

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: March 15, 2011 [X] Consent [] Regular
[] Workshop [] Public Hearing
 Department: Airports
 Submitted By: Department of Airports
 Submitted For: _____

157/10

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to Drainage Agreement (Amendment) with Closter Farms, Inc., (Closter) for excess water drainage services for Palm Beach County Glades Airport (Airport) located on State Road 715 in Pahokee.

Summary: Excess water drains from the Airport onto Closter’s farmland adjacent to the Airport, pursuant to the Drainage Agreement dated April 18, 2006 (R2006-0664). The Amendment extends the term of the Drainage Agreement to April 1, 2015 and corrects the acreage on which annual per-acre fees are assessed. Countywide (HJF)

Background and Justification: Closter leases farmland east and south of the Airport from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (BOT), which lease is scheduled to expire April 1, 2015. The Amendment extends to the term of the Drainage Agreement to the scheduled expiration of Closter’s lease with BOT. Closter currently provides drainage services for the Airport at a cost of \$18 per acre. The Amendment provides for extension of the term at the same per-acre rate and reduces the acreage from 243 acres to 231.36 acres. The per-acre rate is based on the amount Closter pays for drainage services to East Shore Water Control District.

Attachments:
1. Amendment (3)

Recommended By: *[Signature]* 2/13/11
Department Director Date

Approved By: *[Signature]* 2/17/11
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Capital Expenditures					
Operating Costs	<u>1,735.20</u>	<u>4,164.48</u>	<u>4,164.48</u>	<u>2,082.24</u>	
Operating Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u><u>1,735.20</u></u>	<u><u>4,164.48</u></u>	<u><u>4,164.48</u></u>	<u><u>2,082.24</u></u>	
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No
 Budget Account No: Fund 4100 Department 120 Unit 2241 Object 3401
 Reporting Category _____

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

Funds Are Available In The Above Referenced Account.

C. Departmental Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

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

[Signature] 2/14/11
 OFMB VA
 2/10/11 2/10/11

[Signature] 2/15/11
 Contract Dev. and Control
 E. Jones 2/15/11

This amendment complies with our review requirements.

B. Legal Sufficiency:

[Signature] 2/16/11
 Assistant County Attorney

C. Other Department Review:

 Department Director

**FIRST AMENDMENT TO
DRAINAGE AGREEMENT**

This First Amendment to Drainage Agreement ("First Amendment") is made and entered into _____, by and between Palm Beach County, a political subdivision of the State of Florida, whose mailing address is 301 North Olive Avenue, West Palm Beach, Florida 33401 ("County"), and Closter Farms, Inc., a Florida corporation, whose address is One North Clematis Street, Suite 200, West Palm Beach, Florida 33401 ("Closter").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports (the "Department"), owns and operates the Palm Beach County Glades Airport, located in Palm Beach County, Florida, comprising approximately 210 acres (the "Airport"); and

WHEREAS, County, by and through its Parks & Recreation Department and Animal Care & Control Division, owns and operates County facilities on a total of approximately 21.36 acres adjacent to the Airport (the "County Facilities"); and

WHEREAS, the Airport and County Facilities, comprising a total of approximately 231.36 acres (collectively referred to as the "County Property"), are depicted in Exhibit "A" attached hereto, and made a part hereof; and

WHEREAS, pursuant to that certain Drainage Agreement between County and Closter, dated April 18, 2006 (R2006-0664) (the "Agreement"), Closter provides drainage services for the County's excess water, in return for an annual fee from County; and

WHEREAS, the initial term of the Agreement is scheduled to expire April 30, 2011, and County desires to exercise its option pursuant to the Agreement to renew the Agreement through April 1, 2015; and

WHEREAS, the parties hereto desire to amend the Agreement in accordance with the terms and conditions set forth herein.

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. Recitals. 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 Agreement.

2. Exhibit "A" to the Agreement. Exhibit "A" attached hereto is hereby made part of the Agreement.

3. Modification of Section 1. Section 1 of the Agreement is deleted in its entirety and replaced with the following:

1. This Agreement 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. The Term of this Agreement shall commence on May 1, 2006, and expire on April 1, 2015. Notwithstanding the foregoing, the parties acknowledge and agree that this Agreement is contingent upon the continued existence of the State Lease referenced above. In the event that the State Lease is terminated, Closter may terminate this Agreement upon ninety (90) days prior written notice to the County, whereupon the parties shall be relieved of all further obligations under this Agreement.

4. Modification of Section 2. Effective May 1, 2011, Section 2 of the Agreement shall be deleted in its entirety and replaced with the following:

2. County agrees to pay to Closter an annual fee of Eighteen Dollars (\$18.00) per acre for 231.36 acres of County Property, for a total of Four Thousand One Hundred Sixty-Four Dollars and 48 Cents (\$4,164.48) per year. Each annual payment shall be paid in advance by County warrant within forty-five (45) days of receipt of an invoice from Closter. Invoices shall be mailed to the Department at the address identified in Paragraph 9 of this Agreement. No sales or use tax shall be charged with the per-acre fee since County is a tax exempt entity as is evidenced by tax exemption #60-2211419753 C.

5. Modification of Section 9. Section 9 of the Agreement is deleted in its entirety and replaced with the following:

9. All notices 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, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if by 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 hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Department:

Palm Beach County Department of Airports
Attn: Deputy Director, Airports Business Affairs
846 Palm Beach International Airport
West Palm Beach, Florida 33406
Fax: 561-471-7427

With a copy to:

Palm Beach County Attorney's Office
Attn: Airport Attorney
301 N. Olive Avenue
West Palm Beach, Florida 33401
Fax: 561-355-4398

Closter:

Closter Farms, Inc.
Attn: Armando A. Tabernilla
Vice President and General Counsel
One North Clematis Street, Suite 200
West Palm Beach, Florida 33401
Fax: 561-651-1247

With a copy to:

Closter Farms, Inc.
Attn: William F. Tarr
Vice President
P.O. Box 3435
West Palm Beach, Florida 33402
Fax: 561-651-1280

6. Addition of Section 16. The following Section 16 is hereby added to the Agreement:

16. Inspector General. Pursuant to Ordinance No. 2009-049, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present, and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

7. Ratification of Agreement. Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

8. Conflict. In the event of a conflict between any provision of this First Amendment and the provisions of the Agreement, or any other amendment thereto, the provisions of this First Amendment shall control.

9. Incorporation by Reference. Exhibits and terms referenced herein shall be deemed to be incorporated in this First Amendment by such reference.

10. Paragraph Headings. The heading of the various sections of this First Amendment are for convenience and ease of reference only, and shall not be construed to define, limit, augment, or describe the scope, context, or intent of this First Amendment or the Agreement.

11. Effective Date. This First Amendment shall be considered effective when signed by the parties and approved by the Palm Beach County Board of County Commissioners.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

ATTEST:
SHARON R. BOCK,
CLERK & COMPTROLLER

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Karen T. Marcus, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS:

Assistant County Attorney

Don Kelly
Department Director

Signed, sealed and delivered in
the presence of two witnesses:

CLOSTER FARMS, INC.

John C. DiPaola
Witness

By: *AMU*

JOHN C. DiPaola
Typed or printed name

Armando A. Tabernilla
Typed or printed name

Marcela Torres
Witness

Title: Vice President

MARICELA TORRES
Typed or printed name



(Seal)

Exhibit "A"
The "County Property"

