

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>63,776</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>63,776</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
 Budget Account No: Fund 4100 Department 120 Unit 8430 R Source 4413
 Reporting Category _____

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

Approval of the Amendment will result in a reduction of revenues of \$63,776.18, which includes \$63,396.57 in rental and \$379.61 in late fees.

C. Departmental Fiscal Review: Michael Simon

III. REVIEW COMMENTS

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

THE TERMINAL BUILDING LEASE AGREEMENT DATED JUNE 5, 2007 IS FOR AN ANNUAL RENTAL OF \$253,588.25.

Adwillwhite 6-6-08
 OFMB
 6-4-08 6/5/08 CN 6/2/08

Don J. Jacoby 6/9/08
 Contract Dev. and Control

B. Legal Sufficiency:

James Brub 6/10/08
 Assistant County Attorney

This amendment complies with our review requirements.

C. Other Department Review:

 Department Director

**FIRST AMENDMENT TO TERMINAL BUILDING LEASE AGREEMENT
BETWEEN PALM BEACH COUNTY AND
THE GENERAL SERVICES ADMINISTRATION**

THIS FIRST AMENDMENT TO TERMINAL BUILDING LEASE AGREEMENT (this "Amendment") is made and entered into this _____ day of _____, 2008, by and between Palm Beach County, a political subdivision of the State of Florida (the "County"), and the General Services Administration, an Executive Agency of the United States of America ("Lessee").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports (the "Department") owns and operates the Palm Beach International Airport, located in Palm Beach County, Florida (the "Airport"); and

WHEREAS, pursuant to that certain Terminal Building Lease Agreement between County and Lessee dated June 05, 2007 (R2007-0855) (the "Lease"), Lessee leases 4,925 square feet of Type 4 Space at a rate of \$51.49 per square foot, for an annual rental of \$253,588.25; and

WHEREAS, the parties have agreed to amend the Agreement to extend the term of the Agreement to provide additional time for construction of the premises prior to the commencement of rental payments and to delete the requirement that Lessee's contractor furnish a construction bond for improvements; and

WHEREAS, Lessee acknowledges the rental rates set forth above are adjusted annually; and

WHEREAS, the parties hereto desire to amend the Lease in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and for such other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

1. The foregoing recitals are true and correct and are hereby incorporated herein by reference. Terms not defined herein shall have the meanings ascribed to them in the Lease.

2. Article 3.02 of the Lease is hereby deleted in its entirety and replaced with the following:

3.02 Commencement Date. The term of this Lease shall commence on March 01, 2008 (the "Commencement Date") and shall terminate on November 30, 2012 (the "Term").

3. Article 10.04 of the Lease is hereby deleted in its entirety and replaced with the following:

10.04 Contractor Requirements. Lessee shall require its contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County's Risk Management Department may reasonably require. County's Risk Management Department may require additional insurance for any alterations, additions or improvements approved

pursuant to this Lease in such amounts as County's Risk Management Department reasonably determines to be necessary.

4. Except as specifically modified herein, all of the terms and conditions of the Lease shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

5. This Amendment shall become effective when signed by both the parties hereto and approved by the Palm Beach County Board of County Commissioners.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed by the Chair of the Board of County Commissioners and the seal of the Board to be affixed hereto by the Clerk of the Board, pursuant to the authority granted by the Board and the General Services Administration, an Executive Agency of the United States of America, has caused these presents to be signed in its name by its duly authorized officer, the Contracting Officer, acting on behalf of the Lessee, the day and year first written above.

ATTEST:

Sharon R. Bock, Clerk and Comptroller

By: _____
Deputy Clerk

PALM BEACH COUNTY, a political subdivision of the State of Florida, by its Board of County Commissioners

By: _____
Addie L. Greene, Chairperson

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: *James Bock*
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: *Jim Kelly*
Director - Department of Airports

ATTEST:

Signed, sealed and delivered in the Presence of two witnesses for LESSEE

Brenda DiMarzio
Signature
BRENDA DIMARZIO
Print Name

Sherry Bellini
Signature
Sherry Bellini
Print Name

LESSEE:

GENERAL SERVICES ADMINISTRATION

By: *Louise Long 5/2/08*
Louise Long
Contracting Officer

February 14, 2008

MEMORANDUM FOR CHRISTOPHER BANKS
 CONTRACT SPECIALIST
 ACQUISITION MANAGEMENT DIVISION (4PM)

FROM: GEORGE U. LANE JR.
 SENIOR ASSISTANT REGIONAL COUNSEL
 OFFICE OF REGIONAL COUNSEL (4L)

SUBJECT: Miller Act Bonding: Dual Obligee

The question presented is whether the Miller Act prohibits having dual obligees on performance and payment bonds for government construction projects.

Response: I believe such dual obligees are prohibited.

In short summary the Miller Act, 40 U.S.C. §3133, 3134 mandates obtaining performance and payment bonds from contractors for all Federal construction projects exceeding \$25,000.00. Under such bonding the United States is the obligee. Historically, the limitation on what party or entity may be the obligee on the bonds is clear. In UNITED STATES of America, to the Use of ACME FURNACE FITTING CO., v. FT. GEORGE G. MEADE DEFENSE HOUSING CORPORATION NO.1, et.al., 186 F.Supp. 639 (USDC MD, 1960), the court stated:

The requirement that Miller Act bonds must be furnished "to the United States" means that the United States shall be named as a sole obligee. Miller Act, § 1 et seq., 40 U.S.C.A. § 270a et seq. (now 40 U.S.C.A. §3133)

Further, the primarily purpose of the Miller Act is to provide protection for the subcontractors and suppliers who furnish work to the prime or general contractors on Federal construction projects. Not only do the bonds provide a source of funds to pay these parties if the prime contractor cannot, but affords these subcontractors access to Federal court through a civil suit filed by them "on behalf of the United States of America". I am concerned that adding another obligee to the bonds could adversely affect the subcontractors' ability to use these bonds as a vehicle to reach Federal court.



Southeast Sunbelt Region
Realty Services Division
7771 W. Oakland Park Boulevard, Suite 119
Sunrise, Florida 33351
Phone: 954-356-7698, Fax: 954-356-7675

U.S. General Services Administration

March 10, 2008

Ms. Laura Beebe
Deputy Director, Airports Business Affairs
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, Florida 33406

Re: Lease Number LFL47818

Dear Ms. Beebe:

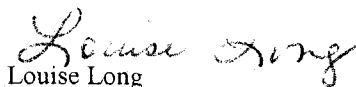
This letter is in response to your attached e-mail dated March 4, 2008. The General Services Administration is in agreement with Palm Beach International Airport and would like to work through the following four issues so that we can begin construction of the new Transportation Safety Administration space at PBIA. In the meantime, please proceed and draft an amendment to this lease for my review and signature.

- (1). Rent: GSA agrees to start rent beginning March 1, 2008 even though we do not occupy the space. I am going to input a special appeal to get rent started in our system without a signed lease amendment. In the meantime, please get the lease amendment before the Board of Commissioners in early May. Be sure amendment shows a March 1, 2008 effective date with an annual rental amount. Everything must match in order for GSA to process payment. Also, I will need a completed ACH form which I will fax over to you.
- (2). Location of Sanitary Line: Government will take full responsibility for the location and installation of the sanitary line. We hope the airport will assist us in order to avoid unnecessary delays in the process.
- (3). Construction Bond: Per your e-mail, please proceed with waiver of the bond requirement and include the waiver in the lease amendment.
- (4). Insurance: The GSA Construction Branch has agreed to get PBIA the required documentation of insurance by Tuesday, March 18, 2008. Please let me know if you do not receive this documentation by this date.

I hope this will satisfy all outstanding issues. The TSA is very anxious to get into this space. I have been told that once a permit has been issued, it will take approximately 90 days to complete the construction.

If you have any questions, please give me a call at (954) 356-7662 extension 120.

Sincerely,


Louise Long
Contracting Officer