

Agenda Item:

AGENDA ITEM SUMMARY

<input checked="" type="checkbox"/> [X]	Consent	<input type="checkbox"/> []	Regular
<input type="checkbox"/> []	Workshop	<input type="checkbox"/> []	Public Hearing

Submitted By: Department of Airports

I. EXECUTIVE BRIEF

Summary: This Agreement provides for vehicle parking on unimproved Airport property by U.S. Navy reserve personnel associated with NOSC's facility on Marine Drive, north of PBI. NOSC conducts drills at the facility and has requested the right to use the property from time to time for overflow parking. NOSC will submit written requests specifying the dates and times parking is requested, which must be approved in writing by the Airport Director or his designee. The Agreement will expire on September 30, 2016. The Agreement is being granted to NOSC at no charge and may be revoked upon notice. **Countywide (AH)**

Attachments: License Agreement (3)


Department Director

12/2/11
Date


County Administrator

1/12/20
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>~0~</u> <i>* See below</i>	_____	_____	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X

Budget Account No: Fund _____ Department _____ Unit _____ RSource _____
Reporting Category _____

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

* No fiscal impact.

C. Departmental Fiscal Review:

CM Sumner

III. REVIEW COMMENTS

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

[Signature]
OFMB
12/20/11
12/29/11

[Signature] *12/29/11*
Contract Dev. and Control
12-28-11 [Signature]

B. Legal Sufficiency:

Anne Helgent *12/29/11*
Assistant County Attorney

C. Other Department Review:

Department Director

LICENSE AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
NAVAL OPERATIONS SUPPORT CENTER WEST PALM BEACH
N69450-11-RP-00078

THIS LICENSE AGREEMENT (this "Agreement") made and entered into this ____ day of _____, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Naval Operations Support Center (NOSC) West Palm Beach whose principal place of business is located at 1227 Marine Drive, West Palm Beach, Florida, ("Licensee").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports (the "Department"), is the owner and operator of the Palm Beach International Airport (the "Airport"); and

WHEREAS, County is the owner of that certain real property as more particularly described on the attached Exhibit "A"; and

WHEREAS, County is willing to grant Licensee a revocable license to use the Property 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 non-exclusive, revocable license to use the Property (as hereinafter defined) upon the following terms and conditions:

ARTICLE 1
BASIC PROVISIONS

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

1.02 Property. The Property, which is the subject of this Agreement, is more particularly identified in Exhibit "A", attached hereto and incorporated herein (the "Property").

ARTICLE 2
LENGTH OF TERM AND COMMENCEMENT DATE

The term of this Agreement shall commence on the Effective Date and expire on September 30, 2016 (the "Term"), unless terminated earlier as provided for herein.

ARTICLE 3
CONDUCT OF BUSINESS AND USE OF PROPERTY BY LICENSEE

3.01 Use of Property. Licensee shall use the Property solely and exclusively for parking of non-commercial vehicles, which are owned or operated by U.S. Navy Selected Reserve (SELRES) personnel, on dates and at times approved by County in writing ("Parking Event"). Licensee shall submit all requests for use of the Property for a Parking Event in writing to County in advance of the Parking Event. Requests may be submitted by facsimile or electronic mail as provided in Section 8.04 of this Agreement. County may accept or reject a request for use of the Property for a Parking Event, in whole or in part, in its sole and absolute discretion. Furthermore, County may suspend, modify or revoke any prior approval to use the Property for a Parking Event upon written notice to Licensee. Licensee shall not use, permit or suffer the use of the Property for any other business or purpose whatsoever. No license fee shall be due for Licensee's use of the Property.

3.02 Improvements. Licensee shall make no improvements, alterations or additions to the Property whatsoever, without the prior written consent of the Department, which may be granted or withheld in the Department's sole and absolute discretion.

3.03 Condition of Property. Licensee accepts the Property in its "As is", "Where is" condition as of the Effective Date of this Agreement. Licensee further acknowledges that County has not made any warranties or representations of any nature whatsoever regarding the Property including, but not limited to, any warranties or representations relating to the physical condition of the Property or any improvements located therein, or the suitability of the Property or any improvements for the Licensee's intended use.

3.04 Waste or Nuisance. Licensee shall not commit or suffer to be committed any waste upon the Property or any nuisance or other act or thing which may result in damage or depreciation of value of the Property.

3.05 Compliance with Laws. Licensee shall, at its sole cost and expense, secure any and all required licenses and permits and shall comply with all local, state, and federal laws pertaining to Licensee or its use of the Property, including all applicable zoning, building and fire laws and regulations. Licensee acknowledges and agrees that County has made no representations whatsoever regarding Licensee's ability to use the Property for the purposes set forth in this Agreement. Licensee shall ensure that its invitees, guests and all other persons entering the Property with or without Licensee's consent or knowledge comply with all applicable laws on the Property. To the extent permitted by law, Licensee shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section. The foregoing indemnification agreement shall survive the expiration or earlier termination of this Agreement.

3.06 Non-Discrimination. Licensee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (a) that no person on the grounds of race, sex, color, religion, creed, ancestry, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression, shall be excluded from participation in or denied the use of the Property, (b) that in the construction of any improvements on, over, or under such Property and the furnishing of services, no person on the grounds of race, sex, color, religion, creed, ancestry, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Licensee shall use the Property in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended from time to time. In the event of the breach of any of the foregoing non-discrimination covenants, County shall have the right to terminate this Agreement and to reenter and repossess the Property and the facilities hereon, and hold the same as if the Agreement had never been made or issued. This cancellation provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed including exercise or expiration of appeal rights.

3.07 Surrender of Property. Upon expiration or earlier termination of Licensee's license to use the Property, Licensee, at its sole cost and expense, shall surrender the Property to the County in at least the same condition as the Property was in as of the Effective Date of this Agreement.

3.08 County's Right to Enter. County shall have the right to enter the Property at any time, without notice, for any purpose whatsoever. County agrees to exercise reasonable efforts to minimize interference with or disruption of Licensee's operations on the Property; provided, however, 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 Property during Licensee's operating hours, which will disrupt or interfere with the Licensee's operations, County will

endeavor to provide prior notice to Licensee. The notice requirements provided under Section 8.04 shall not apply to this Section.

ARTICLE 4 REPAIRS AND MAINTENANCE OF PROPERTY/SECURITY

4.01 Repairs & Maintenance. County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Property. All portions of the Property and all improvements erected on the Property shall be kept in good repair and condition by Licensee. Licensee shall maintain the Property free of trash and debris. Upon expiration or earlier termination of this Agreement, Licensee shall deliver the Property to County in good repair and condition as specified herein, free of all improvements constructed by Licensee, if any. In the event of any damage to the Property, County may complete the necessary repairs or maintenance of the Property and Licensee shall reimburse County for all expenses incurred by County in doing so, plus a twenty five percent (25%) overhead, within fifteen (15) days after written request for reimbursement from County.

4.02 Security. Licensee acknowledges and accepts full responsibility for the security and protection of the Property and any and all personal property and improvements now existing or hereafter placed on or installed in or upon the Property, and for the prevention of unauthorized access to the Property. Licensee fully understands that the police security protection provided by County is limited to that provided to any other business situated in Palm Beach County by the Palm Beach County Sheriff's Office and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Property, shall be the sole responsibility of Licensee and shall involve no additional cost to County.

ARTICLE 5 INDEMNIFICATION

In the event that death or injury occurs to any person, or loss, destruction or damage to any property of County in connection with the use of the Property, occasioned in whole or part by the acts or omissions of Licensee, its officers, agents or employees, Licensee, insofar as it may legally do so, agrees, pursuant to the provisions of an Act of Congress, approved June 25, 1948 (62 Stat., 982: T. 28, U. S. Code Sec. 2671-2680), to indemnify and save harmless County. Licensee recognizes the broad nature of this indemnification provision and specifically acknowledges the receipt of good and value separate consideration in support thereof. This provision shall survive expiration or earlier termination of this Agreement.

ARTICLE 6 ASSIGNMENT

Licensee may not assign, sublet or rent any portion of the Property.

ARTICLE 7 REVOCATION OF LICENSE/DEFAULT

7.01 Revocation of License. Notwithstanding any provision of this Agreement to the contrary, the rights granted to Licensee hereunder amount only to a non-exclusive license to use the Property, which license is expressly revocable by County for any reason whatsoever upon notice to Licensee. Upon notice from County of the revocation of the license granted hereby, this Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination.

7.02 Termination for Convenience by Licensee. Licensee may terminate this Agreement for convenience upon five (5) days prior written notice to County, whereupon

the parties shall be relieved of all further obligations hereunder with the exception of those obligations accruing prior to the date of such termination and those obligations which expressly survive termination of this Agreement.

7.03 Default. Failure to perform or observe any of the agreements, covenants, or conditions contained in this Agreement to be performed or observed by such party upon five (5) days prior written notice shall constitute a default of this Agreement.

ARTICLE 8 MISCELLANEOUS

8.01 Subordination to Bond Resolution. This Agreement and all rights granted to Licensee hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented (the "Bond Resolution"), and County and Licensee agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Licensee and County with the terms and provisions of this Agreement and Bond Resolution.

8.02 Subordination to State/Federal Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which the County acquired the land or improvements thereon, of which the Property is a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Licensee understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between County and the United States of America, the State of Florida or any of their respective agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

8.03 Entire Agreement. This Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee concerning the Property. 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.

8.04 Notices. 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 overnight mail, electronic mail, telecopied or faxed (provided in each case a receipt is obtained), 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 overnight mail, or on the date of transmission with confirmed answer back if by telecopier, fax or electronic mail 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:

- (a) If to County at:
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470
Attn: Deputy Director, Airports Business Affairs
Fax: (561) 471-7427 E-Mail: Laura.Beebe@pbia.org

(b) If to Licensee at:
Department of Navy
NAVFAC Southeast
Attn: Timothy T. Yonce
PO Box 30, B135N
NAS Jacksonville, FL 32212-0030
RE Contract Number: N69450-11-RP-00078
Fax: (904) 542-627 E-Mail: timothy.yonce@navy.mil

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

8.05 Recording. Licensee shall not record this Agreement or any memorandum or short form thereof.

8.06 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.

8.07 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.

8.08 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.

8.09 Captions. The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

8.10 Severability. In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

8.11 Waiver. No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

8.12 Consent or Action. In the event this Agreement is silent as to the standard for any consent, approval, determination or similar discretionary action, the standard shall be at the sole, absolute and unfettered discretion of the County or Department, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Agreement requires the County or Department's consent or approval or permits the County or Department to act, such consent, approval or action may be given or performed by the Airport Director or his designee. If Licensee requests the County or Department's consent or approval pursuant to any provision of the Agreement and County or Department fails or refuses to give such consent, Licensee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.

8.13 Inspector General. Licensee acknowledges that the 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.

8.14 Effective Date. This Agreement shall become effective when executed by the parties hereto and approved by the Palm Beach Board of County Commissioners (the "Effective Date").

(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.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, a political
subdivision of the State of Florida by its
Board of County Commissioners

By: _____

By: _____

Shelley Vana, Chair

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: *[Signature]*
Director of Airports

Robin McCarthy
Signature

Robin McCarthy
Printed Name

Michael Brooks
Signature

Michael Brooks
Printed Name

THE UNITED STATES OF AMERICA,
acting by and through the Deptment of
The Navy

By: *[Signature]*
Real Estate Contracting Officer

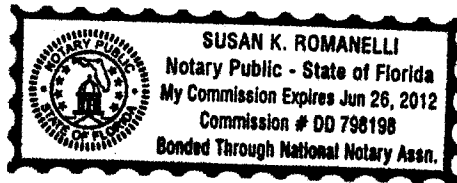
Date: 17 Nov 11

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 17th day of November, 2011, by TIMOTHY T. YONCE, Real Estate Contracting Officer for the United States of America, Department of the Navy, who is personally known to me or who has produced personally known as identification.

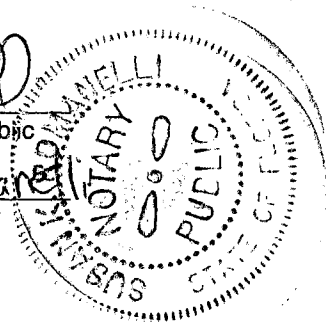
[SEAL]



Signature of Notary Public

Susan K. Romanelli

Printed name of Notary



CONCURRENCE

SLM

COMMANDING OFFICER
Navy Operational Support Center

EXHIBIT "A"
THE PROPERTY

FILE 8616 Pg 1261
DOROTHY H. WILKIN, CLERK PB COUNTY, FL

Property Appraisers Parcel Identification (Folio) Number(s):

EXHIBIT "A"

LEGAL DESCRIPTION

(Former) U. S. Army Reserve Center, Belvedere Road,
West Palm Beach, Palm Beach County, Florida
3.10 Acres +/-

All that or parcel of land lying and being in Section 30,
Township 43 South, Range 43 East, Palm Beach County,
Florida, more particularly described as follows:

Commencing at the Southeast corner of said Section 30;

Thence North 87° 58' 54" West along the South line of said
Section 30, a distance of 2,330.5 feet;

Thence North 01° 29' 36" East 33.0 feet to a point which is
on the Northern right-of-way line of Belvedere Road as
described in a quitclaim deed dated 20 September 1961
and recorded in Official Records Book 690, Pages 321-327,
recorded in Palm Beach County Florida, and the POINT
OF BEGINNING;

Thence North 87° 58' 54" West along the Northern
right-of-way line of said Belvedere Road a distance of
450.0 feet;

Thence North 01° 29' 36" East 300.01 feet;

Thence South 87° 58' 54" East 450.0 feet;

Thence South 01° 29' 36" West 300.01 feet, more or less, to
the point of beginning containing 3.10 acres, more or less,
taken subject to existing easements for public roads and
highways, for public utilities, for railroads and pipelines,
including the right-of-way for Belvedere road and
specifically subject to an easement for road or street
right-of-way No. DACA 01-2-73-715 between the
Department of the Army and the Board of County
Commissioners of Palm Beach County, Florida, described
hereinafter as follows:

A right-of-way lying and being in Section 30, Township
43 South, Range 43 East, Tallahassee Meridian, Palm
Beach County, Florida, being more particularly described
as follows:

Commencing at the Southeast corner of said Section 30;
Thence N 87° 58' 54" W along the South line of said
Section 30 a distance of 2,330.5 feet to the Southerly

extension of the East line of Golfview Heights
Subdivision. Plat Number 7, as recorded in Plat Book 24,
page 68, public records of palm Beach County, Florida;

Thence N 01° 29' 36" E along the East line. extended, of
said subdivision a distance of 33 feet to a point which is on
the existing Northern right-of-way line of Belvedere
Road, at the Southeast corner of a tract of land owned by
the United States of America at Palm Beach Army
Reserve Center and the POINT OF BEGINNING;

Thence N 87° 58' 54" W along the existing Northern
right-of-way line of said Belvedere Road, which is along
the boundary of said United States tract, a distance of
450.0 feet to Southwest corner of said tract;

Thence N 03° 29' 36" E along the boundary of said United
tract 33 feet;

Thence S 87° 58' 54" E along a line parallel to and 66 feet
North of the South line of said Section 30 a distance of
454.77 feet;

Thence Northeasterly along a curve to the left with a
radius of 25 feet, an arc distance of 39.50 feet, the long
chord of which bears N 46° 45' 21" E 35.52 feet;

Thence 01° 29' 36" E 241.78 feet to the Northern
boundary of said United States tract;

Thence S 87° 58' 54" E along the boundary of said United
States tract 60 feet;

Thence S 01° 29' 36" W 242.24 feet;

Thence Southeasterly along a curve to the left with a
radius of 25 feet an arc distance of 23.17 feet, the chord of
which bears S 25° 03' 38" E 22.35 feet to a point which is on
the boundary of said United States tract;

Thence S 01° 29' 36" W along the boundary of said United
States tract 37.87 feet more or less, to the point of
beginning.

Containing 0.71 of an acre, more or less, and being a part
of the United States Army Reserve Center, West Palm
Beach, Florida.

SKETCH OF THE PROPERTY

