

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

**Meeting Date:** June 2, 2015      ☒ (X) Consent      ☐ ( ) Regular  
☐ ( ) Workshop      ☐ ( ) Public Hearing

Department

**Submitted By:** Environmental Resources Management

**Submitted For:** Environmental Resources Management

## I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to:**


- A) **approve** an Agreement with the Andrew “Red” Harris Foundation, Inc. (ARHF) for accepting donated artificial reef modules in exchange for placing the modules within permitted artificial reef sites offshore of northern Palm Beach County. Estimated deployment costs for the term of the agreement will not exceed \$260,000. This agreement will expire on December 31, 2017;
- B) **approve** naming the artificial reef(s) created utilizing these reef modules as the Andrew Harris Reef;
- C) **authorize** the County Administrator, or his designee, to sign all future time extensions, task assignments, and other forms associated with this Agreement, and necessary minor amendments that do not significantly change the scope of work, terms or conditions of this Agreement;
- D) **adopt** a Resolution authorizing the Clerk of the Board to disburse \$260,000 from the Vessel Registration Fee Trust Fund to provide the necessary funding for placing these reef structures; and
- E) **approve** a Budget Transfer of \$260,000 from reserves in the Environmental Enhancement Saltwater Fund to the Andrew “Red” Harris Foundation reef project.


**Summary:** Staff recommends approval of the Agreement in which ARHF will donate up to 240 artificial reef modules and the County will transport/install the modules at permitted artificial reef sites and name the modular reefs the Andrew Harris Reef. The \$260,000 to cover the County's costs will come from the County Vessel Registration Fees. District 1 (SF)

**Background and Justification:** The Andrew “Red” Harris Foundation (ARHF) was created in 2014 to honor the memory of Andrew “Red” Harris, a young man who was an avid diver, snorkeler and fisherman and who lost his life in a tragic snorkeling accident. ARHF is dedicated to assuring the long-term health and vibrancy of the coastal waters off of Palm Beach County. ARHF will fabricate up to 240 reef modules over the term of the Agreement at an estimated cost of \$1,400 per module for a total value of \$336,000. The County will provide the trucking, barge transport and installation of these modules using the annual artificial reef contractor.

**Attachments:**

1. Agreement
2. Resolution
3. Budget Transfer (1224)

Recommended by:  5/2/15  
Department Director Date

Approved by:  5/18/15  
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures					
Operating Costs	\$60,000	\$100,000	\$100,000		
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	\$60,000	\$100,000	\$100,000		

# ADDITIONAL FTE  
POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included in Current Budget? (Match) Yes \_\_\_\_\_ No X  
Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
Program \_\_\_\_\_

B. Recommended Sources of Funds/Summary of Fiscal Impact

Environmental Enhancement-Saltwater Fund \$260,000

C. Department Fiscal Review:

*Sherry*

III. REVIEW COMMENTS

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

*Sherry*  
OFMB *5/8* *AK*  
*5/8/15*

*Dr. J. Jacobson* *5/15/15*  
Contract Dev. and Control  
*5-15-15 B Wheeler*

B. Legal Sufficiency:

*Sam*  
Assistant County Attorney

C. Other Department Review:

\_\_\_\_\_  
Department Director

**AGREEMENT  
BETWEEN  
PALM BEACH COUNTY  
AND  
ANDREW RED HARRIS FOUNDATION, INC.**

THIS AGREEMENT is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2015, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "COUNTY") and the ANDREW "RED" HARRIS FOUNDATION, INC., non-profit corporation authorized to do business in the State of Florida ("ARHF"), both being hereinafter referred to collectively as the "parties".

**WITNESSETH:**

WHEREAS, ARHF was created in 2014 to honor the memory of Andrew "Red" Harris, a young man who was an avid diver, snorkeler and fisherman and who lost his life in a tragic snorkeling accident; and

WHEREAS, ARHF is dedicated to assuring the long-term health and vibrancy of the coastal waters off of Palm Beach County by building artificial reefs; and

WHEREAS, Palm Beach County has a shared interest in building artificial reefs to provide marine habitat and recreation; and

WHEREAS, the parties wish to work cooperatively towards the construction of artificial reefs offshore of northern Palm Beach County; and

WHEREAS, ARHF has agreed to fabricate high quality reef modules that will mimic corals and sponges and attract marine growth, sea life and fish; and

WHEREAS, it is estimated that it will cost ARHF \$1,400 to fabricate each reef module, and ARHF intends to donate between 40 to 100 reef modules to the COUNTY per year for the life of this Agreement; and

WHEREAS, the COUNTY agrees to transport and place the reef modules within permitted reef site(s) offshore of northern Palm Beach County.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein contained, the parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.
2. The Project. ARHF will fabricate high quality artificial reef modules that will be used to construct artificial reef(s) offshore of northern Palm Beach County, will provide temporary storage for the reef modules until the COUNTY is ready to transport the modules to a staging

site and will load the reef modules onto the COUNTY Contractor's vehicle for transport. The COUNTY will transport and place the reef modules at COUNTY permitted reef sites offshore of northern Palm Beach County.

3. Party's Representatives/Liaison.

- a) The COUNTY's representative during the performance of this Agreement shall be Mr. Carman Vare, telephone number 561-233-2444, e-mail address cvare@pbcgov.org.
- b) ARHF's representative during the performance of this Agreement shall be Dale S. Sugerman, Ph.D, Chief Operating Officer, telephone number 954-568-8760, e-mail address dalesugerman@bellsouth.net.

4. AHRF's Responsibilities. AHRF shall:

- a) Fabricate COUNTY-approved artificial reef modules that provide a diversity of habitat spaces for a myriad of sea life and closely mimic coral and sponge habitats. The reef modules shall measure approximately 6 feet by 8 feet at the base, shall be approximately 48 square feet in dimension and shall be between 1.5 to 2.5 tons in weight with pick up points to facilitate loading, transport and placement ("Reef Modules"); and
- b) By June 30, 2015, fabricate 40 Reef Modules to be donated to the COUNTY.
- c) By June 30, 2016, fabricate between 40 and 100 Reef Modules to be donated to the COUNTY.
- d) By June 30, 2017, fabricate between 40 and 100 Reef Modules to be donated to the COUNTY.
- e) Provide temporary storage for the Reef Modules until the COUNTY can transport them to a staging site and will load the reef modules onto the COUNTY Contractor's vehicle for transport; and
- f) Bear all costs for fabrication and loading of the Reef Modules and all liability and risk associated with fabrication and loading of the Reef Modules up to the point that ARHF completes loading the Reef Modules for transport by the COUNTY's contractor.

5. The COUNTY's Responsibilities. The COUNTY shall:

- a) Work constructively with ARHF to ensure that the Reef Modules are constructed to the COUNTY's specifications; and
- b) Once the Reef Modules are accepted by the COUNTY's Representative, the COUNTY shall provide the transportation, and placement of the Reef Modules at

one or more of the northern Palm Beach County permitted reef sites. The transport and precise placement of the Reef Modules will take place during calmer sea conditions (July through September) to ensure the work is performed safely and efficiently.

6. Naming of the Reef. The COUNTY agrees that any reef created pursuant to this Agreement with at least 40 Reef Modules will be referred to in any COUNTY publication as the "Andrew Harris Reef", provided that the Reef Modules are placed at a previously un-named reef site. However, the parties understand and agree that any reef to be constructed pursuant to this Agreement will be placed in state or federal waters that the COUNTY does not own and that may be subject to current or future regulation by the state or federal government, which could affect the naming rights to the reef. In addition, the parties understand and agree that the COUNTY has no control over how the state, federal government or other parties refer to the reef(s) to be constructed pursuant to this Agreement.

7. Term. The term of this Agreement shall be from the date of execution by both parties until December 31, 2017, unless otherwise provided herein.

8. Availability of Funds. The COUNTY'S performance and obligation to perform under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

9. Notices. All formal notices between the parties shall be deemed received if sent by certified mail, return receipt requested, to the party's representatives identified below, at the below cited address. A copy of all such notice shall also be sent to the following counsel by U.S. Mail. Should any party change its address, written notice of such new address shall promptly be sent to the other party and shall be effective upon receipt.

Palm Beach County  
Director, Department of Environmental Resources Management  
2300 North Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, Florida 33411-2743

Copy to:  
County Attorney's Office  
301 N. Olive Avenue, 6<sup>th</sup> Floor  
West Palm Beach, Florida 33401

Andrew "Red" Harris Foundation, Inc.  
18230 River Oaks Drive  
Jupiter, FL 33458

10. Default and Termination.  
a) If a party fails to fulfill its obligations under this Agreement in a timely and proper manner, the party not in default shall have the right to terminate this Agreement by giving written notice of any deficiency and its intent to terminate. The party in default shall then

have thirty (30) days from receipt of notice to correct the stated deficiency. If the defaulting party fails to correct the deficiency within this time and unless otherwise agreed by the parties, this Agreement shall terminate at the expiration of the thirty (30) day time period.

b) Either party may terminate this Agreement at any time for convenience upon thirty (30) calendar days prior written notice to the other party.

11. Delegation. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.

12. Amendments. This Agreement may only be amended by written Agreement executed by the parties hereto with the same formality used to execute this Agreement.

13. Indemnification by ARHF. ARHF and its agents, employees and contractors shall protect, defend, reimburse, indemnify and hold the COUNTY, its agents, employees and elected officials harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of ARHF's or its agents, employees or contractors performance of the terms of this Agreement or due to the acts or the omissions of ARHF or its agents, employees or contractors.

14. Indemnification by the COUNTY. The COUNTY acknowledges the waiver of sovereign immunity for liability in tort contained in Section 768.28, Florida Statutes, and acknowledges that such statute 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.

15. Insurance Requirements for ARHF.

ARHF agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as the COUNTY's review or acceptance of insurance maintained by ARHF is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by ARHF under this Agreement. In addition, ARHF agrees to notify the COUNTY of any cancellation, non-renewal or material change taking place during the life of this contract. **(This requirement may be satisfied by either ARHF or its subcontractor. In the event the subcontractor provides the coverages listed below, both the COUNTY and ARHF shall be listed as additional insured.)**

**Commercial General Liability** ARHF agrees to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding nor limiting Premises/Operations, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be

provided on a primary basis

**Additional Insured** ARHF agrees to endorse the COUNTY as an Additional Insured with a CG2026 Additional Insured or its equivalent – Designated Person or Organization endorsement to the Commercial General Liability. The additional insured shall read “Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents. Coverage shall be provided on a primary basis

**Waiver of Subrogation** ARHF hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then ARHF shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should ARHF enter into such an agreement on a pre-loss basis.

**Certificate(s) of Insurance** ARHF agrees to provide the COUNTY a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. In addition, ARHF agrees to notify the COUNTY of any cancellation, non-renewal or material change taking place during the life of this contract. The Certificate Holder address shall read:

PALM BEACH COUNTY  
c/o Director, Department of Environmental Resources Management  
2300 North Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, Florida 33411-2743

**Right to Review** the COUNTY reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the COUNTY reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operating legally.

16. **Insurance Requirements for the COUNTY.**

Without waiving the right to sovereign immunity as provided by Florida Statute, Chapter 768.28, the COUNTY acknowledges to be 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.

The COUNTY acknowledges to be self-insured for Worker’s Compensation & Employer’s Liability insurance in accordance with Florida Statute, Chapter 440.

When requested, the COUNTY agrees to provide a Certificate of Insurance evidencing self-

insurance and/or sovereign immunity status, which ARHF agrees to recognize as acceptable for the above mentioned coverages.

17. Nondiscrimination. The parties warrant and represent that all of their respective employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

ARHF 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 ARHF does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to the COUNTY that the ARHF's non-discrimination policy conforms to R-2014-1421, as amended.

18. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof is 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.

19. Waiver of Breach. It is hereby agreed to by the parties that no waiver of breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant or provision.

20. Independent Contractor. ARHF is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All employee's of ARHF engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the ARHF's sole direction, supervision, and control. ARHF shall exercise control over the means and manner in which it and its employees perform the work, and in all respects ARHF's relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

ARHF does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

21. Enforcement Costs. 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.

22. Remedies. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. 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.



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

24. Construction. No party shall be considered the author of this Agreement since the parties 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.

25. 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 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.

26. 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 ARHF.

27. Entirety of Agreement. ARHF and the COUNTY agree that this Agreement, together with any attached exhibits, 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 or obligations in the Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

*The remainder of this page is intentionally left blank.*

WHEREFORE, THE PARTIES have caused this Agreement to be executed by their authorized representatives on the date first written above.

ATTEST:  
SHARON R. BOCK  
CLERK AND COMPTROLLER

PALM BEACH COUNTY  
BOARD OF COUNTY  
COMMISSIONERS:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor Shelley Vana

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: [Signature]  
County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By: [Signature]  
Department Director

ARHF: [Signature]  
Signature

Martha Harris  
Witness Name (Printed)  
[Signature]  
Witness Name (Signed)

Scott Harris  
Scott Harris  
Printed Name  
President  
Title

**RESOLUTION NO. R-2015-\_\_\_\_\_**

**RESOLUTION OF THE BOARD OF COUNTY  
COMMISSIONERS OF PALM BEACH COUNTY,  
FLORIDA TO UTILIZE A PORTION OF THE COUNTY  
VESSEL REGISTRATION FEES FOR THE  
CONSTRUCTION OF AN ARTIFICIAL REEF PROJECT.**

WHEREAS, Palm Beach County enacted the Vessel Registration Fee Ordinance, No. 88-40 which began collecting fees June 1, 1989; and

WHEREAS, the Vessel Registration Fee Ordinance provides that monies collected from vessel registration fees be utilized to protect coastal marine and estuarine habitats, maintain and enhance fisheries and other salt and freshwater habitats, and construct artificial reefs; and

WHEREAS, the Andrew “Red” Harris Foundation (ARHF) was created in 2014 to honor the memory of Andrew “Red” Harris, young man who was an avid diver, snorkeler and fisherman and who lost his life in a tragic snorkeling accident; and

WHEREAS, ARHF is dedicated to assuring the long-term health and vibrancy of the coastal waters off of Palm Beach County and has agreed to cover the costs of constructing 240 artificial reef modules for the term of the contract, estimated to cost approximately \$1,400 each and donate these to the County for use in building artificial reefs; and

WHEREAS, the County has agreed to cover the transportation and placement costs of these artificial reef modules not to exceed \$260,000; and

WHEREAS, these reef structures will increase the primary productivity of Palm Beach County’s coastal waters by providing habitat and shelter for increased numbers and more diverse populations of fish stocks; and

WHEREAS, this project will provide unique diving opportunities, relieve user pressures on natural reefs, and further establish Palm Beach County as a premier diving destination; and

WHEREAS, the new artificial reef will be named the Andrew Harris Reef; and

WHEREAS, the Director of Environmental Resources Management recommends that the Board of County Commissioners authorize the Clerk of the Court to disburse Vessel Registration Fee monies in the amount of \$260,000 to provide funding for this project.

(REMAINING PORTION OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.)

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY  
COMMISSIONERS OF PALM BEACH COUNTY FLORIDA, THAT:

Section 1: The foregoing recitals are hereby adopted and ratified.

Section 2: The Board hereby authorizes the Clerk to disburse funds of \$260,000 for  
the purpose of constructing the Andrew Harris Reef.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who  
moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and  
upon being put to a vote, the vote was as follows:

District 3	COMMISSIONER Shelley Vana, Mayor	_____
District 5	COMMISSIONER Mary Lou Berger, Vice Mayor	_____
District 1	COMMISSIONER Hal R. Valeche	_____
District 2	COMMISSIONER Paulette Burdick	_____
District 4	COMMISSIONER Steven L. Abrams	_____
District 6	COMMISSIONER Melissa McKinlay	_____
District 7	COMMISSIONER Priscilla A. Taylor	_____

The Chair thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

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

**Sharon R. Bock  
Clerk and Comptroller**

By   
Assistant County Attorney

By \_\_\_\_\_  
Deputy Clerk

2015 - 0843

BGEX - 050415\*1256

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA

BUDGET TRANSFER  
FUND 1224 Environmental Enhancement Saltwater


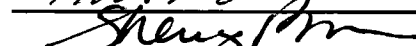
ACCOUNT NAME AND NUMBER		ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENC/EXP 5/3/2015	REMAINING BALANCE
<u>Appropriations</u>								
<u>Reserves</u>								
380-3891	9902 Operating Reserves	584,335	569,084	0	260,000	309,084	0	309,084
<u>Andrew Harris Reef</u>								
380-3098	3401 Other Contractual Services	0	0	260,000	0	260,000	0	260,000
				260,000	260,000			

Environmental Resources

Management

INITIATING DEPARTMENT/DIVISION  
Administration/Budget Department Approval

Signatures & Dates

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

June 2, 2015

Deputy Clerk to the