

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	\$0 _____	_____	_____	_____	_____
 # ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
 Is Item Included in Current Budget? (Match)	Yes _____	No _____			
Budget Account No.:	Fund _____	Department _____	Unit _____	Object _____	
	Program _____				

B. Recommended Sources of Funds/Summary of Fiscal Impact

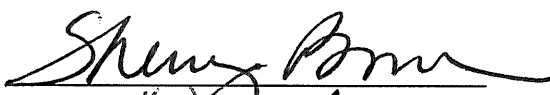

Loss of value of the asset

C. Department Fiscal Review:

JP

III. REVIEW COMMENTS

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

 OFMB ^{KW} 4/23 AK 4/28/15	 Contract Dev. and Control 5-7-15 Wheeler	5/17/15
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B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND
THE CITY OF LAKE WORTH
FOR TRANSFER OF FLOATING DOCK**

THIS AGREEMENT is made and entered into by and between the City of Lake Worth, a Florida municipal corporation, hereinafter referred to as the “City”, and Palm Beach County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the “County”. The City and the County shall hereinafter be referred to collectively as the “parties”.

WITNESSETH:

WHEREAS, the Florida Interlocal Cooperation Act of 1969 (Section 163.01, Florida Statutes) allows governmental units to enter into intergovernmental agreements to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage; and

WHEREAS, the County constructed a day-use floating dock system within the Snook Islands Public Use Facility with a portion of that structure underutilized by the public at its current location; and

WHEREAS, the City requests that a portion of the Snook Islands dock be transferred to the City as a staging dock to facilitate the boaters entering and leaving Bryant Park; and

WHEREAS, the execution of this Agreement is in the best interests of the County and City and the residents and citizens of the same.

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

ARTICLE I – GENERAL

1. The foregoing recitals are true and correct and are incorporated herein as if fully set forth herein.
2. The purpose of this Agreement is to provide a mechanism for the County and the City to cooperate in the relocation of a portion of the floating dock from the Snook Islands Public Use Facility (the “Dock”) to Bryant Park.
3. The term of this Agreement shall commence upon signature by both parties (“the Effective Date”) and shall terminate when the last General Obligation Bond (described below) is retired or August 1, 2026, whichever occurs first.

ARTICLE II – RESPONSIBILITIES OF THE COUNTY

4. The County will donate the Dock to the City for use by the public at Bryant Park.

ARTICLE III – RESPONSIBILITIES OF THE CITY

5. The City will use its best efforts to relocate the Dock to Bryant Park on or before June 30, 2015, utilizing the City’s contractor. The City shall (through its contractor) be responsible for relocating the Dock and installing the Dock at Bryant Park.
6. The City shall coordinate with the County’s representative to set up a mutually convenient date and time to relocate the Dock.
7. The City shall assume ownership of the Dock at the commencement of relocation to Bryant Park and shall provide for maintenance of the Dock.
8. The City shall only use the Dock in a manner that constitutes a “Project.” Project is defined in Resolution No. R-2006-0270, adopted by the County on February 7, 2006 (the “Bond Resolution”) to mean the acquisition of real property or interests therein that preserve, protect or expand public access to and use of freshwater and saltwater bodies of water, the construction of

capital improvements that facilitate public access to and use of such bodies of water including, but not limited to, boat ramps, public parking and governmentally approved waterway dredging, and the acquisition of real property or interests therein that preserve working waterfront areas.

9. If at any time the City ceases to use the Dock in a manner that constitutes a Project, the City shall transfer the Dock back to the County at no cost to the County. The City shall be solely responsible for the cost of transporting the Dock back to a location approved by the County.

ARTICLE IV – MISCELLANEOUS

10. REPRESENTATIVES

The County's representative during the performance of this Contract shall be Mr. Carman Vare, telephone no. 561-233-2444.

The City's representative during the performance of this Contract shall be Jamie Brown, telephone no. (561) 586-1720.

11. TAX COVENANTS OF THE CITY

The City understands that the Dock was acquired by the County with a portion of the proceeds of the County's \$50,000,000 General Obligation Bonds (Waterfront Access Projects). Series 2006 (the "Bonds"), and is subject to restrictions on its use for the term of the Bonds, in order to preserve the exclusion from gross income of the interest on the Bonds. The City hereby covenants that it shall not make any use of the Dock that would cause the Bonds to be classified as "private activity bonds" within the meaning of section 141 of the Code. In furtherance, and not in limitation of, this covenant, the City hereby represents and covenants:

(a) The Dock will be owned and operated by the City or another governmental unit throughout the term of the Bonds. The City will not enter into any arrangement to transfer ownership of any portion of the Dock that will not be dedicated to other governmental units before the last Bond is retired. The City acknowledges that the last Bond is not scheduled to be retired until August 1, 2026.

(b) The City will not enter into any lease or other contractual arrangement which permits any nongovernmental person to use any portion of the Dock in such person's trade or business unless: (i) such use complies with the management contract safe harbor provisions of Revenue Procedure 97-13 or any successor guidance, (ii) such use constitutes general public use (within the meaning of 26 CFR § 1.141-3(c)), or (iii) the City has consulted with the County's Bond Counsel and has determined that such lease or other contractual arrangement will not adversely affect the exclusion from gross income of interest on the Bonds.

(c) Notwithstanding anything in this Agreement to the contrary, the City may enter into any contract or arrangement with respect to the Dock if the City receives an opinion of the County's Bond Counsel addressed to the City and the County that such contract or arrangement will not adversely affect the exclusion from gross income of interest on the Bonds.

(d) If an action is taken that would (absent remedial action) cause the Bonds to be treated as private activity bonds (within the meaning of Section 141 of the Code), at the direction of the County, the City will take remedial action under 26 CFR § 1.141-12 to the extent necessary to preserve the exclusion from gross income of interest on the Bonds.

12. INDEMNIFICATION BY CITY

(a) If the City takes any action related to the Dock that causes interest on the Bonds to be included in the gross income of the holders thereof, the City shall, to the full extent permitted by law, indemnify and hold the County harmless from any loss resulting from same.

(b) To the extent permitted under Florida law, the City shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out of the City's negligence related to the removal, transfer and re-installation of the Dock. However, nothing in this paragraph shall be interpreted as a waiver of the City's sovereign immunity as provided in Section 768.28, Florida Statutes, as amended from time to time, or as consent by the City to be sued.

(c) In the City's contract with its contractor, the City shall require the City's contractor to indemnify, defend and hold harmless the County as follows:

The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City and Palm Beach County, and their commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, Contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City and/or Palm Beach County in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and and/or the County and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

13. INDEMINIFICATION BY COUNTY

The County acknowledges the waiver of sovereign immunity for liability in tort contained in Section 768.28, Fla. Stat., and acknowledges that such statutes permits actions at law against the County to recover damages in tort for money damages up to the amounts set forth in such statute for injury or loss of property, personal injury, or death caused by the negligence or wrongful act or omissions of an employee of the County while acting in the scope of the employee's office or employment under circumstances in which the County, if a person, would be liable under the general laws of the State.

14. Captions. The Captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

15. Effective Date of Agreement. This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and the Lake Worth City Commission and shall become effective only when signed by both parties.

16. Insurance. Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, the City and County acknowledge to be insured or self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statute with monetary waiver limits of \$200,000 Per Person and \$300,000 Per Occurrence, or such limits that may change and be set forth by the legislature. In the event the City or County maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28, Florida Statutes, the City and County shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

The City and County acknowledge to be insured or self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes. When requested, the City and County agree to provide a Certificate of Insurance evidencing insurance or self-insurance and/or sovereign immunity status, which the City and County agree to recognize as acceptable for the above mentioned coverages.

17. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

18. Governing Law. This Agreement shall be governed by the laws of the State of Florida. Venue shall be in Palm Beach County, Florida.

19. Notice. For the purposes of this Agreement, notices to the other party shall be deemed sufficient when addressed to the following persons and addresses and deposited in the United States Mail:

- a. City of Lake Worth
Office of the City Manager
7 North Dixie Highway
Lake Worth, Florida 33460

With copy to:

Torcivia, Donlon, Goddeau and Ansay, P.A.
City Attorney
701 Northpoint Parkway
Suite 209
West Palm Beach, Florida 33407

- b. Palm Beach County
Department Director
Department of Environmental Resources Management
2300 N. Jog Road
West Palm Beach, Florida 33411-2743

With copy to:

County Attorney's Office
ERM Attorney
Palm Beach County, 6th Floor
301 N. Olive Avenue
West Palm Beach, FL 33401

Should either party change its address, written notice of such new address shall promptly be sent to the other party.

20. Termination. If either party fails to fulfill its obligations under this Agreement in a timely and proper manner, the other party shall have the right to terminate this Agreement by giving thirty (30) days' written notice of any deficiency and its intent to terminate. If the deficiency is not corrected within this time, unless otherwise agreed by the parties, this Agreement shall terminate at the expiration of the thirty (30) day time period. If this Agreement is terminated by either party prior to August 1, 2026, the City shall transfer the Dock back to the County at no cost to the County. The City shall be solely responsible for the cost of transporting the Dock back to a location approved by the County.

21. Non-exclusivity of Remedies. 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 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.

22. Non-Discrimination. The parties agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, age, sexual orientation, familial status, gender identity gender expression or genetic information be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

The City has submitted to the County a copy of its non-discrimination policy which is consistent with the above, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the City does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to the County that City's non-discrimination policy conforms to R-2014-1421, as amended.

23. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

24. Incorporation by Reference. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.

25. Entirety of Agreement. This Agreement shall be deemed to be the sole agreement between the parties, and no prior agreements or other prior writings shall supersede that which is contained in this Agreement. The Agreement may be amended only by written document executed by both parties.

26. Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the any party contracting with 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 interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

27. No Third Party Beneficiaries. 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 or the City.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

WHEREFORE, the parties hereto have set their hands and seals on the day set forth next to their signatures.

ATTEST:

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

_____, Clerk

BY: _____
Deputy Clerk

BY: _____
Shelley Vana, Mayor

DATE: _____

DATE: _____

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS:

BY: [Signature]
Assistant County Attorney

BY: [Signature]
Robert Robbins, Director Environmental
Resources Management

DATE: 5/12/15

DATE: _____

CITY OF LAKE WORTH

BY: [Signature]
Pam Triolo, Mayor

DATE: 4/22/15

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: [Signature]
Pamela J. Lopez, City Clerk

BY: [Signature]
Glen J. Torcivia, City Attorney

