

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 20, 2018 [X] Consent [] Regular
 [] Ordinance [] Public Hearing

Department: Engineering and Public Works
Submitted By: Engineering and Public Works
Submitted For: Roadway Production Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an interlocal agreement with the City of Westlake (City), for the transfer of ownership, operation and maintenance of Persimmon Boulevard from Seminole Pratt Whitney Road to approximately 1400 feet east of Seminole Pratt Whitney Road (Persimmon).

SUMMARY: Approval of this interlocal agreement will allow the transfer of County ownership, operation and maintenance responsibilities of Persimmon to the City upon the completion of improvements to Persimmon by the City. District 6 (LBH)

Background and Justification: The City has begun improvements to Persimmon Boulevard from Seminole Pratt Whitney Road to approximately 1400 feet east of Seminole Pratt Whitney Road. The interlocal agreement will allow the City to complete the already initiated roadway improvements by transferring the jurisdictional control, maintenance responsibility, and ownership of Persimmon to the City. The City shall maintain Persimmon as a public right-of-way, and has agreed that Persimmon shall remain open to the public at all times in perpetuity. The Engineering Department recommends the Board of County Commissioners' approval.

Attachments:

- 1. Location Map
- 2. Interlocal Agreement with Exhibits "A" and "B" (4 Originals)

*Shank
MUR
DAF*

Recommended by: *Daryl Z. Red* 22 OCT 2018
County Engineer Date

Approved By: *Pae* 10/25/18
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
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-
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No
 Does this item include the use of federal funds? Yes No X

Budget Acct No.: Fund__ Dept.__ Unit__ Object
 Program

Recommended Sources of Funds/Summary of Fiscal Impact:

**This item has a negligible fiscal impact due to decreased maintenance costs.

C. Departmental Fiscal Review: Alice Kovalainen

III. REVIEW COMMENTS

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

[Signature] 10/22/18 OFMB *[Handwritten: sp 10/22, m 10/22/18]* *[Signature]* Contract Dev. and Control *[Handwritten: 10/23/18 Fu]* *[Handwritten: 10/23/18]*

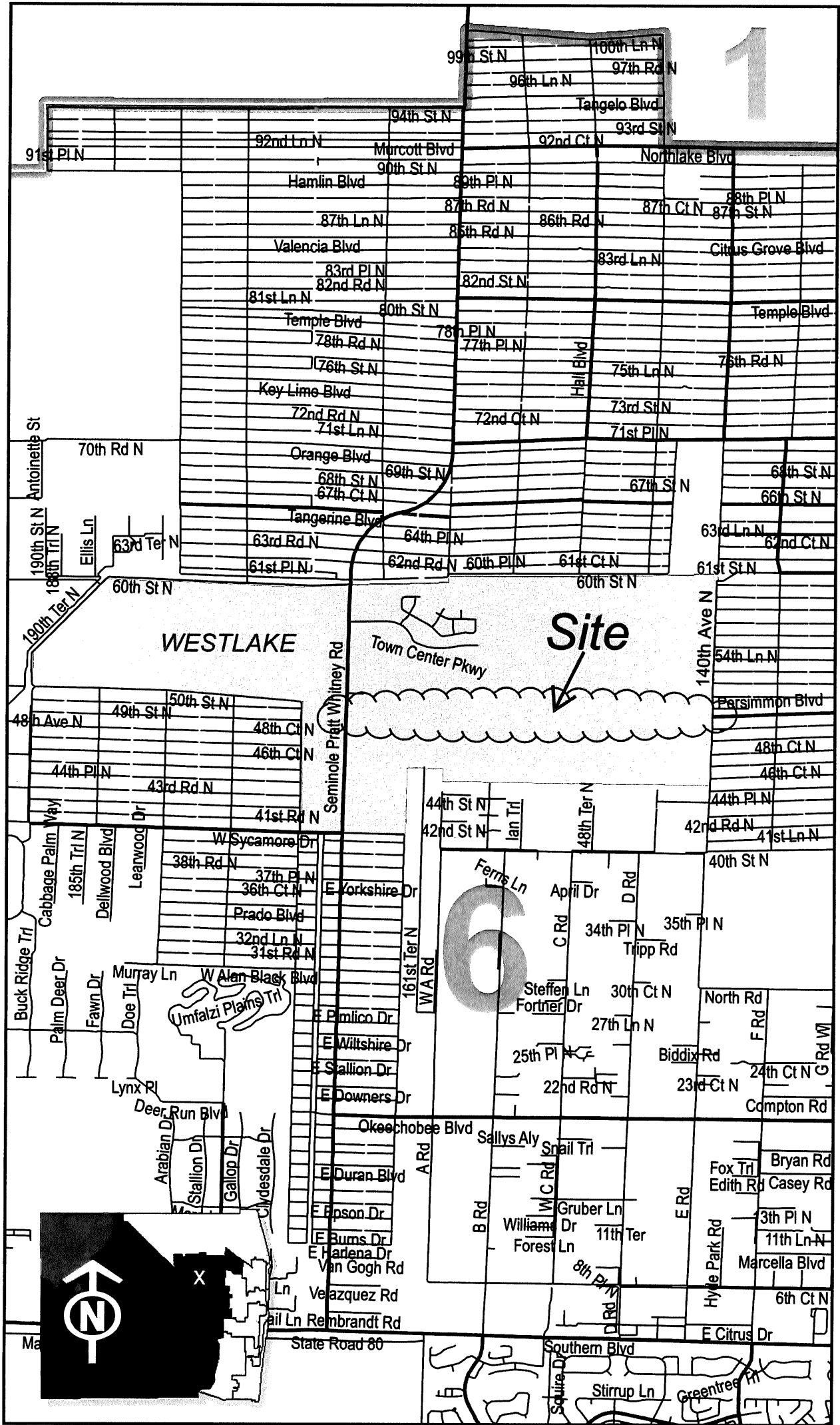
B. Approved as to Form and Legal Sufficiency:

[Signature] 10/25/18
 Assistant County Attorney

C. Other Department Review:

 Department Director

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



Location Map

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE
CITY OF WESTLAKE FOR THE TRANSFER OF OWNERSHIP AND OPERATION
AND MAINTENANCE OF PERSIMMON BOULEVARD**

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of June, 2018, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, (“County”) and the **CITY OF WESTLAKE**, a Florida municipal corporation, whose address is 4001 Seminole Pratt Whitney Road, Westlake, Florida 33470, its successors, agents, and assigns (“Westlake”) individually (“Party”) and collectively (“Parties”).

WITNESSETH:

WHEREAS, on or about October 2014, Palm Beach County Development Order R-2014-1646 (“Development Order”) was issued to Minto PBLH, LLC (“Developer”); and

WHEREAS, pursuant to the Development Order, the Developer is to provide to the County, an 80-foot wide road right-of-way for Persimmon Boulevard, from Seminole Pratt Whitney Road to 140th Ave. North free and clear of all encumbrances (“Persimmon Condition”); and

WHEREAS, in compliance with the Development Order, the Developer has conveyed a portion of the Persimmon Boulevard right-of-way to the County, as recorded in the Official Public Records at ORB 28479, page 0822; and

WHEREAS, the County owns certain portions of Persimmon Boulevard right-of-way, as recorded in the Official Public Records at ORB 28479, page 0822, and ORB 10202, page 430 (collectively “County Rights-of-Way”); and

WHEREAS, on or about June 20, 2016, the Developer incorporated Westlake; and

WHEREAS, Westlake agrees to comply with the Persimmon Condition as provided in this Agreement; and

WHEREAS, Westlake has undertaken widening improvements to Persimmon Boulevard from Seminole Pratt Whitney Road to approximately 1400 feet east of Seminole Pratt Whitney Road (“Project”); and

WHEREAS, the Project includes improvements within the County Rights-of-Way; and

WHEREAS, Westlake has requested and County has agreed that within ninety (90) days of completion of the Project, County will transfer ownership and maintenance responsibilities for certain portions of the County Rights-of-Way to Westlake; and

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, County and Westlake agree as follows:

1. The above recitals are true, correct, and incorporated herein.

2. **PERSIMMON BOULEVARD**
 - a. Westlake shall notify the County within ten (10) days of Westlake's final acceptance of the Project.
 - b. Within ninety (90) days of Westlake's final acceptance of the Project, County agrees to convey to Westlake, the County's interest, and all operation and maintenance responsibilities in the portion of the County Rights-of-Way to Westlake, shown in Exhibit "A." All right-of-way deeds for the portion of the County Rights-of-Way to be conveyed to Westlake, shall be in a form approved by the County Attorney.
 - c. As warranted by traffic analysis and at the direction of the County Engineer, Westlake shall design and construct improvements to Persimmon Boulevard from 1400 feet east of Seminole Pratt Whitney Road to 140th Avenue North ("Persimmon Improvements").
 - d. Westlake shall design and construct the Persimmon Improvements in accordance with the Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, commonly known as the Florida Greenbook, as amended, including but not limited to, the requirement that Persimmon Improvements shall (1) include sufficient road drainage and a landscaped median; and (2) be designed and constructed as a five-lane roadway, with a center bi-directional left turn lane, and right turn lanes.
 - e. Westlake shall ensure that Persimmon Boulevard, from Seminole Pratt Whitney Road to 140th Street North, and any part thereof ("The Boulevard"), be maintained as a public road right-of-way and remain open to the public at all times in perpetuity.

- f. Westlake agrees to not interfere with or seek to modify or alter the location of the existing driveway on Persimmon Boulevard at the Grove Market Shopping Center (“Center”), as shown in Exhibit B, attached hereto and incorporated herein, unless such modification of the driveway location is necessary for public health, safety, or welfare.
- g. In addition to Westlake’s operation and maintenance responsibilities, as provided in Paragraph 2.b. above, Westlake shall have operation and maintenance responsibilities for The Boulevard within the municipal boundaries of Westlake.
3. Notice. All notices required to be given under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States Mail, return receipt requested, postage paid to the following:

As to the County

Engineering and Public Works Department
Tanya N. McConnell, P.E.
Deputy County Engineer
P.O. Box 21229
West Palm Beach, FL 33416-1229

With copy to: Palm Beach County Attorney’s Office
Yelizaveta B. Herman, Assistant County Attorney
301 N. Olive Ave, Suite 601
West Palm Beach, FL, 33401

As to the Westlake

City of Westlake
Ken Cassel, City Manager
4001 Seminole Pratt Whitney Road
Westlake, FL 33470

With a Copy to City Attorney

City of Westlake
Pam E. Booker, City Attorney
4001 Seminole Pratt Whitney Road
Westlake, FL 33470

4. Indemnification. Westlake shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of Westlake, to the extent permitted by law. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28.
5. Legal Fees. The Parties shall bear their own costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms and conditions of this Agreement.
6. Amendments. Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to by the Parties in writing and executed in the same manner, as was this Agreement.
7. Venue. This Agreement shall be construed and governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy conferred upon either Party by this Agreement is intended to be exclusive of any other remedy existing at law, in equity or otherwise. No single or partial exercise by either Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.
8. Preparation. Preparation of this Agreement was a joint effort of the Parties and should not be construed more severely against one Party than the other.
9. Non-Discrimination. The Parties agree that no person shall be excluded on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.
10. Severability. In the event any provision hereof is held invalid by a court of competent jurisdiction, the remaining portions of the Agreement shall remain in full force and effect.

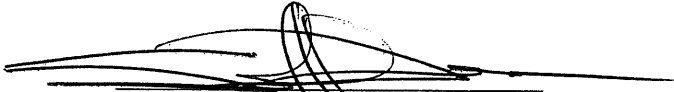
11. Entire Understanding. This Agreement represents the entire understanding of the Parties and supersedes all other negotiations, representations or agreements, written or oral, relating to this Agreement.
12. Inspector General. The County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Parties, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor provided such Local Government is a special district that has previously and by separate written instrument agreed to be subject to said Inspector General's authority or is a municipality.
13. Records. The County and Westlake shall maintain books, records, and documents to justify all charges, expenses and costs incurred or paid by them under this Agreement in performance of the term of this Agreement, in accordance with Generally Accepted Accounting Principles (GAAP), as promulgated by the Government Finance Officers Association from time to time. The County and Westlake shall have access to all books, records, and documents as required in this Agreement, and for at least three (3) years after completion of the Persimmon Improvements.
14. Contractual Relationship. County and Westlake are and shall be, in the performance of all work, services and activities under this Agreement independent contractors and not employees, agents or servants of the other Party. All County employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to County's sole direction, supervision, and control. All Westlake employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to Westlake's sole direction, supervision, and control. The Parties shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Parties' relationship and the relationship of its

employees to the other Party shall be that of an independent contractor and not as employees or agents of the other. The County and Westlake do not have the power or authority to bind each other in any promise, agreement or representation without the prior written consent of the other Party.

15. Waiver. Any waiver by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.
16. Legal Compliance. County and Westlake shall abide by all applicable federal, State and local laws, orders, rules, codes, and regulations when performing under this Agreement. County and Westlake further agree to the inclusion of this provision in all subcontracts issued as a result of this Agreement.
17. Convicted Vendor List. As provided in Sections 287.132-133, Florida Statutes, as may be amended from time to time, by entering into this Agreement or performing any work in furtherance hereof, County shall have its contractor certify that their affiliates, suppliers and sub-consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof.
18. No Third Party Beneficiary. This Agreement is not intended to, nor shall be construed to create a third party beneficiary.
19. Survivability. The obligations, rights, and remedies of the Parties hereunder, which by their nature are intended to survive the termination of this Agreement or the completion of the Project, shall survive such termination or Project completion and inure to the benefit of the Parties.
20. Effective Date. This Agreement shall be effective and binding upon the Parties hereto once the Agreement has been signed by both Parties and filed with the Clerk of the Court in and for Palm Beach County, Florida.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first written above.

ATTEST:



Sandra DeMarco, City Clerk



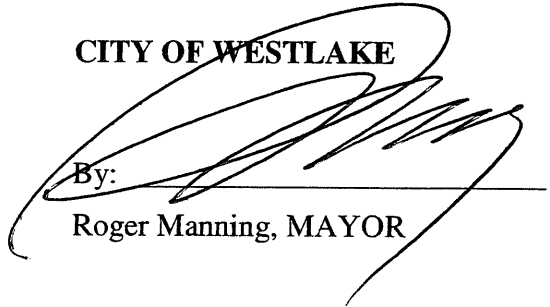
**PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS**

By: Mayor ~~Melissa McKinlay~~

ATTEST:
SHARON R. BOCK,
CLERK & COMPTROLLER

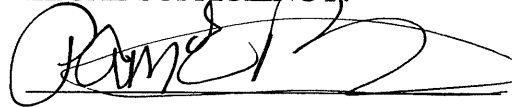
CLERK

CITY OF WESTLAKE



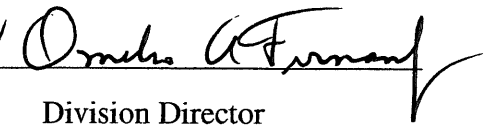
By:
Roger Manning, MAYOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Pam E. Booker, City Attorney

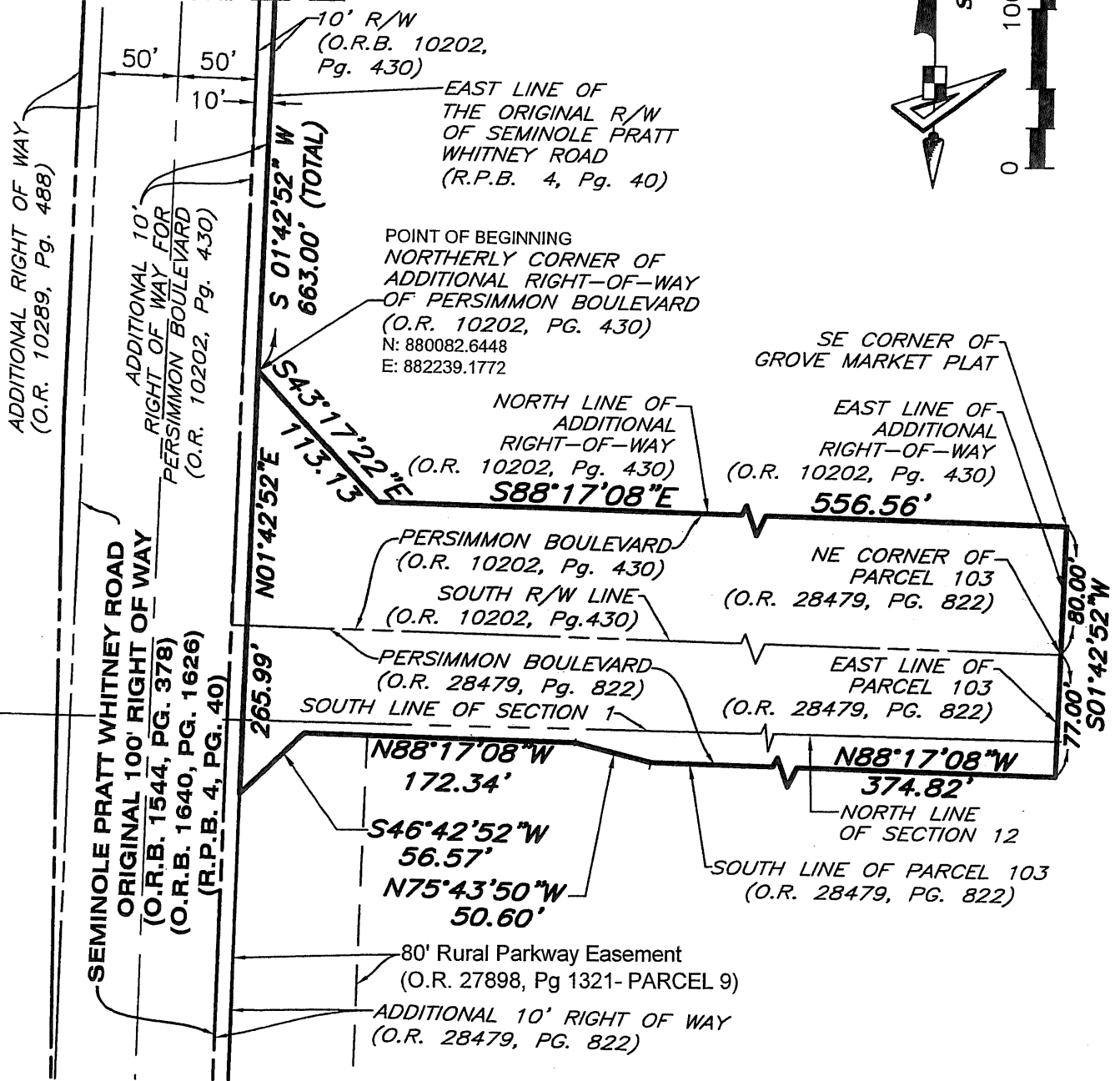
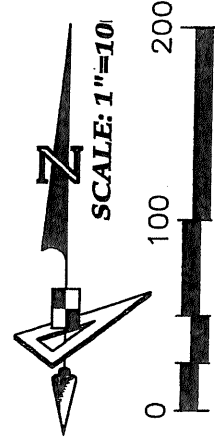
APPROVED AS TO TERMS
AND CONDITIONS:

^{MR}
By: 
Division Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Yelizaveta B. Herman
Assistant County Attorney

MATCH SHEET 3



**PERSIMMON BOULEVARD
LEGAL DESCRIPTION AND SKETCH**

REVISIONS			
No.	Date	Description	Dwn.

Prepared For: MINTO



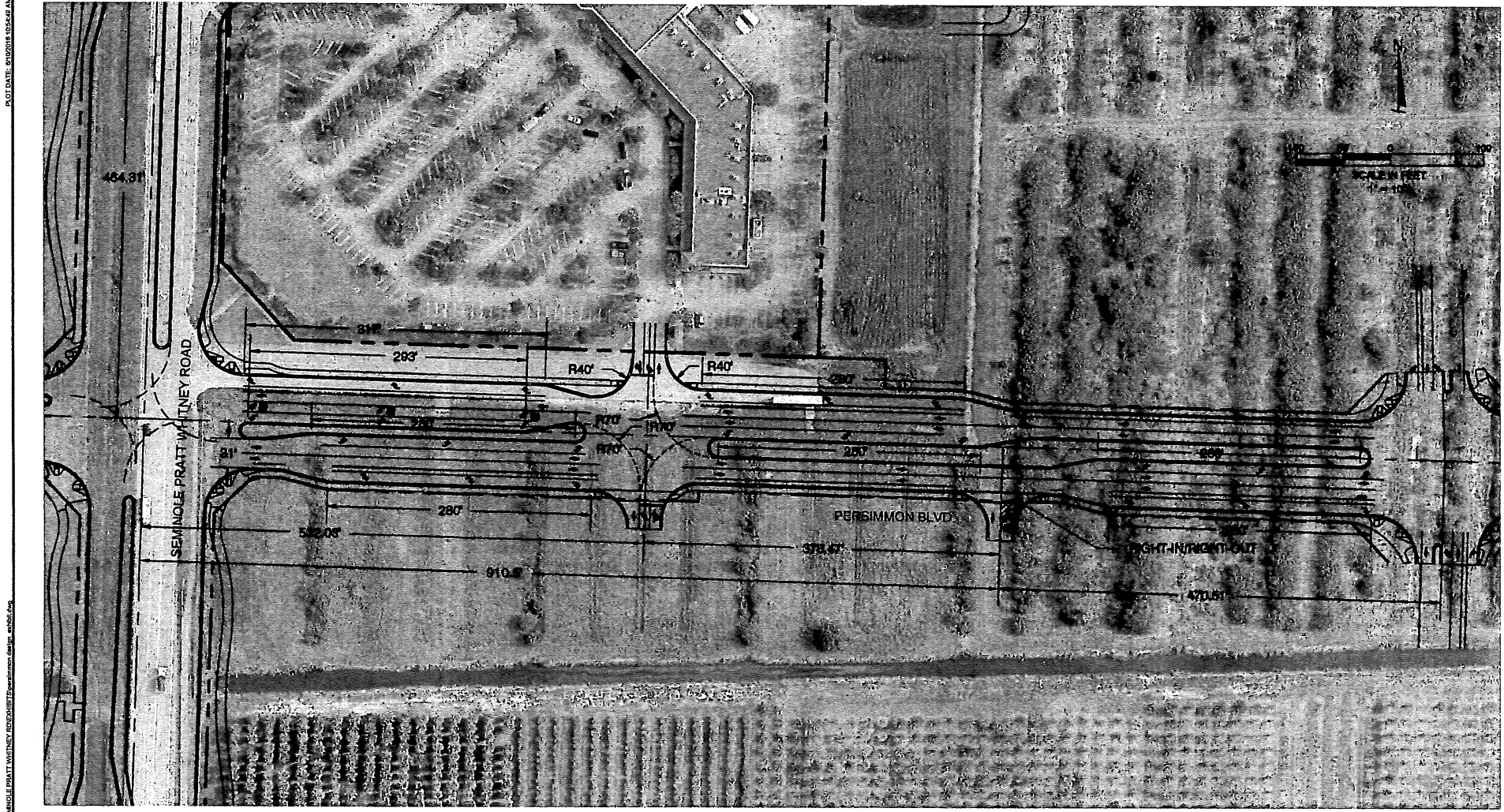
4152 W. Blue Heron Blvd. Suite 105
Riviera Beach, FL 33404
Phone: (561) 444-2720
www.geopointsurvey.com
Licensed Business Number LB 7768

Drawn: SWM	Date: 07/26/18	Data File:
Check: GAR	P.C.:	Field Book:
Section: 1 & 12 Twn. 43S Rng. 40E		Job #: FBA-SP-005

Sheet No. 4 of 4 Sheets

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR.

NAME: W:\MINTO WEST\SURVEY\DESCRIPTIONS\PW RIGHT OF WAY\SEMINOLE-PRATT_ROW_PERSIMMON-7-27-18.DWG PLOTTED BY: GARY RAGER ON: 7/27/2018 12:19 PM LAST SAVED BY: GARYR ON: 7/27/18



S:\PALM BEACH\ROADWAY\SEMINOLE PRATT WHITNEY RD\PROJECTS\palmston design\exhibit.dwg GROVE MARKET EXHIBIT 0300.mxd, 07/02/2016 10:54:46 AM
 PLOT DATE: 07/02/2016 10:54:46 AM


GARNEY AND ASSOCIATES, INC.
 ENGINEERS, SURVEYORS, PLANNERS
 Certificate of Authorization Number: 4709
 4450 N.E. 63rd Road • Westwood, Florida 33785 • (352) 748-3128

NO.	REVISION	BY	DATE


PALM BEACH COUNTY
 ENGINEERING AND PUBLIC WORKS
ROADWAY PRODUCTION
 P.O. BOX 91229, WEST PALM BEACH, FLORIDA

SCALE: AS NOTED
 APPROVED: CP
 DRAWN: MT
 CHECKED: CP
 DATE: 01/10/16

SEMINOLE PRATT WHITNEY RD.
GROVE MARKET EXHIBIT
DESIGN FILE NAME: persimmon_design_exhibit.dwg
 DRAWING NO. 1 OF 1

1