

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AMENDED AND RESTATED LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND BROWARD COUNTY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Amended and Restated Lease Agreement between the City of Pompano Beach and Broward County, a copy of which Agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement.


SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of

this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.


SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 14th day of May, 2013.

PASSED SECOND READING this 28th day of May, 2013.



LAMAR FISHER, MAYOR

ATTEST:


MARY L. CHAMBERS, CITY CLERK

/jrm
4/9/13
L:ord/2013-236

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT, made this 31st
day of May, 2013, by and between:

CITY OF POMPANO BEACH, a municipal corporation of the
State of Florida, hereinafter referred to as "CITY,"

and

BROWARD COUNTY, a political subdivision of the State of
Florida, by its Board of County Commissioners, hereinafter
referred to as "LESSEE."

WITNESSETH:

WHEREAS, the parties entered into a Lease Agreement, dated June 8, 1982, which was amended by the First Amendment to the Lease Agreement, dated June 15, 2012, and by the Second Amendment, dated November 1, 2012, (collectively referred to as "Initial Lease") for the lease of 3.838 acres of city-owned property located at 2011 NW 3rd Avenue, Pompano Beach, Florida, more particularly described in Exhibit "A," which is attached hereto and made a part hereof ("Demised Premises"); and

WHEREAS, the Initial Lease terminates on June 7, 2013; and

WHEREAS, the parties desire to enter into this Amended and Restated Lease Agreement ("Lease") superseding the Initial Lease to provide for an extension of the term and amend other provisions of the Initial Lease as agreed to below; now therefore,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the parties agree as follows:

1. DEMISED PREMISES:

For and in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration paid by LESSEE to CITY, the receipt and sufficiency of which are hereby acknowledged by CITY, and for and in consideration of the mutual covenants herein contained, CITY hereby leases and demises to LESSEE, subject to the covenants and agreements hereinafter set forth, the "Demised Premises" commonly known as 2011 NW

3rd Avenue, located in the City of Pompano Beach in the County of Broward, State of Florida, said property being more particularly described in Exhibit "A" attached hereto and made a part hereof, hereinafter "Demised Premises," together with all easements, rights, privileges and appurtenances thereunto belonging or any wise appertaining to or in any manner connected therewith.

2. TERM:

- A. The term of this Lease shall commence on June 8, 2013, hereinafter referred to as "Commencement Date" and end ten (10) years thereafter, hereinafter referred to as "the Term" unless sooner terminated as provided for hereinafter.
- B. This Lease may be terminated for convenience by the CITY, acting through its City Manager, or the LESSEE, acting through its Director of Real Property Section, at any time with not less than one hundred and eighty (180) days written notice in accordance with this agreement.

3. RENT:

The LESSEE agrees to pay to CITY, as annual rent, the total sum of Ten (\$10.00) Dollars plus tax, if any, payable in yearly installments of Ten (\$10.00) Dollars each, on the Commencement Date of this Lease Agreement and on each subsequent yearly anniversary of the Commencement Date, so long as this Lease Agreement is in full force and effect, and shall be payable at the following location:

Finance Director
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

4. USE OF PREMISES:

LESSEE shall use and occupy the Demised Premises for the purpose of operating a government multipurpose and social and health services delivery center or for other public purposes not inconsistent with the multipurpose and social and health services delivery operations of LESSEE. LESSEE covenants that it will not, without written consent of the CITY, permit the premises to be used or occupied for any other purpose than that approved by CITY in writing, or by any person, firm, entity or corporation other than LESSEE and its agents unless specifically provided for herein. LESSEE shall not permit the leased property to be used or occupied in any manner which will violate any laws or regulations of any governmental authority.

5. ALTERATIONS AND USE OF PROPERTY:

- A. CITY hereby leases the Demised Premises to LESSEE as is. CITY expressly disclaims any warranties or representations of any kind relating

to the fitness, quality, adequacy or suitability of the Demised Premises as an appropriate site for construction of any facility by LESSEE. It shall be the obligation and expense of LESSEE to conduct and perform any inspections, tests, surveys or other acts which are necessary to determine the fitness or use, if any, of said property. CITY further expressly disclaims any warranties or representations of any kind relating to zoning or platting regulations and requirements imposed by it or any local governmental authority, the availability or adequacy of utility service, or any other matter which may affect or is necessary for the proposed use of the Demised Premises. It shall be the responsibility and expense of LESSEE to comply with and obtain, where necessary, the appropriate approvals, permits and any other matter which may be required to commence or complete construction on the Demised Premises, including the payment of any fees which may be required or necessary to obtain approval for the construction of the Demised Premises. The election by LESSEE to attempt any construction on Demised Premises is at the sole risk and expense of LESSEE. To the extent that CITY approval or consent is required as a condition precedent to obtaining permission, permits or approval of matters necessary to construct improvements on the premises, CITY shall grant such approval where, in the opinion of CITY, such approval or consent is appropriate and consistent with any applicable law.

- B. LESSEE shall not undertake any construction, improvements or alterations at a cost in excess of \$25,000.00 or which materially alter or affect the Demised Premises without CITY's written consent, which consent may not be unreasonably withheld. Any improvements and alterations made shall remain on and be surrendered with Demised Premises upon the expiration or termination of this Lease.
- C. If required by law for any construction, LESSEE shall obtain a payment and performance bond from any contractor performing service and supplying materials as required by Section 255.05, Florida Statutes. Said performance bond will comply with Section 713.23, Florida Statutes. LESSEE shall supply CITY with a copy of the payment and performance bond prior to commencement of construction.
- D. LESSEE shall be required to complete any improvement approved by CITY within a reasonable time after commencement of construction.

6. MECHANICS' LIENS:

LESSEE shall pay all costs for construction done by it or caused to be done by it on the Demised Premises as permitted by this Lease Agreement. LESSEE shall keep the building, other improvements and land on which the Demised Premises are a part free and clear of all mechanics' liens resulting from construction done by or for the LESSEE.

If any lien is filed against the building, other improvements, or land of which the Demised Premises are a part, LESSEE shall immediately cause same to be discharged of record prior to execution by payment, by deposit or by the filing of a bond in accordance with Florida law.

7. ASSIGNMENT OR SUBLETTING:

Neither LESSEE nor successors in interest by operation of law or otherwise may transfer this Lease without CITY's consent, which may be arbitrarily withheld. For purposes of this provision, a "transfer" shall mean any of the following: (a) an assignment of this Lease; (b) a sublease, license agreement or other agreement permitting all or any portion of the Demised Premises to be used by others. Consent by CITY to a transfer shall not relieve LESSEE from the obligation to obtain CITY's consent to any further transfer.

8. UTILITIES:

LESSEE shall make all arrangements for and pay timely all costs of all utilities and services furnished to the Demised Premises or used by LESSEE in connection with the Demised Premises including, without limitation, gas, electricity, water, telephone service, trash collection and for all connection charges pertaining thereto. CITY does not guarantee that the service of such utilities will be adequate or continuous.

9. INSURANCE:

The parties hereto acknowledge that LESSEE is a self-insured governmental entity subject to the limitations of Section 768.28, Florida Statutes. LESSEE agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law.

LESSEE shall furnish CITY with written verification of its liability protection in accordance with state law prior to the Commencement Date of this Agreement. LESSEE is fully self-insured and self-administered for General Liability coverage pursuant Section 627.7264, Florida Statutes. LESSEE shall institute and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Lease Agreement in accordance with the provisions of Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of LESSEE's sovereign immunity.

LESSEE further agrees to provide fire and extended coverage for the DEMISED PREMISES on a replacement cost basis during the term of this agreement.

Should LESSEE, at any time during the term of this agreement, transfer this lease, as provided for in Paragraph 7, permitting all or any portion of the Demised Premises to be used by others, then LESSEE shall require that the CITY be named as an additional insured on any policy required by LESSEE of any transferee of an interest in the Property.

10. EVENTS OF DEFAULT OR TERMINATION:

If any one or more of the following events shall occur:

- A. If the LESSEE shall default in the due and punctual payment of any sum which is required to be paid by LESSEE in accordance with the provisions of this Lease Agreement and such default shall continue for more than thirty (30) days after written notice thereof from CITY; or
- B. If the LESSEE shall default in the due performance or observance of any covenant or condition contained in this Lease Agreement and such default shall continue for more than thirty (30) days after written notice thereof from CITY; or
- C. If CITY shall default in the due performance or observance of any covenant or condition contained in this Lease Agreement and such default shall continue for more than thirty (30) days after written notice thereof from LESSEE; or
- D. If LESSEE abandons or vacates the Demised Premises for a period in excess of thirty (30) days, without prior written consent of CITY, which consent shall not be unreasonably withheld or delayed; or
- E. If the Demised Premises are totally or partially destroyed rendering the Demised Premises substantially inaccessible or unusable, and
 - 1. existing laws do not permit the restoration of the Demised Premises; or
 - 2. the Demised Premises were totally or partially destroyed by a risk not covered by insurance and the LESSEE is either unwilling or unable to pay the cost of restoration; or
 - 3. the estimated cost of the restoration exceeds the amount of proceeds received from the insurance maintained by LESSEE and the LESSEE is either unwilling or unable to pay the additional costs or restoration; or
- F. If a substantial portion of the Demised Premises shall be condemned and taken by the right of eminent domain and, that as a consequence thereof, said Demised Premises is rendered unusable or inaccessible, LESSEE has no liability under this Lease as provided in Section 10 herein. LESSEE shall also receive partial compensation for such condemnation, to the extent that any portion of compensation received results from any use, occupancy or improvement made or done by LESSEE.

Then and in any such event CITY or LESSEE, whichever is appropriate, at any time thereafter may give a written notice to the other party specifying a date, which shall be at least thirty (30) days after the giving of such notice, on which this Lease shall terminate, and on such date, subject to paragraph 12 hereof relating to the survival of the LESSEE's obligations, the term of this Lease shall expire and terminate and all rights of LESSEE under this Lease shall cease, unless before the giving of such written notice (i) all sums payable by the defaulting party under this Lease incurred by or on behalf of the non-breaching party, as a result of any default, shall have been paid by the breaching party, and (ii) all other defaults at the time existing under this Lease shall have been cured.

11. WAIVER:

Failure of CITY to insist upon strict performance of any covenant or condition of this Lease Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Lease Agreement shall be waived or modified except by the parties hereto in writing.

12. INDEMNIFICATION:

CITY is a state agency as defined by Section 768.28, Florida Statutes, and self-insured. CITY agrees to be fully responsible for acts and omissions of its agents and employees to the extent permitted by law. Upon request, CITY shall furnish LESSEE with written verification of liability protection in accordance with state law.

Likewise, LESSEE is a state agency as defined by Section 768.28, Florida Statutes, and self-insured. LESSEE agrees to be fully responsible for acts and omissions of its agents and employees to the extent permitted by law. Upon request, LESSEE shall furnish CITY with written verification of liability protection in accordance with state law.

Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Lease.

13. NOTICES:

Any notice or demand, which under the terms of this Lease Agreement or by any statute or ordinance, given or made by a party hereto shall be in writing and shall be given by certified or registered mail sent to the other party at the address set forth below, or to such other address as such party may from time to time designate by notice.

Notice to LESSEE shall be addressed to:

County Administrator
Broward County Governmental Center, Room 409
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

With a copy to:

Real Property Section
Broward County Governmental Center, Room 326
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

Notice to CITY shall be addressed to:

City Manager
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

14. PUBLIC ENTITY CRIMES ACT:

CITY and LESSEE represent that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY or LESSEE and may not submit bids on leases of real property to CITY or LESSEE for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this lease agreement and recovery of all monies paid hereto.

In addition to the foregoing, CITY and LESSEE further represent that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CITY or LESSEE has been placed on the convicted vendor list.

15. THIRD PARTY BENEFICIARIES:

Neither CITY nor LESSEE intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them

based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

16. CONFLICTS:

Neither CITY or LESSEE nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CITY's and LESSEE's loyal and conscientious exercise of judgment related to its performance under this Lease Agreement.

In the event CITY or LESSEE is permitted to utilize subcontractors to perform any services required by this Agreement, CITY and LESSEE agree to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

17. CHANGE IN OWNERSHIP:

Should CITY sell the Demised Premises herein, it shall immediately, together with the new owners, notify LESSEE by certified U.S. mail, to whom and where future rentals shall be paid. Should either CITY or the new owners fail to notify LESSEE, LESSEE shall withhold payment of rentals until such notice is received from both CITY and new owner. The withholding of such rental shall not be construed as a default under this Agreement.

18. SURRENDER UPON TERMINATION:

LESSEE agrees that upon expiration of the term, or upon the termination of the Agreement for any cause, it will peaceably surrender and deliver the Demised Premises to CITY, its agents or assigns.

19. MAINTENANCE:

LESSEE agrees to maintain the property in a neat and clean manner and not to commit waste. The Demised Premises shall be maintained by LESSEE in good condition and LESSEE agrees to keep the landscaping neatly trimmed. On the failure of LESSEE to maintain the landscaping areas, CITY may do so, charging LESSEE the cost of such maintenance, which cost shall be billed directly to LESSEE.

20. INSPECTION:

CITY reserves the right to inspect leased property at all reasonable hours in order to insure compliance with this Lease Agreement.

21. COMPLIANCE WITH LAWS:

CITY and LESSEE shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Lease Agreement.

22. SEVERANCE:

In the event this Lease Agreement or a portion of this Lease Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless LESSEE or CITY elects to terminate this Lease Agreement. Any election to terminate this Lease Agreement based upon this section shall be made within seven (7) days after the finding by the court becomes final.

23. JOINT PREPARATION:

Preparation of this Agreement has been a joint effort of LESSEE and CITY and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

24. PRIORITY OF PROVISIONS:

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Lease Agreement by reference and a term, statement, requirement, or provision of this Lease Agreement, the term, statement, requirement, or provision contained in this Lease Agreement shall prevail and be given effect.

25. RECORDING:

This Agreement shall be recorded in the public records of Broward County, Florida.

26. ADDITIONAL PROVISIONS:

Any additional provisions entered into any the time of execution of this Lease Agreement shall require approval of the parties by initialing at the bottom of any additional page(s), which must be affixed to the Agreement.

27. ENVIRONMENTAL CONTAMINATION:

CITY represents and warrants to LESSEE that as of the date of execution of this Lease Agreement, neither CITY, nor to the best of CITY's knowledge, any third party has used, produced, manufactured, stored, disposed of or discharged any hazardous wastes or toxic substances in, under or about the Premises during the time in which CITY owned the Demised Premises.

28. RADON GAS:

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Broward County Public Health Unit.

29. GENERAL PROVISIONS:

- A. The various rights and remedies herein contained and reserved to each of the parties shall not be considered as exclusive of any other right or remedy of any such party, but shall be construed as cumulative and shall be in addition to every other remedy now, or hereafter existing at law, and in equity, or by statute, and said rights and remedies shall be exercised and enforced concurrently and whenever and as often as occasion therefore arises.
- B. The headings and captions contained in this Lease Agreement are inserted for convenience of reference only and are not to be deemed part of or to be used in construing this Lease Agreement.
- C. This Lease Agreement, including the exhibits referred to herein, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Lease Agreement may be modified only by a written agreement signed by the parties hereto.
- D. Covenants, agreements and obligations herein contained shall extend to, bind and insure to the benefit not only of the parties hereto but their respective successors and permitted assigns.
- E. Every term of this Agreement shall be deemed and construed to be of the essence thereof, and any breach shall be deemed and construed to be the very substance of this Agreement.
- F. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.
- G. This Lease Agreement shall be executed in triplicate original copies, each copy of which, bearing original signatures, is to have the force and effect of an original document.

30. HOLD OVER BY LESSEE:

LESSEE may hold over and remain in possession of the Demised Premises after the expiration of this lease only with the approval of the CITY and shall, in no event, be deemed or construed to be a renewal or extension of this lease but shall only operate to create a month-to-month tenancy upon the same terms and conditions as are set forth in this Lease, which may be terminated by either party at the end of any month upon thirty (30) days' prior written notice by certified U.S. mail to the other. Double rent shall not be charged under this section.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed in their behalf by their respective undersigned, duly authorized officers or partners the day and year first above written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

Betty J. Manes

By:

LAMAR FISHER, MAYOR

Christine Wodka

By:

DENNIS W. BEACH, CITY MANAGER

Attest:

Mary L. Chambers

MARY L. CHAMBERS, CITY CLERK

(SEAL)

Approved by:

Gordon B. Linn

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 31st day of May, 2013, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

Krystal Aaron
NOTARY PUBLIC, STATE OF FLORIDA



KRYSTAL AARON
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE874865
Expires 2/14/2017


Krystal Aaron
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LESSEE":

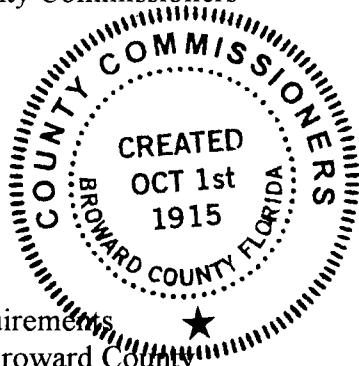
ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

for 
Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

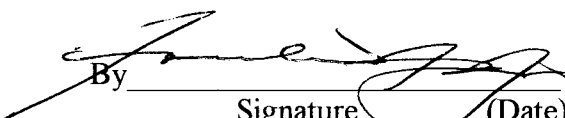
By 
Mayor

23rd day of April, 20 13



Insurance requirements
approved by Broward County
Risk Management Division


Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By  3/14/13
Signature (Date)

Risk Management Division

Print Name and Title above

Jacqueline A. Brims
Risk Insurance and
Contracts Manager

By  3/20/13
Noel M. Pfeffer (Date)
Deputy County Attorney

GBL/jrm
3/29/12
l:agr/manager/2012-722

Exhibit "A"
(Legal Description)

NORTH COUNTY MULTIPURPOSE CENTER 118/31 B PARCEL A

Said land situate, lying and being in the City of Pompano Beach, Broward County, Florida; containing 3.838 acres.

Folio ID: 4842-26-36-0010