

1 SOUTH FLORIDA WATER MANAGEMENT DISTRICT

2
3 RESOLUTION NO. 2012- 1011

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5 A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER
6 MANAGEMENT DISTRICT AMENDING SUBSECTIONS (1), (2), (3), AND (6) OF SECTION
7 140-10, DISTRICT POLICIES CODE, REGARDING ADMINISTRATION OF LEASES TO
8 MAKE CERTAIN REVISIONS TO CLARIFY THE INTENT OF THE POLICY; PROVIDING
9 FOR INCLUSION IN THE DISTRICT POLICIES CODE, PROVIDING FOR SEVERABILITY;
10 PROVIDING AN EFFECTIVE DATE.

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12 Sec. 140-10 - Administration of Leases on District Land

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14 The District leases certain District lands for a variety of uses including agriculture,
15 communication towers, and other uses that are not inconsistent with District purposes.

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17 (1) *For all leases:*

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19 a. The District shall conduct a competitive bid process for new leases and upon
20 expiration of a lease term, including any extensions allowed under this policy,
21 unless the Governing Board approves a waiver of competition. The minimum
22 bid shall be the appraised market rent as approved by a District appraiser.
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24 b. In accordance with Section 373.093, Florida Statutes, the District shall publish
25 notice of intention to lease in a newspaper in the County where the land is
26 located and such other places as the Board may determine.
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28 c. For the initial year of the Lease Term, rent shall be established by the
29 successful high bid. For the second (2nd) through fifth (5th) year of the Lease
30 Term, rent will be subject to annual adjustments based on either Consumer
31 Price Index (CPI) or appropriate Agricultural Commodity Index (ACI). Lessees
32 shall elect which adjustment to use at beginning of the lease and remain with
33 that adjustment throughout lease term. The sixth year of the Lease Term is
34 subject to a new appraisal which will establish market rent for that year with the
35 remaining years of the Lease Term subject to either ACI or CPI adjustment.
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37 d. Current District leases that are expiring with less than a cumulative total lease
38 term of ten (10) years may be renewed for additional terms up to five (5) years,
39 provided that the overall Lease Term does not exceed a maximum of ten (10)
40 years.

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42 (2) *Agricultural leases:*

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44 a. The District shall provide a lease term not to exceed ten (10) years.

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b. Lessee may terminate the lease after 5 years by providing notice at least six (6) months prior to the end of the fifth (5th) year. The District may terminate the lease for convenience at any time with six (6) months prior notice.

c. Upon expiration of the lease term, including any extensions allowed under this policy, the District will conduct a competitive bid process with the minimum bid established by a District appraiser. The District shall provide to the existing tenant a right of first refusal if the existing tenant: 1) has been in substantial compliance with the existing lease, and 2) submits a responsive and responsible bid. In order to exercise the right of first refusal, the existing tenant must agree to pay rent at 10% over the highest bid from another responsive and responsible bidder. In the event the existing tenant is the only responsive and responsible bidder, the existing tenant shall be awarded the lease at the submitted bid amount.

d. At the time the lease has been in place for five (5) years:

1. The District shall complete an appraisal and adjust the rent for year six (6) to fair market value. For each subsequent year of the lease (years 7-10), rent shall be adjusted annually based on the Consumer Price Index (CPI) or appropriate Agricultural Commodity Index (ACI).
2. The District may modify any of the lease terms and conditions as the District in its discretion determines are necessary. Such modifications may include but are not limited to changes in Best Management Practices.

(3) *For all leases other than agricultural leases the District shall provide a lease term not to exceed 10 years.*

(4) *Reservations and Assigned Leases in Connection with District Land Acquisition*

In all agreements for purchase and sale of land, the District shall require that:

a. Any reservation of use for the seller shall have a maximum ten (10) year term.

b. Upon expiration of the seller's reservation, the former seller may participate in the competitive lease process and will have the right of first refusal provided in Section 2(c) of this policy.

c. All third party leases to be assumed by the District shall expire within one year of the date of closing. However, any lease entered into by seller less than six (6) months prior to execution of the purchase and sale agreement shall terminate at closing.

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- d. Upon expiration of the third party lease assumed by the District, the former lessee may participate in the competitive lease process but will not have the right of first refusal provided in Section 2(c) of this policy.

(5) Protect District from Liability on Leased Land for Taxes and Assessments.

- a. Leases entered into after the effective date of this policy shall require the lessee to deposit funds in the amount of one year's estimated property and sales tax liability with the District upon the lessee's execution of the lease. The deposited funds shall be held in escrow by the District.
- b. In lieu of depositing funds with the District in the amount of one year's estimated property tax, a Lessee shall have the option of delivering to the District an irrevocable letter of credit or payment bond, acceptable to the District, in the amount of one year's tax liability for the leased property.
- c. The Lessee shall be responsible for the payment of any ad valorem and non-ad valorem property taxes, special assessments and sales taxes levied against the property which is the subject of the lease.

(6) Use of Cost-Share Participation Programs to Implement Best Management Practices on District Lands.

- a. Prior to Lessee's application for participation in a cost-share program, advance approval from the District Governing Board is required.
- b. Prior to the implementation of any land management practices, installations, or construction associated with the Cost Share Program Best Management Practices (BMPs) on District lands, advance written authorization from the District is required.
- c. Prior to Lessee's application for participation in a cost-share program, Lessee must be in full compliance with all applicable state/federal rules and regulations.
- d. Lessee shall be solely responsible for any and all cost-share obligations.
- e. The District shall have no responsibility for any of the lessee's unpaid cost share.
- f. South Florida Water Management District shall have no obligations under any Lessee's Cost-Share Contract.

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g. Federal cost-share participation does not preclude compliance with the District's agricultural lease requirements, including, but not limited to, the six month District discretionary termination provision.

(7) *Exceptions.* Any exceptions to this policy must be approved by the Governing Board.

PASSED and ADOPTED this 11 day of Oct., 2012.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT, BY ITS
GOVERNING BOARD

ATTEST:

By: *Sachi McGarty*
District Clerk/Secretary

By: *Joe Calhoun*
Chairman

Approved as to form:

By: *Derek C Brown*
Office of Counsel
DEREK C BROWN
Print Name

