

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

Meeting Date: **September 14, 2010** ☒ **Consent** ☐ **Regular**
 ☐ **Ordinance** ☐ **Public Hearing**

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to Agreement of Lease dated June 22, 2004(R2004-1438), with the Florida Department of Education on behalf of the Division of Blind Services for the continued use of 825 SF of space within the Palm Beach County Judicial Center at an annual rate of \$13,322.72.

Summary: The Florida Department of Education on behalf of the Division of Blind Services currently leases approximately 825 SF of floor space within the Palm Beach County Judicial Center located at 205 North Dixie Highway in West Palm Beach, for the operation of Don's Coffee Spot. The initial term of the Lease was for two (2) years ending September 30, 2006, with four (4) successive extension options, each for a period of two (2) years. This First Amendment: i) exercises the third renewal option extending the term of the Lease for two (2) years, from October 1, 2010, through September 30, 2012, ii) revises Section 4.05 to include a prohibition against discrimination based on gender identity or expression, iii) replaces Article VIII Indemnification to language more suitable for use between governmental agencies, iv) updates the Notice provisions and, v) adds language acknowledging the power and authority of the Office of Inspector General. The annual rent for this extension period is \$13,322.72 based on an estimated annual three percent (3%) CPI increase. All other terms and conditions of the Lease shall remain in full force and effect. **(PREM) District 7 (HJF)**

Background and Justification: On June 22, 2004, the Board approved the initial Lease Agreement which allowed the Florida Department of Education on behalf of the Division of Blind Services (Blind Services) the use of 825 SF of space within the Palm Beach County Judicial Center to provide food services. The second option will expire on September 30, 2010. The Board has no discretionary authority to not allow the exercise of this option, however, the Lease provides that either party may terminate upon ninety (90) days written notice. Florida Statutes Section 286.23 does not require that a Disclosure of Beneficial Interest be obtained when the County leases property to another governmental agency. One two (2) year extension option remains available to Blind Services.

Attachments:

1. Location Map
2. First Amendment to Agreement of Lease
3. Budget Availability Statement

Recommended By: Reh Army Wolf 8/22/10
Department Director Date

Approved By: [Signature] 9/2/10
County Administrator 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	_____	<\$13,322.72>	<\$13,722.40>	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	<\$13,322.72>	<\$13,722.40>	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes X No

Budget Account No: Fund 0001 Dept 800 Unit 8001 Object 6225
Program
 N/A

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

OFMB 8/31/10 8/30/10

 9/11/10
Contract Development and Control
Edwards 8/31/10

B. Legal Sufficiency:

 9/1/10
Assistant County Attorney
Agreement not signed by
Tenant at time of CAO review

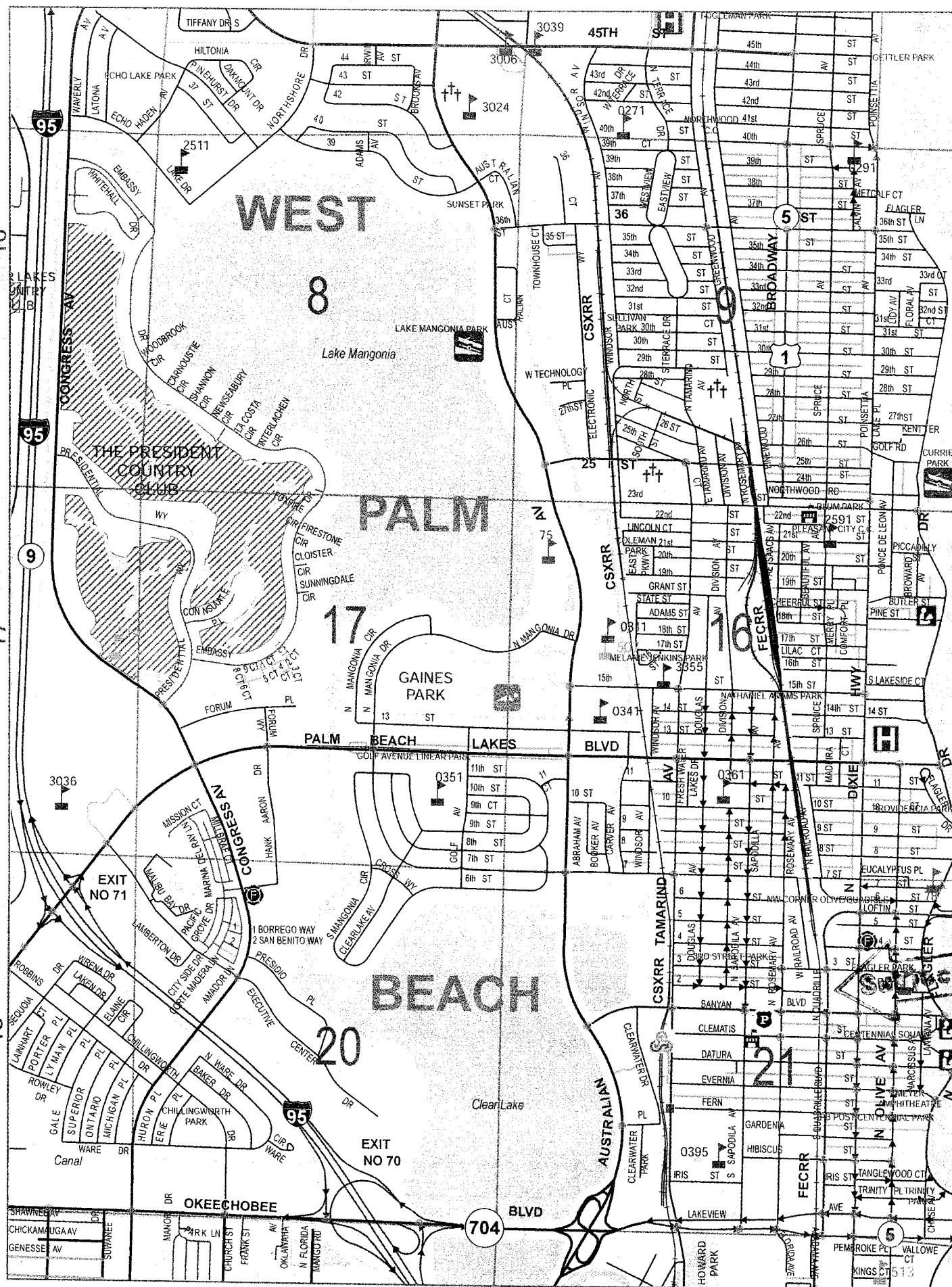
This amendment complies with
our review requirements.

At the time of our
review, the Amendment
was not executed.

C. Other Department Review:

Department Director

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



LOCATION MAP

**FIRST AMENDMENT
TO AGREEMENT OF LEASE**

THIS FIRST AMENDMENT TO LEASE AGREEMENT (the "First Amendment") is made and entered into _____ by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida ("County"), and the **FLORIDA DEPARTMENT OF EDUCATION ON BEHALF OF THE DIVISION OF BLIND SERVICES**, organized and existing under the laws of the State of Florida ("Tenant").

WITNESSETH:

WHEREAS, County and Tenant entered into that certain Agreement of Lease dated June 22, 2004 (R2004 1438) (the "Lease"), for the use of the Premises as defined in the Lease; and

WHEREAS, the initial Term of the Lease was for two (2) years commencing October 1, 2004, and ending September 30, 2006, with four (4) successive extension options, each for a period of two (2) years; and

WHEREAS, Tenant wishes to exercise the third two (2) year extension option and the parties wish to modify certain provisions of the Lease.

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

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning ascribed to them in the Lease.
2. Tenant hereby exercises the third (3rd) two (2) year renewal option, extending the lease until September 30, 2012.
3. Section 4.05, Non-Discrimination, is modified to include a prohibition against discrimination based on gender identity or expression.
4. Article VIII, Indemnification, is hereby deleted in its entirety and replaced with the following:

**ARTICLE VIII
INDEMNIFICATION**

Each party shall be liable for its own actions, omissions, and negligence and, to the extent permitted by law, Tenant shall indemnify, defend and hold harmless County against any actions, claims or damages arising out of Tenant's actions, omissions or negligence in connection with this Lease, and County shall indemnify, defend and hold harmless Tenant against any action, claims or damages arising out of County's actions, omissions or negligence in connection with this Lease. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in section 768.28, F.S., nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's own negligent, willful or intentional acts or omissions.

5. Section 14.02, Notices, is hereby deleted in its entirety and replaced with the following:

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:

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 Tenant at:

Florida Department of Education
Division of Blind Services
325 West Gaines Street
Suite 1114, Turlington Building
Tallahassee, Florida 32399
Telephone: 850-245-0357
Fax: 850-245-0363

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

6. Section 14.16 is hereby added as set forth below:

Section 14.16 Office of the Inspector General.

The County has established the Office of the Inspector General, Ordinance R2009-049, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All parties doing business with the County shall fully cooperate with the Inspector General including providing access to records relating to this Lease. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the Tenant, its officers, agents, employees, and lobbyists in order to ensure compliance with contract/lease specifications and detect corruption and fraud.

7. Except as set forth herein, the Lease remains unmodified and in full force and effect.
8. This First Amendment 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 have duly executed this First Amendment as of the day and year first written above.

ATTEST:

COUNTY:

SHARON R. BOCK
CLERK & COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

Assistant County Attorney

Audrey Wolf, Director
Facilities Development & Operations

TENANT:
FLORIDA DEPARTMENT OF EDUCATION
ON BEHALF OF THE DIVISION OF
BLIND SERVICES, organized and existing
under the laws of the State of Florida

By: _____
Dr. Eric Smith or Joyce Hildreth

Title: Commissioner or Director

Date: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Charles J. Pellegrini
Senior Attorney
Department of Education

Date: _____

Revenue

BUDGET AVAILABILITY STATEMENT

REQUEST DATE: July 22, 2010

REQUESTED BY: Richard C. Bogatin

PHONE: 561-233-0214

FAX: 561-233-0210

PROJECT TITLE: Blind Services Snack Bar d/b/a Don's Coffee Stop Extension #3 PROJECT NO.:210-5.010

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<\$13,322.72>	<13,722.40>	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<\$13,322.72>	<\$13,722.40>	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

** By signing this BAS your department agrees to these staff costs and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed.

BUDGET ACCOUNT NUMBER

FUND: 0001 DEPT: 800 UNIT: 8001 OBJ: 6225

SUB OBJ:

IS ITEM INCLUDED IN CURRENT BUDGET: YES ☒ NO ☐

IDENTIFY FUNDING SOURCE FOR EACH ACCOUNT: (check all that apply)

- ☐ Ad Valorem (source/type: _____)
- ☐ Non-Ad Valorem (source/type: _____)
- ☐ Grant (source/type: _____)
- ☐ Park Improvement Fund (source/type: _____)
- ☐ General Fund ☐ Operating Budget ☐ Federal/Davis Bacon
- ☐ _____ ☐ _____ ☐ _____

SUBJECT TO IG FEE? ☐ YES ☒ NO

Department: Facilities Development and Operations - General Government- PREM

BAS APPROVED BY: [Signature] DATE: 7-22-10

ENCUMBRANCE NUMBER:

G:\Property Mgmt Section\In Lease\Blind Services Judicial Ctr\Amend 1\BAS revenue_expense (031110).docx

Attachment 3



CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

ALEX SINK

STATE RISK MANAGEMENT
TRUST FUND

Policy Number: GL-10-1000

General Liability
Certificate of Coverage

Name Insured: DEPARTMENT OF EDUCATION

General Liability Coverage provided pursuant to Chapter 284, Part II, Section 768.28, Florida Statutes, and any rules promulgated thereunder.

Coverage Limits:

General Liability: \$100,000.00 each person
\$200,000.00 each occurrence

Inception Date: July 1, 2010

Expiration Date: July 1, 2011

Alex Sink

CHIEF FINANCIAL OFFICER

DFS-D0-863
(REV. 3/01)

DEPARTMENT OF FINANCIAL SERVICES
THE CAPITOL, TALLAHASSEE, FLORIDA 32399-0301 • (850) 413-2850 • TELECOPIER (850) 413-2950