

AGENDA ITEM SUMMARY

() Public Hearing

Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	<u> X </u>	_____	_____	_____	_____
 # ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No _____		
Budget Account No.:	Fund _____	Department _____	Unit _____	Object _____	
	Program _____				

☒ B. Recommended Sources of Funds/Summary of Fiscal Impact:
There is no fiscal impact associated with this item.

C. Department Fiscal Review: JP

III. REVIEW COMMENTS

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

No fiscal impact
OFMB 5/20/10 5/24/10 5/24/10
JB JP JP
Contract Development and Control

B. Legal Sufficiency:

M. T. 5-25-10
 Assistant County Attorney

This Contract complies with our
contract review requirements.

*At the time of our review,
the contract was not
executed.*

C. Other Department Review:

 Department Director

AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA
AND
MARTIN COUNTY, FLORIDA
FOR
JOINT PROJECT PARTICIPATION IN
RESTORATION OF OYSTER REEFS IN THE LOXAHATCHEE RIVER

THIS AGREEMENT, hereinafter referred to as the AGREEMENT, made and entered into this _____ day of _____, _____, by and between PALM BEACH COUNTY, a political subdivision in the State of Florida, by and through its Board of County Commissioners, and MARTIN COUNTY, a political subdivision in the State of Florida, by and through its Board of County Commissioners, both hereinafter referred to collectively as the "parties".

WITNESSETH:

WHEREAS, PALM BEACH COUNTY and MARTIN COUNTY are authorized to enter into this Interlocal Agreement ("Agreement") pursuant to Section 163.01, Florida Statutes, as amended, which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

WHEREAS, the goals for MARTIN COUNTY and PALM BEACH COUNTY include the environmental enhancement and restoration of the Loxahatchee River; and

WHEREAS, oyster reefs make a significant biological contribution to estuarine environments and water quality; and

WHEREAS, MARTIN COUNTY has prepared plans and received a permit and funding for a project to restore and enhance 3.45 acres of oyster reef habitat in the Loxahatchee River, hereinafter referred to as the OYSTER PROJECT; and

WHEREAS, PALM BEACH COUNTY has a supply of limestone rock and shell material, hereinafter referred to as CULTCH, obtained through the screening of beach sand placed as part of the Juno Beach Shore Protection Project; and

WHEREAS, PALM BEACH COUNTY desires to cooperate with MARTIN COUNTY on the environmental restoration and enhancement work in the Loxahatchee River in northern Palm Beach County; and

WHEREAS, MARTIN COUNTY has obtained all approvals and permits, and will provide construction oversight, and post-construction monitoring of the OYSTER PROJECT; and

WHEREAS, the execution of this Agreement is in the best interest of PALM BEACH COUNTY, MARTIN COUNTY and their respective residents and citizens; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, PALM BEACH COUNTY and MARTIN COUNTY do hereby agree as follows:

1. The recitals set forth above are hereby adopted and incorporated herein by this reference.
2. Purpose. The purpose of this Agreement is to provide a mechanism for PALM BEACH COUNTY and MARTIN COUNTY to cooperate in the construction of oyster reef habitat and the environmental enhancement and restoration of the Loxahatchee River.
3. The Term. This Agreement shall become effective upon execution by both parties and shall expire upon completion of the OYSTER PROJECT, unless terminated as otherwise provided herein. This Agreement may be extended if agreed to in writing by both parties.
4. PALM BEACH COUNTY agrees to:
 - A. Produce up to 4556 tons of 3/4 - 12 inch diameter CULTCH as tailings obtained through the screening of beach sand placed as part of the Juno Beach Shore Protection Project.
 - B. Make available this 3/4 - 12 inch diameter CULTCH to MARTIN COUNTY for use in the OYSTER PROJECT at no charge.
 - C. Provide at least one staging site to store the CULTCH until MARTIN COUNTY can haul it to their receiving site.
 - D. Notwithstanding any other provision herein, PALM BEACH COUNTY's obligation to perform under this Agreement is contingent upon approval by its Board of County Commissioners.
5. MARTIN COUNTY agrees to:
 - A. Comply with all state and federal permits necessary to complete the OYSTER PROJECT.
 - B. Provide a receiving site with all necessary permits, authorizations and permissions for the CULTCH supplied by PALM BEACH COUNTY.
 - C. Provide the means to haul the CULTCH material to MARTIN COUNTY's receiving site.
 - D. Provide equipment, manpower and the coordination thereof for the final placement of oyster reefs, provide PALM BEACH COUNTY with detailed specifications as to where the oyster reefs are to be placed, and provide post-construction monitoring of oyster reefs once they are in place in accordance with all permits.

- E. Place approximately 1.12 acres of additional oyster reef habitat in the Loxahatchee River entirely within Palm Beach County waters at no charge to PALM BEACH COUNTY.
 - F. Provide PALM BEACH COUNTY with all monitoring reports for the duration of post-construction monitoring.
 - G. Complete the OYSTER PROJECT prior to expiration of the environmental resource permits (USACE Permits #SAJ-2009-1079 (NW-LCK), and SAJ-2009-1081 (NW-LCK); FDEP Permit # 43-0260643-003).
6. Termination.
- A. All provisions of this Agreement calling for the expenditure of ad valorem tax money by either PALM BEACH COUNTY or MARTIN COUNTY are subject to annual budgetary funding and should either party fail to fund any of their respective obligations pursuant to the Agreement, the Agreement may be terminated upon written notice to the other party.
 - B. This Agreement may be terminated, in writing, by either party upon written notice to the other party if construction of the OYSTER PROJECT is not commenced within twelve (12) months of execution of this Agreement by the respective parties.
7. Insurance.
- A. Each party warrants and represents that it is self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence or such monetary waiver limits that may change and be set forth by the legislature. In the event a party maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance on self-insurance under Section 768.28, Florida Statutes, that party shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The parties agree to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.
 - B. The parties further agree that nothing contained herein shall be construed or interpreted as: (1) denying to any party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
 - C. In the event any party subcontracts any part or all of the work hereunder to a third party, the contracting party shall require each and every subcontractor to name the other parties as "additional insured" on all insurance policies as required by the contracting party. Any contract awarded for work under this Agreement shall include a provision whereby the contracting party's subcontractor agrees to defend, indemnify, and pay on behalf, save and hold other parties harmless from all damages arising in connection with said contract.

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- D. When requested, each party shall provide any other party with an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which all parties agree to recognize as acceptable for the above mentioned coverages.
- E. Compliance with the foregoing requirements shall not relieve any party of its liability and obligations under this Agreement.
8. Party Representatives. PALM BEACH COUNTY's representative during the term of this Agreement shall be Richard E. Walesky, whose telephone is (561) 233-2400. MARTIN COUNTY's representative during the term of this Agreement shall be Don Donaldson, whose telephone number is (772) 288-5927.
9. Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be hand delivered, sent by prepaid express overnight courier or messenger service, or mailed by registered or certified mail return receipt requested to the following addresses:

AS TO MARTIN COUNTY

Martin County
ATTN: Don G. Donaldson, P.E., Director
Engineering Department
2401 SE Monterey Road
Stuart, FL 34996

AS TO PALM BEACH COUNTY:

Palm Beach County
ATTN: Richard E. Walesky, Director
Department of Environmental Resources Management
2300 N. Jog Road, 4th Floor
West Palm Beach, Florida 33411-2743

With copy to:
County Attorney's Office
Palm Beach County, 6th Floor
301 N. Olive Avenue
West Palm Beach, Florida 33401

All notices required by this Agreement shall be considered delivered *upon receipt*. If either party changes its mailing address or designated recipient for notices, such change shall be communicated in writing to the other party within ten (10) days of the change.

10. Govern Law; Venue. This Agreement shall be construed by and governed by the laws of the State of Florida. Venue for any and all legal actions necessary to enforce the Agreement shall be held in Martin County, Florida if MARTIN COUNTY files a legal action or Palm Beach County, Florida if PALM BEACH COUNTY files a legal action.

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11. Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy given hereunder and now or hereafter existing at law or in equity or 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.
 12. Severability. In the event any terms or provisions of this Agreement shall be held invalid, such invalid terms or provisions shall not affect the validity of any other term or provision hereof and all such other terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid terms or provisions had never been a part of this Agreement.
 13. Enforcement Costs. Except as otherwise provided herein, any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties. This provision pertains only to the parties to the Agreement.
 14. Standards of Compliance. The parties, their employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement.
 15. Public Records. The parties shall allow public access to all documents and materials related to this Agreement in accordance with the provisions of Chapter 119, Florida Statutes. Should a party assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon that party.
 16. Beneficiaries of Agreement. It is the intent and understanding of the parties that this Agreement is solely for the benefit of the parties. No person or entity other than the parties shall have any rights or privileges under this Agreement in any capacity whatsoever, either as third-party beneficiary or otherwise.
 17. Assignment, Delegation, and Transfer. No party shall assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.
 18. Construction of Agreement.
 - A. The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement or any provision hereto.
 - B. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
 - C. In the event any provision of this Agreement conflicts, or appears to conflict with any other provision of this Agreement, the Agreement,

including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any such conflict or inconsistency.

19. **Records.** The parties shall maintain, in accordance with generally accepted governmental auditing standards, all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this Agreement including supporting documentation for any service rates, expenses, research or reports. The parties shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this Agreement. Such examination may be made only within five (5) years from the date of final payment under this Agreement and upon reasonable notice, time and place. In the event that the parties should become involved in a legal dispute with a third party arising from performance under this Agreement, the parties shall extend the period of maintenance for all records relating to the Agreement until the final disposition of the legal dispute, and all such records shall be made readily available to the Parties.
20. **Equal Opportunity.** PALM BEACH COUNTY and MARTIN COUNTY agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, age, familial status, marital status, sexual orientation, or gender identity or expression be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of the Agreement.
21. **Independent Contractor.** No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.
22. **Entire Agreement.** This Agreement constitutes the entire contract between the parties hereto and supersedes all prior understandings if any. There are no other oral or written promises, conditions, representations, understanding or terms of any kind as conditions of inducement to the execution hereof and none have been relied upon by either party. Any subsequent conditions, representations, warranties or agreement shall not be valid and binding upon the parties unless they are in writing and signed by both parties and executed in the same manner as this Agreement.
23. **Effective Date.** This Agreement shall be effective upon execution by the parties and filing with the Clerks of Circuit Court in Martin and Palm Beach Counties.

IN WITNESS WHEREOF, PALM BEACH COUNTY, has caused this Agreement to be signed by _____ and the seal of said COUNTY to be affixed hereto and attested by the Clerk of this COUNTY, pursuant to authority granted by said COUNTY, and MARTIN COUNTY has caused this Agreement to be signed in its name by its CHAIR and its seal to be affixed hereto, attested by its CLERK OF THE COURT, the date and year first above written.

MARTIN COUNTY
BOARD OF COUNTY
COMMISSIONERS

By: _____
Doug Smith, Chair

Date: _____

ATTEST:

By: _____
Marsha Ewing, Clerk of the Court

Date: _____

(Seal)

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

By: _____
Burt Aaronson, Chair

Date: _____

ATTEST:
Sharon R. Bock, Clerk & Comptroller

By: _____
Deputy Clerk

Date: _____

(Seal)

APPROVED AS TO FORM AND
CORRECTNESS:

By: _____
MARTIN COUNTY ATTORNEY

Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
PALM BEACH COUNTY ATTORNEY

Date: _____

APPROVED AS TO TERMS AND
CONDITIONS:

By: Richard E. Walesky
Richard E. Walesky, Director
Dept of Environmental
Resources Management

Date: 5/19/10



Attachment 2 - Overview of the proposed oyster reef restoration project within the north fork of the Loxahatchee River.