

II. FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>\$16,530</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>\$10,061</u>	<u>\$3,354</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(\$36,780)</u>	<u>(\$4,050)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>(\$10,189)</u>	<u>(\$696)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

ADDITIONAL FTE
POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes No

Budget Account No: Fund 0001 Department 410 Unit 5240 Object 4610
Reporting Category

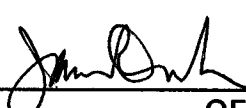
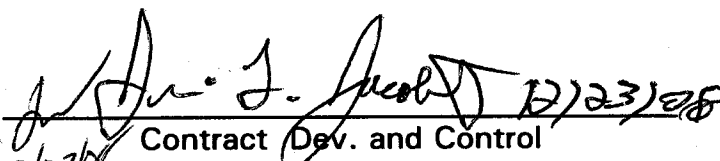
B. Recommended Sources of Funds/Summary of Fiscal Impact:

All out of pocket expenses (\$16,530) are being funded by FDLE within 30 days of the effective date of the agreement. The user fee is payable every 60 days in the amount of \$4,050. The total revenues shown above consist of the entire capital expenditure and the use fee prorated for that fiscal year. This is a use agreement or permit, not a lease. The use fee is slightly less than what the market lease rate if leased commercially. However, the terms of this Agreement are not marketable and the FDLE is not receiving typical rights granted to a Lessor. The County is being made whole for it expenses.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS:

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

 12-22-08
 OFMB (11) 12/14/08 CN
 12/23/08
 Contract Dev. and Control

B. Legal Sufficiency:

 12/24/08
 Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

USE AGREEMENT

THIS USE AGREEMENT (the "Agreement") is made and entered into _____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "County" and the Florida Department of Law Enforcement, a state agency, hereinafter referred to as "FDLE".

WITNESSETH:

WHEREAS, County is the owner of improved property known as Airport Center Building 2; and

WHEREAS, FDLE desires to use and occupy a minimum of 1800 square feet of office space for administrative and investigative purposes located on the second floor of Airport Center Building 2 located at 160 Australian Avenue, West Palm Beach, Fl. 33406; and

WHEREAS, County is willing to allow FDLE to use and occupy the office space according to the terms and conditions set forth hereinafter;

NOW THEREFORE, in consideration of the rents, covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I BASIC PROVISIONS

Section 1.01 Recitals

The foregoing recitals are true and correct and incorporated herein by reference.

Section 1.02 Background Information.

Both parties acknowledge that there is a benefit to both the citizens of Palm Beach County and FDLE by maintaining a field office within the County for the purposes of providing the most effective law enforcement services and encouraging inter-agency investigative operations.

Section 1.03 Premises.

The Premises shall consist of 2683 square feet of office space on the second floor of Airport Center Building 2 as identified on Exhibit "A", attached hereto and made a part hereof (the "Premises"). Both parties acknowledge that only 1800 square footage is required to meet the requirements of FDLE, but the County is allowing use by FDLE of the additional 883 square feet of entire 2683 square feet of office space at no charge so as to avoid the County's expense of subdividing the Premises.

Section 1.04 Length of Term and Commencement Date.

This Agreement shall be effective upon the Effective Date as defined hereinafter. The term of this Agreement shall commence upon the Effective Date (the "Commencement Date"), and shall extend for a period of one year, (the "Term"), unless sooner terminated pursuant to the provisions of this Agreement.

Section 1.05 Option to Renew.

Provided that FDLE is not in default of any term, covenant, or condition of this Agreement, the Term of this Agreement may be extended for three successive one year periods under the same terms and conditions of this Agreement by mutual written consent of both the County and FDLE. FDLE shall exercise its option to renew by providing prior written notice to County on or before sixty (60) days prior to the expiration of the initial Term or renewal thereof. FDLE acknowledges that the County has plans to undertake a major renovation to the Building in the future and renewal terms are not guaranteed. Further, the County shall have no obligation to find replacement space for FDLE as a result of lack of renewal or earlier termination of this Agreement.

ARTICLE II PAYMENT

Section 2.01 Annual Costs.

The costs associated with FDLE's use and occupancy of the Premises are identified on Exhibit "B", attached hereto and made a part hereof. FDLE shall pay the County one time start-up costs not to exceed \$16,530. FDLE shall pay the one-time start-up costs associated with the Use Agreement within thirty days of the Effective Date. FDLE shall pay the County a total of annual use fee of \$24,300 paid in six payments of \$4,050 for the following 60 days. Payments shall be made by January 18, March 18, May 18, July 18, September 18, and November 18; annually.

Payments shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Finance Department, Revenue Section, P.O. Box 4036, West Palm Beach, Florida 33402.

ARTICLE III CONDITION OF AGREEMENT PREMISES, ALTERATIONS

Section 3.01 Acceptance of Premises by FDLE.

FDLE certifies that it has inspected the Premises and accepts same "As Is", in its existing condition and "WITH ALL FAULTS," together with all defects, latent and patent, if any, and that no improvements other than those identified on Exhibit B as start-up costs are required for FDLE to occupy the Premises for its intended use in a safe and code compliant manner. FDLE shall not undertake any modification or change to the Premises or permanently affix any furniture, equipment or shelving unit without the prior written approval of the County, which approval may be granted or withheld in County's sole and absolute discretion, which shall not be unreasonably withheld. FDLE shall submit work orders to the County for any desired modification or changes to the Premises. The County will scope and price the work order and return same to FDLE for approval and funding. The costs of modification or changes to the Premises shall be funded by FDLE.

Section 3.02 Alterations.

FDLE agrees and acknowledges that all work performed to the Premises, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of FDLE, and not for the benefit of County, such work being nevertheless subject to each and every provision of this Agreement.

**ARTICLE IV
CONDUCT OF BUSINESS AND USE OF PREMISES BY FDLE**

Section 4.01 Use of Premises.

FDLE shall use and occupy the Premises solely and exclusively for administrative and investigative office space required for the provision of services by FDLE. Under no circumstances shall the FDLE bring persons in the custody of the Palm Beach County Sheriff's Office Corrections Department, the State of Florida Department of Corrections, or any Federal agency with detention responsibilities to the Premises for any purpose or any duration. FDLE shall not use, permit, or suffer the use of the Premises for any other purpose whatsoever without the prior written consent of County, which consent may be granted or withheld in County's sole discretion.

Section 4.02 Waste or Nuisance.

FDLE shall not commit or suffer to be committed any waste upon the Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's fee interest in the Premises or which results in an unsightly condition.

Section 4.03 Governmental Regulations.

FDLE shall, at its sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to or its use of the Premises, or the Premises generally. FDLE shall not use, maintain, store or dispose of any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents on the Premises or any adjacent land in any manner not permitted by law. FDLE shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from FDLE's failure to perform its obligations in this Section.

Section 4.04 Non-Discrimination.

FDLE shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, gender identity or expression, or disability with respect to any activity occurring on the Premises or under this Agreement.

Section 4.05 Surrender of Premises.

Upon expiration or earlier termination of this Agreement, FDLE, at its sole cost and expense, if so directed by County, shall remove FDLE's personal property, removable fixtures, and equipment from the Premises and shall surrender the Premises to the County in the same condition the Premises were in as of the Commencement Date of this Agreement, reasonable wear and tear excepted. Any personal property of FDLE not removed shall, at the option of the County, become the property of County.

Section 4.06 Hazardous Substance

FDLE shall not use, maintain, store or dispose of any contaminants including, but not

limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in 's operations, on the Premises or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, FDLE shall not cause or permit the Disposal of Hazardous Materials upon the Premises or upon adjacent lands and shall operate and occupy the Premises in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, whether by FDLE or any third party, shall be reported to County immediately upon the knowledge thereof by FDLE. FDLE shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the Premises or emanating from the Premises onto adjacent lands, as a result of the use and occupancy of the Premises by FDLE, or 's agents, licensees, invitees, subcontractors or employees.

FDLE hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs, which may arise directly, indirectly or proximately as a result of any violation of the Disposal of any Hazardous Materials upon the Premises or violation of this provision. FDLE's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of FDLE, it shall not be deemed to alter or diminish any statutory or common law liability of FDLE.

FDLE acknowledges that County would not have entered into this Agreement without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive expiration or earlier termination of this Agreement.

ARTICLE V REPAIRS AND MAINTENANCE OF PREMISES

Section 5.01 Responsibility of County.

County shall keep and maintain all portions of the Premises in good condition and repair.

ARTICLE VI UTILITIES

County shall be solely responsible for and promptly pay all costs and expenses relating to providing utility service to the Premises and shall pay directly to the utility company or the provider of such service all charges and assessments for any utility services provided including, without limitation, water, sewer, gas, electricity, trash collection and removal or any other utility used or consumed on the Premises. In no event shall County be liable for an interruption or failure in the supply of any such utility to the Premises.

ARTICLE VII INSURANCE

Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, FDLE acknowledges and represents that FDLE is self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

FDLE agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When requested, FDLE agrees to provide a statement or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve FDLE of its liability and obligations under this Agreement.

FDLE agrees its self-insurance, general liability, automobile liability, and property insurance shall be primary as respects to any coverage afforded to or maintained by County.

ARTICLE VIII INDEMNIFICATION

It is understood and agreed that FDLE is not an agent, servant or employee of County or its Board of County Commissioners. Notwithstanding the language in Section IV of this Agreement. FDLE shall to the extent permitted by law, indemnify, defend and save harmless the County from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Agreement including without limitation those arising as a result of FDLE's use and occupancy of the Premises, any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the Premises by reason, during or as a result of the use and occupancy of the Premises by FDLE, its agents, employees, licensees, invitees and the general public, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event County shall be made a party to any litigation commenced against FDLE or by against any third party, then FDLE shall to the extent permitted by law, protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Notwithstanding anything herein to the contrary, FDLE shall not be obligated to indemnify or hold harmless County for matters which are judicially determined to be attributable to the negligent or intentional acts or omissions of County. This section shall survive the expiration or earlier termination of this Agreement. Nothing contained herein shall be construed as a waiver of sovereign immunity or the statutory limits of liability set forth in Section 768.28, Florida Statutes.

ARTICLE IX DESTRUCTION OF PREMISES

Section 9.01 Damage or Destruction by Fire, War or Act of God.

In the event the Premises shall be destroyed or so damaged or injured by fire or other casualty during the Term of this Agreement, or any extension thereof, whereby the same shall be rendered untenable, in whole or in part, County shall have no responsibility to restore the Premises.

ARTICLE X ASSIGNMENT AND SUBLETTING

Section 10.01 Consent Required.

FDLE may not assign, mortgage, pledge or encumber this Agreement in whole or in part, nor sublet or rent all or any portion of the Premises nor grant any easements affecting the Premises, without prior written consent of County, which may be granted or withheld at County's absolute discretion. Any attempted assignment, mortgage, pledge, encumbrance or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of Agreement. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

ARTICLE XI DEFAULT

Section 11.01 Default by FDLE.

The occurrence of any one or more of the following shall constitute an Event of Default by FDLE under this Agreement: (i) FDLE's failure to pay any sum due hereunder within fifteen (15) days after the same shall become due; (ii) FDLE's failure to perform or observe any of the agreements, covenants or conditions contained in the Agreement on FDLE's part to be performed or observed if such failure continues for more than thirty (30) days after notice from County unless the same is of such a nature that it can not reasonably be cured within such a time period, in which event FDLE shall be entitled to a reasonable period under the circumstances; or (iii) FDLE's vacating or abandoning the Premises. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to give FDLE notice that County intends to terminate this Agreement upon a specified date not less than thirty (30) days after the date notice is received by FDLE, and this Agreement shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Agreement. If, however, the default is cured within the thirty (30) day period and the County is so notified, this Agreement will continue.

Section 11.02 Default by County.

County shall not be in default unless County fails to perform obligations required of County within a reasonable time, but in no event later than thirty (30) days after written notice by FDLE to County, specifying wherein County has failed to perform such obligations; provided, however, that if the nature of County's obligations is such that more than thirty (30) days are required for performance then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

ARTICLE XII ANNUAL BUDGETARY FUNDING

FDLE's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event the terms and conditions of this Article XII conflict with any other terms or conditions of this Agreement, the provisions of this Article XII shall prevail.

This Agreement and all obligations of County are subject to and contingent upon annual budgetary funding and appropriations for its purpose by the Palm Beach County Board of County Commissioners.

ARTICLE XIII TERMINATION

At any point during the initial term of this Agreement or any subsequent renewals thereof, FDLE shall have the right to terminate, without penalty, this Agreement in the event a State owned building becomes available to FDLE for occupancy upon giving six (6) months advance written notice to the County by Certified Mail, Return Receipt Requested. In the event that this term conflicts with another term of this Agreement, the time requirement for advance notice shall be the lesser time of the conflicting terms.

Notwithstanding anything in this Agreement to the contrary, either party may cancel this Agreement for any reason upon sixty (60) days prior written notice to the other party.

ARTICLE XIV MISCELLANEOUS

Section 14.01 Entire Agreement.

This Agreement and any Exhibits attached thereto, constitute all agreements, conditions and understandings between County and FDLE concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or FDLE unless reduced to writing and signed by them.

Section 14.02 Notices.

All notices, consents, approvals, and elections (collectively "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any such notice shall be the date of delivery of the notice if by personal delivery, courier service, or national overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties designate the following addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the County at:

Business and Community Agreement Manager
2633 Vista Parkway

West Palm Beach, FL 33411-5605
Telephone 561-233-0232
Fax 561-233-0206

with a copy to:

Palm Beach County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Telephone 561-355-2225
Fax 561-355-4398

(b) If to the FDLE at:

Florida Department of Law Enforcement
Attention: Office of General Services
2331 Phillips Road
Tallahassee, Florida 32308
Telephone: 850-410-7300
Fax: 850-410-7333

Invoices shall be submitted to:

Florida Department of Law Enforcement
Office of Finance and Accounting
Post Office Box 1489
Tallahassee, Florida 32302

Any party may from time to time change the address which notices under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

Section 14.03 Severability.

If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 14.04 Recording.

FDLE shall not record this Agreement, or any memorandum or short form thereof, without the written consent and joinder of County, which may be granted or withheld at County's sole discretion.

Section 14.05 Waiver of Jury Trial.

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS, BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS AGREEMENT.

Section 14.06 Governing Law and Venue.

This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in a State court of competent jurisdiction in Palm Beach County, Florida.

Section 14.07 Radon.

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

Section 14.08 Time of Essence.

Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

Section 14.09 Waiver.

The waiver by County of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant herein contained.

The consent or approval by County to or of any act by FDLE requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by FDLE.

Section 14.10 Non-exclusivity of Remedies.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 14.11 Construction.

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 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 is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 14.12 Incorporation by Reference.

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

Section 14.13 Survival

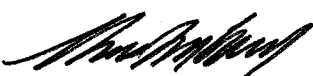
Notwithstanding any early termination of this Agreement, FDLE shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon FDLE hereunder arising prior to the date of such termination.

Section 14.14 Effective Date of Agreement.

This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

WITNESS:

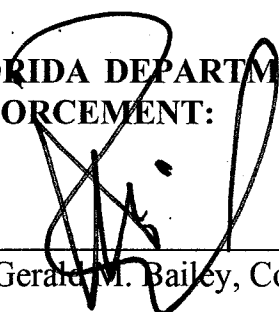


Witness Signature

Thomas J. McIndevy

Print Witness Name

**FLORIDA DEPARTMENT OF LAW
ENFORCEMENT:**


By: _____
Gerald M. Bailey, Commissioner

**ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER**

By: _____
Deputy Clerk

**PALM BEACH COUNTY, a political
subdivision of the State of Florida**

By: _____
John F. Koons, Chairman

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

**APPROVED AS TO TERMS AND
CONDITIONS**

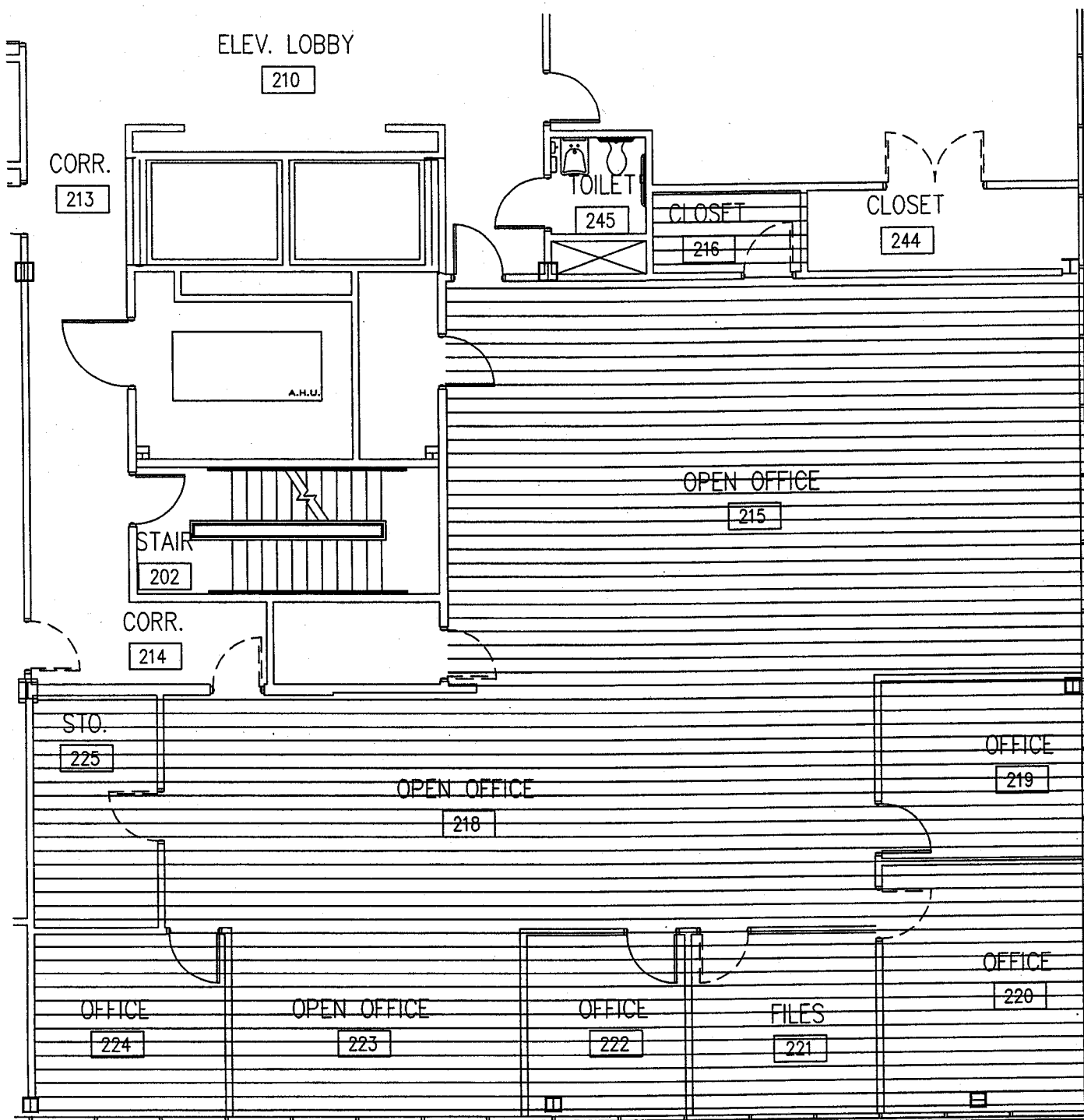
By: *Anthony Wong*

Department Director

EXHIBIT "A"

THE "PREMISES"

EXHIBIT "A"



AIRPORT CENTER 2ND FLOOR
FDLE SPACE

EXHIBIT "B"

	<u>Unit Price</u>	<u>Total FDLE</u>
Operational Costs		
1A. Use Fee (inc. custodial, utilities pest)	\$13.50/sf	\$24,300 ¹
One-time Start-up costs		
2A. Phone Equip and Installation & Fax Install		\$12,430 ²
2B. Data lines from closet		\$ 1,500
2C. Locking hardware modifications		\$ 2,100
2D. Project Clean		\$ 500
Sub-total		\$16,530

Assumes:

1. Space is Airport Center Building #2, 2nd Floor, 1800 square feet excluding common areas (spine hallway, restrooms, stairs and elevators). Includes custodial, pest, grounds, parking and common security.
2. Item 2A includes new phone sets and full installation costs at \$565/phone or fax connection. Actual costs for this item will be based on number of sets required by FDLE, not to exceed 22. On-going communications costs will be direct billed for long distance usage only.