

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

*TIME CERTAIN
11:00 AM*

Meeting Date: March 20, 2012 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff requests Board direction regarding: a request by the Supervisor of Election (SOE) to immediately exercise the renewal option on a SubLease with Huttig Building Products (R2009-1211) for warehouse space utilized by the SOE for support operations and election day vote tabulation.

Summary: On July 21, 2009, the Board entered into a SubLease with Huttig for approximately 76,000 sf of warehouse space for the SOE for a term of five years with a renewal option ending June 21, 2016. At the same time, the Board entered into a Consent to SubLease with RREEF America REIT II Corp (RREEF or Landlord R2009-1212). The Broker for the transaction was Robert Goldstein, President Hospitality Consultants Realty Services (HCRS) and the broker fees are owed by Huttig, pursuant to an agreement to which the County is not a party. For the last several months, HCRS has been requesting that the County exercise the renewal option so that HCRS can be paid its brokerage fee. In addition, HCRS and SOE believe that by exercising the renewal option early, there will be financial benefits to the County, will relieve the County from liability, and better protect the SOE from the potential interruption in the use of the space in the event of Huttig's bankruptcy. It is Staff's position that there are no benefits to the County or SOE in exercising the option early. On January 24, 2012, the Board directed Staff to open negotiations with RREEF regarding options beyond 2016, however RREEF is unwilling to discuss an extension at this early date. Staff believes that RREEF's refusal to open negotiations are for the same reasons that Staff desires to postpone negotiations - preservation of negotiating position based on conditions and needs just prior to the time that the option has to be exercised. For this reason, Staff is recommending that the plans for accommodating the SOE's needs beyond June 2016 occur in the summer of 2013 and based on the conclusion of those discussions, consider exercising the option at that time. (PREM) Countywide (HJF)

Background & Policy Issues: The term of the County SubLease from Huttig is through December 28, 2014 (based on the actual commencement date) and there is a renewal option ending June 21, 2016. That renewal option expiration date was chosen to coincide with the term of Huttig's Lease with RREEF. The renewal option must be exercised no later than 180 days prior to the end of the term or no later than July 1, 2014. In the event that the County does not exercise the SubLease renewal option, there is a SubLease provision which requires the County to pay \$450,000 in additional rent to Huttig to assist Huttig in satisfying an identical obligation in its Lease from RREEF. This \$450,000 is a contractual obligation in the event that the option is not exercised. That obligation does not change whether the renewal option is exercised today, on June 30, 2014 or anytime in between.

Agenda Item is more than 50 pages
and may be viewed in Minutes

Attachments:

- 1. SubLease
- 2. Certificate of SubLease Commencement
- 3. Consent to SubLease

Recommended by: *[Signature]* 3/5/12
Department Director Date

Approved by: *[Signature]* 3/13/12
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>-0-</u> <i>See below</i>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

ADDITIONAL FTE POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes No

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

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

There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: _____ *3-6-12*

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Development & Control Comments:
** Estimated monthly rent would be \$33,769 for FY2015 and \$34,790 for FY2016 per the FY2010 Agreement. Expenses will be paid out of Supervisor of Elections's budget*
 _____ *3/8/12* OFMB
 _____ *3/13/12* Contract Dev. and Control
3/13/12 13. Whittle

B. Legal Sufficiency:
 _____ *3/14/12*
 Assistant County Attorney

C. Other Department Review:

Background and Policy Issues (Cont'd)

The County will need to eventually make a decision as to how to accommodate the long term facilities requirements of the Supervisor of Elections. The options which exist are: 1) construct a new facility on County-owned land, 2) continue to lease a facility, or 3) attempt to negotiate a purchase of the existing leased facility. The factors which the Board would need to consider in making this decision are; 1) ability to meet current SOE programmatic requirements and the flexibility to change as technology and operations change, 2) cost in the short and long term, 3) funding in the short and long term, and 4) timing.

While it is unlikely that the County would choose not to exercise the two year renewal, implementation of the two year renewal would have the SOE relocating in July 2016 which is not possible due to it being a presidential election year. The practical possibilities for a relocation would be 2015, 2017, 2018, or 2019. Therefore, the one and one half (1 ½) year renewal option which exists in the SubLease does not work on its own.

A decision in the first half of calendar year 2013 would allow adequate time for the County to not only exercise the renewal option, but also to conclude its direct negotiation with RREEF on additional time. Any additional time in the current facility beyond June 21, 2016 would require the SubLease renewal option to be exercised as well as a concurrent direct negotiation with the RREEF, as Huttig's sublease will expire in July 2016. The longer the term that the County is willing to commit to with the Lessor, the more favorable the rates will be beyond June 21, 2016. Exercising options close to the option date is consistent with industry practice, especially when there is no incentive for exercising early, as is evidenced by RREEF's unwillingness to consider an extension at this time. .

The County Attorney's Office has reviewed the Lease, SubLease, and applicable bankruptcy rules and regulations and it is their opinion that the County's continued use/occupancy of the space at the rates contained in the SubLease will not be impacted by Huttig's bankruptcy proceedings. They also believe that the County will be able to remain in the facility in the event of Huttig's rejection of the Lease or SubLease because the Consent to SubLease signed by RREEF requires RREEF to honor the terms of the SubLease in the event of rejection by Huttig in bankruptcy. It is likely however that the County would have to participate in the bankruptcy proceedings. However, the necessity of the County participating will not be alleviated by exercising the Option.

Exercising the option early only serves to benefit Mr. Goldstein by; 1) expediting the payment of the brokerage fee or 2) moving his brokerage fee to a more secure position in the event of Huttig's bankruptcy. While it is unfortunate Mr. Goldstein's brokerage fee (an agreement between Mr. Goldstein and Huttig and to which the County is not a party) was structured so that Mr. Goldstein would not be paid the brokerage fee until the option is exercised, Staff can only consider the benefits to the County in making a recommendation to the Board.