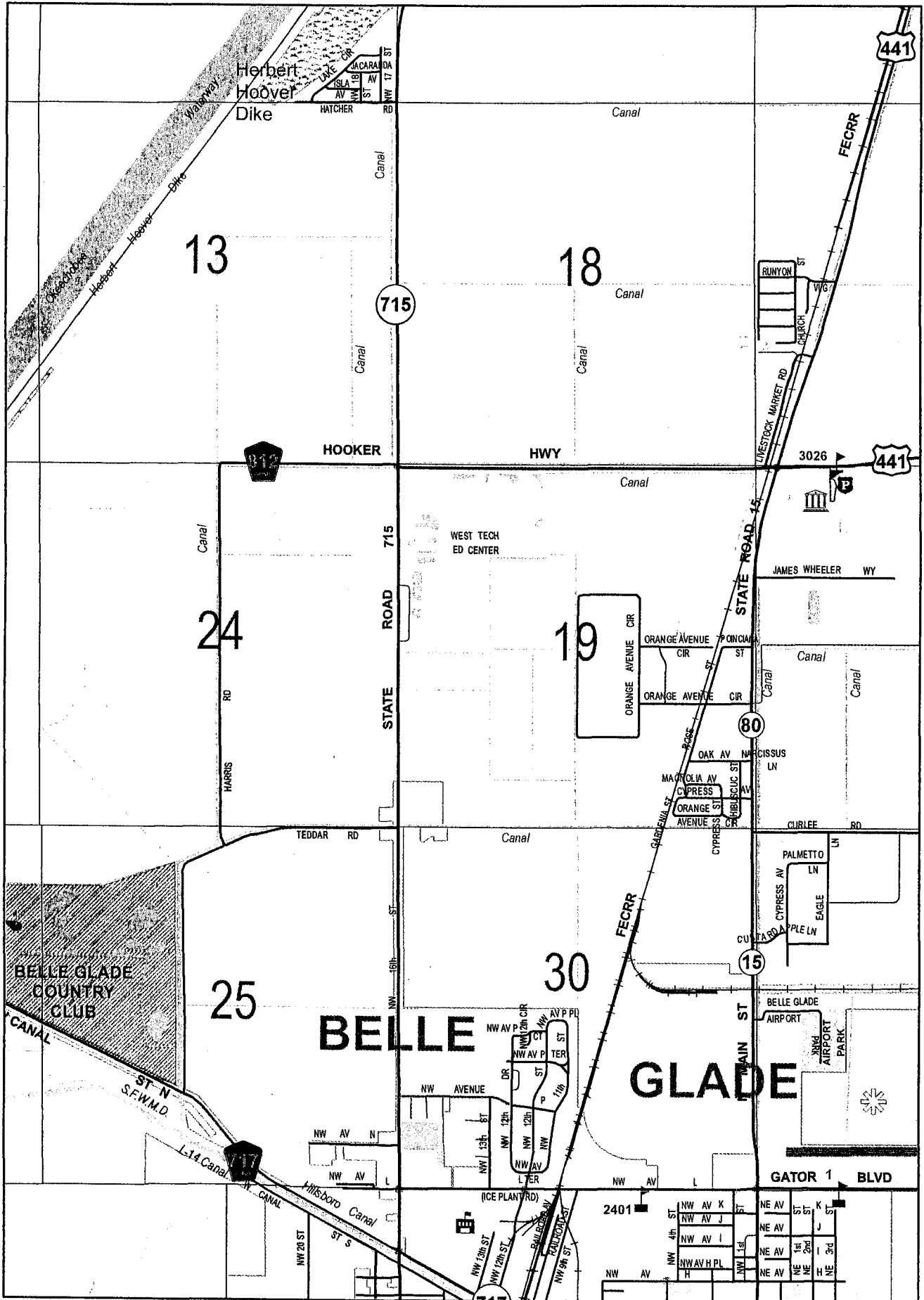
WUD will pay \$104,500 representing compensation for this use through the end of 2013 to the School Board within 30 days. On January 1, 2014, WUD will pay the final years rent in the amount of \$19,000. There will be no proration if WUD vacates the property before December 31, 2014.

The GUA is expected to be dissolved by May 1, 2013. WUD will be taking over the operations of the GUA and will need to continue operations on the School Board property until WUD's operations are transitioned to County owned property adjacent to the West County Governmental Center. The School Board is expected to sign the Amended, Restated and Reinstated License Agreement at their May 15, 2013, Board meeting.

TWP 43

TWP 43

TWP 43



RNG 36

See pg 157

RNG 37

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LOCATION MAP



AMENDED, RESTATED AND REINSTATED
LICENSE AGREEMENT

THIS IS A LICENSE AGREEMENT (the "Agreement") made _____, and granted by the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA 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 located east of the intersection of Hooker Highway and NW 16th Street (aka State Road 715), Belle Glade, Florida (the "School Board Property"); and

WHEREAS, the Glades Utility Authority (GUA) was established to provide potable water and sanitary wastewater distribution and collection systems and related facilities to the residents of Belle Glade, Pahokee and South Bay, and surrounding areas (hereinafter referred to as the "Project"); and

WHEREAS, County's Water Utility Department (WUD) and/or GUA have continuously used a portion of the School Board Property commencing in 2006 as a staging area for construction of a water treatment facility until completion of construction in 2008; thereafter this use transitioned to a customer service and maintenance facility for the GUA; and

WHEREAS, County and School Board entered into that certain License Agreement dated August 18, 2009 (R2009-1289) (the "PBC License Agreement"), for WUD's temporary use of the School Board Property as a staging area for WUD's operation and maintenance crews in Belle Glade and the term of the Agreement ended on August 18, 2010; and

WHEREAS, the GUA and the School Board entered into that certain License Agreement dated August 19, 2010 (the "GUA License Agreement"), for GUA's continued temporary use of the School Board Property as a staging area for GUA's operation and maintenance crews in Belle Glade and the term of the Agreement ended on August 18, 2011; and

WHEREAS, the parties desire to reinstate the PBC License Agreement and amend it as set forth herein.

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 portion of the School Board Property depicted on Exhibit "A" attached hereto containing 3.8 acres (the "License Property"). County shall be entitled to utilize the License Property for the following purpose: vehicular access, placement of modular buildings, office operations, a parking area, fuel storage, and a lay down area for the storage of utility materials and equipment. This Agreement shall expire on December 31, 2014.

3. The parties agree that compensation for the long standing and continued use by WUD and GUA of the License Property shall be \$123,500. County shall pay School Board \$104,500, representing compensation for the County's use through the end of 2013, within 30 days of the execution of this Agreement. On January 1, 2014, County will pay \$19,000 representing compensation for the County's use through December 31, 2014. If the County vacates the property after January 1, 2014, but before December 31, 2014, no proration of the compensation paid to School Board will be allowed.
4. 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.
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. This License may not be assigned by County. Any such attempted assignment shall render this License null and void.
8. 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.
9. 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.

10. 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 Two Million Dollars (\$2,000,000) 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 Operations on the License Property, 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 an Additional Insured. Such Insurance shall be issued by an insurance company licensed to do business in the State of Florida and approved by the County and 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 County's contractors and subcontractors pursuant to this Agreement. Such Certificate shall require at 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.
11. 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.
12. 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 to a state court of competent jurisdiction in Palm Beach County, Florida.
13. 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.
14. 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.
15. 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.

16. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of County or employees of County or School Board.

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

ATTEST: _____

SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA

BY: _____
E. Wayne Gent, Superintendent

BY: _____
Chuck Shaw, Chairman

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: _____
School Board Attorney

ATTEST:

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

Sharon R. Bock
Clerk and Comptroller

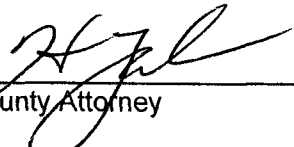
BY: _____
Deputy Clerk

BY: _____
Steven L. Abrams, Mayor

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

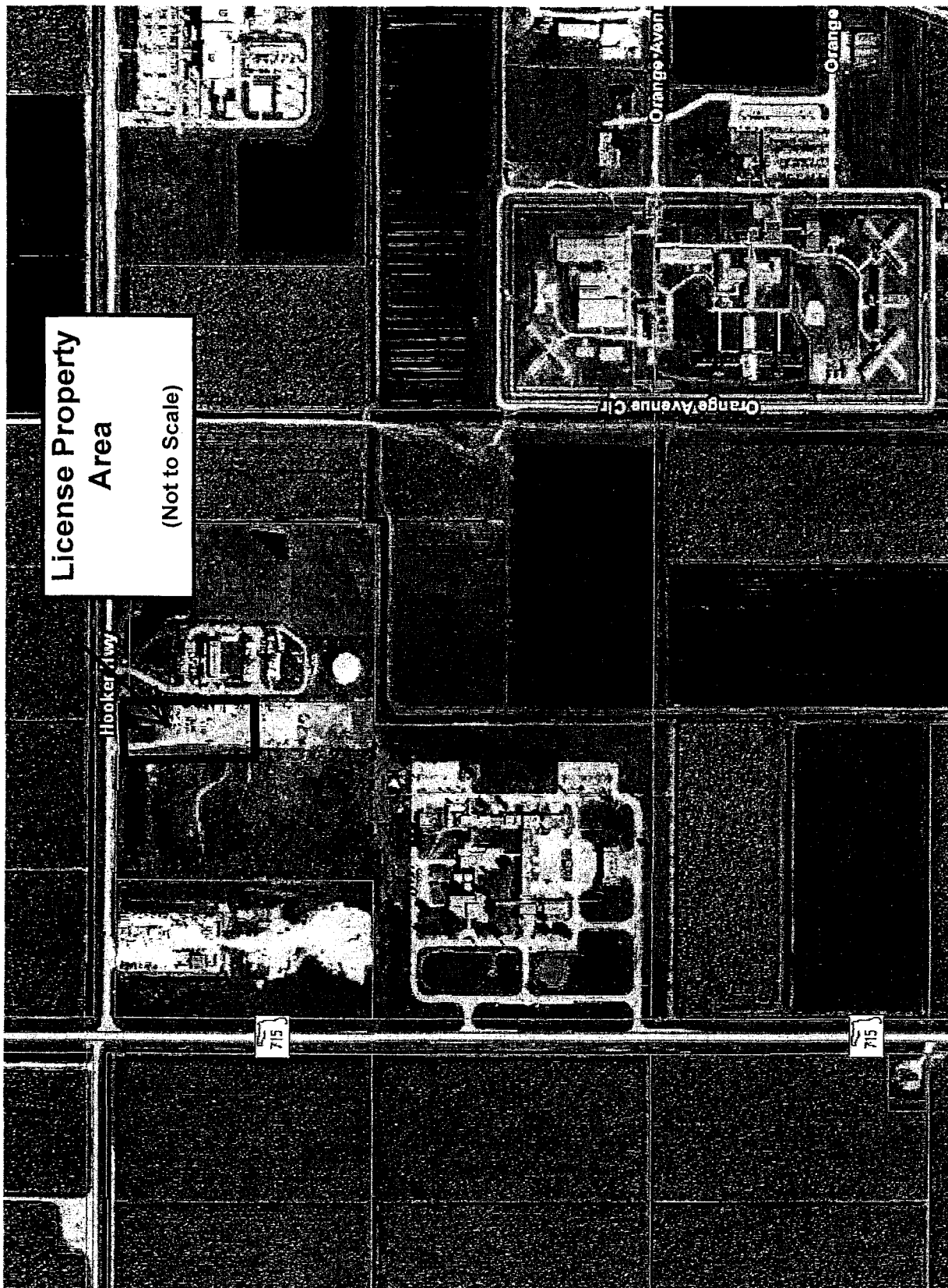
BY: 
County Attorney

BY: 
Department Director

[Note: This signature page represents a continuation of the License Agreement between the
School Board of Palm Beach County and Palm Beach County]

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agreement.002.docx

EXHIBIT "A"
License Property



INTEROFFICE COMMUNICATION
PALM BEACH COUNTY

BUDGET AVAILABILITY STATEMENT

DATE: May 7, 2013

TO: Margaret Jackson, Real Estate Specialist
Property and Real Estate Management

FROM: Guy Eggertsson, Fiscal Manager 1
Water Utilities Department

Guy Eggertsson

RE: Lease Payment to School Board for GUA

FISCAL IMPACT ANALYSIS:

Summary of Fiscal Impact:

Is item included in current budget? Yes X No ___

Budget Account Number:

Fund	Agency	Organization	Object	Allocation
4001	720	1GUA	4414	\$104,500.00

Recommended Sources of Funds/Summary of Fiscal Impact:

Water Utilities Department user fees