

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>\$-0-</u></u>	<u><u>\$-0-</u></u>	<u><u>\$-0-</u></u>	<u><u>\$-0-</u></u>	<u><u>\$-0-</u></u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

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

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

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

There is no fiscal impact.

C. Departmental Fiscal Review: Debbie Dunanson 6/2/23
 (D) 6/2

III. REVIEW COMMENTS

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

AFD 6/5/23
 OFMB 6/6/23

EGW
 6-5-2023

John J. Anselmi 6/14/23
 Contract Dev. and Control
 6/15/23

B. Legal Sufficiency:

Anne Welford 6/15/23
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 11/17

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

**LICENSE AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE UNITED STATES OF AMERICA**

THIS LICENSE AGREEMENT (this "Agreement") made and entered into this ___ day of July 11, 2023 (the "Effective Date") by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and the United States of America, acting by and through the Secretary of the Navy, Naval Facilities Engineering Command Southeast ("Licensee").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports (the "Department"), is the owner and operator of the Palm Beach International Airport (the "Airport"); and

WHEREAS, Licensee maintains a facility nearby the Airport and has requested the periodic use of certain property on the Airport for parking of non-commercial vehicles owned or operated by U.S. Navy Selected Reserve (SELRES) personnel.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby grants the Licensee a non-exclusive, revocable license to use the Property (as defined in Section 3.01) upon the following terms and conditions:

**ARTICLE 1
RECITALS**

The foregoing recitals are true and correct and incorporated herein.

**ARTICLE 2
LENGTH OF TERM AND COMMENCEMENT DATE**

The term of this Agreement shall commence on the Effective Date and expire on September 30, 2023 (the "Initial Term"), unless terminated earlier as provided for herein. Upon expiration of the Initial Term, this Agreement shall be automatically renewed on a month-to-month basis, (each a "Renewal Term"), unless terminated earlier as provided for herein; provided, however, no Renewal Term shall extend beyond September 30, 2028; and further provided, either party may elect to not renew this Agreement upon providing no less than fifteen (15) days advance written notice to the other party prior to the expiration of the then current term. The Initial Term and Renewal Term shall be collectively referred to as the "Term".

ARTICLE 3
USE OF PROPERTY BY LICENSEE; PROPERTY USE PERMIT

3.01 Property Use Permit Request. For each requested use (each, a "Parking Event"), Licensee's authorized agent shall submit a separate Property Use Permit request to County, in the form attached as Exhibit "A", or such form as may be modified by County upon written notice to Licensee (the "Property Use Permit" form). Each Property Use Permit request shall be submitted by Licensee to County at least than seven (7) days in advance of the Parking Event and shall be valid only upon written approval by County for the date(s) specified therein. Property Use Permit requests shall be submitted as provided in Section 8.04 of this Agreement, including by facsimile or electronic mail to properties@pbia.org. County, in its sole and absolute discretion, may approve or reject any proposed Property Use Permit request. Furthermore, County may suspend, modify or revoke any Property Use Permit upon written notice to Licensee. Licensee shall not use, permit or suffer the use of the Property for any other business or purpose whatsoever. No license fee shall be due for Licensee's use of the Property.

3.02 The Property. Each approved Property Use Permit shall specify the portion(s) or area of the property on the airport that Licensee shall be authorized to use for the specified Parking Event(s). Access to public rights of way by the most direct route shall also be permitted.

3.03 Use of the Property. Licensee shall use the Property solely and exclusively for parking of non-commercial vehicles, which are owned or operated by SELRES personnel. No overnight parking shall be permitted at any time; vehicles remaining overnight, shall be subject to towing without notice. Licensee shall contain its use of the County's property solely to the boundaries of the Property identified in the Property Use Permit.

3.04 Improvements. Licensee shall make no improvements, alterations or additions to the Property whatsoever, without the prior written consent of the Department, which may be granted or withheld in the Department's sole and absolute discretion.

3.05 Condition of Property. Licensee accepts the Property in its "As is", "Where is" condition as of the Effective Date of this Agreement. Licensee further acknowledges that County has not made any warranties or representations of any nature whatsoever regarding the Property including, but not limited to, any warranties or representations relating to the physical condition of the Property or any improvements located therein, or the suitability of the Property or any improvements for the Licensee's intended use.

3.06 Waste or Nuisance. Licensee shall not commit or suffer to be committed any waste upon the Property or any nuisance or other act or thing which may result in damage or depreciation of value of the Property.

3.07 Compliance with Laws. Licensee shall, at its sole cost and expense, subject to available appropriations, secure any and all required licenses and permits and shall comply with all local, state, and federal laws pertaining to Licensee or its use of the Property, including all applicable zoning, building and fire laws and regulations. Licensee acknowledges and agrees that County has made no representations whatsoever

regarding Licensee's ability to use the Property for the purposes set forth in this Agreement. Licensee shall ensure that its invitees, guests and all other persons entering the Property in connection with an event by Licensee, with Licensee's consent and knowledge, comply with all applicable laws on the Property.

3.08 Surrender of Property. Upon expiration or earlier termination of any Property Use Permit, Licensee, at its sole cost and expense, shall surrender the Property to the County in at least the same condition as the Property was in as of the effective date of any Property Use Permit.

3.09 County's Right to Enter. County shall have the right to enter the Property at any time, without notice, for any purpose whatsoever. County agrees to exercise reasonable efforts to minimize interference with or disruption of Licensee's operations on the Property; provided, however, County shall not be required to expend additional sums of money in order to comply with the foregoing requirement. In the event that a County work activity must take place within the Property during Licensee's operating hours, which will disrupt or interfere with the Licensee's operations, County will endeavor to provide prior notice to Licensee. The notice requirements provided under Section 8.04 shall not apply to this Section.

3.10 Anti-Deficiency Act; Navy's Obligations. Notwithstanding any provision to the contrary, all of Navy's activities under or pursuant to this License are subject to the availability of appropriated funds, and no provisions shall be interpreted to require obligation or provision of funds in violation of the Anti-Deficiency Act, 31 U.S.C. section 1341. Additionally, nothing contained in this License shall be considered to imply that the Congress of the United States of America will, at any later date, appropriate sufficient funds to meet the Navy's obligations under this License or any deficiencies hereunder.

3.11 Nondiscrimination. Licensee shall comply with the nondiscrimination provisions contained in Exhibit "B" attached hereto.

ARTICLE 4 REPAIRS AND MAINTENANCE OF PROPERTY/SECURITY

4.01 Repairs & Maintenance. County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Property. All portions of the Property and all improvements erected on the Property shall be kept in good repair and condition by Licensee. Licensee shall maintain the Property free of trash and debris. Upon expiration or earlier termination of this Agreement, Licensee shall deliver the Property to County in good repair and condition as specified herein, normal wear and tear excepted, and free of all improvements constructed by Licensee, if any.

4.02 Security. Licensee acknowledges and accepts full responsibility for the security and protection of the Property and any and all personal property and improvements now existing or hereafter placed on or installed in or upon the Property, and for the prevention of unauthorized access to the Property during Parking Events. Licensee fully

understands that the police security protection provided by County is limited to that provided to any other business situated in Palm Beach County by the Palm Beach County Sheriff's Office and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Property during Parking Events, shall be the sole responsibility of Licensee and shall involve no additional cost to County.

ARTICLE 5 INDEMNIFICATION

Pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. sections 1346(b), 2671-2680, or the Military Claims Act ("MCA"), 10 U.S.C. section 2733, as applicable, the Navy is liable to Palm Beach County and any third party for any injury to persons or damage to property proximately caused by the acts or omissions of Navy employees acting within the scope of their employment. Palm Beach County or injured third parties may use the FTCA or MCA to recover losses caused as a result of this Agreement that are not repaired or compensated for adequately by the Navy using any other means. In no case will the Navy's liability exceed that allowable under applicable law, including the FTCA and MCA or available appropriations.

ARTICLE 6 ASSIGNMENT

Licensee may not assign, sublet or rent any portion of the Property.

ARTICLE 7 REVOCATION OF LICENSE/DEFAULT

7.01 Revocation of License. Notwithstanding any provision of this Agreement to the contrary, the rights granted to Licensee hereunder amount only to a non-exclusive license to use the Property, which license is expressly revocable by County for any reason whatsoever upon notice to Licensee. Upon notice from County of the revocation of the license granted hereby, this Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination.

7.02 Termination for Convenience by Licensee. Licensee may terminate this Agreement for convenience upon five (5) days prior written notice to County, whereupon the parties shall be relieved of all further obligations hereunder with the exception of those obligations accruing prior to the date of such termination and those obligations which expressly survive termination of this Agreement.

7.03 Default. Failure to perform or observe any of the agreements, covenants, or conditions contained in this Agreement to be performed or observed by such party upon five (5) days prior written notice shall constitute a default of this Agreement.

**ARTICLE 8
MISCELLANEOUS**

8.01 Subordination to Bond Resolution. This Agreement and all rights granted to Licensee hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented (the "Bond Resolution"), and County and Licensee agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Licensee and County with the terms and provisions of this Agreement and Bond Resolution.

8.02 Subordination to State/Federal Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which the County acquired the land or improvements thereon, of which the Property is a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Licensee understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between County and the United States of America, the State of Florida or any of their respective agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

8.03 Entire Agreement. This Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee concerning the Property. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Licensee unless reduced to writing and signed by them.

8.04 Notices. 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 overnight mail, electronic mail, telecopied or faxed (provided in each case a receipt is obtained), 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 overnight mail, or on the date of transmission with confirmed answer back if by telecopier, fax or electronic mail if transmitted before 5PM on a business day and on the next 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 as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to County at:
Palm Beach County Department of Airports
Attn: Director of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470
Fax: (561) 471-7427 E-Mail: properties@pbia.org
- (b) If to Licensee at:
Department of Navy
NAVFAC Southeast
Attn: Real Estate Contracting Officer
Box 30, Bldg. 903, RE32
Jacksonville, FL 32212-0030
RE Contract Number: N69450-23-RP-00081
Fax: (904) 542-6104 E-Mail: ferdinand.l.salomon.civ@us.navy.mil

Either party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other party.

8.05 Recording. Licensee shall not record this Agreement or any memorandum or short form thereof.

8.06 Governing Law and Venue. This Agreement shall be governed by and interpreted according to the laws of the State of Florida as applied in Federal District Court and venue shall be in the United States District Court for the Southern District of Florida.

8.07 Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

8.08 Captions. The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

8.09 Severability. In the event that any section, paragraph, sentence, clause, or provision of this Agreement 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.

8.10 Waiver. 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.

8.11 Consent or Action. In the event this Agreement is silent as to the standard for any consent, approval, determination or similar discretionary action, the standard shall be at

the sole, absolute and unfettered discretion of the County or Department, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Agreement requires the County or Department's consent or approval or permits the County or Department to act, such consent, approval or action may be given or performed by the Airport Director or his designee. If Licensee requests the County or Department's consent or approval pursuant to any provision of the Agreement and County or Department fails or refuses to give such consent, Licensee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.

8.12 Inspector General. County recognizes Navy has a Naval Inspector General whose mission is to inspect, investigate, or inquire into any and all matters of importance to the Department of the Navy and maintain the highest level of public confidence. The Commander, Navy Region Southeast Inspector General can be reached at toll-free 1-877-657-9851 or commercial 904-542-4979. The Navy is committed to working with the Palm Beach Inspector General, to the extent provided by law, in order to ensure compliance with contract requirements and detect corruption and fraud.

8.13 Effective Date. This Agreement shall become effective when executed by the parties hereto and approved by the Palm Beach Board of County Commissioners (the "Effective Date").

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, County and Licensee have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

ATTEST: JOSEPH ABRUZZO,
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida by
its Board of County Commissioners

By: _____
Clerk and Comptroller

By: _____
Gregg K. Weiss, Mayor

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: Arme Idelfant
County Attorney

By: Sandra Barber *PSW*
Director, Department of Airports

LICENSEE: The United States of
America, acting by and through the
Department of the Navy, Naval
Facilities Engineering Systems
Command Southeast

WITNESSES:

BAILEY.MICHAEL.P. Digitally signed by
AUL.1066619040 BAILEY.MICHAEL.PAUL.1066619040
Date: 2023.05.25 10:47:13 -04'00'

Signature

Michael P. Bailey

Typed or Printed Name

ADAMS.HEATH.11536 Digitally signed by
14977 ADAMS.HEATH.1153614977
Date: 2023.05.25 10:52:36 -04'00'

Signature

Heath Adams

Typed or Printed Name

SALOMON.FERDINAND Digitally signed by
.LEWIS.III.1048781841 SALOMON.FERDINAND.LEWIS.III.
1048781841
Date: 2023.05.25 10:39:36 -04'00'

By: _____

Ferdinand L. Salomon
Real Estate Contracting Officer
NAVFAC SE

Exhibit "A"
Property Use Permit

Palm Beach

INTERNATIONAL AIRPORT

PROPERTY USE PERMIT

**NAME AND TITLE OF LICENSEE'S
AUTHORIZED REPRESENTATIVE:** _____

TELEPHONE/E-MAIL: _____

Pursuant to Section 3.1 of that certain License Agreement dated _____, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and the United States of America, acting by and through the Secretary of the Navy, Naval Facilities Engineering Command Southeast ("Licensee"), Licensee hereby requests use of Property for the following Parking Event(s):

Commencement Date/Time	Termination Date/Time

By signing below, I hereby certify that I have the authority to represent and Licensee in making this request, and to assure that Licensee shall comply with all terms and conditions of the Property Use Permit.

Signature of Authorized Representative of Licensee

Title

Date

This Property Use Permit is APPROVED by County, for use of the Property identified in Attachment "A" attached hereto and made a part hereof.

BY: _____

Director, Department of Airports

Date

NOTIFICATIONS PROVIDED TO: _____

Date

___ Airport Maintenance

___ Airport Operations

___ Palm Beach County Sheriff

DOA Properties Representative

**If multiple dates are required, a separate form shall be submitted for each date.*

***Once County receives and processes this form, further instructions, including parking location will be sent to the email address listed to complete the request.*