

ADD ON

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

Meeting Date: October 20, 2015	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
	<input type="checkbox"/> Public Hearing	

Department:	Department of Public Safety
Submitted By:	Department of Public Safety
Submitted For:	Division of Animal Care and Control

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Agreement with the Animal Recovery Mission, Inc. ("ARM"), for the care of animals seized by the County on October 13, 2015.

Summary: On October 13, 2015, Animal Care and Control ("ACC") and ARM assisted the Palm Beach County Sheriff's Office ("PBSO") in removing more than 750 farm animals from farms that illegally and inhumanely slaughter animals. Due to the large number of animals seized, ACC is unable to maintain all of the animals at its shelter. ARM agreed to maintain a large number of the animals pending the outcome of animal custody cases that will soon be filed. This Agreement sets forth the terms under which ARM will maintain the animals until the conclusion of court cases to determine custody of the animals and how the animals will be disposed of after such cases. The parties agree that the County shall not be responsible to compensate ARM for any costs ARM incurs to impound, transport, possess or care for the Animals at issue in this Agreement. **District 6 (SF)**

Background and Policy Issues: ARM is a nonprofit organization dedicated to eliminating animal cruelty and protecting animal welfare. For the last six months, ARM has engaged in undercover investigations at three slaughterhouses in Palm Beach County that have been found to perform inhumane slaughter of animals. On October 13, 2015, ACC and ARM assisted PBSO in removing over 750 and animals from three slaughter facilities. ACC's shelter is inadequate to maintain the large number of animals seized. Therefore, ARM offered to maintain the animals that could not be maintained at ACC's facility pending the outcome of court hearings to determine custody of the animals. ARM has agreed that if the County wins custody of the animals, it will keep or find homes for the animals it is temporarily maintaining pursuant to this Agreement and that such animals will be allowed to live out their lives on a sanctuary without being slaughtered for consumption.

Attachments:

1. Agreement with ARM

Recommended by: 	10/15/15
Department Director	Date

Approved By: 	10/15/15
Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
Net Fiscal Impact	<u>0*</u>				

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included In Current Budget? Yes X No _____

Budget Account Exp No: Fund _____ Department _____ Unit _____ Object _____

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

There is no fiscal impact to the County associated with this agenda item.

Departmental Fiscal Review: Stephanie Szymoka

III. REVIEW COMMENTS

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

John G. Wilson
OFMB
OK 10/16/20
OK 10/16

Dr. S. Jacobson 10/16/15
Contract Administration

B. Legal Sufficiency:

Sam J. J.
Assistant County Attorney

C. Other Department Review:

Department Director

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

**AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE ANIMAL RECOVERY MISSION, INC.**

THIS AGREEMENT is made and entered into on the 13th day of October, 2015, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "COUNTY") and the ANIMAL RECOVERY MISSION, INC. ("ARM"), a Florida non-profit corporation authorized to do business in the State of Florida, hereinafter referred to collectively as "the parties".

WITNESSETH

WHEREAS, ARM is dedicated to eliminating animal cruelty and protecting animal welfare and to that end has facilities to care for livestock and other animals; and

WHEREAS, the County's Animal Care and Control facility has a limited amount of space to care for livestock and animals primarily housed outdoors such as ducks, chickens and roosters; and

WHEREAS, ARM wishes to assist the County in the care of certain animals as more specifically set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein which the parties acknowledge to be sufficient consideration, the parties agree as follows:

1. Purpose. The purpose of this Agreement is for the parties to work cooperatively for the care of animals seized on October 13, 2015, by the County pursuant to Section 828.073, Florida Statutes (the "Statute"), pending a final disposition of the animals in accordance with the Statute.

2. Term. This Agreement shall commence on October 13, 2015, upon execution by ARM and the Director of the Palm Beach County Division of Animal Care and Control ("Director") and shall be approved by the Palm Beach County Board of County Commissioners at the first available meeting date retroactive to October 13, 2015. The Agreement shall terminate once all proceedings brought by the County pursuant to the Statute are concluded, including but not limited to any appeals, and the animals concerned in such proceedings that are possessed by ARM are disposed of pursuant this Agreement.

3. ARM shall humanely impound, transport, possess and care for those animals agreed upon by ARM and the County pending all legal proceedings concerning such animals brought under the Statute. Such animals are hereinafter referred to as the "Animals."

4. ARM shall, if it desires to have the County attempt to seek reimbursement for the costs ARM has incurred, maintain a record of costs incurred by ARM to care for the Animals pending resolution of any case brought pursuant to the Statute. The County agrees that during proceedings brought under the Statute, it will attempt to seek an order requiring the owner(s) of the Animals to reimburse ARM for the costs ARM has incurred. ARM understands that the County may also seek an order requiring the owner(s) to reimburse the County for the costs the County has incurred to care for animals in the County's possession. ARM understands that receiving an order from a Judge requiring an owner to reimburse ARM and/or the County for the costs of caring for animals does not necessarily mean that the owner will comply with such order.

The parties agree that the County shall not be responsible to compensate ARM for any costs ARM incurs to impound, transport, possess or care for the Animals at issue in this Agreement.

5. If at any point during the term of this Agreement, the County wishes to take possession of any of the Animals, ARM shall facilitate transferring the Animals to the possession of the County within 5 days of request by the County.

6. ARM understands that during court proceedings brought pursuant the Statute, the owner(s) may demand the right to inspect the Animals. ARM agrees that in such event, if requested by the County, it will work with the County to facilitate any owner's inspection of the Animals. The parties understand that the Animals may have to be transported to another location for the purpose of such inspection so as not to reveal the location where ARM maintains the Animals.

7. During the term of this Agreement, ARM shall allow the County to inspect the Animals and their living conditions upon reasonable notice and as coordinated between ARM and the Director or her staff.

8. If at the conclusion of any legal proceedings concerning the Animals, the Animals are ordered to be returned to their respective owners, ARM shall turn the Animals over to the County so that the County may return the Animals to their respective owners or shall assist the County in returning the Animals. ARM understands that, in the event that a court orders that the Animals be returned to their respective owner(s), if ARM fails to return the Animals to the County or their owners, the County could be held in contempt of court or could face substantial liability.

9. At the conclusion of all court proceedings concerning the Animals, if the Animals are awarded to the permanent custody of the County, all of the Animals in the possession of ARM shall become the property of ARM. ARM agrees that it will maintain the Animals in a humane manner for the duration of their lives. ARM agrees that the Animals shall never be auctioned, used, sold or given away for the purpose of human or animal consumption and that ARM will not transfer any of the Animals to any organization that or person who will use them for such purpose. The Animals may be euthanized in a humane manner, if deemed appropriate by ARM. This paragraph shall survive the expiration of this Agreement.

10. Independent Contractor. ARM 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 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 the ARM'S sole direction, supervision, and control. ARM shall exercise control over the means and manner in which it and its employees perform the work, and in all respects ARM'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.

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

11. Indemnification. In the event that the County is sanctioned or held liable for costs or fees due to ARM's action or failure to act in violation of paragraph 6 or 8 of this Agreement, ARM shall indemnify, defend and hold the County 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.

ARM shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers 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 their performance of the terms of this Agreement or due to the acts or omissions of ARM.

This paragraph shall survive the expiration of this Agreement.

12. Termination. This Agreement may be terminated by ARM upon fifteen (15) days' prior written notice to the COUNTY's representative in the event of substantial failure by the County to perform in accordance with the terms of this Agreement through no fault of the ARM, in which case the County shall be responsible to pick up all animals possessed by ARM pursuant to this Agreement at a date and time agreed to by the parties. This Agreement may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to ARM in which case the County shall be responsible to pick up all animals possessed by ARM pursuant to this Agreement at a date and time agreed to by the parties.

13. Nondiscrimination. ARM warrants and represents that all of its 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.

14. Severability. 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

provision, 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.

15. Remedies. This Agreement shall be governed by the laws of the State of Florida. Any 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, 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.

16. 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 and/or ARM.

17. Notices. All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the County, notices shall be addressed to:

Palm Beach County
Division of Animal Care and Control
C/O Director
7100 Belvedere Road
West Palm Beach, Florida 33411

With copy to:

Palm Beach County Attorney's Office
Animal Care and Control Attorney
301 North Olive Ave.
West Palm Beach, Florida 33401

Animal Recovery Mission
C/O Director Richard Couto
927 Lincoln Road
Miami Beach, Florida 33139

18. Waiver of Breach. It is hereby agreed to by the parties that no waiver or 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 of any other covenant.

19. 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.

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

21. Entirety of Agreement. The County and ARM 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.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the County and ARM has hereunto set its hand the day and year above written.

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS:

By: _____
Deputy Clerk

By: _____
Mayor Shelley Vana

WITNESS:

Shannon Fox
Signature

Name (type or print)

ARM:

Signature

Richard Ceto
Name (type or print)

Signature

Name (type or print)

Title

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

(corp. seal)

By _____
County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

By 
Division Director