

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: April 21, 2009

[X] Consent [] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: First Restated Use Agreement (R2006-0082) with the Sheriff of Palm Beach County (PBSO) with regard to the continued operation of the Cabana Colony Youth Center.

Summary: On January 10, 2006 the County entered into a Use Agreement with PBSO to manage the newly created youth center and operate a PAL program from the site. At the same time, the County also entered into a license agreement with the Partnership for a Drug Free Community (Partnership) to provide various program and services in addition to those being offered by PBSO. The license agreement has expired and the space vacated by the Partnership. PBSO desires to expand its programs and services at the Center to include; 1) tutoring, 2) recreational programs that may be provided in conjunction with Parks and Recreation, 3) administration of the Congressional Awards Program, and 4) community based law enforcement programs. The First Restated Use Agreement also modifies the minimum hours of operation to Monday through Friday 10 am to 7:00 pm with modified hours during holidays and school breaks. PBSO is responsible for the all costs associated with operating the Center including supervision of the youth attending programs at the Center. The County is responsible for costs associated with maintaining the Center. The term of the First Restated Use Agreement is ten (10) years commencing on January 10, 2006 and has two (2) additional five (5) year renewals by mutual agreement. (FDO Admin) District 1 (JB)

Background and Justification: The Cabana Colony Youth Center was created at a structure owned by the County and previously used as a fire station. It was the County's desire to make the property available to house a multi-agency community resource center. Cabana Colony is one of the County's Countywide Community Revitalization Team (CCRT) areas and the CCRT had identified a need for a center in the area for community based programs. Funding for the renovations to the Center was initially provided by the County general fund, CCRT project budget and PBSO. The Youth Center has been a success since its creation and participation/use has continually grown. PBSO would now like to expand the range of programs provided from the Center.

Attachments:

First Restated Agreement

Recommended by: _____

Department Director

3/30/09
Date

Approved by: _____

County Administrator

4/13/09
Date

II. FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</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>*</u>	<u>-0</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

**# ADDITIONAL FTE
POSITIONS (Cumulative)**

Is Item Included in Current Budget? Yes X No

Budget Account No: Fund _____ Department _____ Unit _____ Object _____
Reporting Category _____


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

* There is no additional funding impact on the County as a result of this item. The County's maintenance responsibilities are unmodified as a result and already included in FDO/Facilities Management's operating budget.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

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

John D. 4.8.03
OFMB  *an. la*

D. S. Jacob 4/9/09
Contract Dev. and Control

B. Legal Sufficiency:

This Contract complies with our contract review requirements.

James Bralor 4/10/09
Assistant County Attorney

C. Other Department Review:

FIRST RESTATED USE AGREEMENT

THIS FIRST RESTATED USE AGREEMENT (the "Restated Agreement") made and entered into _____, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida ("County") and RIC L. BRADSHAW, SHERIFF, in his official capacity as SHERIFF of PALM BEACH COUNTY, a State constitutional officer ("Sheriff").

WHEREAS, County owns property at 12180 Alternate A1A, Palm Beach Gardens, FL 33410, formerly known as the Cabana Colony Fire Station (the "Property"), and desires to make it available to house a community resource center; and

WHEREAS, Cabana Colony is one of the County's Countywide Community Revitalization Team ("CCRT") areas and the CCRT has identified a need for a center for community based programs; and

WHEREAS, Sheriff has expressed a desire to operate a community teen center ("Teen Center" or "Cabana Colony Youth Center") in the Cabana Colony area; and

WHEREAS, County and Sheriff entered into a Use Agreement (R2006-0082) under which Sheriff was to operate the Teen Center in partnership with community based not for profit agencies; and

WHEREAS, Sheriff wishes to take full responsibility for the operation of the Teen Center for public outreach programs; and

WHEREAS, County and Sheriff agree that the operation of a Teen Center furthers the goals and objectives of both agencies and the Cabana Colony area, and therefore the parties are willing to agree to be bound by the obligations contained herein.

WITNESSETH

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The recitals contained above are true and correct and are incorporated herein by reference.
2. This Restated Agreement rescinds and replaces the Use Agreement (R2006-0082) in its entirety.

3. Sheriff shall offer at the Teen Center the programs and services identified in Exhibit "A", attached hereto and made a part hereof, to this Restated Agreement (the "Approved Programs"). Sheriff shall not enter into any agreements with respect to the Approved Programs, nor offer any programs or services not identified in Exhibit "A", without the written approval of County. Sheriff shall not permit or suffer the use of the Teen Center (i) for profitable use by any person, group, or entity; or (ii) as a place of business for any person, group, or entity; or (iii) for any use not directly related to Sheriff's approved use of the Teen Center unless such use has been consented to by the Director of Facilities Development & Operations (the "Director") on a special event basis as provided for in Section 13 of the Agreement.

Sheriff shall operate the Teen Center, at a minimum, according to the following schedule:

HOURS OF OPERATION

The Cabana Colony Youth Center's normal operating hours are:

Administrative Office:

Monday - Friday - 10:00am to 7:00pm

Youth Center Hours (In-School)

**Monday - Friday
2:00pm - 7:00pm**

(Out of School & Summer)

**Monday - Friday
10:00am - 6:00pm**

The Cabana Colony Youth Center observes the following official holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and the day following, and Christmas Day and the day following. Half days are observed for: Thanksgiving Eve, Christmas Eve and New Year's Eve.

4. The access points and common areas of the Teen Center meet the requirements of Title III of the Americans with Disabilities Act which are applicable to this structure. However, the Sheriff shall be responsible for complying with any applicable Title I requirements of the Americans with Disabilities Act.
5. Sheriff shall submit any requests for modifications or changes to the Teen Center necessitated by this Restated Agreement to the Director for written approval. County shall perform any work approved by the Director at Sheriff's sole cost and expense.

6. The Sheriff shall fund those improvements and purchase such equipment, including telephone service and equipment and supplies, required at the Teen Center in order to conduct its programs and services to be offered at the Center.
7. The County shall fund and perform all maintenance and operations at the Teen Center, both interior and exterior. The Sheriff shall not perform any maintenance work with its own or volunteer work forces without the written permission of the County. The Sheriff shall adopt and enforce any reasonable operational rules and regulations necessary to assist the County in carrying out its maintenance responsibilities pursuant to this Section. The Sheriff shall also only use the appliances within the structure at the Property for their intended purpose.
8. Sheriff shall not commit waste upon the Teen Center, nor maintain, commit or permit the maintenance or commission of a nuisance thereon, which may result in damage or depreciation of value of the Teen Center or which may affect County's fee interest in the Teen Center. Sheriff acknowledges that its employees and the Teen Center shall, throughout the term of the Restated Agreement, be in full compliance with all federal, state, county and local statutes, laws, rules and regulations respecting the use and occupancy of the Teen Center. Sheriff shall comply with all applicable Federal, State and local laws, regulations and ordinances protecting the environment and natural resources and regulating hazardous substances.
9. The Sheriff shall be solely responsible for and promptly pay all costs and expenses related to providing utility service to the Teen Center including, without limitation, construction and connection charges. The Sheriff shall pay directly to the utility company, or the provider of the service, all charges and assessments for any utility services provided including, without limitation, water, sewer, gas, electricity, telephone service, trash collection and removal, or any other utility used or consumed at the Teen Center. In no event shall County be liable for an interruption or failure in the supply of any such utility to the Teen Center.
10. All refuse is to be removed from the Teen Center daily at Sheriff's sole cost and expense. Sheriff shall keep the access to the Teen Center, and the parking areas, driveways, and other contiguous areas to the Teen Center free and clear of obstruction. Sheriff, at its sole cost and expense, shall keep the Teen Center free of rodents, vermin and other pests.
11. County shall have the right to enter the Teen Center at any time necessary, without notice, to implement its responsibilities pursuant to this Restated Agreement and for the purposes of inspection of the Teen Center generally. Sheriff shall provide the County's Facilities Development & Operations/Facilities Management Division and Electronic Services and Security Division designees with keys and

security passwords necessary for total and complete access throughout the Teen Center. County agrees to exercise reasonable efforts to minimize interference with or disruption of Sheriff's operations at the Teen Center; provided, however, County shall not be required to expend additional sums of money in order to comply with the foregoing requirement. In the event that a County work activity must take place within the Teen Center's operating hours and will disrupt or interfere with Sheriff's operation, County's designee will endeavor to provide 48 hours notice to Sheriff.

12. The term of this Restated Agreement is for a ten (10) year period commencing on January 10, 2006, the effective date of the original Use Agreement. The Restated Agreement may be extended for two (2) additional five-year periods upon mutual written agreement between the Sheriff and the County.
13. The Sheriff may make the Teen Center available for not-for-profit or community law enforcement uses, other than the Approved Programs, on a special event basis only with the prior written consent of the Director of Facilities Development & Operations or her designee. The County reserves the right to deny and/or reject any request for any reason whatsoever, and/or to add conditions to the approval of the use. In the event that the Sheriff requests that the Teen Center be used for uses other than those established above and such approval is granted, the Sheriff has the right to establish and enforce reasonable rules and regulations, and to charge fees to recover the operating expenses incurred by the Sheriff as described below.

The Sheriff shall have the right to charge an hourly rate for the use of the Teen Center for purposes other than its programs as may be required to offset the cost of providing building supervision and custodial services. Said fees shall not exceed \$60.00 per hour of use for the first term of this Restated Agreement. Said fees may be increased with the mutual consent of the parties upon the Sheriff providing adequate documentation.

14. The Sheriff hereby assumes all responsibility for providing, maintaining, or facilitating continuous, adequate and appropriate staffing for the Approved Programs. Staffing shall be provided by PBSO employees, contractual employees, or volunteers.
15. No alcoholic beverages or drugs shall be permitted at the Teen Center or on the Property at any time.
16. Without waiving the right to sovereign immunity as provided by Florida Statutes, sect.768.28, Sheriff acknowledges and represents that Sheriff 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.

In the event Sheriff maintains third-party Commercial General Liability and Business Auto Liability, in lieu of exclusive reliance of self-insurance under Florida Statutes, sect.768.28, Sheriff agrees to maintain said insurance policies at limits not less than \$500,000 each occurrence. Sheriff agrees to add the County as an "Additional Insured" with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or similar endorsement, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Property & Real Estate Management Division." Sheriff agrees the Additional Insured endorsement provides coverage on a primary basis. Claims-bill indemnification style coverage shall not be considered third-party liability for the purpose of this paragraph.

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

When requested, Sheriff 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 Sheriff of its liability and obligations under the Agreement.

Sheriff 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, except as to the physical structure of the Property.

17. Prior to commencing any PAL Program activity, the Sheriff shall ensure that Palm Beach County PAL, Inc. secures and maintains the Liability Insurance Program of the National Association of Police Athletic Leagues, Inc., in an amount no less than \$1,000,000 General Liability per occurrence, \$1,000,000 Participant Legal Liability, \$300,000 Fire Damage Legal Liability, \$5,000 Medical Expense Payments and \$1,000,000 Products/Completed Operations Aggregate. The insurance policy shall have Palm Beach County listed as Additional Insured and a copy of same shall be provided to the County prior to the Sheriff commencing any PAL Program activity. In addition, Palm Beach County PAL, Inc. will maintain Director's and Officers Liability Insurance for Police Athletic Leagues issued by the National Association of Police Athletic Leagues, Inc., naming Palm Beach County as Additional Insured.

Should Sheriff or Palm Beach County PAL secure legal liability waivers from the participants in the PAL Program, the Sheriff shall ensure that the waiver includes the same protection for the County as that provided to the Sheriff or Palm Beach County PAL, Inc. through the waiver. Sheriff shall also ensure that Palm Beach County PAL, Inc. maintains full and complete records of the legal liability waivers for the PAL program conducted at the Teen Center. The records shall be maintained for at least four (4) years after the termination or expiration of this Restated Agreement. The County shall have the right to examine the records for any purpose reasonably related to this Restated Agreement.

18. Sheriff 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 at the Teen Center or under the Restated Agreement.
19. The Teen Center is identified as a "critical facility" by Palm Beach County Resolution No. R2003-1274, and is therefore subject to a heightened level of security. Any person not employed by County or Sheriff requiring unescorted access in the Teen Center, including the volunteers and independent contractors, is subject to a fingerprint based criminal history records check and must receive clearance for unescorted access from County as provided for in Palm Beach County Ordinance 2003-030, and from Sheriff.
20. Upon termination or expiration of the Restated Agreement, Sheriff, at its sole cost and expense, if so directed by County, shall remove Sheriff's personal property, removable fixtures, and equipment from the Teen Center and shall surrender the Teen Center to the County in the same condition the Teen Center was in as January 10, 2006, reasonable wear and tear excepted. Upon surrender of the Teen Center, title to any and all remaining improvements or property within the Teen Center shall, at the option of County, vest in County.
21. This Restated Agreement shall take effect when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused this Restated Agreement to be signed on the day and year first above written.

SHARON R. BOCK
CLERK & COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS:

By: _____
Assistant County Attorney

By: Anthony Wine
Director, Facilities Development &
Operations

ATTEST:

RIC L. BRADSHAW, IN HIS
OFFICIAL CAPACITY AS SHERIFF
OF PALM BEACH COUNTY,
FLORIDA
a State Constitutional Officer

By: [Signature]

By: [Signature]
Ric L. Bradshaw, Sheriff

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: [Signature]
PBSO Assistant Legal Advisor

EXHIBIT "A"
APPROVED PROGRAMS

1. Police Athletic League (PAL) Programs
2. Administration of the Congressional Awards Program. Youths involved in the PBSO Eagle Academy may be sponsored to be candidates for the Congressional Awards. Program administrators will insure that participants' applications are properly filled out with goals that will be accepted, and are then sent to Washington DC. Each youth will have an Advisor and the youth's progress will be reviewed monthly with the Advisor. Files will be maintained for the applications and status reports.
3. Tutoring
4. Recreation programs provided by the Palm Beach County Parks & Recreation Department
5. Community based law enforcement programs