

Agenda Item #3.M.1.

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 17, 2010

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Use Agreement with US Coast Guard Auxiliary, Flotilla 51 of the Palm Beaches for the period August 17, 2010, through August 16, 2011, for use of the multipurpose room in the Marine Center Building at Phil Foster Park to conduct boating safety classes, organizational meetings, and to serve as a check in location for courtesy boat inspections.

Summary: US Coast Guard Auxiliary, Flotilla 51 of the Palm Beaches has requested the use of the multipurpose room in the Marine Center Building, located in Phil Foster Park. Flotilla 51 provides services to the public to include public education programs, boating safety classes and courtesy boat inspections. With this Use Agreement, these services can continue according to a mutually agreeable schedule, at no cost to Flotilla 51. The term of the Use Agreement is for one (1) year, commencing on the date of approval, and is automatically renewed from year to year thereafter, until one party gives the other party ninety (90) days written notice prior to the anniversary date that this Use Agreement will not be renewed for another year. District 1 – (AH)

Background and Justification: US Coast Guard Auxiliary, Flotilla 51 of the Palm Beaches has a history, dating back to its inception in 1961, of providing support to the United States Coast Guard, State/Local Government operations and the general boating public. With the completion of the Marine Center Building at Phil Foster Park, an opportunity exists to enhance the relationships that already exist with the Parks and Recreation Department, PBSO's Marine Safety Unit and the local boating community.

Attachment: Use Agreement

Recommended by:


Department Director

7-23-10
Date

Approved by:


Assistant County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(10)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>(10)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Is Item Included in Current Budget? Yes No
 Budget Account No.: Fund 0001 Department 580 Unit 5110
 Revenue Source 4902 Program N/A
 4729

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

FUND: General Fund
 UNIT: Administration

P&R Other Fees/Other 0001-580-5110-4729-09 (\$10)

C. Departmental Fiscal Review: ckopelakis

III. REVIEW COMMENTS

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

[Signature] 7/28/10
 OFMB

[Signature] 7/28/10
 Contract Development and Control

B. Legal Sufficiency: 7/27/10
 5:27/10

This Use Agreement complies with our review requirements.

Anne Delgard 7/30/10
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 10/95
 ADM FORM 01

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

Use Agreement Between Palm Beach County and US Coast Guard Auxiliary, Flotilla 51 of the Palm Beaches

THIS USE AGREEMENT is made and entered into as of the _____ day of _____, 2010 (“Agreement”) by and between Palm Beach County, a Political Subdivision of the State of Florida, (“County”) and US Coast Guard Auxiliary, Flotilla 51 of the Palm Beaches, an instrumentality of the United States (14 U.S.C. Sec. 821) (“Flotilla 51”), hereinafter after referred to collectively as the “parties”.

WITNESSETH:

WHEREAS, the County owns and operates The Marine Center, Phil Foster Park located at 900 E. Blue Heron Boulevard, Riviera Beach, FL 33404 which contains a multipurpose room available for use by groups, individuals and organizations, hereinafter referred to as “Multipurpose Room”; and

WHEREAS, Flotilla 51 conducts boating safety classes, organizational meetings, and boat inspections; and

WHEREAS, Flotilla 51 desires to use the Multipurpose Room to conduct it’s boating safety classes, organizational meetings and boat inspections; and

WHEREAS, County desires to allow Flotilla 51 to use the Multipurpose Room to conduct it’s boating safety classes, organizational meetings and boat inspections; and

WHEREAS, providing the Multipurpose Room to Flotilla 51 serves a public purpose.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The Recitals as set forth above are true and correct and are reaffirmed as if specially stated herein.

2. County hereby grants to Flotilla 51 the use of the Multipurpose Room as described in Exhibit “A” to conduct public boating safety classes, courtesy boat inspections and organization meetings according to a mutually agreeable schedule, at no cost to the Flotilla 51. Flotilla 51 shall submit a schedule to County for use of the Multipurpose Room on the first day of each month, for the succeeding months use. County shall provide Flotilla 51 with notice if the proposed schedule is not acceptable to County. Upon notice by County, Flotilla 51 shall revise the schedule and re-submit the schedule to County within five (5) business days. If County and Flotilla 51 cannot agree to a schedule, County shall inform Flotilla 51 what days the Multipurpose Room is available for its use.

3. County hereby grants to Flotilla 51 the use of a lockable closet accessible through the Multipurpose Room as described in Exhibit "A", for the purpose of Flotilla 51 storing educational and related materials for its classes, at no cost to the Flotilla 51.

4. County shall provide Flotilla 51 with one (1) key to the Multipurpose Room and one (1) key to the lockable closet. It shall be responsibility of Flotilla 51 to unlock and lock the Multipurpose Room prior to each use and upon conclusion of each use. Upon termination of this Agreement, Flotilla 51 shall return the Multipurpose Room key and the closet key to the County.

5. This Agreement shall be for a term of one (1) year commencing on the date set forth above and automatically renewed from year to year thereafter until one party gives the other party ninety (90) days written notice prior to the anniversary date that this Agreement will not be renewed for the following year.

6. Flotilla 51 expressly acknowledges that it has inspected the Multipurpose Room and lockable closet and accepts the same "As Is, Where Is" in the condition existing as of the effective date of this Agreement, together with all defects latent and patent, if any. Flotilla 51 further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Multipurpose Room and lockable closet, including, but not limited to, the physical condition, or any improvements located thereon, or the suitability of the Multipurpose Room and lockable closet, or legal ability of Flotilla 51 to use the Multipurpose Room and lockable closet for its intended use.

7. Flotilla 51, in the manner and to the extent provided by the Federal Tort Claims Act, as amended (28 U.S.C. Sec. 2671-2680) shall be liable for, and shall hold County, its officers, directors, employees, agents, and servants harmless from claims for damage or loss of property, personal injury or death caused by the acts or omissions of Flotilla 51, its members and employees in the use of the Multipurpose Rooms and lockable closet by Flotilla 51, including ingress and egress thereto, unless such claims are caused by County's sole intentional acts or negligence. This provision shall survive termination or expiration of this Agreement.

8. If the Multipurpose Room or lockable closet, or any portion thereof, is damaged in any way whatsoever, by the act, default or negligence of Flotilla 51, its agents, employees, officers, representatives, guests, invitees, contractors, patrons, or any person admitted to the Multipurpose Rooms or locked closet by Flotilla 51, Flotilla 51 shall, at its sole cost and expense, be responsible for costs and expenses associated with County repairing such damage to the condition existing prior to such damage. Such costs shall be due and payable within thirty (30) days from the date of written notice and any invoices for the restoration.

9. Nothing in this Agreement shall prevent County from contracting with other entities, organizations or individuals to use Phil Foster Park or its Multipurpose Room, as long as such use does not conflict with Flotilla 51's use.

10. This Agreement may be terminated, in whole or in part, by either party, with or without cause, immediately upon written notice to the other party. Within ninety (90) days of receipt of a termination notice and except as otherwise directed by County, Flotilla 51 shall remove all equipment and property stored in the locked closet.

11. Flotilla 51 shall not charge any admission to any person or vehicle for entry to Phil Foster Park without prior approval from the Director or Assistant Director of Parks and Recreation Department.

12. County's representative during the performance of this Agreement shall be the Assistant Director of Parks and Recreation Department, telephone no. 561-966-6613. Flotilla 51's representative during the performance of this Agreement shall be Louis Townsend, Commander, telephone no. 561-684-6914.

13. Flotilla 51, as an instrumentality of the United States as set forth at 14 U.S.C. Sec. 821, does not carry liability insurance inasmuch as the United States Government "self insures" for the liability exposures set forth herein. Flotilla 51 shall be liable, to the extent provided by the Federal Tort Claims Act, 28, 28 U.S.C. Sec. 2671 et seq., and shall defend and hold harmless Palm Beach County, for death, personal injury and damage to property proximately caused by the act or omission of Flotilla 51 or its members, assigned to duty and acting within the course and scope of such duty as set forth in 14 U.S.C Sec. 823a, in connection with the use of the Phil Foster Park, the Multipurpose Room and their appurtenant facilities by Flotilla 51..

14. Flotilla 51 is, and shall be, in the performance of all work, services and activities under this Agreement, an instrumentality of the United States, 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 Flotilla 51's sole direction, supervision, and control. Flotilla 51 shall exercise control over the means and manner in which it and its employees perform the work, and in all respects Flotilla 51's relationship and the relationship of its employees to County shall be that of an instrumentality of the United States and not as employees or agents of the County. Flotilla 51 does not have the power or authority to bind County in any promise, agreement or representation.

15. Flotilla 51 acknowledges that it has no right whatsoever to lease, assign or sublease the Multipurpose Room or lockable closet or any portion thereof.

16. This Agreement shall be governed by the laws of the State of Florida, to the extent applicable, and the laws of the United States, as applicable. Any legal action necessary to enforce this Agreement will be held in a court of appropriate jurisdiction in Palm Beach County, Florida. 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 further exercise thereof.

17. Flotilla 51 shall not pledge County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Flotilla 51 further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

18. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to persons 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.

19. The failure of County to insist on a strict performance of any of the terms, conditions, and covenants hereof shall not be deemed a waiver of any rights or remedies that County may have for any subsequent breach, default, or non-performance, and County's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.

20. Flotilla 51 acknowledges that it will be subject to periodic inspections by County. County shall have the right to enter the Multipurpose Room and have access to the lockable closet during Flotilla 51's use at all times, for the purposes of inspection for compliance with the provisions of this Agreement and applicable laws. Flotilla 51 shall provide County with a key or combination number, whichever is applicable, to access the locked closet in accordance with this provision.

21. As provided in Section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Flotilla 51 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 thirty-six (36) months immediately preceding the effective date of this Agreement. This notice is required by Section 287.133(3) (a), Florida Statutes.

22. County and Flotilla 51 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 and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

23. Any signs proposed by Flotilla 51 for placement at Phil Foster Park, the Multipurpose Room or lockable closet must receive prior written approval from the Director of Parks and Recreation.

24. Flotilla 51 shall, at all times during its use, maintain the Multipurpose Room and lockable closet clean and free of litter and refuse.

25. During the term of this Agreement, Flotilla 51 shall comply with the Palm Beach County Code, Article 2, Chapter 21, as the same may be amended, with respect to any and all rules, hours of operation or use occurring on or about Phil Foster Park.

26. Flotilla 51 shall not commit or permit any reckless or dangerous conduct or activities by Flotilla 51, its employees, guests, or invitees in the Multipurpose Room or Phil Foster Park, at any time. Flotilla 51 shall take all reasonable precautions for and shall be responsible for initiating, maintaining and supervising all programs relating to the safety of all persons and property affected by or involved in the performance of the Flotilla 51's operations or use under this Agreement. All of Flotilla 51's employees, members, guests, spectators and invitees shall behave in a civil and respectful manner. Violators of this provision may be ordered to leave the Multipurpose Room and Phil Foster Park by law enforcement officers or designated County employees.

27. The use of drugs or alcoholic beverages at Phil Foster Park or the Multipurpose Room is prohibited. No person who is intoxicated or under the influence of drugs or alcohol is permitted to enter Phil Foster Park or the Multipurpose Room.

28. Flotilla 51 shall coordinate with and obtain prior written approval from the County's special event staff for any special event Flotilla 51 desires to host at Phil Foster Park, which may be approved or denied in County's sole discretion. If approved by County, a separate agreement or permit may be needed for Flotilla 51 to host the special event.

29. 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:

Assistant Director
Palm Beach County Parks and Recreation
2700 6th Avenue South
Lake Worth, Florida 33461

As to the Flotilla 51:

Louis Townsend, Commander
Flotilla 51 of the Palm Beaches
U.S. Coast guard Auxiliary
3300 Lakeshore Drive
Riviera Beach, Florida 33404

30. Flotilla 51 agrees, warrants and represents that no person shall on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, ethnicity, marital status, sexual orientation, gender identity or expression be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

31. The parties agree that, in the event Flotilla 51 is in default of its obligations under this Agreement, the County shall provide Flotilla 51 thirty (30) days written notice to cure the default. In the event the Flotilla 51 fails to cure the default within the thirty (30) day cure period, the County shall have no further obligations under this Agreement. The Director of Parks and Recreation Department is hereby authorized to provide such notice to Flotilla 51.

32. Each party's performance and obligations under this Agreement shall be contingent upon an annual budgetary appropriation by its respective governing body for subsequent fiscal years.

33. Palm Beach County has established the Office of the Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor and inspect the activities of the County, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statute, in the same manner as a second degree misdemeanor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized officers or representatives effective as of the date first above written above.

ATTEST:
SHARON R. BOCK, Clerk & Comptroller

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

By: _____
Deputy Clerk

By: _____
Commissioner Burt Aaronson, Chair

WITNESSES:

US CG AUXILIARY FLOTILLA 51

Katherine H. Hochstetler

By: Louis R. Townsend, Jr. Esq
Name (Type or Print)

John F. Wilford

Title: Flotilla Commander Flotilla 51

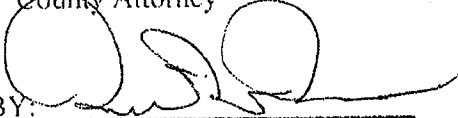
APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: Louis Townsend
Signature

By: _____

APPROVED AS TO TERMS AND CONDITIONS

County Attorney


BY: _____
USCG Auxiliary Staff Legal Officer

ANDREW W. ANDERSON
07 DSO-LP

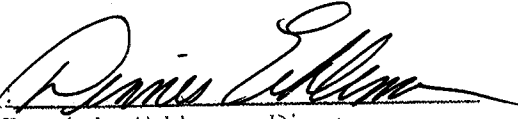
By: 
Dennis L. Fishleman, Director
Parks and Recreation Department

EXHIBIT "A"

Description of Multipurpose Room

A portion of a building described on this date as the Phil Foster Park, Marine Center, Multipurpose Room (with lockable closet), 900 E. Blue Heron Boulevard, Riviera Beach, Florida 33404.