

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

Meeting Date: **September 10, 2013** **Consent** **Regular**
 Ordinance **Public Hearing**

Department: **Facilities Development & Operations**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) adopt a Resolution authorizing a one (1) year term extension, with three (3) one (1) year extension options and finding that the Third Amendment to the Lease Agreement with Robert Weatherbee d/b/a The Sub Division (Sub Division) is in the best interest of the County; and

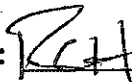
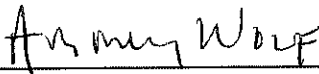
B) approve a Third Amendment to the Lease Agreement (R2006-0077) with Sub Division to continue to provide food services at the County's Vista Center 2300 Building in West Palm Beach at an annual rate of \$9,110.30.


Summary: Since January 1, 2007, Sub Division has been leasing 349 square feet of space in the lunchroom for the provision of food services at the County's Vista Center 2300 Building located at 2300 North Jog Road. Sub Division has been providing an acceptable level of service and quality of food at reasonable prices. Staff believes that it is unlikely there would be sufficient interest in responding to an RFP for food service operations at this location to justify the Staff effort involved in issuing an RFP. Staff therefore recommends the Board find that an extension of the Lease without a competitive process is in the best interest of the County. This Third Amendment will extend the lease for one (1) year, from January 1, 2014, through December 31, 2014, with three (3) one (1) year extension options, each requiring County consent and adds a provision regarding third party beneficiaries. On January 1, 2014, the annual rent will increase 4% from \$8,759.90 (\$729.99/mo) to \$9,110.30 (\$759.19/mo). All other terms and conditions of the Lease Agreement will remain unchanged. **(PREM) District 2 (HJF)**

Background and Policy Issues: On July 31, 2005, Staff issued a Request for Proposals (RFP) to lease space and provide food services at the County's Vista Center 2300 Building, located at 2300 North Jog Road. On January 10, 2006, the RFP was awarded to Sub Division (R2006-0077). The Lease premises consists of 349 square feet within the lunchroom area of the 2300 Building, together with the use of two (2) unassigned parking spaces within the parking garage. Pursuant to the RFP, Sub Division was required to pay for interior improvements, alterations and provide the kitchen equipment necessary to operate. **(Continued on Page 3)**

Attachments:

1. Location Map
2. Resolution
3. Third Amendment
4. Letter of Request from Robert Weatherbee d/b/a The Sub Division

Recommended By:   **8/12/13**
 Department Director **Date**

Approved By:  **8/12/13**
 County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$-0-)	(\$6,832.72)	(\$2,277.58)	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$-0-)</u>	<u>(\$6,832.72)</u>	<u>(\$2,277.58)</u>	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in ~~Proposed~~ Budget: Yes X No

Budget Account No: Fund 0001 Dept 800 Unit 8001 Object 6225
 Program _____

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

C. Departmental Fiscal Review: _____ *[Signature]* 8-12-13

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature]
 OFMB *KD 8/15* 8/15/13

[Signature] 8/15/13
 Contract Development and Control
 8-15-13 *[Signature]*

B. Legal Sufficiency:

[Signature] 8/19/13
 Assistant County Attorney

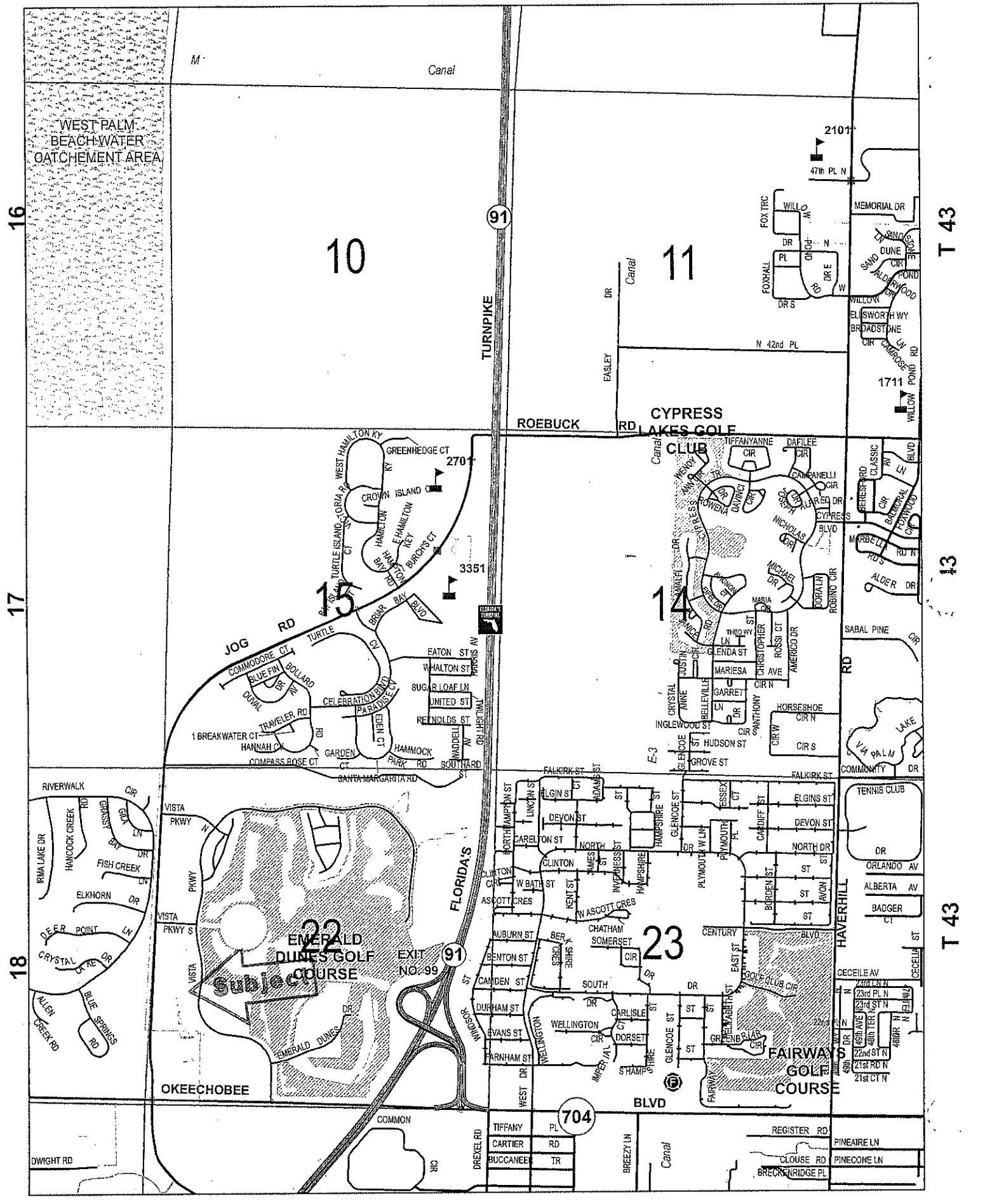
C. Other Department Review:

 Department Director

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

Background and Policy Issues (cont'd): Sub Division estimated the return on its investment based on the information provided in the RFP, which identified an estimated number of building users and guests as 1,000 employees and 1,000 daily visitors. However, due to a reduction in the customer base as a result of County budget related staff reductions, the predicted number of employees and guests did not materialize. Sub Division maintains, and Staff agrees, that economic conditions negatively impacted their food and beverage sales, which reduced the expected return on Sub Division's initial investment. On December 1, 2009, the Board approved a First Amendment (R2009-2063) suspending the required 4% annual rent increase for a period of one (1) year due to economic conditions caused, in part, by the reduction of County staff located at the buildings at Vista Center. The 4% annual increases recommenced on January 1, 2011.

On December 6, 2011, the Board approved a Second Amendment (R2011-1936) exercising the first extension option, and on December 4, 2012, the Board consented to the exercise of the second and final one (1) year extension option (R2012-1789) extending the term through December 31, 2013. In November 2012, Sub Division provided documentation evidencing that their product costs had increased by approximately 25%, and Staff authorized an increase of Sub Division's menu prices by approximately 13%. This was the only price increase during the term of this lease. This Third Amendment will extend the lease for one (1) year, from January 1, 2014, through December 31, 2014, adds three (3) additional one (1) year extension options and adds language confirming that the Lease does not create any third party beneficiaries. Florida Statutes, Section 286.23, does not require a Disclosure of Beneficial Interests be obtained.



LOCATION MAP



RESOLUTION NO. 2013-_____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING A ONE (1) YEAR EXTENSION OF THE TERM OF THE LEASE, WITH THREE (3) ADDITIONAL ONE (1) YEAR EXTENSION OPTIONS, UNDER THE TERMS OF COUNTY'S LEASE OF BUILDING SPACE TO ROBERT WEATHERBEE D/B/A THE SUB DIVISION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Robert Weatherbee d/b/a The Sub Division, a sole proprietor ("Tenant"), pursuant to a Lease Agreement dated January 10, 2006 (R2006-0077), as amended, leases space from County for the operation of the Sub Division, a food service concession located on the first floor of the County-owned Vista Center; and

WHEREAS, Tenant is largely dependent on County-derived business and has suffered adverse economic conditions wherein Tenant has seen a continued reduction in its business due to a reduction in the customer base as a result of County budget related staff reductions; and

WHEREAS, Tenant has made application to the Board of County Commissioners of Palm Beach County requesting that Palm Beach County amend the lease to approve a one (1) year extension of the Term of the Lease, with three (3) additional one (1) year extension options in order to allow Tenant to obtain the predicted rate of return on Tenant's original build out and equipment investment based on employee and daily visitor counts provided in the RFP's background section; and

WHEREAS, Tenant provides a service to County employees and visitors to the Vista Center buildings by offering them convenient food service at a reasonable price and County wishes to retain Tenant's operations at Vista Center; and

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that Tenant provides a service to County that County does not wish to lose, and the extension of the Lease Agreement with Tenant is in the best interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. Recitals

The foregoing recitals are true and correct and incorporated herein by reference.

Section 2. Authorization to Lease Real Property

The Board of County Commissioners of Palm Beach County shall extend the Term for one (1) year, with three (3) one (1) year extension options pursuant to the Third Amendment to Lease Agreement, attached hereto and incorporated herein by reference, in connection with the lease of building space identified in such Lease Agreement.

Section 3. Conflict with Federal or State Law or County Charter

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

Section 4. Effective Date

The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing resolution was offered by Commissioner _____ who moved its adoption. The Motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

- Commissioner Steven L. Abrams, Mayor
- Commissioner Priscilla A. Taylor, Vice Mayor
- Commissioner Hal R. Valeche
- Commissioner Paulette Burdick
- Commissioner Shelley Vana
- Commissioner Mary Lou Berger
- Commissioner Jess R. Santamaria


The Mayor thereupon declared the resolution duly passed and adopted this _____ day of _____, 2013.

PALM BEACH COUNTY, a political subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

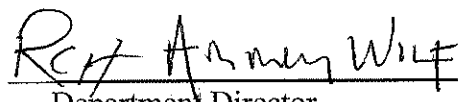
SHARON R. BOCK
CLERK & COMPROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: 
Department Director

**THIRD AMENDMENT
TO
LEASE AGREEMENT**

THIS THIRD AMENDMENT TO LEASE AGREEMENT (the "Third Amendment") is made and entered into _____ by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida ("County"), and **ROBERT WEATHERBEE d/b/a THE SUB DIVISION**, a sole proprietor ("Tenant"). County and Tenant are sometimes referred to herein collectively as the "parties".

WITNESSETH:

WHEREAS, County and Tenant entered into that certain Lease Agreement dated January 10, 2006 (R2006-0077) (the "Lease"), for the use of the Premises as defined in the Lease, as amended by R2009-2063 and R2011-1936; and

WHEREAS, the Term of the Lease, as extended by the Tenant's exercise of the second option to extend approved by the Board on December 4, 2012 (R2012-1789), currently expires on December 31, 2013; and

WHEREAS, the parties wish to amend the Lease to (i) approve a one (1) year extension of the Term of the Lease, (ii) provide for three (3) one (1) year extension options, and (iii) incorporate certain language required by County; and

WHEREAS, County hereby acknowledges that Tenant is not delinquent in the payment of rent and is not in default of any of the terms and conditions of the Lease.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) 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. The Term of the Lease is hereby extended for a period of one (1) year commencing on January 1, 2014, and expiring on December 31, 2014. Annual Rent shall be adjusted as provided for in Section 2.02 of the Lease.
3. Article I, Section 1.07 of the Lease, is deleted in its entirety and replaced with the following:

Section 1.07 Option to Renew

County hereby grants to Tenant, provided Tenant is not then in default of this Lease, the right and option to renew the Term of this Lease for three (3) successive periods of one (1) year each under the same terms and conditions of this Lease, except that any renewal option shall be subject to approval by County in its sole discretion.

Tenant shall exercise its option to renew, if at all, by written notice to the County received by the County on or before 90 days of any renewal thereof. Failure of Tenant to duly and timely exercise its option to renew the Term of this Lease shall be deemed a waiver of Tenant's right to said option and all further options.

4. No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizens of County or employees of County or Tenant.

5. Except as set forth herein, all of the terms and conditions of the Lease, as amended, remain unmodified and in full force and effect.

6. This Third 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.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have duly executed this Third 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

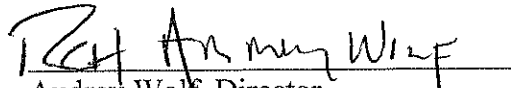
By: _____
Deputy Clerk

By: _____
Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY


APPROVED AS TO TERMS
AND CONDITIONS

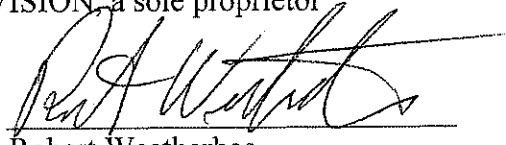

Assistant County Attorney

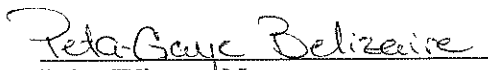

Audrey Wolf, Director
Facilities Development & Operations

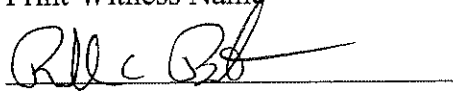
WITNESSES:

TENANT:
ROBERT WEATHERBEE d/b/a THE SUB
DIVISION, a sole proprietor


Witness Signature

By: 
Robert Weatherbee


Peta-Gaye Belizeaire
Print Witness Name


Richard C Bogatin
Witness Signature


Richard C Bogatin
Print Witness Name

The Sub Division
Robert Weatherbee, sole proprietor
5255 Whitewood Cove
Lake Worth, Florida 33467
561-681-4700

Hand Delivered

June 10, 2013

Palm Beach County
Property and Real Estate Management Division
Attention Ross C. Hering, Director
2633 Vista Parkway
West Palm Beach, FL 33411

RE: Request Third Amendment to Lease Agreement (R2006-0077), dated January 10, 2006 by and between Palm Beach County and Robert Weatherbee d/b/a the Sub Division

Dear Mr. Hering:

On December 4, 2012 the Board of County Commission consented to the exercise of my second and final 1-year option to extend. The original term of five (5) years with two 1-year options was expected to provide a higher rate of return on my original build-out and equipment investment. However, as you are aware over the past four years the numbers of potential customers were negatively impacted by county budget staff reductions and economic conditions slowing building and development. In the process of exercising my second option, we discussed amending the lease in the future to extend my use of the premises.

I am requesting your support in proceeding with amending the agreement by adding four (4) additional 1-year options under the same terms and conditions provided for in Section 1.07 of the agreement.

Sincerely,



Robert Weatherbee
D/B/A the Sub Division

Cc: County Attorney's Office, Palm Beach County
Richard C. Bogatin, Property Specialist

