

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: June 23, 2015	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

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I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: a Drainage Agreement (Agreement) with Closter Farms, Inc., (Closter) for water drainage services for County facilities located on State Road 715 in Pahokee, commencing April 2, 2015, for payment of \$6,959.40 annually.


**Summary:** The Agreement enables the County to drain excess water from the Palm Beach County Glades Airport (Airport, 210.62 acres), the West County Pahokee Animal Care & Control Facility (AC&C Facility, 2.00 acres), and Duncan Padgett Park (Park, 19.36 acres) (collectively, the County Facilities, totaling 231.98 acres) onto Closter's adjacent farmland, for payment of an annual fee of \$30 per-acre for a total of \$6,959.40. The initial term of the agreement is 5 years with one 5-year renewal. Countywide (HJF)

**Background and Justification:** Closter leases farmland east and south of the County Facilities from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, which lease is scheduled to expire April 1, 2045. The Agreement provides for Closter to provide drainage services covering the County Facilities totaling 231.98 acres. The per-acre rate is based on the amount Closter pays for drainage services to East Shore Water Control District, plus a pro rata share of Closter's expenses to operate and maintain its pumping system. The annual fee will be apportioned based on the acres controlled by the Departments of Airports, Public Safety, and Parks & Recreation. Closter, or its predecessor, has maintained drainage of these facilities since 1969.

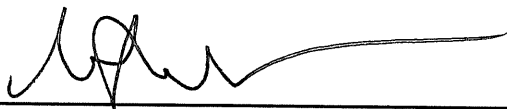

**Attachments:**

- 1. Agreement (3)

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Recommended By:		5/20/15
	Department Director	Date

Approved By:		
	County Administrator	Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Capital Expenditures					
Operating Costs	<u>3,133.</u>	<u>6,319</u>	<u>6,319</u>	<u>6,319</u>	<u>3,168</u>
Operating Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u>3,133.</u>	<u>6,319</u>	<u>6,319</u>	<u>6,319</u>	<u>3,168</u>
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes \_\_\_\_\_ No X  
Budget Account No: Fund 4100 Department 120 Unit 2240 Object 4605  
Reporting Category \_\_\_\_\_

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

The fiscal impact above is an annual payment of \$6,318.60 by the Departments of Airports (210.62 acres @ \$30 per acre). The remaining portions of the \$6,959.40 total annual fee will be paid by Public Safety (2.00 acres @ \$30 per acre = \$60.00), and Parks & Recreation (19.36 acres @ \$30 per acre = \$580.80).

### C. Departmental Fiscal Review:

CM Simon

## III. REVIEW COMMENTS

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

Sherry Brown  
5/21/15  
OFMB

Dr. J. Jacobson 5/20/15  
Contract Dev. and Control

### B. Legal Sufficiency:

H. Jal 5/20/15  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

**DRAINAGE AGREEMENT**

**THIS DRAINAGE AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between Palm Beach County, a political subdivision of the state of Florida (“County”), and Closter Farms, Inc., a Florida corporation, having its office and principal place of business at One North Clematis Street, Suite 200, West Palm Beach, Florida 33401 (“Closter”).

**WITNESSETH:**

**WHEREAS**, County, by and through its departments listed below, owns and operates the following facilities on approximately 231.98 acres of land (more or less) in Sections 25, 26, 35, and 36, Township 42 South, Range 36 East, Palm Beach County, Florida (hereinafter collectively referred to as the “County Facilities”):

COUNTY DEPARTMENT	FACILITY	ACRES
Department of Airports	Palm Beach County Glades Airport (“Airport”)	210.62
Department of Public Safety	West County Pahokee Animal Care & Control Facility (“AC&C Facility”)	2.00
Department of Parks & Recreation	Duncan Padgett Park and support facilities (“Park”)	19.36
TOTAL ACRES:		231.98

and

**WHEREAS**, Closter operates a farm immediately east and south of the Airport subject to Agriculture Lease No. 3420 dated October 20, 1995, as amended, from the Board of Trustees of the Internal Improvement Trust Fund of the state of Florida, which is effective until April 1, 2045 (the “State Lease”), pursuant to which Closter is responsible for operating a pumping station and other facilities in order to provide appropriate drainage of its farm lands; and

**WHEREAS**, excess water is currently drained from the County Facilities onto the farm operated by Closter, and, Closter currently provides drainage services to the Department pursuant to a Drainage Agreement dated April 18, 2006 (R2006-0664), as amended (the “Existing Agreement”); and

**WHEREAS**, the Existing Agreement expires on April 1, 2015; and

**WHEREAS**, County and Closter wish to enter into a new agreement under which Closter will continue to provide drainage services for the excess water from the County Facilities in return for an annual fee from the County.

**NOW, THEREFORE**, in consideration of the premises and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

(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 April 2, 2015, and extend for a period of five (5) years, expiring on April 1, 2020 (the “Initial Term”). At the end of the Initial Term, so long as County is not in default of any term, covenant or condition of the Agreement, County shall have the option to renew this Agreement for a period of five (5) years through April 1, 2025 (the “Renewal Term”) (the “Renewal Option”), which shall be subject to negotiation of the per-acre fee as described in Section (2), below. County shall exercise its Renewal Option, if at all, by written notice to Closter received by Closter on or before ninety (90) days prior to the expiration of the Initial Term. Failure of County to duly and timely exercise its Renewal Option shall be deemed to be a waiver of County’s right to said option. Notwithstanding the foregoing, the parties acknowledge and agree 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 obligations un this Agreement.

(2) During the Initial Term, County agrees to pay to Closter for each annual period hereunder the sum of Thirty Dollars (\$30.00) per acre for the total of 231.98 acres of the Airport property, which is equal to Six Thousand Nine Hundred Fifty-Nine Dollars and Forty Cents (\$6,959.40). 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 of Airports at the address identified in Section 9 below and the Department of Airports shall be responsible for collecting the proportional share of costs from the Department of Public Safety and the Department of Parks & Recreation, which shall be divided among the County Facilities as follows:

COUNTY DEPARTMENT	FACILITY	ACRES	ANNUAL COST
Department of Airports	Airport	210.62	\$6,318.60
Department of Public Safety	AC&C Facility	2.00	\$60.00
Department of Parks & Recreation	Park	19.36	\$580.80
TOTAL:		231.98	\$6,959.40

No sales or use tax shall be charged since County is a tax exempt entity. Prior to County’s exercise of the Renewal Option, Closter and County agree to negotiate the per-acre fee County pays to Closter to approximate Closter’s then-current annual per acre drainage cost to be paid during the Renewal Term.

(3) The annual payment referenced in Section 2 above shall be the total consideration due from County for Closter providing drainage services to the County Facilities. Closter shall, at its sole cost and expense, be responsible for operating the pumping stations and other facilities necessary to provide all drainage services required by the County Facilities.

(4) County shall not cause nor allow to occur any change in the drainage rate or characteristics of the land that would substantially increase the amount of water discharged from the County Facilities without the prior written consent of Closter, which consent shall not be unreasonably withheld, and County agrees that if it causes such increases or allows same to occur, that County will pay an additional reasonable fee, acceptable to both parties, over and above the specified in Section 2 above, equal to Closter's increase in costs resulting from its additional efforts to drain the County Facilities.

(5) County acknowledges that it is aware of the pumping capacity of the pumping stations in operation by Closter; that it is aware of the drainage characteristics of the County Facilities; that Closter will not be required, for the purposes of fulfilling its obligations under this Agreement, to increase the present capacity of the pumping system; and that if the County Facilities become flooded as result of rainfall so high in rate or duration as to exceed the present capacity of the present pumping system to keep the County Facilities properly drained when said pumping system is properly managed, Closter shall not be liable for any damages whatsoever resulting from such rainfall. For purposes of this Section and Sections 6 and 7, it is agreed that "Closter" refers both to Closter itself and to its affiliates.

(6) Nothing herein shall be construed to impose upon Closter any responsibility or liability relating to the quality of water on, under, leaving, or flowing from the Airport or relating to compliance with any environmental requirements applicable to the County Facilities. County expressly agrees that it shall be responsible for and shall comply with all federal, state, regional, and local laws, regulations, water quality standards, and ordinances protecting the environment and natural resources, and County shall secure any all approvals and permits, and shall properly make all necessary notifications, as may be required by any and all governmental agencies having jurisdiction over the County Facilities.

(7) Closter agrees as follows:

A. Closter shall, at its sole cost and expense, maintain the pumping stations and/or all other associated facilities necessary to provide adequate drainage of the County Facilities in good and adequate condition at all times during the Term of this Agreement.

B. If, at any time, Closter becomes aware of the failure o the pumping facilities or associated facilities which will affect the ability of said facilities to adequately drain excess water from the County Facilities, Closter shall: (a) notify the Department of Airports that said facilities are not operating properly; and (b) promptly take, at its sole cost and expense, whatever action is necessary to bring said facilities into proper operating condition.

C. Closter shall be liable to County for any damage sustained by County resulting from Closter's failure to comply with Sections 7A and 7B above.

(8) Closter may terminate this Agreement if County defaults in the performance of any term or covenant herein or fails to comply with any environmental requirement as provided hereinabove and County fails to remedy such defect or noncompliance for a period of ninety (90) days after receipt from Closter of written notice to remedy same; provided, however, no termination shall be of any force or effect if County shall have remedied the default or non-compliance prior to the expiration of the ninety (90) day period. In the event that this Agreement is terminated prior to the end of the Initial Term or any Renewal Term hereunder, Closter shall refund to County a pro-rata share of the advance payment made by County (pursuant to Section 2 above) for the annual period during which the Agreement is terminated. Said return of advance funds shall be made by Closter not later than forty-five (45) days following termination of this Agreement.

(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 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 shall constitute binding notice given to such party:

To County:  
Palm Beach County Department of Airports  
Attn: Deputy Director, Airport 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 Real Estate Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401-4791  
Fax: 561-355-4398

To Closter:  
Closter Farms, Inc.  
Attn.: General Counsel  
One North Clematis Street, Suite 200  
West Palm Beach, Florida 33402  
Fax: 561-651-1247

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

(10) This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

(11) Time is of the essence with respect to the performance of each and every provision of this Agreement where a time is specified for performance.

(12) This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and may not be modified or amended except in writing signed by all of the parties hereto.

(13) The parties' warranties, agreements, covenants, and representations set forth in this Agreement shall not be merged and shall survive consummation of the transaction contemplated by this Agreement.

(14) 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.

(15) No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations, drafting, and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof 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.

(16) Closter warrants and represents to County that all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. Closter has submitted to County a copy of its non-discrimination policy, which is consistent with the above, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, if Closter does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to County affirming their non-discrimination policy conforms to R-2014-1421, as may be amended.

(17) Federal Non-Discrimination Covenants.

A. Closter, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

1. In the event facilities are constructed, maintained, or otherwise operated by on County property by Closter for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Closter will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the

Nondiscrimination Authorities (as hereinafter defined), as may be amended, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of County property.

3. In the construction of any improvements on, over, or under County property and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

4. Closter shall comply with, and use County property in compliance with, the requirements imposed by or pursuant to the Nondiscrimination Authorities.

B. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Permit if this Permit had never been made or issued. This Permit shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including, the exercise or expiration of appeal rights.

C. For purposes of this Article, the term "Non-Discrimination Authorities" includes, but is not limited to, the non-discrimination statutes, regulations and authorities listed in Appendix "E" of Appendix "4" of FAA Order 1400.11, Non-discrimination in Federally-Assisted Programs at the Federal Aviation Administration, as may be amended.

(18) Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Closter, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

(19) This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.

(20) No provision of this Agreement 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 Agreement, including but not limited to any citizen or employees of County and/or Closter.



IN WITNESS WHEREOF, County and Closter have executed this Agreement 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, Mayor

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
County Attorney

By: *[Signature]*  
Director of Airports

WITNESSES:

CLOSTER FARMS, INC.

*Maricela Torres*  
Signature  
Maricela Torres  
Typed or Printed Name

By: *[Signature]*  
Armando A. Fabernilla  
Title: Vice President & General Counsel

*[Signature]*  
Signature  
STEPHEN J. CARR  
Typed or Printed Name



(SEAL)

## CLOSTER FARMS, INC.

### Certificate

The undersigned, William F. Tarr, as Assistant Secretary of Closter Farms, Inc., a Florida corporation (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors on April 27, 2011, and such resolutions are currently outstanding, in full force and effect and have not been modified, amended or rescinded in any manner:

1. The Corporation is authorized and permitted to engage in the following activities subject to such limitations as are or may be prescribed by law and the Articles of Incorporation and Bylaws of the Corporation:

(a) To accept, acquire, receive and hold by bequest, devise, grant, gift, purchase, exchange, lease, transfer, or otherwise, as the objectives and purposes of the Corporation may require, any property, both real and personal and both tangible and intangible, of whatever nature and description and wherever situated;

(b) To sell, exchange, convey, mortgage, lease, transfer or otherwise dispose of any such property, both real and personal and both tangible and intangible, as the objectives and purposes of the Corporation may require;

(c) To borrow money and, from time to time, to make, accept, endorse, execute and issue bonds, debentures, promissory notes, both secured and unsecured, bills of exchange, any other debt instruments and other obligations of the Corporation for associated indebtedness or monies borrowed or in payment for property acquired or for any of the other objectives and purposes of the Corporation, and to secure the payment of any such obligations by mortgages, pledge, deed, indenture, agreement or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all or any part of the property, rights or privileges of the Corporation, wherever situated;

(d) To guaranty or provide the security for the debts, obligations, commitments or promises of any subsidiary or affiliated companies or entities;

(e) To invest or reinvest its funds in stocks, bonds, debentures, mortgages or other investments or securities and property;

(f) To maintain a margin account and to conduct business in the margin account in the same fashion in which an individual may conduct business, including, but not limited to, buying on margin, selling short, buying and selling options, maintaining a special subscription account and dealing in commodities; and


(g) In general, to engage in such other activities, which now are or which hereinafter may be conferred by law upon a corporation, necessary or incidental to the activities so conferred herein above or conducive to effectuate or attain the objectives and purposes of the Corporation, subject to any restrictions and limitations set forth in the Articles of Incorporation and Bylaws of the Corporation.

2. The following officers are authorized and directed, for and on behalf of the Corporation, to execute any documents and perform such acts as they deem necessary or appropriate to effectuate the foregoing actions:

Oscar R. Hernandez	President
Luis J. Fernández	Executive Vice President
Erik J. Blomqvist	Vice President & Treasurer
Armando A. Tabernilla	Vice President, General Counsel & Secretary”

Dated May 14, 2015.

CLOSTER FARMS, INC.,  
a Florida corporation

By:   
William F. Tarr, Assistant Secretary