

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: October 21, 2008 [X] Consent [] Regular
[] Workshop [] Public Hearing
Department:
Submitted By: Department of Airports
Submitted For:
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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Agreement to Terminate Development Site Lease Agreement with Hyperion Farms, L.L.C. (Hyperion) (Termination Agreement) for the lease of property at the North County General Aviation Airport, terminating the Development Site Lease Agreement (R2006-0337) (Lease), effective November 1, 2008.

Summary: The Lease required Hyperion to construct a hangar and associated improvements no later than August 28, 2008. Construction has not started, and Hyperion has asked to terminate the Lease. The Termination Agreement provides for termination of the Lease effective November 1, 2008, and for Hyperion to pay a termination fee in the amount of \$8,500. The Department does not object to termination of the Lease and anticipates issuing a competitive solicitation for the lease of property at the North County General Aviation Airport next year. Countywide (JB)

Background and Justification: Hyperion has paid ground rental to the County since the Lease was approved February 28, 2006. No construction has commenced and Hyperion has asked to terminate the Lease. Hyperion has agreed to pay a termination fee of \$8,500. The County will retain Hyperion's security deposit in the amount of \$5,100 and Hyperion has paid an additional \$3,400.

Attachments:

- 1. Agreement to Terminate Development Site Lease Agreement (3)

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Recommended By: Jan Kelly 9/24/08
Department Director Date
Approved By: [Signature] 10/7/08
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>10,078</u>	<u>20,267</u>	<u>20,267</u>	<u>20,267</u>	<u>20,267</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>10,078</u>	<u>20,267</u>	<u>20,267</u>	<u>20,267</u>	<u>20,267</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X

Budget Account No:

Fund 4100 Department 120 Unit 8250 RSRC 4416 Reporting Category _____

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

Annual rent amounts to \$20,267 which will cease upon termination. Annual revenue impacts are shown above. 2009 revenue reductions are offset by an \$8,500 termination fee to the County.

C. Departmental Fiscal Review: *Michelle Simon*

III. REVIEW COMMENTS

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

galk 10-21-08
Stwellhite 10-2-08
 OFMB
10/2/08
9/29/08

Contract Dev. and Control
10/3/08
TR Termination
Agreement complies with our other agreements.

B. Legal Sufficiency:

James Brubaker 10/26/08
 Assistant County Attorney

C. Other Department Review:

 Department Director

**AGREEMENT TO TERMINATE DEVELOPMENT SITE LEASE
AGREEMENT AT NORTH PALM BEACH COUNTY GENERAL AVIATION AIRPORT
BETWEEN PALM BEACH COUNTY AND HYPERION FARMS, L.L.C.**

This Agreement to Terminate Development Site Lease Agreement at North Palm Beach County General Aviation Airport (this "Agreement") is made and entered into _____, 20__ by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Hyperion Farms, L.L.C., having its office and principal place of business at 1517 Perimeter Rd. Ste. 508, West Palm Beach, FL 33406-1445 ("Tenant").

WITNESSETH:

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

WHEREAS, County and Tenant have entered into that certain Development Site Lease Agreement at North Palm Beach County General Aviation Airport dated February 28, 2006 (R-2006-0337), as amended by that certain First Amendment to Development Site Lease Agreement at North Palm Beach County General Aviation Airport dated December 18, 2007 (R-2007-2239) (collectively, the "Development Agreement"); and

WHEREAS, Tenant has requested to terminate the Development Agreement; and

WHEREAS, Tenant has agreed to pay a termination fee to County in the amount of Eight Thousand Five Hundred Dollars (\$8,500) (the "Termination Fee"); and

WHEREAS, County has no objection to termination of the Development Agreement.

NOW, THEREFORE, in consideration of the premises and of 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 recitals set forth above are true and correct and form a part of this Agreement.
2. The Development Agreement shall be terminated effective November 1, 2008 (the "Termination Date"); provided, however, that any claim, cause of action, or other obligation to Tenant or to County then accrued, shall survive termination.
3. Tenant shall pay to County a Termination Fee in the amount of Eight Thousand Five Hundred Dollars (\$8,500) payable as follows: (i) Tenant's Security Deposit in the amount of Five Thousand One Hundred Dollars (\$5,100) shall be retained by County as partial payment of the Termination Fee, and (ii) the remaining Three Thousand Four Hundred Dollars (\$3,400) shall be paid by Tenant to County upon execution of this Agreement by Tenant.
4. This Agreement shall become effective when signed by the parties hereto, and approved by the Palm Beach County Board of County Commissioners.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ATTEST:
SHARON R. BOCK,
CLERK AND COMPTROLLER

PALM BEACH COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
FLORIDA, BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: *Shawn Kelly*
Director, Department of Airports

Witnesses:

TENANT: Hyperion Farms, L.L.C.

Argella V. Barjuan
Signature

By: *Harvey L. Armstrong*

ARGELLA V. BARIUAN
Print Name

HARVEY L. ARMSTRONG
Print Name

Julie DeMartini
Signature

Title: MANAGER

JULIE DEMARTINI
Print Name