

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$1.00)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	(\$1.00)	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes No _____

Does this item include the use of federal funds? Yes _____ No

Budget Account No: Fund 4000 Dept 720 Unit 4200 RSRC 6999
Program _____

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

Fixed Assets Number _____

C. Departmental Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 3/27/2020
OFMB *[initials]* 3/24
[initials] 3/26 *[initials]* 3/26

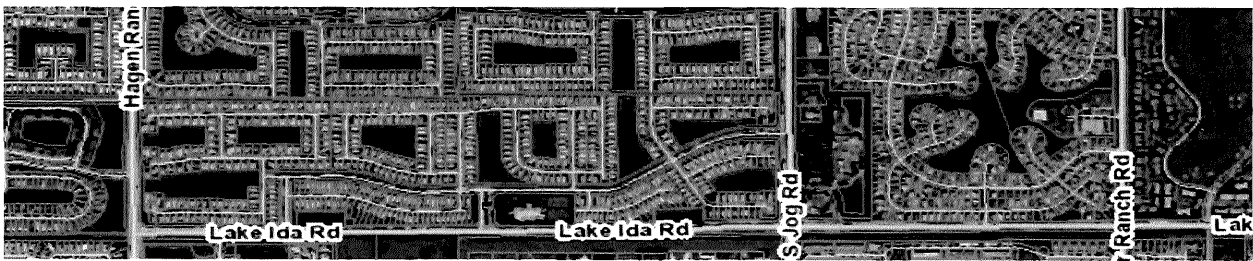
[Signature] 4/11/2020
Contract Development and Control
4-1-2020 TW

B. Legal Sufficiency: *[Signature]*
Assistant County Attorney

C. Other Department Review: *[Signature]*
Department Director

This summary is not to be used as a basis for payment.
G:\PREM\AGENDA\2020\04-07-20\Winsberg 5th Amend - rcb.docx

Background and Policy Issues Continued: April 13, 2004 (R2004-0649), the Third Amendment dated April 18, 2006 (R2006-0666), and the Fourth Amendment to Lease Agreement dated April 15, 2008 (R2008-0629). WUD is currently reviewing options for development of Phase 2 on the remaining 60+ acres at Green Cay. The property contains deed restrictions limiting the use of the property to construction of a wetland treatment and/or groundwater recharge facility, or for wildlife habitat, passive park, or open space use for the aesthetic and educational public benefit. This restriction precludes the County from leasing the Property to others for farming. The tenth and final one year extension option provided for in the Fourth Amendment was exercised on April 16, 2019, (R2019-0505) extending the term of the Lease Agreement through May 1, 2020. Approval of this Fifth Amendment will extend the term through May 1, 2021, update the Non-Discrimination, Notice and Insurance provisions and will add Public Entity Crimes, Third Party Beneficiaries, Condemnation, and Office of Inspector General Audit Requirement provisions.



LOCATION MAP



ATTACHMENT #2
RESOLUTION WITH EXHIBIT A
6 PAGES

RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING A ONE YEAR EXTENSION OF A LEASE OF CERTAIN REAL PROPERTY TO THEODORE W. AND GERTRUDE K. WINSBERG, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Theodore W. and Gertrude K. Winsberg, husband and wife (“Tenant”), have made application to the Board of County Commissioners of Palm Beach County requesting that Palm Beach County extend the lease of certain real property owned by Palm Beach County and leased to Tenant for use by Tenant for agricultural and farming purposes (R 99-842D dated May 18, 1999); and

WHEREAS, Tenant was the original owner of the Property and sold the Property to the County in 1996 under a Real Estate Purchase and Sales Contract (R96-1547D); and

WHEREAS, a portion of the consideration given by County to Tenant was that Tenant would be permitted to lease back the Property for farming purposes for the sum of \$1.00 per year until the occurrence of certain events; and

WHEREAS, the deed restrictions contained in the conveyance of the Property limits the use of the Property to a wetland treatment and/or groundwater recharge facility, or for wildlife habitat, passive park, or open space use for the aesthetic and educational public benefit, which precludes the County from leasing the Property to others for farming or other purposes; and

WHEREAS, by virtue of its presence on the Property, Tenant has provided site security, repairs, maintenance and performed other obligations which have benefited the County and which the County would have otherwise been obligated to provide at its expense; and

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that such real property will not be needed for County purposes during the term of the Lease extension, Tenant is the only person capable of reasonably utilizing the Property due to the deed restriction and the extension of the Lease 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 lease to Theodore W. and Gertrude K. Winsberg, pursuant to the Fifth Amendment to Lease attached hereto as Exhibit "A" and incorporated herein by reference, for a term of one (1) year and an annual rental of One Dollar and no/100 (\$1.00), the real property identified in such Lease for the use identified above.

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 Dave Kerner, Mayor
- Commissioner Robert S. Weinroth, Vice Mayor
- Commissioner Hal R. Valeche
- Commissioner Gregg K. Weiss
- Commissioner Mary Lou Berger
- Commissioner Melissa McKinlay
- Commissioner Mack Bernard

The Mayor thereupon declared the resolution duly passed and adopted this _____ day of _____, 2020.

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

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: 
Department Director

Exhibit "A"

FIFTH AMENDMENT TO LEASE AGREEMENT

THIS FIFTH AMENDMENT is made and entered into _____ by and between Palm Beach County, a political subdivision of the State of Florida ("County") and Theodore W. Winsberg and Gertrude K. Winsberg ("Tenant").

WITNESSETH:

WHEREAS, County and Tenant entered into a Real Estate Purchase and Sales Contract ("Agreement") dated October 1, 1996 (Resolution No. R96-1547D), as amended, wherein Tenant agreed to sell and County agreed to purchase property described in Exhibit "A" to the Contract; and

WHEREAS, County and Tenant agreed in the Agreement that a portion of the consideration to be given by County to Tenant for such sale and purchase would be that Tenant would be permitted to lease back the Premises for farming purposes for the sum of One Dollar (\$1.00) per year until the occurrence of certain events; and

WHEREAS, the deed restriction contained in the conveyance of the property limits the use of the property to a wetland treatment and/or groundwater recharge facility which precludes County from leasing the property to others for farming or any other purposes; and

WHEREAS, County and Tenant entered into a Lease Agreement dated May 18, 1999 (R99-842D), as amended by the First Amendment To Lease Agreement dated June 19, 2001 (R2001-0937), the Second Amendment To Lease Agreement dated April 13, 2004 (R2004-0649), the Third Amendment To Lease Agreement dated April 18, 2006 (R2006-0666), and the Fourth Amendment to Lease Agreement dated April 15, 2008 (R2008-0629) (the "Lease");

WHEREAS, in addition to Tenant providing covered storage for County materials, and performing other functions which have benefited County and which are beyond the obligations of Tenant, Tenant has relieved County of having to provide security for the Premises by virtue of Tenant's presence on the site; and

WHEREAS, the design and construction of the wetlands restoration project have not yet been completed; and

WHEREAS, the Term of the Lease currently expires on May 1, 2020; and

WHEREAS, the parties wish to amend the Lease to approve a one (1) year extension of the Term of the Lease and incorporate certain language required by County.

NOW, THEREFORE, in consideration of premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is 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 as ascribed to them in the Lease.

2. Article I, Section 1.02 of the Lease is hereby deleted in its entirety and replaced with the following:

The term of this Lease shall commence on the Effective Date, as hereinafter defined ("Commencement Date"), and shall expire on May 1, 2021 ("Term"), unless terminated earlier in accordance with the provisions of this Lease.

3. Article IV, Section 4.04 of the Lease is hereby deleted in its entirety and replaced with the following:

Section 4.04 Non-Discrimination.

The County is committed to assuring equal opportunity in the award of Leases and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County

Resolution R2017-1770, as may be amended, the Tenant warrants and represents that throughout the term of this Lease, including any renewals thereof, if applicable, all individuals shall be treated equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information with respect to any activity occurring at the Premises or conducted pursuant to this Lease. Failure to meet this requirement shall be considered default of this Lease.

4. Article VII of the Lease is hereby amended to add the following:

Section 7.05 Certificate(s) of Insurance.

Tenant will deliver to County a certificate of insurance with respect to each required policy to be provided by the Tenant under this Section. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Submit certificates of insurance to:

Palm Beach County
c/o Property & Real Estate Management Division
2633 Vista Parkway
West Palm Beach, FL 33411

Tenant shall, during the term of the Lease, and prior to each renewal thereof, provide such evidence to County. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate(s) of Insurance should reference in the "CERTIFICATE HOLDER" box (ACORD FORM): Palm Beach County BOCC, Property & Real Estate Management, Attention Director, 2633 Vista Parkway, West Palm Beach, FL 33411-5605.

Section 7.06 Contractors/ Subcontractors.

Concessionaire shall require any contractor or subcontractor performing work upon the Premises on behalf of Concessionaire, at all times during the performance of such work, to maintain in full force and effect insurance of the same type and amount as Concessionaire is required to maintain by this Article. Concessionaire shall require Contractor(s) and/ or Subcontractor(s) to include Concessionaire and "Palm Beach County" as Additional Insureds on any commercial general liability insurance policies.

5. Article XII, Section 12.02 (a) is hereby amended as follows:

- (a) If to the County to:

Property and Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Telephone: 561-233-0217
Fax: 561-233-0210

With copies to:

Palm Beach County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401-4791
Fax: 561-355-4398

And

Palm Beach Soil and Water Conservation District
750 South Military Trail
West Palm Beach, Florida 33416-3963

6. Article XII is hereby amended to add the following:

Section 12.16 Public Entity Crimes.

As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

Section 12.17 No Third Party Beneficiary.

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 Palm Beach County or employees of County or Tenant.

Section 12.18 Condemnation.

If the Premises, or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, County shall be entitled to the entire award therefor, including, without limitation, any award relating to both Tenant's leasehold estate and County's reversionary interest in the fee simple estate, without deduction, claim or setoff for any present or future estate of Tenant. Tenant hereby assigns and relinquishes to County all right, title and interest in such award and shall execute all documents required to evidence such result. Notwithstanding the foregoing, Tenant shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses, business damages, and value of any crops. In the event of a total taking of the Premises, the rent shall be prorated to, and this Lease shall terminate upon, the date title vests in the condemning authority. Notwithstanding such termination, Tenant shall remain liable for all matters arising under this lease prior to such termination. In the event of a partial taking, Rent shall be reduced on a prorata basis. In the event of a temporary taking, Rent shall be abated on a pro rata basis for the period of time Tenant is unable to use the portion of the Premises temporarily taken. After such period, Rent shall be restored to the Rent which would have been then due without regard to such taking. County shall have no obligation to restore the Premises improvements or otherwise perform any work upon same as a result of any such taking.

Section 12.19 Palm Beach County Office of the Inspector General Audit Requirements.

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 is authorized with the power 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. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

7. Except as set forth herein, the Lease remains unmodified and in full force and effect, and County and Tenant hereby ratify, confirm, and adopt the Lease as amended hereby.

8. This Fifth 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.

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

Signed in the presence of:

TENANT:

Witness (as to both)

Theodore W. Winsberg

Print Witness Name

Witness (as to both)

Gertrude K. Winsberg

Print Witness Name

ATTEST:

COUNTY:

**SHARON R. BOCK
CLERK & COMPTROLLER**

PALM BEACH COUNTY, a political subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

Assistant County Attorney

Audrey Wolf, Director
Facilities Development & Operations

Attachment #3
Fifth Amendment
2 Originals 4 Pages Each

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8. This Fifth 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.

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

Signed in the presence of:

Sharilyn Butz
Witness (as to both)

Sharilyn Butz
Print Witness Name

Denise Favreau
Witness (as to both)

Denise Favreau
Print Witness Name

TENANT:

Theodore W. Winsberg
Theodore W. Winsberg

Gertrude K. Winsberg
Gertrude K. Winsberg

ATTEST:

COUNTY:

**SHARON R. BOCK
CLERK & COMPTROLLER**

PALM BEACH COUNTY, a political subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

[Signature]
Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

[Signature]
Audrey Wolf, Director
Facilities Development & Operations

