

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Capital Expenditures					
Operating Costs	<u>\$4,325</u>	<u>\$8,699</u>	<u>\$8,699</u>	<u>\$8,699</u>	<u>\$8,699</u>
Operating Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u>\$4,325</u>	<u>\$8,699</u>	<u>\$8,699</u>	<u>\$8,699</u>	<u>\$8,699</u>
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No
 Does this item include the use of federal funds? Yes No

Airports Budget Account No: Fund 4100 Department 120 Unit 2240 RSource 4605
 Reporting Category _____

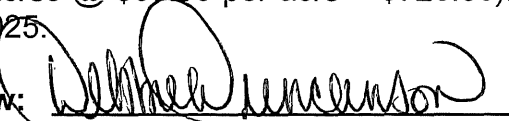
Public Safety Budget Account No: Fund 0001 Department 660 Unit 2200 RSource 3401
 Reporting Category _____

Parks & Recreation Budget Account No: Fund 0001 Department 580 Unit 5221-06
 RSource 3401 Reporting Category _____

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

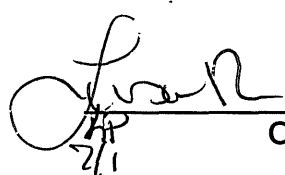
The Amendment extends the term for 5 years from April 2, 2020, to April 1, 2025. The fiscal impact of the Amendment is annual payments totaling \$8,699.25 (231.98 acres @ \$37.50 per acre). The cost will be apportioned between the Department of Airports (210.62 acres @ \$37.50 per acre = \$7,898.25), Public Safety (2.00 acres @ \$37.50 per acre = \$75.00) and Parks & Recreation (19.36 acres @ \$37.50 per acre = \$726.00). Not shown above is the \$4,374 fiscal impact for FY2025.

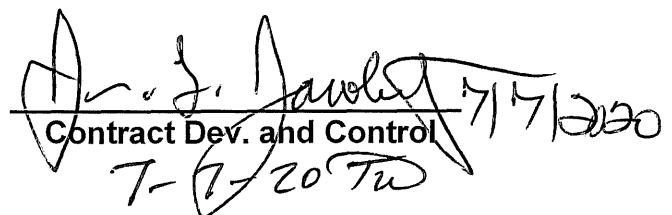
C. Departmental Fiscal Review:



III. REVIEW COMMENTS

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

 7/12/2020
 OFMB 7/12

 7/17/2020
 Contract Dev. and Control 7-17-20 TW

B. Legal Sufficiency:

 7/17/20
 Assistant County Attorney

C. Other Department Review:


 Department Director (Public Safety)


 Department Director (Parks & Recreation)

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

CLOSTER FARMS, INC.

Secretary's Certificate

The undersigned, Armando A. Tabernilla, Secretary of Closter Farms, Inc., a Florida corporation (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors on November 6, 2018, and such resolutions are currently outstanding, in full force and effect and have not been modified, amended or rescinded in any manner:

"General Authority and Banking Authority

RESOLVED, that 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;

....

(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.

Erik J. Blomqvist	President
Luis J. Fernández	Executive Vice President
Alejandro Londono	Vice President, Finance & Treasurer
Armando A. Tabernilla	Vice President, General Counsel & Secretary”

Dated June 17, 2020

CLOSTER FARMS, INC.
a Florida corporation



By: 
Armando A. Tabernilla, Vice President

**FIRST AMENDMENT TO DRAINAGE AGREEMENT BETWEEN
PALM BEACH COUNTY AND CLOSTER FARMS, INC.**

This First Amendment to Drainage Agreement ("First Amendment") is made and entered into _____, by and between Palm Beach County, a political subdivision of the State of Florida (the "County"), and Closter Farms, Inc., whose address is One North Clematis Street, Suite 200, West Palm Beach, Florida 33401 ("Closter") (hereinafter collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports, Department of Public Safety and Department of Parks & Recreation, owns and operates facilities on approximately 231.98 acres of land in Sections 25, 26, 35 and 36, Township 42 South, Range 36 East, Palm Beach County, Florida ("County Facilities"); and

WHEREAS, the Parties entered into that certain Drainage Agreement dated June 23, 2015 (R-2015-0774) ("Agreement"), under which Closter will provide drainage services for the excess water from the County Facilities in return for an annual fee paid by County to Closter; and

WHEREAS, the Parties hereto desire to amend the Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and for such other good and valuable consideration, the receipt of which the Parties hereby expressly acknowledge, the Parties hereto covenant and agree to the following terms and conditions:

1. The recitals set forth above are true and correct and incorporated herein by this reference. Terms not defined herein shall have the meaning ascribed to them in the Agreement.

2. County hereby exercises its Renewal Option, effective April 2, 2020, as provided in Section 1 of the Agreement. The Term of the Agreement shall expire on April 1, 2025, with no further renewal.

3. Section 2 of the Agreement is hereby amended to reflect that during the Renewal Term the per-acre payment shall be \$37.50 (Thirty-Seven and 50/100 Dollars) for the 231.98 acres of County Facilities.

4. The Agreement is hereby amended to attach Exhibit "A", the Nondiscrimination Provisions.

5. Sections 16 and 17 of the Agreement are hereby deleted and replaced with the following Section 16:

(16) Nondiscrimination. Closter shall comply with all applicable requirements of the Nondiscrimination Provisions set forth in Exhibit "A" attached hereto, as such requirements may pertain to Closter's provision of drainage services provided hereunder.

6. The Agreement is hereby amended to add the following Section 21:

(21) Scrutinized Companies. In so far as it relates to the provision of drainage of excess water, Closter certifies that it acknowledges the provisions in Section 287.135, Florida Statutes, and agrees to comply with the applicable provisions thereof.

7. Except as specifically amended herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the Parties hereto.

8. This First Amendment shall become effective when executed by the Parties hereto and approved by the Palm Beach County Board of County Commissioners.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, County and Closter have executed this First Amendment as of the date first written above.

ATTEST:
SHARON R. BOCK,
CLERK AND COMPTROLLER

PALM BEACH COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
FLORIDA, BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: *Anna Beck*
Director, Department of Airports

Signed, sealed and delivered in
the presence of two witnesses

CLOSTER:

CLOSTER FARMS, INC.

Maricela Torres
Signature

By: *Armando A. Tabernilla*
Signature



Maricela Torres
Print Name

Armando A. Tabernilla
Print Name

B. L. Sadler
Signature

Vice President
Title

Benjamin L. Sadler
Print Name

EXHIBIT "A"

NONDISCRIMINATION PROVISIONS

COUNTY NONDISCRIMINATION PROVISIONS

Palm Beach County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, Closter warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment 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. Failure to meet this requirement shall be considered default of the Agreement.

FEDERAL NONDISCRIMINATION REQUIREMENTS

A. Title VI Clauses for Compliance with Nondiscrimination Requirements.

During the performance of this Agreement, Closter, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** Closter will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities ("Nondiscrimination Acts and Authorities" as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** Closter, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Closter will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Closter for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Closter of Closter's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Closter will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Closter will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this Agreement, County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to Closter under this Agreement until Closter complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** Closter will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Closter will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Closter becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Closter may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Closter may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Closter, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities, as may be amended, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Closter for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) 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 said facilities, (2) that in the construction of any improvements on, over, or under such land, 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, (3) that Closter will use the Closter Premises and any License Area in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.

2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter or re-enter and repossess the Closter Premises and any License Area and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

Closter for itself and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement 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, the Closter will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (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. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

E. Airport Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. Closter agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Closter agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

F. General Civil Rights Provision.

Closter agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Closter transfers its obligation to another, the transferee is obligated in the same manner as Closter. This provision obligates Closter for the period during which the property is owned, used or possessed by Closter and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.