Agenda Item #:

3H-4

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	June 19, 2012	[X] Consent [] Ordinance	[] Regular [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: First Amendment to Use Agreement dated September 15, 2009 (R2009-1502) with the Sheriff of Palm Beach County (PBSO) for the use of space at DuBois Park in Jupiter.

Summary: On September 15, 2009, the Board approved a Use Agreement with PBSO for the use and occupancy of space at three (3) County Parks by PBSO's Marine Unit. This First Amendment to the Use Agreement provides PBSO's Marine Unit with exclusive use of the following space at DuBois Park: (i) Dubois Marina boat slip #2, together with the associated boat lift; (ii) storage unit #1; and (iii) one designated parking space (collectively, "DuBois Premises"). PBSO's Marine Unit will also have the non-exclusive use of the finger pier that provides access to and from the mainland. PBSO's use of the DuBois Premises is free of charge. The County is responsible for the maintenance and repair of the DuBois Premises at its sole cost, except for the boat lift, which is the responsibility of PBSO. The County shall pay the cost of water and electrical service at the DuBois Premises. In the event any dredging is required for use of the DuBois Premises then PBSO will reimburse the County for its proportionate share of the costs. The County's Parks and Recreation Department supports the use of the DuBois Premises by PBSO's Marine Unit as such use provides additional security at the park. (FDO Admin) District 1 (HJF)

Background and Justification: On September 15, 2009, the Board approved a Use Agreement with PBSO for use and occupancy of Phil Foster Park, Ocean Inlet Park and DuBois Park for an initial term of twenty (20) years. The Use Agreement provides for two (2) renewal options of five (5) years each. The Use Agreement contemplated that an amendment would be entered into in the event docks were constructed at DuBois Park. In March of 2012, the County's DuBois Park marina project was completed. The marina project included construction of: (i) three (3) docks with boat lifts for use by public safety vessels along the Zeke's Marina portion of the park; and (ii) a water taxi shelter with three (3) storage lockers on the uplands, providing a sheltered location for park patrons to wait for the water taxis and storage lockers for use by PBSO, Florida Fish and Wildlife Conservation Commission, and Palm Beach County Ocean Rescue to store public safety equipment.

Attachments:

First Amendment

Recommended by		3/30/12
	Department Director	Date '
Approved by:	When	chi
	County Administrator	Date `

II. FISCAL IMPACT ANALYSIS

	11. 1100	ALI IIVII II OI 13	d (III) LOLD		
A. Five Year Summary of	Fiscal Impact	:			
Fiscal Years	2012	201 3	201 4	201 5	201 6
Capital Expenditures Operating Costs External Revenues Program Income (County) In-Kind Match (County) NET FISCAL IMPACT # ADDITIONAL FTE	-0- -0- -0- -0- -0-	-0- -0- -0- -0- -0- -0- see below	-0- -0- -0- -0- -0-	-0- -0- -0- -0- -0-	-0- -0- -0- -0- -0-
POSITIONS (Cumulative) Is Item Included in Current Budget Account No.:	Fund Object	Department	<u>//A</u>		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
B. Recommended Sources There is no fiscal impact asso C. Departmental Fiscal Re	ciated with the		Impact:	5.31.A	-
III. REVIEW COMMENTS					

Α.	OFMB Fiscal	_and/or	Contract Development and Control Comments:
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B. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 9/2003 ADM FORM 01

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

Contract Development and Control

FIRST AMENDMENT TO USE AGREEMENT

THIS FIRST AMENDMENT TO USE AGREEMENT (the "First Amendment"), made and entered into _______, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida ("County") and RIC L. BRADSHAW, SHERIFF, in his official capacity as SHERIFF of PALM BEACH COUNTY, a State constitutional officer ("Sheriff").

WHEREAS, County and Sheriff entered into that certain Use Agreement dated September 15, 2009 (R2009-1502) (the "Use Agreement") that provides for the Sheriff's use of the Parks as defined in the Use Agreement for operation of the Sheriff's Marine Unit; and

WHEREAS, County has installed improvements at DuBois Park, including but not limited to a boat slip, together with a boat lift and a storage unit, that the County desires to allow the Sheriff to use and occupy in accordance with the terms and obligations set forth herein.

NOW, THEREFORE, in consideration of the rents, mutual covenants, and agreements hereinafter set forth, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning ascribed to them in the Use Agreement.
- 2. Exhibit "C" attached to the Use Agreement shall be deleted in its entirety and replaced with Exhibit "C" attached hereto and made a part hereof.
- 3. Section 3 of the Use Agreement is modified so that each party shall have the right to terminate the Use Agreement as to the Parks or each individual park for any reason upon thirty (30) days prior written notice to the other party.
- 4. Section 19 of the Use Agreement is hereby deleted in its entirety and replaced as follows:
 - 19. Sheriff shall have the exclusive use of Slip #2, which is improved with a boat lift, and the non-exclusive use of the finger pier that provides access to and from the mainland, all as depicted on Exhibit "C". Furthermore, the Sheriff shall have the exclusive use of: (i) Storage Unit # 1 as depicted on Exhibit "C"; and (ii) one (1) designated parking space, as depicted on Exhibit "C" within DuBois Park. (Collectively, all of the areas described in this Section shall hereinafter be referred to as the "DuBois Premises"). Sheriff agrees that the DuBois Premises shall be used solely by the Sheriff's Marine Unit.

- 5. The Use Agreement is hereby amended to add the following provisions:
 - 20. Slip #2 and the finger pier are located on submerged lands leased by the County from the State of Florida (the "State"), pursuant to Sovereignty Submerged Lands Lease No. 500341216 as recorded in the public records of Palm Beach County in Official Book 24156 Page 0975 and by reference made a part hereof (the "Submerged Lands Lease"). The Sheriff's use of the finger pier, together with Slip #2 shall be subject to the terms of the Submerged Lands Lease, as the same may be modified.

The current term of the Submerged Lands Lease expires on May 8, 2012. County will request that the State renew the Submerged Lands Lease for a term of five (5) years, but County cannot guarantee that the Submerged Lands Lease will be renewed. The parties acknowledge and agree that the Use Agreement as it relates to the DuBois Premises is contingent upon the continued existence of the Submerged Lands Lease; in the event that the Submerged Lands Lease is terminated or is not renewed, the Use Agreement as it relates to the DuBois Premises shall terminate and the parties shall be released from all obligations relating to the DuBois Premises. County will provide Sheriff with written notice if the Submerged Lands Lease is not renewed.

- 21. Sheriff shall have the right to use the DuBois Premises at no charge; provided however, Sheriff shall be responsible for any dredging that may be required for use of Slip #2 at its sole cost and expense. Sheriff acknowledges that any dredging is subject to the prior written consent of the State, pursuant to the terms of the Submerged Lands Lease. In the event dredging is necessary the Sheriff shall notify the County and the County will use its best efforts to obtain the State's consent regarding the same. Sheriff shall reimburse the County for its proportionate share of all costs and expenses incurred by the County that are associated with the dredging, including those incurred in obtaining any required consents and/or permits.
- 22. County shall provide electric and water service to Slip #2 and shall be responsible for all costs associated therewith.
- 23. County shall maintain, repair and keep the DuBois Premises in good condition and repair at County's sole cost and expense. County shall also be responsible for all operating costs for the DuBois Premises. Notwithstanding anything herein to the contrary, Sheriff shall be responsible for the maintenance and repair of the boat lift at Sheriff's sole cost and expense.
- 24. Sheriff shall not modify or alter the DuBois Premises without the prior written approval of the County through its Director of Facilities Development & Operations and the Director of Parks & Recreation.

- 25. Sheriff shall not store or dispose of any contaminants including, but not limited to, hazardous or toxic substances, chemicals, fuel or other agents on the DuBois Premises.
- 26. Sheriff shall not store nor permit to be stored in Storage Unit #1 any firearms, firearm ammunition or explosives of any kind.
- 27. In the event of an emergency County shall have the right, without prior notice to the Sheriff, to access Storage Unit # 1.
- 28. Dubois Park is open to the public between sunrise and sunset. Sheriff shall be responsible for unlocking and relocking the park gate when accessing the DuBois Premises during the hours that the DuBois Park is not open to the public. The County shall install a chain link fence as depicted on Exhibit "C" with a gated entrance, at its sole cost and expense, in order to secure the site. County shall provide Sheriff with keys to both the DuBois Park gate and the gates depicted on Exhibit "C" for access.
- 29. Sheriff acknowledges that the intent of the parties is for the Sheriff to dock a Sheriff's Marine Unit vessel at Slip #2 on a regular basis for law enforcement/security purposes.
- 30. Sheriff shall have the right for ingress and egress over and across DuBois Park as is reasonably necessary for the use of the DuBois Premises.
- 6. This First Amendment shall take effect when signed by all parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").
- 7. Except as set forth herein, the Use Agreement remains unmodified and in full force and effect and the parties hereby ratify, confirm, and adopt the Use Agreement, as amended by this First Amendment, in accordance with the terms thereof.

(the remainder of the page is intentionally left blank)

IN WITNESS WHEREOF, Sheriff and County have executed this First Amendment, or have caused the same to be executed, as of the day and year first above written.

ATTEST:	
SHARON R. BOCK CLERK & COMPTROLLER	PALM BEACH COUNTY, a political subdivision of the State of Florida
By: Deputy Clerk	By:Shelley Vana, Chair
Signed and delivered in the presence of:	
Witness Signature	
Print Witness Name	APPROVED AS TO TERMS AND CONDITIONS
Witness Signature	By:
Print Witness Name	
APPROVED AS TO FORM AND LEGAL SUFFICIENCY By: Assistant County Attorney	APPROVED AS TO TERMS AND CONDITIONS By: Director, Facilities Development & Operations
ATTEST: By Sharrow R. Mc Q'illians	RIC L. BRADSHAW, IN HIS OFFICIAL CAPACITY AS SHERIFY OF PALM BEACH COUNTY, FLORIDA, a State Constitutional Officer
APPROVED AS TO FORM AND LEGAL SUFFICIENCY.	



STORAGE UNIT #1 - SHERIFF STORAGE UNIT #2 - OCEAN RESCUE STORAGE UNIT #3 - F.F.W.C.

EXHIBIT 'C'



PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

DUBOIS PARK USE AGREEMENT DUBOIS PREMISES

