

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: August 13, 2013

(X) Consent
() Workshop

() Regular
() Public Hearing

Department

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

I. EXECUTIVE BRIEF

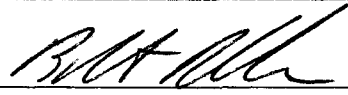
Motion and Title: Staff recommends motion to approve: an Amendment to Agreement R-2012-0340 with PBA Holdings, Inc. (PBA) to revise the implementation schedule for restoration of a 2.87-acre parcel of property to be used as a portion of a wildlife corridor, and to provide for a performance bond.

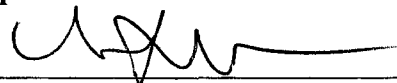
Summary: As part of PBA's development approval for a Type IIIB excavation, PBA accepted a condition to restore and convey a 2.87-acre parcel as part of a wildlife corridor. The planting was to have been completed within 180 days of the March 6, 2012 effective date of the Agreement. PBA requests an extension of the restoration deadline to August 31, 2019. The amended agreement will also provide for a performance bond in the amount of \$50,411.83 to help ensure timely performance. There is no cost to the County. District 6 (SF)

Background and Justification: Agreement R-2012-0340 provides for the conveyance of a portion of a wildlife corridor. The conveyance of this parcel to the County was completed on June 18, 2013. The planting of the corridor parcel began on June 26, 2013. PBA requests a revised implementation schedule that calls for an extension of time to complete the planting of the corridor and a proposal to submit to the County a completion bond as assurance that PBA will complete the planting.

Attachments:

- 1. Amendment To Agreement

Recommended by:  2/8/13
Department Director **Date**

Approved by:  2/27/13
County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?		Yes _____		No <u>X</u>	
Budget Account No.:	Fund _____	Department _____	Unit _____	Object _____	
	Program _____				

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

C. Department Fiscal Review:

No fiscal impact. The bond will be held until work is completed under the plan. *JP*

III. REVIEW COMMENTS

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

[Signature]
 OFMB
ce 7/11/13 pm 7/11/13

[Signature] 7/17/13
 Contract Development and Control
 7-17-13 *[Signature]*

B. Legal Sufficiency:

[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

AMENDMENT
TO
AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
PBA HOLDINGS, INC.

THIS AMENDMENT to the AGREEMENT is made this ____ day of _____, 2013, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "County") PBA Holdings, Inc., a Florida Corporation ("PBA"), both being hereinafter referred to collectively as the parties.

WITNESSETH:

WHEREAS, on March 6, 2012, the parties entered into an Agreement (R-2012-0340), which provided among other things that PBA would convey a wildlife corridor to the County and complete a planting plan thereupon in order to partially fulfill the requirements of a Palm Beach County Development Order; and

WHEREAS, PBA has conveyed the Property to the County for a wildlife corridor and has provided the Pilot Planting Project Payment to the County; and

WHEREAS, PBA has requested additional time to complete the pilot planting project, which includes exotic plant removal, trail and road construction and planting; and

WHEREAS, the parties have agreed to a revised implementation schedule and plant list for the pilot planting project and related items contingent upon PBA posting a performance bond to ensure completion the pilot planting project and related items as of August 31, 2019.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants set forth herein, the parties agree as follows:

1. The foregoing recitals are true and correct and are hereby incorporated herein by reference as if fully set forth herein.
2. Paragraph 11.3 of the Agreement is deleted and replaced with the following:

PBA shall complete planting, exotic and nuisance plant removal and construction of the trail and tower access road on the Property in accordance with the Planting Plan for the Property, the Implementation Schedule attached hereto as Exhibit A1 to this Amendment and the Revised Plant List attached hereto as Exhibit B1 to this Amendment.

3. Paragraph 11.9 is added to the Agreement as follows:

Upon execution of this Agreement, PBA shall execute the performance bond attached hereto as Exhibit C, which performance bond shall remain in full force and effect until the County determines that PBA has successfully completed all terms and conditions of this Agreement.

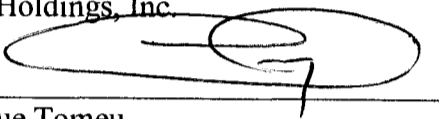
4. Paragraph 20 is amended by adding the following:

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or PBA.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the parties by and through a duly authorized representative hereby execute this Agreement on the date first written above.

PBA Holdings, Inc.



Enrique Tomeu
President

Date: 7/9/13

ALBERTO MORAGUES JR
(Print Witness Name)

ATTEST:

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

Sharon R. Bock, Clerk & Comptroller

BY: _____
Deputy Clerk

BY: _____
Steven L. Abrams, Mayor

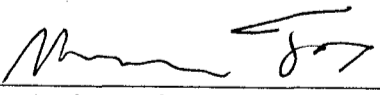
DATE: _____

DATE: _____

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS:

BY: 
Assistant County Attorney

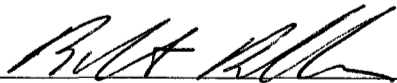

Robert Robbins, Director
Palm Beach County Dept. of
Environmental Resources Management

Exhibit A1
Implementation and Schedule

1. **Site prep:** May- June 2013 – need 2-3 months to kill bahiagrass.
 - a. April-May Herbicide: glyphosate and Imazapyr herbicide X 2 for Bahiagrass and Bermudagrass. (Complete)
 - b. Repeat herbicide Imazapyr.
 - c. Disk to break up compacted soil in appropriate locations.
 - d. Add sterile (no weeds) soil if needed prior to planting.
 - e. Herbicide after treatment – light application for remaining weeds, heavier application for bahiagrass and Bermudagrass, or use pre-emergent fertilizer.
 - f. Establish planting zone under powerline for groundcover and low growing shrubs. No trees planted under powerline.
2. **Planting:** Best planting time is **June-August** after the rainy season begins.

First year – June-August 2013:

 - a. Plant **grasses**. Keep grasses together in large groupings, as some of the grasses will “seed out” into bare patches as they mature.
 - i. Plant Cordgrass along the east edge (may be as early as April provided bahiagrass and Bermuda grass are eradicated in those areas).
 - ii. Plant grasses (all species) in clusters, under the powerline corridor.
 - b. Plant **trees** on higher locations and in tree/shrub clusters.
 - c. Plant **shrubs** in tree/shrub clusters on higher locations and on hill.
 - d. Plant mesic-wetland **shrubs** (saltbush, wax myrtle) and herbs (Seaside goldenrod) in ditches or lower elevations extending w-e across two linear western plots and extending north-south along lower elevations of two linear eastern plots.
 - e. Plant sun loving herbaceous species (dune sunflower, sunshine mimosa, prickley pear).

Second Year – June-August 2014:

 - a. Plant light sensitive **understory species** (wild coffee, myrsine, Florida Sword fern) under trees planted first year.
 - b. Plant wildflowers and herbaceous species.
 - c. Evaluate first year plantings and replace with hardy species that thrived in first year.

Recommendations for all planting

 - a. Use only deeper pine straw mulch under trees and shrubs, less or none near grasses and wildflowers.
 - b. Use reduced fertilizer requirements in holes not on groundcover or grasses.
 - c. If using potassium polymer, use reduced amounts to prevent lifting plants above ground level.
3. **Watering** (at planting and as needed for 4-6 months).
4. **Maintenance**
 - a. Weed control – backpack glyphosate, do not overspray.
 - b. Weeding frequency – 4 times/year
5. **Monitoring**
 - a. As provided in the Agreement
6. **Trail & Tower Access Road Construction:** August 2013
7. **Completion of Planting and Related Items:** August 31, 2019

EXHIBIT B 1

Approved Plant list as of 6/4/13 - sorted by lifeform
 Palm Beach Aggregates Wildlife Corridor Revised Plant list
 Anne Cox, Ph.D. Updated Feb 15 & May 30, June 4, 2013

Specific numbers of plants, sizes and species above may be interchanged depending upon availability and specific site conditions
 Note Total Counts are approximate numbers based on availability

COMMON NAME	BOTANICAL NAME	LIFEFORM	TOTAL COMMENTS
Acrostichum aureum	Golden leather fern	fern	low areas
Florida Sword Fern	Nephrolepis exaltata	fern	402 lower elevation, shade
Broomsedge Bluestem	Andropogon virginicus	grass	326 Plant in clusters
Cordgrass	Spartina bakeri	grass	3,555 Plant in clusters
Little Bluestem	Schizachyrium scoparium	grass	326 Plant in clusters
Silver Lovegrass	Eragrostis elliottii	grass	326 Plant in clusters
Wiregrass	Aristida stricta	grass	191 Plant in clusters
Butterfly Weed	Asclepias tuberosa	herb	470 Plant later - 1 year
East Coast Dune Sunflower	Helianthus debilis	herb	225 Put 4 ft apart, sprawling herb in clusters
Florida Paintbrush	Carphephorus corymbosum	herb	225 Plant later - 1 year
Gayfeather, blazing star	Liatris gracilis, L. laevigata	herb	225 Plant later - 1 year
Prickly Pear Cactus	Opuntia humifusa	herb	817 very dry, higher elevation
Seaside Goldenrod	Solidago sempervirens	herb	225 lower areas as needs more moisture
Spider Lily	Hymenocallis latifolia	herb	74 grows on beach dunes
Sunshine mimosa	Mimosa strigillosa	herb	481 vine - full sun - put in groups along the Powerline ROW
Adam's Needle	Yucca filamentosa	shrub	16
Beauty Berry	Callicarpa americana	shrub	59 put in later as may need more mesic conditions
Cherokee Bean	Erythrina herbacea	shrub	24
Cocoplum	Chrysobalanus icaco	shrub	95 Get local and coastal if possible
Fiddlewood	Citharexylum spinosum	shrub	may substitute for other shrubs, plant later in shade,
Florida Privet	Forestiera segregata	shrub	610 Changed to Florida privet (coastal, not pineland)
Horizontal Cocoplum	Chrysobalanus icaco 'Horizontal'	shrub	139 maybe difficult 1st year- needs water 2 mo - wait until 2nd year
Marlberry	Ardisia escallonioides	shrub	may substitute for other shrubs, plant later in shade,
Myrsine	Rapanea punctata	shrub	59 plant later in shade
Necklace pod	Sophora tomentosa (shrub)	shrub	223 Replaces Iva frutescens (Sub shrub-shrub)
Salt Bush	Baccharis halimifolia	shrub	223 put in low areas
Saw palmetto - 1 gal.	Serenoa repens	shrub	55
Saw palmetto - 3 gal.	Serenoa repens	shrub	27
Silver Saw Palmetto - 1 gal.	Serenoa repens 'Silver Form'	shrub	166
Silver Saw Palmetto - 3 gal.	Serenoa repens 'Silver Form'	shrub	80
Simpson's Stopper	Myrcianthes fragrans	shrub	207
Spanish Stopper	Eugenia foetida	shrub	59
Tough Buckthorn	Sideroxylon tenax	shrub	81
Wax myrtle, bayberry	Myrica cerifera	shrub	100 Replaces Hamelia patens
White Indigoberry	Randia aculeata	shrub	13
White Stopper	Eugenia axillaris	shrub	118
Wild Coffee	Psychotria nervosa	shrub	219 plant later in shade
Wild Lime	Zanthoxylum fagara	shrub	74
Blolly	Guiapira discolor	tree	May substitute for other trees
Cabbage Palm	Sabal palmetto	tree	May substitute for other trees
False Mastic	Sideroxylon foetidissimum	tree	May substitute for other trees
Gumbo limbo	Bursera simaruba	tree	May substitute for other trees
Live Oak	Quercus virginiana	tree	71
Myrtle Oak	Quercus myrtifolia	tree	319 smaller plants or cut back upon planting to grow stronger roots
Paradise tree	Simarouba glauca	tree	May substitute for other trees, plant later
Pigeon plum	Coccoloba diversifolia	tree	May substitute for other trees
Seagrape - 1 gal.	Coccoloba uvifera	tree	111
Slash pine	Pinus elliottii var densa	tree	154 Replaces Ilex glabra and Lyonia fruticosa
Strangler fig	Ficus aurea	tree	May substitute for other trees
Taxodium distichum	Bald Cypress	tree	
Willow bastic	Sideroxylon salicifolia	tree	May substitute for other trees

Exhibit C

PERFORMANCE BOND

BOND NUMBER: _____

BOND AMOUNT: _____

PRINCIPAL'S NAME: PBA Holdings Inc., a Florida Corporation

PRINCIPAL'S ADDRESS: _____

PRINCIPAL'S PHONE: _____

SURETY COMPANY: _____
SURETY ADDRESS: _____

OWNER'S NAME: PALM BEACH COUNTY

OWNER'S ADDRESS: 2300 North Jog Road, 4th Floor
West Palm Beach, Florida 33411-2743

OWNER'S PHONE: 561-233-2454

DESCRIPTION OF WORK: Completion of the Pilot Planting Project, which includes exotic nuisance removal, construction of a wildlife corridor trail and tower access road, successful planting of the Property with plant survival for five consecutive years without the need for supplemental plantings, as more specifically described in the Agreement dated March 6, 2012 and amended on August 13, 2013.

PROJECT LOCATION: West side of L-8 Canal and east of communication tower site

LEGAL DESCRIPTION: See Exhibit B to the Agreement (R-2012-0340) dated March 6, 2012.

This Bond is issued in favor of the County conditioned on the full and faithful performance of the Agreement, as amended.

KNOW ALL MEN BY THESE PRESENTS: that Principal and Surety, are held and firmly bound unto

Palm Beach County Board of County Commissioners
301 N. Olive Avenue
West Palm Beach, Florida 33401

As Obligee, herein called County, for the use and benefit of claimant as herein below defined, in the amount of:

Fifty Thousand Four Hundred and Eleven Dollars and Eighty-Three Cents
(\$50,411.83)

for the payment whereof Principal and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written Agreement dated March 6, 2012 and amended August 13, 2013 (hereinafter referred to collectively as the "Agreement"), entered into an agreement with the County for:

Project Description: See Page PB 1
Project Location: See Page PB 1
Legal Description: See Page PB 1

which Agreement is by reference made a part hereof in its entirety, and is hereinafter referred to as the Agreement.

THE CONDITION OF THIS BOND is that if Principal:

1. Timely and successfully performs the Agreement; and
2. Promptly makes payments to all claimants supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Agreement; and
3. Pays County all losses, damages (including liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that County sustains because of a default by Principal under the Agreement; and

4. Performs the guarantee of all work and materials furnished under the Agreement for the time specified in the Agreement;

then, this bond is void; otherwise, it remains in full force.

5. Any changes in or under the Agreement documents and compliance or noncompliance with any formalities connected with the Agreement or the changes does not affect Surety's obligation under this bond and Surety waives notice of such changes.

6. Any increase in the total cost of the project as more fully described in the Agreement, as may be amended from time to time, shall accordingly increase the Surety's obligation by the same dollar amount of said increase. The Principal shall be responsible for notification to Surety of all such changes.

7. Surety agrees to pay the County the Bond Amount provided on page PB 1 in good and lawful money of the United States of America immediately upon demand of the County, for the failure of the Principal to comply with the provisions of the Agreement, as may amended from time to time.

8. Any action brought under this instrument shall be brought in the state court of competent jurisdiction in Palm Beach County and not elsewhere.

Attest as to the signature of
Principal

PBA Holdings, Inc. (Seal)

By: _____
Enrique H. Tomeu
President

Date

Attest as to the signature of
Surety

Surety (Seal)
By: _____
Signature

Title

Date