

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 23, 2007

Consent  Regular  
 Ordinance  Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: an agreement with the Wildlife Foundation of Florida, Inc., (WFF) for the right to name the Public Shooting Park (Park) and selected features within the Park in exchange for meeting minimum fund raising amounts set by the County.

**Summary:** THIS ITEM IS A COMPANION ITEM TO THE 9:30 AM WORKSHOP. Due to the projected cost of designing, constructing and operating a public shooting park, the County will require outside funding to meet the desired timeline for development of the park. WFF has agreed to raise the minimum net amount of \$5,000,000 by December 31, 2010, to assist in the construction of Phase 1 of the park through the sale of naming rights at the park and through a variety of community based fund raising programs. In exchange for the \$5,000,000, the WFF shall be afforded the opportunity to name the park and selected features within the park; however, the opportunity to name the entire park shall require a minimum net amount of \$1,500,000. The WFF shall submit a comprehensive fund raising plan including interim milestones within ninety days. In addition, WFF has agreed that names which promote anything offensive to the general public or perceived by the County to be offensive to the public will not be permitted and that names which promote tobacco, liquor, exotic dancing, religious or political groups are specifically prohibited. Should WFF fail to raise the full amount by the deadline, the County may terminate this agreement and the right to name the park and selected features reverts to the County. WFF shall not be afforded any other advertisement or promotion opportunities at the park and shall not receive any operational control of the park or special privileges at the park. As fundraising and the administration of donated funds involves operating and administrative expenses (primary costs being for legal and accounting services), WFF shall be entitled to retain seven (7) percent of each donation for the park and ten (10) percent of each donation made for the park using a credit card. These amounts are identical to the amounts retained by WFF in its agreement with the Florida Fish and Wildlife Conservation Commission for similar services. WFF shall submit all names to the County Administrator for approval prior to executing an agreement with the donor for the name. This Agreement may be terminated by the County, without cause, upon thirty days prior written notice to the other party prior to the acceptance of the fundraising amount. (FDO Admin) District 6 (JM)

**Background & Policy Issues:** Wildlife Foundation, an experienced fundraiser for the Florida Fish and Wildlife Conservation Commission, has agreed to undertake a fundraising campaign in order to assist the County in delivering the park to the public at the earliest date possible. Without a successful fundraising campaign, construction of the park will be delayed.

**Attachments:** Agreement with the Wildlife Foundation of Florida, Inc.

Recommended by: \_\_\_\_\_

*Amy Wolf*  
Department Director

10/16/07  
Date

Approved by: \_\_\_\_\_

*[Signature]*  
County Administrator

*[Signature]*  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	-0-	-0-	-0-	12,100,000	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
Other				(1,600,000)	
Fundraising					
External Revenues	-0-	-0-	-0-	<5,000,000>	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
<b>NET FISCAL IMPACT</b>	-0-	-0-	-0-	5,500,000	-0-

# ADDITIONAL FTE POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes \_\_\_ No \_\_\_

Budget Account No: Fund \_\_\_ Department \_\_\_ Unit \_\_\_ Object \_\_\_  
Reporting Category \_\_\_

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

Phase I Project Cost: \$12,100,000 proposed to commence FY 2011.  
Anticipated sources of funding:

Parks Bond	500,000
Parks Impact Fees	3,000,000
Ad Valorem	2,000,000
WWF Fundraising	5,000,000
Grants	200,000
FL Fish/ Wildlife Conservation	1,400,000

C. Departmental Fiscal Review: 12,100,000

**III. REVIEW COMMENTS:**

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

*Elizabeth Bloese* 10/19/07  
OFMB 10/19/07

*Jim J. Javel* 10/19/07  
Contract Dev. and Control  
10/19/07

This Contract complies with our contract review requirements.

**B. Legal Sufficiency:**

*James (Mike) J.* 10/22/07  
Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_

**AGREEMENT BETWEEN PALM BEACH COUNTY AND WILDLIFE FOUNDATION OF  
FLORIDA, INC. FOR NAMING THE PUBLIC SHOOTING PARK**

**THIS AGREEMENT** is made entered into on \_\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the County, and Wildlife Foundation of Florida Inc., a Florida not-for-profit organization authorized to do business in the State of Florida, hereinafter referred to as the Wildlife Foundation.

In consideration of the promises and mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt of which the parties expressly acknowledge, the parties covenant and agree to the following terms and conditions:

1. The County desires to design, construct and operate a Public Shooting Park for recreational activities at 20 Mile Bend in Palm Beach County. Due to the projected cost of the Public Shooting Park and the acknowledged need by the Wildlife Foundation and the Florida Fish and Wildlife Conservation Commission for such a facility, the County will require outside funding to move forward with the Park in a timely fashion. Wildlife Foundation, an experienced fundraiser for the Florida Fish and Wildlife Conservation Commission, has agreed to undertake a fundraising campaign in order to assist the County in delivering the Public Shooting Park to the public at the earliest date possible. In the event that the fundraising campaign is not successful in raising the amount of funds contemplated, the construction of the Public Shooting Park will be delayed.

2. Wildlife Foundation shall raise for County the minimum amount of five million dollars (\$5,000,000) (the "Fundraising Amount") for the construction of Phase 1 of the Public Shooting Park through the sale of naming rights at the Park and through a variety of community based fundraising programs. In exchange for the Fundraising Amount, the County shall provide Wildlife Foundation with the opportunity to name the Public Shooting Park and other selected amenities (the "Selected Features") at the Park, as listed on Exhibit A, attached hereto and incorporated herein. The opportunity to name the Public Shooting Park, however, shall require a minimum amount of one and one-half million dollars (\$1,500,000) (the "Naming Amount"). Wildlife Foundation specifically agrees and acknowledges that the Fundraising Amount shall be provided in exchange solely for the opportunity to name the Park and Selected Features and that Wildlife Foundation has no other rights to any advertisement or promotion opportunities at the Park. Wildlife Foundation further agrees and acknowledges that no other advertisement or promotion opportunities shall be included in any donation agreement between Wildlife Foundation and its donors.

3. Wildlife Foundation specifically acknowledges and agrees that the Fundraising Amount will not provide any operational control to Wildlife Foundation at the Park nor will it provide any special privileges or use of the Park to Wildlife Foundation or its donors. Wildlife Foundation acknowledges and agrees that the donation agreements between Wildlife Foundation and its donors shall not include any promise of operational control of the Park or Selected Features for donors.

4. In order to raise the Fundraising Amount, Wildlife Foundation shall conduct a variety of community based fundraising programs. Within ninety (90) days of the Effective Date of this Agreement, Wildlife Foundation shall deliver a fundraising plan for the Public Shooting Park to County which shall include the number and types of fundraising programs to be implemented, the amount of fundraising that each program is expected to deliver, the initiation date of each program, and the likely duration of each program. The fundraising plan shall also provide for interim fundraising milestones for the community based programs.

In conjunction with Wildlife Foundation's fundraising plan, the County shall allow Wildlife Foundation to provide a link on its website to the County's website and provide a link to Wildlife Foundation's website on the County's website for the purpose of promoting the fundraising campaign. The County shall also allow Wildlife Foundation to utilize the County's logo on written materials promoting the fundraising campaign for the Public Shooting Park only.

5. Wildlife Foundation shall complete the fundraising effort and deliver the Fundraising Amount in full to the County by December 31, 2010 (the "Fundraising Deadline"). Should Wildlife Foundation fail to raise the Fundraising Amount by the Fundraising Deadline, the County shall have the right to terminate this Agreement and the opportunity to name the Park and Selected Features shall revert to the County. In the event that Wildlife Foundation is successful in conducting the fundraising campaign for the Public Shooting Park, the parties may pursue a renewal of this Agreement in order to fund Phase 2 of the construction of the Public Shooting Park or fund the continuing endowment of the Public Shooting Park.

6. Wildlife Foundation shall prepare and transmit a financial report to the County on the fundraising programs every six (6) months which will include, at a minimum, the fundraising amount raised by each program as well as the total amount raised for the Fundraising Amount.

7. As fundraising and the administration of donated funds requires a certain financial investment, Wildlife Foundation shall be entitled to retain seven (7) percent of each donation made to Wildlife Foundation for the Park and ten (10) percent of each donation made to the Wildlife Foundation for the Public Shooting Park using a credit card. Wildlife Foundation agrees and acknowledges that each donation agreement between Wildlife Foundation and its donors and all advertisements in connection with the fundraising campaign for the Park shall include a clear disclosure to the donor that seven percent of the donation amount shall be retained by Wildlife Foundation as an administration fee.

8. The name chosen by Wildlife Foundation (the "Chosen Name") for the Park or Selected Feature shall not be placed at the Park or on a Selected Feature until the Fundraising Amount is received by County and construction of the Park and Selected Features has been completed. The Chosen Name for the Park will appear over or adjacent to the entrance to the Park. The Chosen Name for a Selected Feature will be displayed prominently at or on the Selected Feature in a location selected by County as appropriate. County shall retain the Chosen Name for the Park for the life of the Park and retain the Chosen Name for a Selected Feature for the life of the Selected Feature.

9. Wildlife Foundation acknowledges and agrees that names which will negatively impact the County or promote anything offensive to the general public or which will be perceived by County to be offensive to the public, will negatively impact the capital generated by the fundraising effort, and, thus, are not permitted. County prohibits the selection of Chosen Names which are defamatory, libelous, slanderous, obscene or unlawful. County also prohibits the selection of Chosen Names which promote tobacco, liquor of any type, exotic dancing, religious or political groups or any other Chosen Name which County determines to be inappropriate or likely to interfere with the goal of generating capital from the exchange of naming opportunities for fundraising.

10. Wildlife Foundation shall submit Chosen Names to County for approval by the County Administrator prior to executing an agreement with the donor for the Chosen Name.

11. In the event of a casualty loss, the Chosen Name of the Park or Selected Feature shall be placed on the restored or replaced Park or Selected Feature; however, Wildlife Foundation acknowledges and agrees that County shall have no obligation to replace or restore the Park or any Selected Feature should the Park be destroyed or damaged. Wildlife Foundation agrees and acknowledges that the donation agreements between Wildlife Foundation and its donors shall include a provision to this effect.

12. The Chosen Name of the Park shall be included on all written materials associated with the Park including, but not limited to, advertising, marketing and promotions for programs, services and events at the Park. Wildlife Foundation agrees and acknowledges that the donation agreements between Wildlife Foundation and its donors shall include a provision to this effect.

13. County shall present to Wildlife Foundation no fewer than two (2) size, style, material and color options for the lettering of the Chosen Name of the Park or Selected Feature. As the Park is constructed, County reserves the right to limit size, style, material and color choices in order to ensure consistency within the Park and the appropriateness of scale for each individual amenity. County shall consult Wildlife Foundation on the final size, style, material and color of the lettering prior to placement of the Chosen Name but County reserves the right to make the final decision. Wildlife Foundation agrees and acknowledges that the donation agreements between Wildlife Foundation and its donors shall include a provision to this effect.

14. In the event that Wildlife Foundation wishes to make changes to the Chosen Name on the Park or a Selected Feature after installation, such changes shall require the approval of County, and approval shall be subject to the same evaluation criteria as the original Chosen Name. Any approved changes will be made only at Wildlife Foundation's sole expense. Wildlife Foundation agrees and acknowledges that the donation agreements between Wildlife Foundation and its donors shall include a provision to this effect.

15. County acknowledges its intent to construct Phase 1 of the Public Shooting Park, contingent on fund-raising efforts by the Wildlife Foundation, and agrees that the Fundraising Amount shall be used for the construction of Phase 1 of the Public Shooting Park and its amenities. Wildlife Foundation acknowledges and agrees that in the event that the total amount of funds raised exceeds the Fundraising Amount, the excess funds shall be used to create an endowment for the Park to fund capital improvements, ongoing renewal replacement, operating costs and special events not covered by the operating budget. Wildlife Foundation agrees and acknowledges that the donation agreements between Wildlife Foundation and its donors shall include a provision to this effect.

16. The County agrees that it will make its best efforts to coordinate with the Wildlife Foundation regarding all contact with donors and potential donors to the Public Shooting Park in a timely manner. In order to establish clear communications regarding donor and fund-raising information, the County will coordinate, to the best of its ability as a government agency, with Wildlife Foundation any release to the public of fund-raising and donor information.

17. Wildlife Foundation warrants that it is an active not-for-profit corporation, duly chartered and registered with the Florida Department of State, Division of Corporations.

18. Wildlife Foundation agrees to maintain books, records, and documents in accordance with normally accepted accounting procedures and practices, which sufficiently and properly reflect all the funds raised pursuant to this Agreement for a period of not less than three (3) fiscal years. County shall have the right to inspect and audit said books, records and documents and other evidence during normal business hours.

19. The Agreement may not be assigned or transferred without the prior written approval of the County.

20. The parties agree that, in the event that Wildlife Foundation is in default of its obligations under this Agreement, County shall provide Wildlife Foundation thirty (30) days written notice to cure the

default. In the event Wildlife Foundation fails to cure the default within the thirty (30) day cure period, County may terminate this Agreement and shall have no further obligation to honor the terms of this Agreement.

21. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by County, without cause, upon thirty (30) days prior written notice to the other party at any time prior to the acceptance of the Fundraising Amount.

22. Wildlife Foundation agrees and acknowledges that the donation agreements between Wildlife Foundation and its donors shall include a notice provision which states that the donor's name and donation amount shall be provided to the County in the event that the agreement between Wildlife Foundation and the County is terminated unless the donor opts to strike the provision. Upon termination of this Agreement for any reason, the Wildlife Foundation shall refund all donations raised on behalf of the County's Public Shooting Park to the donors minus the administration fee collected by Wildlife Foundation and provide the County with a list of the donors who have executed donation agreements with Wildlife Foundation for the Public Shooting Park with the notice provision. The Wildlife Foundation acknowledges and agrees that, in the event of termination of this Agreement, the County shall have the right to pursue direct donations from donors who had previously executed donation agreements with the Wildlife Foundation and did not opt to strike the disclosure language, and that Wildlife Foundation will not interfere with the County's efforts to pursue such donations.

23. County and Wildlife Foundation may pursue any and all actions available under law to enforce this Agreement including, but not limited to, actions arising from the breach of any provision set forth herein.

24. This Agreement shall be governed by the laws of the State of Florida and all legal action necessary to enforce this Agreement shall be held in a state court of competent jurisdiction in Palm Beach County, Florida.

25. The space made available for the Chosen Names at the Park and Selected Features constitute a nonpublic forum. County does not intend to open the Chosen Name to public discourse nor to create a limited or designated public forum. County, in making the space for the Chosen Name available in exchange for fundraising, is acting strictly in a proprietary capacity with the purpose of generating capital. The goal of the County's naming rights agreement is to generate capital for the construction of the Park from the fundraising initiative for the naming rights (that are reasonable and in good taste) in accordance with the terms of this Agreement to promote County's provision of a safe, pleasant, convenient, non-controversial and cost-effective public shooting park.

26. Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by U.S. mail. All notices shall be addressed to the following:

As to the County:  
Director of Facilities Development & Operations  
2633 Vista Parkway  
West Palm Beach, FL 33411-5603

As to the Wildlife Foundation:  
Wildlife Foundation of Florida, Inc.  
Attn: Executive Director  
620 South Meridian Street  
Tallahassee, FL 32399-1600

27. This Agreement represents the entire agreement between the parties and supercedes all other negotiations, representations, or agreement, either written or verbal, relating to this Agreement. The Agreement may be modified and amended only by written instrument executed by the parties hereto.

28. This Agreement is made solely and specifically among and for the benefit of the parties hereto, and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

29. The parties are acting as independent contractors. Nothing in this Agreement will create or be construed as creating a partnership, joint venture or agency relationship between the parties and no party shall have the authority to bind the other in any respect.

30. All of the terms of this Agreement shall apply to, be binding upon and inure to the benefit of the parties, their successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

31. This Agreement shall take effect (the "Effective Date") upon execution by both parties.

**IN WITNESS WHEREOF**, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the County and Wildlife Foundation has hereunto set its hand the day and year above written.

**ATTEST:**

**WILDLIFE FOUNDATION OF FLORIDA,  
INC.**

By: \_\_\_\_\_  
Witness

By: Daniel Bourcy  
for Charles Brett Boston, Executive Director

**SHARON R. BOCK,  
CLERK & COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA BY ITS  
BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Addie L. Greene, Chairperson

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: [Signature]  
Asst. County Attorney

By: \_\_\_\_\_  
Director Facilities Dev & Operations

## **Exhibit A**

### **Public Shooting Park Fundraising Campaign Naming Opportunities**

#### **Park**

#### **1. Public Shooting Park**

#### **Selected Features**

- 2. Related In-Park Structures that are part of Phase 1 of the construction of the Park**
- 3. Individual Shooting Bays**
- 4. Individual Shooting Lanes**
- 5. Community Based – Wall of Fame Type Project**