

Agenda Item #3.M.5.

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 16, 2010

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

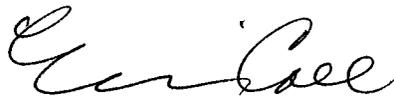
Motion and Title: Staff recommends motion to approve: First Amendment to Use Agreement with South Florida Water Management District (R2009-1986) for temporary parking at Lake Lytal Park to extend the termination date from November 16, 2010, to March 16, 2011.

Summary: This Amendment provides for a four-month extension to the Use Agreement which allows South Florida Water Management District (SFWMD) to temporarily utilize up to 75 parking spaces at Lake Lytal Park while construction of a new generator building continues taking place at its nearby administrative headquarters complex. Use will be limited to employees and visitors for the parking of personal automobiles between the hours of 7:00 a.m. and 5:00 p.m. excluding weekends and County holidays. Construction of the Generator Building was delayed due to changes in design. These issues have been resolved and construction has resumed. When construction of the generator building is complete, the Use Agreement allows for the termination of use. District 2 (AH)

Background and Justification: SFWMD's administrative headquarters is located adjacent to Lake Lytal Park. In the past, they have requested and been permitted to use parking spaces located in Lake Lytal Park as temporary parking for employees and visitors while other construction projects were occurring on their campus. This extension is consistent with our policy of using park property for temporary parking during times and days when the parking spaces are not being used. The County will assume neither responsibility nor liability for the SFWMD vehicles parked in Lake Lytal Park.

Attachments:

1. First Amendment to Use Agreement
2. Use Agreement R2009-1986

Recommended by: 
Department Director

10-20-10
Date

Approved by: 
Assistant County Administrator

10/28/10
Date

ORIGINAL

**FIRST AMENDMENT TO
USE AGREEMENT BETWEEN PALM BEACH COUNTY AND SOUTH FLORIDA
WATER MANAGEMENT DISTRICT FOR TEMPORARY PARKING AT LAKE
LYTAL PARK**

THIS FIRST AMENDMENT, is dated _____, 2010, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "County", and South Florida Water Management District, hereinafter referred to as "SFWMD".

WITNESSETH:

WHEREAS, the parties have entered into that certain Agreement dated November 17, 2009 (R2009-1986), hereinafter referred to as the "Agreement", whereby SFWMD can temporarily utilize up to 75 parking spaces at Lake Lytal Park while construction of a new generator building is taking place at SFWMD's administrative headquarters; and

WHEREAS, the Agreement will expire on November 16, 2010; and

WHEREAS, due to construction delays of the new generator building at SFWMD's administrative headquarters, SFWMD has requested an extension to the term of the Agreement for an additional four (4) months; and

WHEREAS, the parties desire to modify Section 2 of the Agreement to extend the Agreement for a four (4) month period from November 17, 2010, through March 16, 2011; and

WHEREAS, the County established the Office of Inspector General in Ordinance 2009-049, and both parties agree to include the provisions of Ordinance 2009-049 into the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements expressed herein, the County and SFWMD agree as follows:

1. The above recitals are true and correct and are hereby incorporated by reference.
2. Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

"County hereby grants SFWMD permission to reserve 75 parking spaces in the Park between the hours of 7 a.m and 5 p.m. except weekends and County holidays for 16 months from the date of execution of this Agreement for the exclusive use of parking for its employees in the locations shown on Exhibit "C", including the right of entry, ingress and egress to the Park during other hours of Park operation. Parking spaces will be on a first come first serve basis."

3. Section 16 is added to the Agreement as follows:

“Palm Beach County has established the Office of the Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor and inspect the activities of the SFWMD, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.”

4. All other provisions of the Agreement, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

IN WITNESS WHEREOF, County and SFWMD hereby set their hands and seals on the date first written above.

SHARON R. BOCK, CLERK &
COMPTROLLER

PALM BEACH COUNTY, 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: _____
County Attorney

By: *[Signature]*
Department Director

[Signature]

Witness

[Signature]
Witness

South Florida Water Management District

By: *[Signature]*
Jessica J. Flathmann, Procurement Director

Date: Sept 21, 2010

Office of Counsel approved

[Signature] 9/21/10

Procurement Approved

[Signature]

ORIGINAL

**USE AGREEMENT BETWEEN PALM BEACH COUNTY AND THE SOUTH FLORIDA WATER
MANAGEMENT DISTRICT FOR TEMPORARY PARKING AT LAKE LYTAL PARK**

R 2009, 19 86

THIS AGREEMENT, MADE THIS NOV 17 2009 day of NOV 17 2009, 2009, by and between SOUTH FLORIDA WATER MANAGEMENT DISTRICT, hereafter referred to as "SFWMD" and Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, the SFWMD is planning the construction of a new Generator Building Project on SFWMD Headquarters property, legally described in Exhibit "A" that will cause the temporary displacement of approximately 75 employee parking spaces, and

WHEREAS, the County is the owner of a parcel of land adjoining the SFWMD Headquarters known as Lake Lytal Park, legally described in Exhibit "B" (hereinafter "Park"); and

WHEREAS, the SFWMD desires to use the Park Property for temporary employee parking as depicted on the sketch attached as Exhibit "C" and made part hereof; and

WHEREAS, the COUNTY is supportive of the SFWMD request to utilize the Park for temporary parking for 75 SFWMD employees during times of the day and week that do not conflict with the public's use of the Park and its facilities.

NOW, THEREFORE, In consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The above recitals are true and correct and incorporated herein by reference.
2. COUNTY hereby grants SFWMD permission to reserve 75 parking spaces in the Park between the hours of 7 a.m. and 5 p.m. except weekends and County holidays for 12 months from the date of execution of this Agreement for the exclusive use of parking for its employees in the locations shown on Exhibit "C", including the right of entry, ingress and egress to the Park during other hours of Park operation. Parking spaces will be on a first come first served basis.
3. SFWMD's use of the Park as set forth in paragraph 2 above shall be subject to the following terms and conditions:

- a. SFWMD shall notify the County Parks and Recreation Department, in writing, at least 72 hours prior to commencing use of the 75 reserved parking spaces.
 - b. Upon completion of the SFWMD Generator Building Project, the Parks and Recreation Department Director or his designee, at their discretion, may direct the SFWMD to leave the Park in its then current condition or restore it to its original condition.
 - c. SFWMD shall not use the Park in any manner which, in the opinion of County, may tend to interfere with County's use of the Park or may tend to cause a hazardous condition to exist. SFWMD shall not cause or permit any waste of the Park and shall keep the parking area depicted in Exhibit "C" clean and clear so as to prevent it from becoming unsightly and remove any and all litter on a daily basis. SFWMD shall not construct or erect any permanent or temporary building, structure, fixture, fence, shelter, attachment or other improvement upon the Park property.
4. SFWMD shall, at its sole cost and expense, comply with any and all ordinances, laws, statues and regulation promulgated by all county, municipal, state, federal or other applicable governmental authority, now in force, or by which may hereafter be in force, which pertain to any minor site improvements and operation of the temporary parking areas under the terms of this Agreement.
 5. SFWMD or County may terminate this Agreement at any time upon thirty (30) days written notice to the other party. Notwithstanding anything contained herein, in the event that SFWMD violates any of the terms and conditions of this Agreement, the Exhibits and /or Attachments, County may, at its option, require SFWMD to cease use of the Park upon reasonable notice under the circumstances.
 6. SFWMD shall, to the extent permitted by law, indemnify and hold harmless County from any and all claims for damages or injury, whether to persons or property, including but not limited to, causes of action, suites, litigation costs , attorney fees, property damage, hazardous waste, or contamination clean-up costs, and any and all expenses whatsoever, in connection with, arising out of, or in any manner attributable to , the use of the Park by SFWMD, and its agents, employees, contractors, licenses and invites. This indemnification provision shall survive the expiration or earlier termination of this Use Agreement.
 7. Prior to execution of their Agreement by the County, SFWMD shall provide either a certificate evidencing insurance coverage's as required herein or a statement of self insurance for the SFWMD's Risk Manager. SFWMD shall, during the term of this Agreement

and any extension hereof, maintain in full force and effect, self insured or commercial general liability insurance, including contractual liability, in the amounts specified in Section 768.28, Florida Statutes, to specifically cover all exposures associated with the terms and conditions of this Agreement. All policies shall contain a clause providing the County with at least thirty (30) days prior notice in the event of cancelation, non-renewal, or material adverse change in coverage. Compliance with the forgoing requirements shall not relieve SFWMD of its liability and obligations under this Agreement.

8. SFWMD hereby acknowledges that County is the owner of fee simple title to the Park described herein and agrees never to claim any interest or estate of any kind by virtue of this Agreement. County reserves the right to enter the Park parking area at any time for any purpose.
9. SFWMD shall deliver the Park in as good a condition as existed prior to the date of commencement hereof upon expiration, revocation or termination of this Agreement. SFWMD shall remove all personal property placed by it on the Park and shall repair and restore and save County harmless from all damage caused by such removal. If such property is not so removed by SFWMD, then County shall have the right to take possession of and appropriate to itself, without any payment or offset hereof, any property of SFWMD. County shall have the right to make such removal at SFWMD's sole cost and expense, the amount of which, SFWMD agrees to pay to County upon written demand.
10. SFWMD expressly covenants and agrees that the Park shall not be subject to any encumbrances by any mortgage or lien, nor shall County be laible to satisfy any indebtedness that may result from SFWMD's operation incurred by SFWMD in any manner whatsoever.
11. SFWMD may not, without prior written consent of County, transfer, assign, sublet, enter into any agreement or mortgage or hypothecate this Agreement.
12. If SFWMD remains in possession of the Park, or any part thereof, after any termination of this Agreement, no tenancy or interest in the Park shall result there from, but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal and shall upon written demand pay to County the cost of any such eviction and removal as may be incurred by County.

13. This Agreement constitutes the entire agreement between the parties relative to the parking hereby granted, and any agreement or representation which is not expressly set forth herein and covered hereby must be in writing and executed by SFWMD and County. Waiver by County of any breach of the same or any other term or provision hereof shall not be deemed a waiver of subsequent breach of the same or any other term or provision hereof.
14. This Agreement is governed and interpreted pursuant to the laws of the State of Florida. All legal matters arising out of, or in connection with this Agreement shall be subject to a court of competent jurisdiction within the State of Florida, in Palm Beach County. If any provision or part of this Agreement is unlawful, void or unenforceable, that part will be deemed severable and shall not impair or affect the validity and enforceability of any of the remaining provisions.
15. Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by U.S. mail. All notices shall be addressed to the following:

As to the County:
Director
Palm Beach County
Parks and Recreation Department
2700 Sixth Avenue South
Lake Worth, FL 33461

As to the SFWMD:

South Florida Water Management District
Procurement Department
3301 Gun Club Road
West Palm Beach, FL 33406

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

ATTEST:

SHARON R. BOCK
CLERK AND COMPTROLLER

By: [Signature]
Deputy Clerk



APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Anne Adelgent
Assistant County Attorney

Witnesses:

[Signature]
[Signature]

COUNTY: R 2009, 19 86

NOV 17 2009

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

By: [Signature]
~~John L. Keenan~~ Chairman
Burt Aaronson

APPROVED AS TO TERMS
AND CONDITIONS

By: [Signature]
Dennis Eshleman, Director
Parks & Recreation Dept.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT:

By: [Signature] Deputy Procurement Dir.
602 Frank Hayden, Procurement Director ~~Dir.~~

SFWMD PROCUREMENT APPROVED

By: [Signature]
Date: SEP 17 2009

SFWMD OFFICE OF COUNSEL APPROVED

By: [Signature]
Date: 9/24/09

Exhibit "A"

SFWMD EOC – DATA MANAGEMENT CENTER IMPROVEMENTS, PALM BEACH COUNTY, FLORIDA

Project Description

The SFWMD Emergency Operations Center (EOC) is located on the east end of Building B-1 at the District HQ in West Palm Beach, FL. The project will require the construction of a new generator building, fuel tank area, underground duct-bank connection to the existing EOC Building, and interior modifications to the existing EOC building. Included in the work is the installation of District furnished 1000KW generators, 400KW UPS modules and 12K gallon fuel tanks.

Location

The District's West Palm Beach Headquarters is located at 3301 Gun Club Road, West Palm Beach, FL 33406.

EXHIBIT 'B'

LAKE LYTAL PARK LEGAL DESCRIPTION

The West 315 feet of Tract 4, Block 1, and all of Tract 1, Block 2, PALM BEACH PLANTATIONS, Plat No. 1, according to Plat Book 10, Page 20, Public Records of Palm Beach County, LESS the following parcel more particularly described as beginning at a point, which is the intersection of the East line of the West 315 feet of Tract 4, Block 1, with the North right of way line of Gun Club Road, thence West along said right of way line a distance of 275 feet, thence North at right angles to same; a distance of 260 feet, thence East at right angles to the preceding course, a distance of 275 feet, thence South along the East line of the West 315 feet of Tract 4, Block 1, to the Point of Beginning; containing 24.83 acres, more or less.

EXHIBIT 'C'

TEMPORARY EMPLOYEE PARKING AREA SKETCH

