Agenda Item #3.M.4.

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	October 20, 2009	[X] Consent [] Ordinance	[] Regular [] Public Hearing
Department:	Parks and Recreation		
Submitted By:	Parks and Recreation Department		
Submitted For	Parks and Recreation Department		
	I. EXECUTIVE BI	RIEF	

Motion and Title: Staff recommends motion to approve: Agreement with Friends of Okeeheelee Nature Center, Inc. defining their role in management, operation and use of the Okeeheelee Nature Center, effective upon execution of this Agreement with automatic yearly renewal of terms.

Summary: The Okeeheelee Nature Center (Nature Center) is operated by the Board of County Commissioners. The Friends of Okeeheelee Nature Center, Inc. (Corporation) is a private not-for-profit corporation whose purpose is to support and enhance the Nature Center and provide visitors and the surrounding community with educational and programmatic resources that will result in a recreation experience and a deeper understanding of Florida's eco-system. The Agreement outlines the Corporation's role in the management, operation and use of the Nature Center. <u>District 6</u> (AH)

Background and Justification: On November 20, 1992, Friends of Okeeheelee Nature Center, Inc. established themselves as a not-for-profit corporation in the State of Florida. The Corporation was established to support and enhance the Nature Center, and accepts monetary donations, personal property and tangible objects for the enhancement and beautification of the Nature Center. The Corporation has been working in cooperation with the Nature Center without a formal agreement. The approval of this Agreement defines the Corporation's role in overseeing and maintaining the everyday operations of the Nature Center Gift Shop. The Agreement requires the County provide the Corporation access to office equipment and meeting space for Corporate-related purposes and allows the Corporation to organize special events at the Nature Center, with prior written approval of the Nature Center Manager. The Agreement also provides for the Corporation to maintain ownership of all inventory at the Nature Center Gift Shop upon termination of the Agreement, although all permanent and temporary structures remain County property. By entering into this Agreement, the County can focus on the programming, management and operation of the Nature Center as a whole.

Attachment: Agreement			
Recommended by:	Department Director	9/29/09 Date	
Approved by:	Assistant County Administrator	10-4-09 Date	

II. FISCAL IMPACT ANALYSIS

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A. Five Year Summary	oi riscai im	pacı:			
Fiscal Years	2010	2011	2012	2013	2014
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NET FISCAL IMPACT	0-43	ee belgu	0	0-	0
# ADDITIONAL FTE POSITIONS (Cumulative) _0	Market Company			
Is Item Included in Curro Budget Account No.:	Fund	Yes Department Program _			
B. Recommended Sou	rces of Fund	ds/Summary of	Fiscal Impact	:	
There is no fiscal in	mpact assoc	iated with this ite	em.		
C. Departmental Fiscal	Review: _	ckopelak	iù		A #W
	<u>11</u>	I. REVIEW COM	MENTS		
A. OFMB Fiscal and/or	Contract De	evelopment and	d Control Com	ments:	
OFMB 1309 1090109	cols for	109	Au - J Oøntract Deve	opment and Co	10/5/0/
B. Legal Sufficiency:			This Contra	Contract complies water review requirem	rith our ents.
Assistant County Attor	1016 109 ney		Commi		
C. Other Department R	leview:				

REVISED 10/95 ADM FORM 01

Department Director

This summary is not to be used as a basis for payment

AGREEMENT BETWEEN PALM BEACH COUNTY AND THE FRIENDS OF OKEEHEELEE NATURE CENTER, INC. FOR MUTAL COOPERATION FOR MANAGEMENT, COOPERATION AND USE OF THE OKEEHEELEE NATURE CENTER

THIS AGREEMENT is made and entered into this	day of	, 2009, by and between
Palm Beach County, a political subdivision of the State of Fle	orida, hereinafi	ter referred to as "County",
and Friends of Okeeheelee Nature Center, Inc., a Florida no	t-for-profit cor	poration, hereinafter referred
to as "Corporation".	-	

WITNESSETH:

WHEREAS, the County owns and operates the Okeeheelee Nature Center, which includes a Nature Center building, surrounding natural area and property, hereinafter referred to as "Nature Center"; and

WHEREAS, the Corporation was established as a private non-profit corporation to support and enhance the operation and programming of the Okeeheelee Nature Center; and

WHEREAS, the County and the Corporation desire to define their respective cooperative roles for the effective and efficient management, operation and use of the Nature Center building, surrounding natural area and property; and

WHEREAS, the County and Corporation desire to enter into this Agreement; and

WHEREAS, entering into this Agreement serves a public purpose.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

- 1. The recitals as set forth above are true and correct and are reaffirmed as if specifically stated herein.
- 2. The County and Corporation shall jointly manage and operate a gift shop within the spaced designated within the Nature Center, which is described in more detail in "Exhibit A", which is attached hereto and incorporated herein.
- 3. The Corporation shall provide assistance, guidance and make recommendations to the County regarding the management and operation of the gift shop. The Corporation shall be responsible for overseeing and maintaining the everyday operations of the gift shop.
- 4. The County shall provide the Corporation with the gift shop space as identified in Exhibit "A" attached hereto, rent-free during the term of this Agreement.
- 5. The County shall provide reasonable storage of gift shop merchandise within the Nature Center building.

- 6. Any expansion or improvement to the gift shop, Nature Center, surrounding nature areas, or property on a temporary or otherwise basis, must receive prior written approval from the Director of Parks and Recreation.
- 7. The Corporation shall be responsible for all direct expenses associated with said gift shop, including but not limited to purchases of merchandise and resale of gift shop merchandise; gift shop displays and exhibits; inventory control accounting; marketing and all other operating expenses related thereto. All merchandise sold in the gift shop and all displays and exhibits installed by the Corporation must be approved by the Nature Center Manager, hereinafter referred to as "Manager", prior to the Corporation purchasing said merchandise.
- 8. The Corporation may sell gift shop merchandise relating to the Nature Center via catalogue, Internet or in the area outside the gift shop, such as booths and kiosks at special events, upon prior approval of the Manager. Any permanent structure for the sale of merchandise shall be approved by the Director of Parks and Recreation.
- 9. All revenues derived from said gift shop shall inure to the Corporation and be utilized for the purpose of the Nature Center.
- 10. The Corporation may accept monetary donations, personal property and tangible objects on its behalf for the enhancement and beautification of the Nature Center.
- 11. The County agrees to the Corporation's use of the Nature Center, surrounding natural area and property for fundraising activities, special events, and educational activities. All such functions and activities must receive prior written approval from the Manager. Any requests for functions, activities or uses of the Nature Center, surrounding natural area or property which are not specifically set forth in this section must receive prior approval from the Director of Parks and Recreation. Any and all approvals requested of the Manager or of the Director of Parks and Recreation shall not be unreasonably withheld. Corporation shall supplement operations of the County at the Nature Center by providing assistance that is clearly outside the scope of duties and responsibilities performed by the Nature Center Manger and the Naturalist. With regard to the use of the Nature Center, the Corporation and all subcontractors hired by the Corporation, shall abide by all applicable federal, state and local laws, rules and regulations.
- 12. All revenues derived from said fundraising activities, special events and educational activities shall inure to the Corporation and utilized for the purpose of the Nature Center.
- 13. The County shall provide meeting space for the Corporation, based on a time and place determined by the Corporation and County.
- 14. Upon prior approval by the Manager, County shall provide the Corporation access to office equipment for Corporate related purposes.

- 15. The term of this Agreement shall begin upon execution by both parties hereto and shall automatically renew annually, unless terminated by either party as provided herein.
- 16. This Agreement may be terminated for any reason by either party upon sixty (60) days written notice given to the other party.
- 17. Upon termination of this Agreement, any and all temporary or permanent improvements or additions made by the Corporation to the gift shop, Nature Center, surrounding natural area or property shall remain the property of the County.
- 18. The Corporation shall hold County, its agents, employees and elected officers harmless from any and all claims, liability, expense, loss, cost or damages that may result to the Corporation's inventory, exhibits, and displays, including Betterments and Improvements located at the Nature Center irrespective of cause, except due to the County's sole negligence.
- 19. The Corporation represents that it has, or will secure at its own expense, all necessary members required to perform the services under this Agreement. All of the Corporation's members while on County premises will comply with all County requirements governing conduct, safety and security.
- 20. The Corporation agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this contract the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by the Corporation is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the County under this contract.
 - A. <u>Commercial General Liability</u> Corporation agrees to maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement(s) excluding nor limiting Premises/Operations, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis
 - **B.** Worker's Compensation Insurance & Employers Liability Corporation agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. Coverage shall be provided on a primary basis
 - C. Additional Insured Corporation agrees to endorse COUNTY as an Additional Insured with a CG026 Additional Insured Designated Person or Organization endorsement to the Commercial General Liability. The additional insured shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents. Coverage shall be provided on a primary basis
 - D. <u>Waiver of Subrogation</u> Corporation agrees by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Corporation to enter into an pre-loss agreement to waive subrogation without an endorsement, then Corporation agrees

to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Corporation enter into such an agreement on a pre-loss basis.

- E. <u>Certificate of Insurance:</u> Prior to execution of this Agreement, Corporation shall deliver to the County's representative a Certificate(s) of insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. Such Certificates(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage.
- F. Right to Review: County by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.
- 21. The Corporation shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages, or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of Corporation it's agents, employees, officers, volunteers or subcontractors.
- 22. The County and the Corporation each binds itself and its partners, successors, executors, administers and assigns to the other party and to the partners, successors, executors, administers or assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the County nor the Corporation shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Corporation.
- 23. This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

24. The Corporation represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The Corporation further represents that no person having any such conflict of interest shall be employed for said performance of services.

The Corporation shall promptly notify the County's representatives, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Corporation's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Corporation may undertake, and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest, if entered into by the Corporation. If, in the opinion of the County, the prospective business association, interest or other circumstance would not constitute a conflict of interest by the Corporation, the County shall so state in the notification and the Corporation shall, at its option, enter into said circumstance and it shall be deemed not a conflict of interest with respect to services provide to the County by the Corporation under the terms of this Agreement.

- 25. The Corporation shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Corporation further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 26. The Corporation and its members are, and shall be, in the performance of all work, services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Corporation's sole direction, supervision, and control. The Corporation shall exercise control over the means and manner in which it and its members perform the work, an in all respects the Corporation's relationship and the relationship of its members to the County shall be that of an Independent Contractor and not as employees or agents to the County. The Corporation does not have the power or authority to bind the County in any promise, agreement or representation.
- 27. The Corporation shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Corporation's place of business.

- 28. The Corporation warrants and represents that the gift shop and the fundraising activities, special events, and educational activities events will be open to all individuals without regard to race, color, religion, disability, sex, age, national origin, ancestry, martial status, sexual orientation, gender identity or expression.
- 29. The Corporation hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the Manager upon request.
- 30. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to the extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to person or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 31. As provided by F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance thereof, the Corporation certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).
- 32. The Manager may reject any proposed action taken by the Corporation, which may be contrary to the educational objectives and or policies of Palm Beach County and the Nature Center.
- 33. All notices required in this Agreement shall be sent by certified mail, return receipt request, hand delivery or other delivery service requiring signed acceptance. If any information in the notice provision changes, that party shall provide written notice of the change to the other party, which change shall be considered incorporated into this Agreement as if it were originally provided for herein. If sent to the County, notices shall be addressed to:

Okeeheelee Nature Center, Manager 7715 Forest Hill Blvd. West Palm Beach, FL 33413

Director of Recreation Services 2700 6th Avenue South Lake Worth, Florida 33461 If sent to the Corporation, notices shall be addressed to:

Friends of Okeeheelee Nature Center, President 1549 Wiltshire Village Dr. Wellington, FL 33414

- 34. The Corporation shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if Corporation's employees, members or subcontractors are required under this Agreement to enter a "critical facility" as identified in Resolution R-2003-1274. The Corporation acknowledges and agrees that all employees, members and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although County agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the Corporation shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.
- 35. The County's performance and obligation to pay under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.
- 36. The County and Corporation agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be added to, modified, or superseded or otherwise altered, except by written instrument executed by the parties hereto.

(Remainder of this page is intentionally left blank)

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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 the Corporation, has hereunto set its hand the day and year above written.

ATTEST: SHARON R. BOCK, Clerk & Comptroller	PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS
By: Deputy Clerk	John F. Koons, Chairman
WITNESS:	FRIENDS OF OKEEHEELEE NATURE CENTER, INC
Cline S. Finak	The Selection
Pegna var borhero)	Signature STEVEN PLISKUW
000	Typed name PRESIDENT
	Title
APPROVED AS TO FORM AND LEGAL SUFFICIENCY	
By: County Attorney	
APPROVED AS TO TERMS AND CONDITIONS By:	
Director, Parks and Recreation Department	

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BOARD OF COUNTY COMMISSIONERS Palm Beach County c/o Kimberly McNeely 2700 6th Avenue South Lake Worth FL 33463			IMPOSE NO OBL	NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHAI IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE		

ACORD 25 (2001/08)

Theresa Ferraro

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