

Add-on

Agenda Item #:

5C3

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: July 21, 2009

☐ Consent

☒ Regular

☐ Ordinance

☐ Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a License Agreement with the United States Department of Homeland Security Federal Emergency Management Agency (FEMA) for use of offices within Vista Center Office Building without charge.

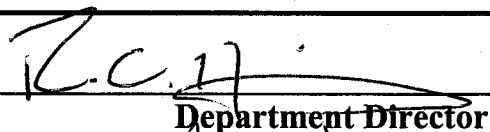
Summary: Staff is recommending that FEMA be granted a License to use four (4) modular open air work stations on the second floor of the Vista Center Office Building located at 2300 North Jog Road in unincorporated West Palm Beach. The space will be used solely by FEMA employees for general office purposes. FEMA's employees will also have the right to park in the Vista Center parking garage. The term of the License Agreement is for nine (9) months. The County may revoke the license for any reason whatsoever upon written notice to FEMA. The County will not charge for the use of the licensed premises, and will supply all utilities and janitorial services. This will provide space for FEMA employees working on reimbursements to the County. **(PREM) District 2 (HJF)**

Background and Policy Issues: This space is located on the second floor of the Vista Center Office Building within the Planning, Zoning and Building Departments' space. FEMA accepts the licensed premises in its "As-Is" condition. Although FEMA employees will have use of the modular open air work stations, they will be using their own phones and computer equipment.

Attachments:

1. Location Map
2. License Agreement

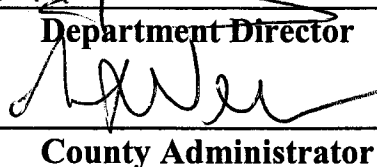
Recommended By:


Department Director

7-14-09

Date

Approved By:


County Administrator

7/17/09
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
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 _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
Program _____

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

~~*~~ No fiscal impact

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 7/15/09
OFMB

[Signature] 7/16/09
Contract Development and Control

[Signature] 7/15/09

B. Legal Sufficiency:

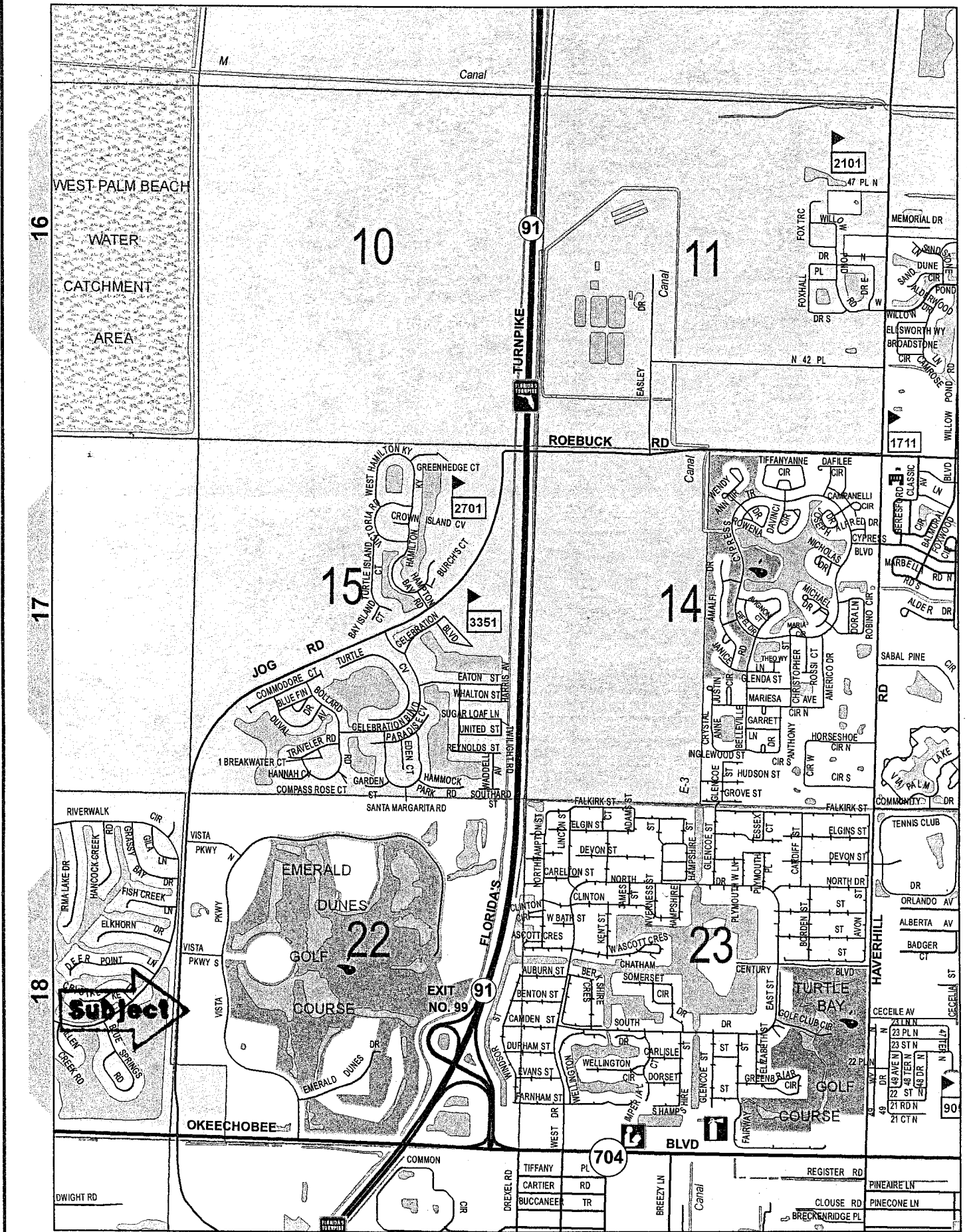
This Contract complies with our
contract review requirements.

[Signature] 7/17/09
Assistant County Attorney
*Agreement not signed by
FEMA at time of CAO review.*

C. Other Department Review:

Department Director

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



LOCATION MAP

ATT. # 1

II

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made and entered into this _____ day of _____ 2009, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County" and The United States Department of Homeland Security Federal Emergency Management Agency, hereinafter referred to as "Licensee".

WITNESSETH:

WHEREAS, County is the owner of certain real property in Palm Beach County, Florida, known as the Vista Center Office Building, Parcel 22 ("Vista Center") with an address of 2300 North Jog Road, West Palm Beach, Florida; and

WHEREAS, Licensee desires to use and occupy certain space within the Vista Center as a tactical field office; and

WHEREAS, County has agreed to grant Licensee a revocable license to use a portion of Vista Center for the purposes hereinafter defined.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby grants the Licensee a revocable license to use the Premises as hereinafter defined upon the following terms and conditions:

ARTICLE I BASIC PROVISIONS

Section 1.01 Recitals. The foregoing recitals are true and correct and incorporated herein by reference.

Section 1.02 Premises. The Premises which are the subject of this Agreement consist of four (4) modular open air work stations on the second floor of the Vista Center, as depicted on the Floor Plan attached hereto as Exhibit "A", and made a part hereof (the "Premises"). Licensee shall have a non-exclusive license over, upon and across the Premises, together with the common area of Vista Center to allow Licensee's employees working within the Premises access to and use of the Premises. In addition, Licensee's employees operating out of the Premises shall have the non-exclusive right to use on a first come first served basis parking spaces in the parking garage located on the second floor of the Vista Center parking garage.

Section 1.03 Length of Term, Hours of Operation and Commencement Date. The term of this Agreement shall commence upon the approval of this Agreement by the Palm Beach County Board of County Commissioners, and shall extend for a period of nine (9) months thereafter (the "Term"), unless sooner terminated pursuant to the provisions of this Agreement. The rights granted herein shall be on a twenty-four- hour-a-day basis.

ARTICLE II LICENSE FEE

Licensee shall be entitled to use the Premises without charge.

ARTICLE III CONDUCT OF BUSINESS AND USE OF PREMISES BY LICENSEE

Section 3.01 Use of Premises. Licensee shall use the Premises solely and exclusively for general office purposes of the Federal Emergency Management Agency as a tactical field office for DR 1545, 1561 and 1609 which shall provide general disaster assistance and information to the public. Licensee shall not use, permit or suffer the use of the Premises for any other business or purpose whatsoever, nor permit any non-Federal Emergency Management Agency personnel to use the Premises.

Section 3.02 Licensee's Work. Licensee acknowledges that it has inspected the Premises, and hereby accepts the Premises in its "As-Is Condition". No improvements, alterations or additions to the Premises shall be performed by the Licensee.

Section 3.03 Waste or Nuisance. Licensee shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or Vista Center or which may affect County's fee interest in the Premises. Licensee shall not store or dispose any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents on the Premises.

Section 3.04 Governmental Regulations. Licensee shall, at Licensee's sole cost and expense, comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Licensee or its use of the Premises, and shall faithfully observe in the use of the Premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force.

Section 3.05 Non-Discrimination. Licensee shall assure and hereby certifies that it will comply with the Title VII 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.

Section 3.06 Surrender of Premises. Upon expiration or earlier termination of Licensee's license to use the Premises, Licensee, at its sole cost and expense, shall remove all of its personal property from the Premises and shall surrender the Premises to the County in at least the same condition the Premises were in as of the date of this Agreement, reasonable wear and tear excepted.

ARTICLE IV REPAIRS AND MAINTENANCE OF PREMISES

Section 4.01 Responsibility of Licensee. Licensee has no responsibility for maintenance of the Premises. Upon expiration or earlier termination of this Agreement, Licensee shall deliver the Premises to County in good repair and condition as specified herein. In the event of any damage to the Premises by the Licensee, County may complete the necessary repairs and Licensee shall reimburse County for all expenses incurred by County in doing so.

Section 4.02 Responsibility of County. County agrees to maintain, repair and keep the Premises in good condition and repair at County's sole cost and expense. Licensee agrees to adopt and enforce any reasonable operational rules and regulations necessary to assist the County in carrying out its maintenance responsibilities pursuant to this Section.

Section 4.03 County's Right to Enter. County shall have the right to enter the Premises at any time necessary, without notice, to implement its responsibilities pursuant to this Section and for purposes of inspection of the Premises generally. The County agrees to exercise reasonable efforts to minimize interference with or disruption of Licensee's operations on the Premises; provided however, the 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 Licensee's operating hours and will disrupt with or interfere with the Licensee's operation, the County's designee will provide 24 hours notice to Licensee.

ARTICLE V INSURANCE

Licensee is self-insured and shall have full control of and sole responsibility for its activities, equipment, and personnel while at the Premises. Further, Licensee agrees to promptly consider and adjudicate any and all claims which may arise from its operations at the Premises, and to pay for any damage done to the Premises, or other County property. Such adjudication may be made under the Federal Tort Claims Act, 28 USC 2671, et. seq.; or under such other authority as may be available to Licensee. Licensee

shall give such consideration to all claims, demands, or suits arising directly or indirectly for Licensee's use of the Premises.

ARTICLE VI INDEMNITY

Licensee shall be liable for its own actions and negligence, and, to the extent permitted by law, Licensee shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out of its use and occupancy of the Premises and exercise of the rights granted by this License including without limitation, its negligence in connection with this Agreement. Notwithstanding the foregoing, nothing in this Article shall be construed as a waiver of the Licensee's or County's present statutory sovereign immunity.

ARTICLE VII UTILITIES AND SERVICES

The County currently supplies all janitorial services and utilities to the Premises that are necessary for the Premises to be used for general office purposes and will continue to do so at the County's sole cost and expense throughout the Term of this Agreement. In no event shall County be liable for an interruption or failure in the supply of any utilities to the Premises.

ARTICLE VIII REVOCATION OF LICENSE

Notwithstanding anything to the contrary contained herein, the rights granted to Licensee hereunder amount only to a license to use the Premises, which license is expressly revocable by County for any reason whatsoever upon notice to Licensee. Upon Licensee's receipt of notice from County of the revocation of the license granted hereby, Licensee shall vacate the Premises within five (5) days, whereupon this Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination.

ARTICLE IX ACCESS

Licensee will be issued access cards allowing entry to Vista Center and the Vista Center parking garage for all of Licensee's employees operating out of the Premises. The access cards are and shall remain the property of the County and shall be returned to County at the expiration or termination of this Agreement.

**ARTICLE X
MISCELLANEOUS**

Section 10.01 Entire Agreement. This Agreement and any Exhibits attached hereto and forming a part hereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee 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 Licensee unless reduced to writing and signed by them.

Section 10.02 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 5:00 pm on a business day and on the next business day if transmitted after 5:00 pm 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:

Property and Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, FL 33411-5605
Telephone 561-233-0217
Fax 561-233-0210

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 Licensee at:

The United States Department of Homeland Security
Federal Emergency Management Agency
Attention: Brenda Conner
2300 North Jog Road
West Palm Beach, Florida
Telephone 561-233-5012
Fax 561-656-7948

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

Section 10.03 Recording. Licensee shall not record this Agreement, or any memorandum or short form thereof in the Public Records of Palm Beach County.

Section 10.04 Waiver of Jury Trial. The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

Section 10.05 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 Palm Beach County.

Section 10.06 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 10.07 Annual Budgetary Funding. This Agreement and all obligations of County hereunder requiring the expenditure of funds are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, County and Licensee have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

WITNESSES:

LICENSEE:

FEDERAL EMERGENCY MANAGEMENT
AGENCY

Witness Signature

By: _____
Name/Title

Print Witness Name

Witness Signature

Print Witness Name

COUNTY:

ATTEST:
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: _____
County Attorney

By: _____
Department Director

Exhibit "A"

Floor Plan

EXHIBIT "A"

