

Agenda Item #: **3H-12**

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

Meeting Date:	January 12, 2010	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Facilities Development & Operations		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Third Amendment to Memorandum of Understanding (MOU) (R2004-2589) between the Department of Airports (DOA) and Facilities Development & Operations (FDO) for use of Building 1169/Skychef at PBI to retroactively decrease the square footage and rent payable by FDO and terminate the MOU as of December 31, 2009.

Summary: The term of the current MOU for use of Building 1169/Skychef extends until December 13, 2013. The Supervisor of Elections (SOE) and other general government users, primarily PBSO occupied the building through December 2009. SOE vacated 23,570 SF of Building 1169/Skychef in December 2009, for its leased Voter Equipment Center. The remainder of the users were relocated into County-owned space, vacating the remaining 27,630 SF of Building 1169/Skychef as of December 31, 2009. This Third Amendment to MOU for Building 1169/Skychef provides for: (i) a decrease of square footage of the SOE Premises, effective as of the date SOE surrenders the SOE Premises; (ii) the retroactive decrease in FDO's rental obligations for December 2009 to \$18,662.65, plus a per diem rental fee of \$515.00 calculated from December 1, 2009, through the date of surrender of the SOE Premises; and (iii) the termination of the MOU on December 31, 2009. The early surrender of Building 1169/Skychef allows the remaining annual rent of approximately \$320,000 for FY 2010 and the annual rent of \$453,871.04 for FY 2011-FY2013 to be re-directed to offset a portion of the annual rental payments for the SOE at its new leased Voter Equipment Center.
(PREM) District 2 (HJF)

Background and Justification: Due to Hurricanes Frances and Jeanne displacing FDO from Building 503, FDO leased the first floor of Building 1169/Skychef from DOA in late-2004. The annual rental rate for the premises is calculated at \$6.66/SF building rent and \$0.65/SF ground rent through September 30, 2010. On December 21, 2004, the Board approved the MOU for FDO's lease of 51,200 SF of Building 1169/Skychef and 109,132 SF of ground area. The initial term of the MOU was extended through December 13, 2013, via the First Amendment to the MOU (R2007-1321) and the Second Amendment to the MOU (R2009-0206). In 2007, FDO relocated to Vista Center and the premises has since been used by PBSO and SOE. On August 21, 2007, the Board approved a Use Agreement between FDO and SOE (R2007-1322) for SOE's use of 23,570 SF of Building 1169/Skychef and 47,692 SF of ground area, which SOE is in the process of vacating for their newly leased Voter Equipment Center. PBSO will be relocated from the remaining 23,570 SF of Building 1169/Skychef and 61,440 SF of ground area as of December 31, 2009, to various other County-owned facilities until their permanent County-owned locations are renovated as part of the postponed Capital Improvement Program.

1. Location Map
2. Third Amendment to Memorandum of Understanding

Recommended By:


Department Director

12/11/09
Date

Approved By:


County Administrator

12/27/09
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>\$</u></u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes X No _____

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

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

* The early surrender of Building 1169/Skychef allows the remaining annual rent of approximately \$320,000 for FY 2010 and the annual rent of \$453,871.04 for FY 2011-FY2013 to be re-directed in support of the rental payments for the Supervisor of Elections new Voter Equipment Center.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

Jan D. 12-21-09
OFMB
88 12/17/09
MM
12-17-09

Jim J. Jacobson 12/19/09
Contract Development and Control

B. Legal Sufficiency:

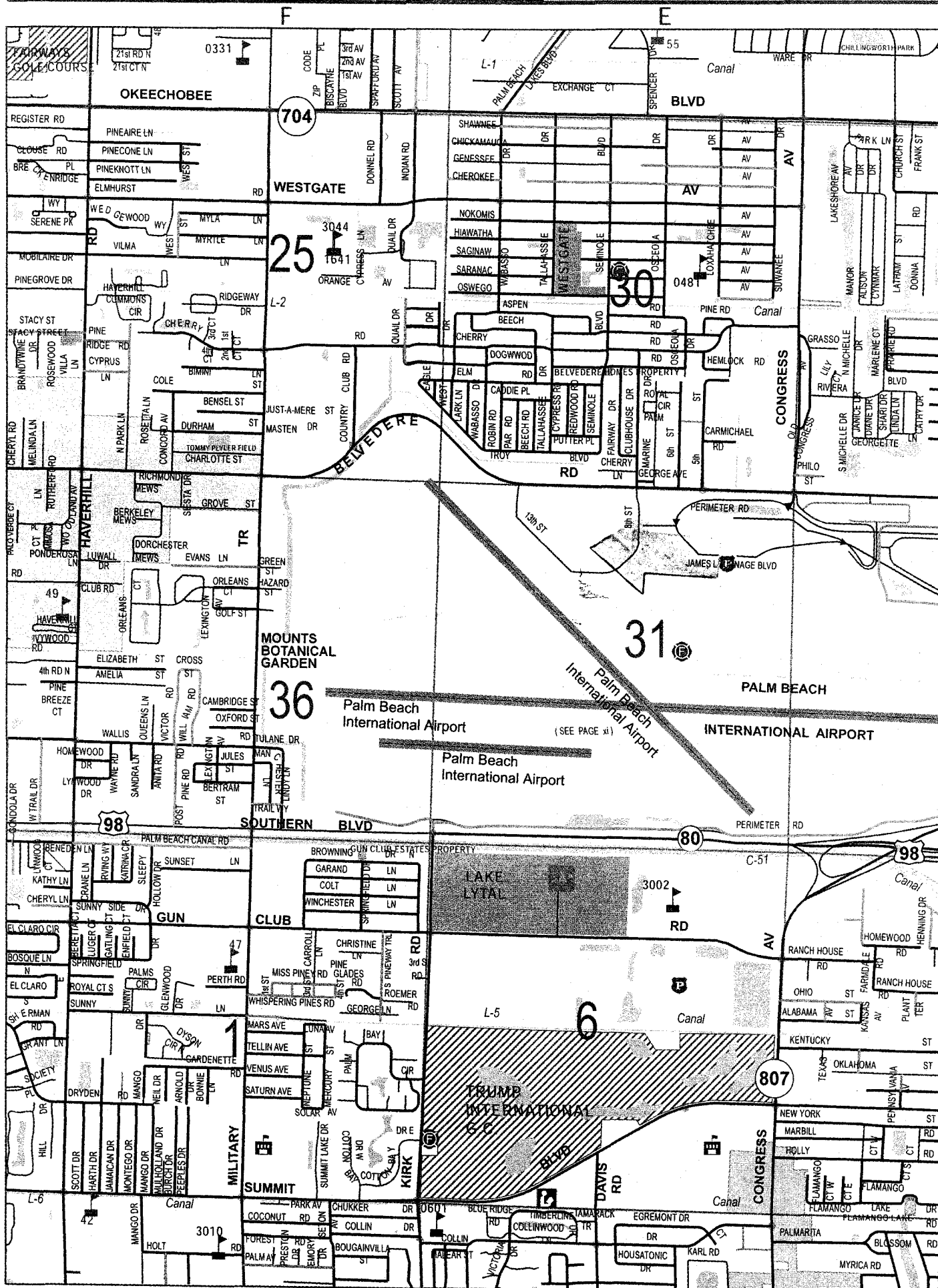
12/23/09
Assistant County Attorney

This amendment complies with
our review requirements.

C. Other Department Review:

Department Director

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



THIRD AMENDMENT TO MEMORANDUM OF UNDERSTANDING

THIS THIRD AMENDMENT TO MEMORANDUM OF UNDERSTANDING (this "Third Amendment") is made and entered into _____, 20____, by and between the Palm Beach County Department of Airports, an administrative department of Palm Beach County ("DOA"), and the Palm Beach County Facilities Development and Operations Department, an administrative department of Palm Beach County ("FD&O").

WITNESSETH:

WHEREAS, FD&O uses and occupies the Premises as defined in the Memorandum of Understanding with DOA dated December 21, 2004, (R2004-2589) as amended by that certain First Amendment to Internal Memorandum of Understanding dated August 21, 2007, (R2007-1321) and as amended by that certain Second Amendment to Memorandum of Understanding dated February 3, 2009, (R2009-0206) (the Memorandum of Understanding and all amendments thereto shall individually and collectively be referred to as the "MOU"); and

WHEREAS, County and Arthur Anderson, Palm Beach County Supervisor of Elections, a State constitutional officer ("Supervisor") entered into a Use Agreement on August 21, 2007 (R2007-1322) (the "Agreement") whereby the Supervisor leased from County a portion of the Premises consisting of 23,570 square feet of Building 1169 and 47,692 square feet of ground area (the "SOE Premises"); and

WHEREAS, the Supervisor anticipates that it will vacate and surrender the SOE Premises as of November 30, 2009; and

WHEREAS, FD&O will vacate and surrender the remainder of the Premises on December 31, 2009; and

WHEREAS, DOA and FD&O have agreed to: (i) retroactively decrease both the square footage of the Premises and the annual rent payable by FD&O, effective as of the date SOE surrenders the SOE Premises (the "SOE Surrender Date"), and (ii) terminate the MOU as of December 31, 2009; and

WHEREAS, DOA and FD&O acknowledge and agree that during the period from December 1, 2009, until the Effective Date of this Third Amendment, the parties were and are bound by the terms of this Third Amendment.

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 recitals set forth above are true and correct and incorporated herein by this reference. Terms not defined herein shall have the meaning ascribed to them in the MOU.
2. Effective as of the SOE Surrender Date, the Premises shall be reduced by the SOE Premises as set forth and depicted on Exhibit "C" attached hereto and made a part hereof. FD&O shall notify DOA in writing of the SOE Surrender Date.
3. Section 3(A) of the MOU is hereby modified so that the Automobile Parking area is reduced to approximately 61,440 square feet of ground area effective as of the SOE Surrender Date.
4. Section 3(B) of the MOU is hereby modified so that the square footage of Building 1169 used and occupied by FD&O is reduced to approximately 27,630 square feet effective as of the SOE Surrender Date.
5. Section 3 of the MOU is hereby modified so that effective as of December 1, 2009, FD&O's rental obligations to be paid to DOA shall be: (a) \$3,328.00 for Ground Rental; (b) \$15,334.65 for Building Rental; and (c) an additional per diem rental fee of \$430.07 for Building Rental and \$84.93 for Ground Rental calculated from December 1, 2009 through and including the SOE Surrender Date.
6. Section 1 of the MOU is hereby modified so that the Term of the MOU terminates on December 31, 2009.
7. DOA hereby agrees to accept: (i) the SOE Premises in its "As Is" condition as of the SOE Surrender Date and (ii) the remainder of the Premises in its "As Is" condition as of December 31, 2009. All personal property shall be removed from the Premises on or before December 31, 2009 and the Premises surrendered by FD&O in a neat and clean condition.
8. All other terms and conditions of the MOU shall remain unmodified and in full force and effect and the parties hereby ratify, confirm and adopt the MOU as amended hereby.
9. This Third Amendment shall become effective when signed by all parties and approved by the Board.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be approved by the Palm Beach County Board of County Commissioners on the day and year first above written.

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: _____
Burt Aaronson, Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

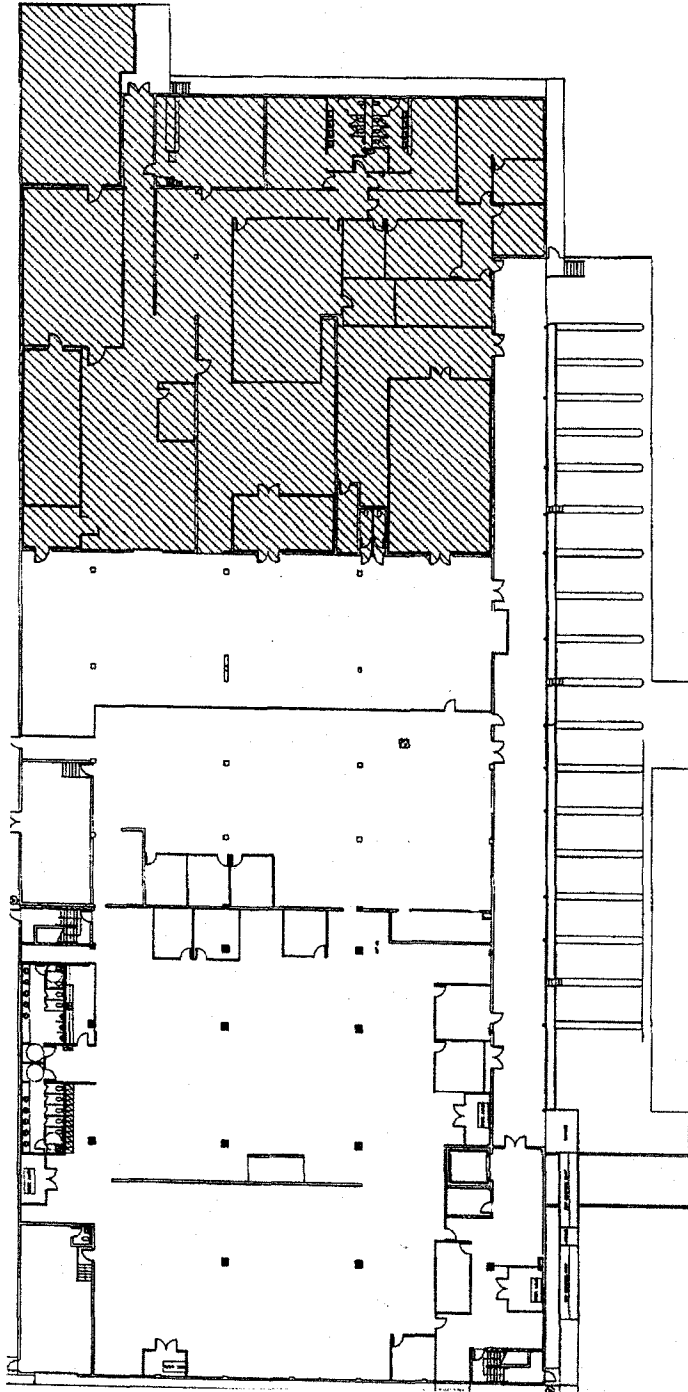
By: _____
Assistant County Attorney

By: SSC Audrey Wolf
Audrey Wolf, Director
Facilities Dev. & Operations

By: Bruce V. Pelly
Bruce V. Pelly, Director
Department of Airports

EXHIBIT "C"

SOE Premises



SOE Premises does not include the cross hatched area

Building 1169: 23,570 SF

Automobile Parking: 47,692 SF