

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

Meeting Date: May 3, 2016

() Consent

(X) 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 the acquisition of the *M/V Ana Cecilia* from U.S. Customs Service at no cost to the County;

B) authorize staff from Environmental Resources Management, as designated by the Deputy County Administrator, to go to the ships' site on May 4, 2016 to sign disposition orders transferring title of the ship from U.S. Customs Service to the County;

C) find and declare an emergency purchase to approve a \$103,750 contract with Bunnell Foundation, Inc. to provide a "turn-key" service that includes accepting liability of the ship, preparation, towing and scuttling of the ship within a designated permitted County artificial reef site;

D) authorize the County Administrator, or her designee, to approve and sign all future modifications and other forms associated with this contract, and necessary minor amendments that do not substantially change the scope of work, terms or conditions of this contract;

E) adopt resolution authorizing the Clerk of the Board to disburse \$125,000 from the Vessel Registration Fee Trust Fund to cover the project costs, dockage fees and contingencies; and

F) approve Budget Transfer of \$125,000 from the Environmental Enhancement Saltwater Fund (1224) from Reserves for the *M/V Ana Cecilia* project.

Summary: Artificial reefs provide habitat for reef organisms, including soft and stony corals and the fishes and invertebrates that live among them. The U.S. Customs Service offers the ship to the County if the County will take the ship quickly, making an emergency purchase necessary. The ship, which is accruing daily dockage fees, has to be transferred to the County or sold at auction. Attempts at a competitive process included contacting the only two other locally known vendors capable of such work, who declined interest. The resolution authorizes the Clerk to transfer \$125,000 from the Vessel Registration Fee Trust Fund into the Environmental Enhancement Saltwater Fund to cover the costs for the preparation, towing and scuttling of the ship off Lake Worth Inlet, which will also provide a unique recreational diving and fishing amenity.

Districts 1, 7 (AH)

Continued on page 3**Attachments:**

1. Correspondence to/from U.S. Customs Service
2. Example of a Disposition Order
3. Contract
4. Resolution
5. Budget Transfer (1224)

Recommended by:Bill R. R. R.
Department Director4/18/16
Date**Approved by:**[Signature]
Deputy County Administrator5-2-16
Date

II. FISCAL IMPACT ANALYSIS

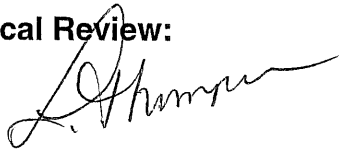
A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$125,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	 <u>\$125,000</u>	 _____	 _____	 _____	 _____
 # ADDITIONAL FTE POSITIONS (Cumulative)	 _____	 _____	 _____	 _____	 _____

Is Item Included in Current Budget? Yes _____ No X
Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
Program _____

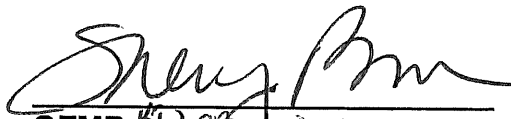
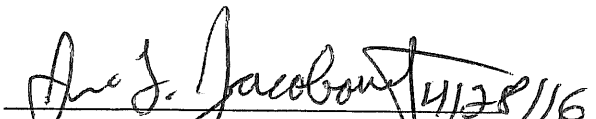
B. Recommended Sources of Funds/Summary of Fiscal Impact \$125,000 Vessel Registration Fee Trust Fund-Saltwater Fund (1224)

C. Department Fiscal Review:

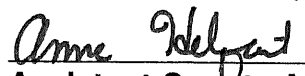


III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:


OFMB 4/19/16
Contract Administrator 4/28/16

B. Legal Sufficiency:


Assistant County Attorney 15/2/16

C. Other Department Review:

Department Director

Continued from page 1

Background and Justification: The U.S. Customs Service offers to the County the *M/V Ana Cecilia* provided that it can quickly be transferred as it is accruing daily dockage fees. In an effort to expedite this project, staff has identified Bunnell Foundation, Inc. (BFI), as a contractor that is willing to accept liability, prepare, tow and scuttle the ship at a County permitted artificial reef site for \$103,750. BFI owns the waterfront dockage facility where the ship will be moored. BFI is in the ship cleaning and salvage business and are the only willing entity with sufficient insurance along the Miami River to enter into an agreement with the County for this work. This is the fifth instance in the Artificial Reef Program that the County has assumed ownership of a vessel. This liability is offset by the requirement of the Contractor to carry liability insurance of \$2,000,000 and name the County on the policy. Additionally, the BFI assumes responsibility for the ship once the vessel is attached for towing.

ATTACHMENT 1

PO Box 52-2207
Miami, FL 33152-2207



**U.S. Customs and
Border Protection**

February 18, 2016

TO: Director
Fines, Penalties and Forfeitures
Washington, D.C.

FROM: Director, Fines, Penalties and Forfeitures
Miami, Florida

SUBJECT: Transfer of Forfeited Property for Official Use
Seizure Case Number 2015-S201-000894-01

A handwritten signature in black ink, appearing to be "Jena", written over the "FROM" line of the letterhead.

This is to request approval to transfer the following property to Palm Beach County for destruction and subsequent construction of an artificial reef. The property is not prohibited or restricted from importation into the United States and the property is normally authorized for procurement by the receiving organization. The following information is provided:

1. Property Description: One (1) 1972 170' Halter Marine cargo ship
KNOWN as the M/V ANA CECILIA
2. Appraised Value: \$110,000
3. Vessel IMO Number: 7237547
St. Vincent Official Number: 400929
4. Receiving Organization and Point of Contact (POC):

Palm Beach County – Department of Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, Florida 33411

POC: Jena McNeal
Environmental Analyst
Artificial Reef Coordinator
Office: (561) 233-2513
Fax: (561) 233-2414

5. The property has no "Operational Value" to Customs and Border Protection.

1) Total Costs: \$180,344.81

\$180,344.81 - Contractor Holding Costs through 03/02/2016

2) The lost opportunity of sale costs: UNKNOWN - (appraised value is \$110,000)

3) Operating costs: N/A

6. Functional Use Description:

1) The Coral Reefs and Restoration Programs are crucial to the overall balance of the oceans as they provide a habitat for a variety of sea life.

Palm Beach County, Department of Environment Resources Management will sink (destroy) this large cargo ship creating and transforming it into a viable habitat for various sea life.

2) The sinking of the vessel will benefit the ecosystem and also have a positive impact on the economy for the State of Florida and Federal Government. In addition, there will be positive media campaign associated with the action once approved..

Acting Director, Treasury Executive Office for Asset Forfeiture:

Approved: [Signature] Disapproved: _____

Date: 3.29.2016.

ATTACHMENT 2

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

DISPOSITION ORDER

Tc-96-001, Tc-01-032

☐ Contractor
☐ Seizing Agency

CBP ☐ OFO ☐ OBP ☐ ICE ☐ IRS ☐ USSS ☐ USCG ☐ OTHER

1. SEACATS Seizure Case No.		2. Agency Tracking No.		3. Date	
4. DISPOSITION INSTRUCTIONS:					
<input type="checkbox"/> REMIT <input type="checkbox"/> Owner/Violator <input type="checkbox"/> Authorized Agent <input type="checkbox"/> Lien Holder (Complete Blocks 6 & 7)		<input type="checkbox"/> SELL <input type="checkbox"/> Export Only <input type="checkbox"/> Quick Sale <input type="checkbox"/> Interlocutory <input type="checkbox"/> Court Directed <input type="checkbox"/> ASSET SHARING (Complete Block 6)		<input type="checkbox"/> TRANSFER <input type="checkbox"/> To Treasury Agent <input type="checkbox"/> Other Federal Agency <input type="checkbox"/> State & Local Law Enforcement Agency <input type="checkbox"/> Donation to Charitable Institution (Complete Blocks 6 & 7) (Please Print) _____ FP&F Officer or Other Authorized Agency Representative <input checked="" type="checkbox"/> X Signature _____	
<input type="checkbox"/> DESTROY Attach CBP 4613 Order to Destroy (Complete Block 6)					
<input type="checkbox"/> MANIPULATION (Complete Block 6) <input type="checkbox"/> OTHER (Complete Block 6)					
Contractor Office Telephone Number _____					
5. IDENTIFICATION OF PROPERTY:					
<input type="checkbox"/> Only sub-line items listed below <input type="checkbox"/> All items in seizure <input type="checkbox"/> Only line items listed below <input type="checkbox"/> Partial line item quantity listed below					
Line Item No.	Description	Unit of Measure	Quantity		
6. SPECIAL INSTRUCTIONS: <input type="checkbox"/> Waive all costs <input type="checkbox"/> Waive SCA only - Reason: _____					
7. RELEASE PROPERTY TO:					
Name of Agency/Organization: _____ Telephone No. _____					
Name of Individual: _____					
Address (City, State, Zip Code): _____					
Caution: Property will be released ONLY to person named in Block 7 unless an agent is authorized. Approved agents must have proof of identification and a letter of authorization from person identified in Block 7.					
<input type="checkbox"/> Remit <input type="checkbox"/> Sell <input type="checkbox"/> Transfer <input type="checkbox"/> Destroy <input type="checkbox"/> Manipulate <input type="checkbox"/> Other Drivers License or Passport Number: _____					
8. DISPOSITION ACCOMPLISHED:					
Date Accomplished: _____ Charges Paid \$ _____ Sale Price Received \$ _____					
(Print) Subcontractor Name		Signature		(Print) Person Receiving Property Name	
				Signature	
(Print) Contractor Name		Signature		(Print) Seizing Agency Representative	
				Signature	
9. CONTRACTOR/SEIZING AGENCY REPRESENTATIVE AUTHENTICATION:					
(Print) Name and Title		Signature		Date	
INSTRUCTIONS TO OWNER/LIEN HOLDER: This property is in the custody of the U.S. Customs and Border Protection seized property contractor. Reimbursement of costs incurred by the Seizing Treasury Agency for property management services is required. These charges must be paid by cash or cashier's check. All cashier's checks must be made payable to (Check one) <input type="checkbox"/> "Department of the Treasury/VSE Agent," or <input type="checkbox"/> "Rod Robertson Enterprises, Inc." NOTE: Anyone acting, as an agent of owner/lien holder must have proof of identity and letter of authorization to claim the property. Personal checks, business checks or money orders are not acceptable.					

Original - Issuing Seizing Agency/Office Case File; Canary - Contractor File; Pink - Person Receiving Seizure (Remittance, Transfers & Donation); Goldenrod - Agency Suspende

ATTACHMENT 3

CONTRACT FOR SINKING OF *M/V ANA CECILIA* TO CREATE AN ARTIFICIAL REEF

This Contract is made as of the _____ day of _____, 2016, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and Bunnell Foundation, Inc., located at 1325 NW 18th Avenue, Miami, FL 33125, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I. D. number is 59-1403177.

In consideration of the mutual promises contained herein, the COUNTY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR's responsibility under this Contract is to assume liability for, mooring maintenance, prepare, transport, and scuttle the vessel, *M/V ANA CECILIA*, as an artificial reef as more specifically set forth in the Scope of Work/Services detailed in Exhibit A, and at a permitted artificial reef site within Palm Beach County.

The COUNTY's representative/liaison during the performance of this Contract shall be Robert Robbins, Director, Environmental Resources Management, telephone number (561) 233-2400 or designee Jena McNeal, telephone number (561) 233-2513.

The CONTRACTOR's representative/liaison during the performance of this Contract shall be Richard Bunnell, President, telephone number (305) 545-5902.

ARTICLE 2 - SCHEDULE

The CONTRACTOR shall commence services within 10 calendar days of receipt of a fully executed contract, and complete all services by 90 days from execution of this Contract.

Reports and other items shall be delivered and/or completed in accordance with Exhibit A.

ARTICLE 3 - PAYMENTS TO CONTRACTOR

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials shall not exceed a total contract amount of One Hundred and Three Thousand Seven Hundred and Fifty Dollars and no cents (**\$103,750.00**). The CONTRACTOR will bill the COUNTY for two separate invoice amounts. The first invoice will be for (**\$35,000.00**) which will cover the costs associated with the completion of all work defined in Paragraph 4 within the Scope of Work/Services set forth in Exhibit A. The second and final payment (**\$68,750.00**) will be made

upon the completion of the remaining items within the Scope of Work/Services set forth in Exhibit A.

- B. The invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. The approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- C. Final Invoice: In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "final invoice" on the CONTRACTOR's billing to the COUNTY. This shall constitute CONTRACTOR's certification that all services have been properly performed and all charges and costs have been invoiced to the COUNTY. Any other charges not properly included on this final invoice are waived by the CONTRACTOR.

ARTICLE 4- TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONTRACTOR's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside contractors. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be terminated by the CONTRACTOR upon sixty (60) 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 Contract through no fault of the CONTRACTOR. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the COUNTY's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY, the CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.

- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereinunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONTRACTOR'S key personnel must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY'S representative before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONTRACTOR's personnel (and all subcontractor) while on COUNTY premises, will comply with all COUNTY requirements governing conduct, safety and security.

ARTICLE 7 - SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONTRACTOR is encouraged to seek small business enterprises (SBE) for participation in subcontracting opportunities. If the CONTRACTOR uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor

by the COUNTY.

The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance and pursuant to Palm Beach County Code, Chapter 2, Article III, Sections 2-71 through 2-80.13 and any revisions thereto, and will allow the COUNTY to inspect such records.

ARTICLE 8 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY's Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

ARTICLE 9 - AVAILABILITY OF FUNDS

The COUNTY's performance and obligation to pay under this Contract are contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

ARTICLE 10 - INSURANCE

It shall be the responsibility of the CONTRACTOR to provide evidence of the following minimum amounts of insurance coverage to Palm Beach County Environmental Resources Management 2300 North Jog Road, West Palm Beach, FL 33411, Attention: Julie Aden, Contracts Manager, Environmental Enhancement and Restoration Division. The CONTRACTOR shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Contract, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of the Contract. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the Contract.

- A. **Commercial General Liability:** CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence, **\$2,000,000** Aggregate Coverage. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONTRACTOR shall provide this coverage on a primary basis.

- B. **Marine Protection & Indemnity Insurance:** CONTRACTOR agrees to maintain Marine Protection and Indemnity, or similar Water-Craft Liability, for owned, hired, or borrowed water-craft. Coverage may be provided either way of endorsement under the Commercial General Liability (GC 24 12 Boats), or by separate Marine Protection and Indemnity insurance with limits not less than **\$1,000,000** each occurrence.
- C. **Workers' Compensation Insurance & Employer's Liability:** CONTRACTOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440. CONTRACTOR shall provide this coverage on a primary basis. CONTRACTOR and/or its approved sub-contractors agree to maintain Federal Act endorsement for U.S. Longshoremen's & Harbor Workers Act (WC 00 01 06 A) and The Jones Act (WC 00 02 01 A) when activities or operations involve work on or contiguous to navigable bodies of U.S. waterways and ways adjoining, or vessels.
- D. **Business Automobile Liability:** CONTRACTOR shall maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Accident for all owned, non-owned and hired automobiles. In the event CONTRACTOR doesn't own automobiles, the Business Auto Liability requirement shall be amended allowing CONTRACTOR to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. CONTRACTOR shall provide this coverage on a primary basis.
- E. **Additional Insured Clause:** CONTRACTOR shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured – Designed Person or Organization endorsement, or its equivalent, to the Commercial General Liability and Marine Protection and Indemnity coverage. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, Its Officers, Employees and Agents." CONTRACTOR shall provide the Additional Insured endorsements coverage on a primary basis.
- F. **Waiver of Subrogation:** CONTRACTOR 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 CONTRACTOR shall agree to 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 prohibits such an endorsement, or which voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

- G. **Certificate(s) of Insurance:** Prior to execution of this Contract, CONTRACTOR shall deliver to the COUNTY'S representative as identified in Article 26, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be issued to

Palm Beach County
Environmental Resources Management
2300 North Jog Road
West Palm Beach, FL 33411

- H. **Umbrella or Excess Liability:** If necessary, CONTRACTOR may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- I. **Right to Review:** COUNTY, by and through its Risk Management Department in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

ARTICLE 11 - INDEMNIFICATION

CONTRACTOR 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 attorneys' 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 Contract or due to the acts or omissions of CONTRACTOR.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

The COUNTY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners,

successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other.

ARTICLE 13 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract 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 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.

No provision of this Contract 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 Contract, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

ARTICLE 14 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes and the Palm Beach County Code of Ethics. The CONTRACTOR further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONTRACTOR shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONTRACTOR. The COUNTY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the COUNTY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the

CONTRACTOR under the terms of this Contract.

ARTICLE 15 - EXCUSABLE DELAYS

The CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractor(s) and without their fault or negligence. Such causes include, but are not limited to: acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONTRACTOR's request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR's failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY's rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 16 - ARREARS

The CONTRACTOR shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data bases, reports and other data developed or purchased under this Contract for or at the COUNTY's expense, shall be and remain the COUNTY's property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports, and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 through 2-440, as amended.

ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Contract, 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 Contract shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'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.

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

ARTICLE 19 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 20 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records related to all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONTRACTOR's place of business.

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 through 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

CONTRACTOR, 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 2-241 through 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 21 - NONDISCRIMINATION

The CONTRACTOR 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.

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

ARTICLE 22 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 23 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, 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 Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 24 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management

Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 25 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the COUNTY's notification of a contemplated change, the CONTRACTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONTRACTOR's ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY's decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and approved and executed on behalf of Palm Beach County.

ARTICLE 26 - NOTICE

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

Robert Robbins, Director
Environmental Resources Management
2300 North Jog Road
West Palm Beach, FL 33411

With a copy to: Palm Beach County Attorney's Office
301 N. Olive Avenue
West Palm Beach, FL 33401

If sent to the CONTRACTOR, notices shall be addressed to:

Richard Bunnell, President
Bunnell Foundation, Inc.
1320 NW 18th Avenue
Miami, FL 33125

ARTICLE 27 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONTRACTOR agree that this Contract 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 the Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25 - Modifications of Work.

ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK

If CONTRACTOR'S employees or subcontractors are required under this Contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required from criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

ARTICLE 29 - REGULATIONS; LICENSING REQUIREMENTS:

The CONTRACTOR shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONTRACTOR is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONTRACTOR 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: _____
MARY LOU BERGER, MAYOR

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
ASSISTANT COUNTY ATTORNEY

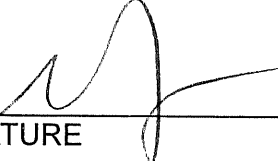
BY:  _____
DIRECTOR, ENVIRONMENTAL
RESOURCES MANAGEMENT

DATE


DATE

WITNESS:  _____
SIGNATURE


NAME (TYPE OF PRINT)

 _____
SIGNATURE


NAME (TYPE OF PRINT)

BUNNELL FOUNDATION, INC.
 _____
SIGNATURE

BY: DICK BUNNELL
NAME (TYPE OR PRINT)

ITS: PRESIDENT
TITLE

(CORPORATE SEAL)

EXHIBIT A
SCOPE OF WORK/SERVICES

1. The CONTRACTOR shall recover, prepare, transport, and scuttle the surplus vessel *M/V ANA CECILIA* as an artificial reef for the COUNTY.
2. The vessel shall not be scuttled until the COUNTY has given its written approval.
3. Preparation of the *M/V ANA CECILIA* shall include all actions necessary to secure Coast Guard approval for scuttling the vessel as an artificial reef, including, but not limited to: any and all actions necessary to ensure the structural integrity of the vessel; removal of all petroleum products and other materials potentially hazardous to the marine environment and cleaning or removing any compartments used to hold those products; removal of any floatables or loose objects including, but not limited to, tire fenders, loose deck gear, wood, loose paneling, or other miscellaneous materials that are not an integral part of the vessel's structure; removal of any objects not substantial enough to withstand the stress of a rapid scuttling; removal of all glass; and removal of all doors, hatch covers, and loose cables or wiring. The CONTRACTOR shall coordinate all necessary inspections and approvals with the Coast Guard Marine Safety Office. The disposition of all removed materials will be in accordance with all applicable state and federal regulations.
4. Preparation shall also include the sampling and abatement of all asbestos and polychlorinated biphenyls (PCB) materials, as necessary, by County, State and Federal requirements. Removal of pollutants shall be supervised by a qualified environmental consulting firm with an expertise in asbestos and Polychlorinated Biphenyls (PCB) remediation. All preparations and removals shall be completed with a final report prepared by the consulting firm attesting that the vessel is free of PCBs and asbestos. Upon the completion of all work as outlined in Paragraph 4, the CONTRACTOR may invoice the COUNTY for \$35,000.
5. Any salvage activity which may adversely affect the vessel's structural integrity is expressly prohibited. All salvageable items must have COUNTY approval before they are removed from the vessel and the following items shall not be removed: vessel's propeller; vessel's cargo booms, masts, smoke stack, and supports; vessel's funnel.
6. The CONTRACTOR shall scuttle the vessel *M/V ANA CECILIA* at a COUNTY permitted artificial reef site in approximately 110 feet of water and shall remain on site until released by the COUNTY.
7. The CONTRACTOR shall submit a written operational plan for scuttling the vessel for COUNTY approval at least seven (7) days in advance of the proposed

scuttling. The vessel shall be scuttled so as to come to rest on the ocean bottom in a level position, upright on its keel, and shall maintain a minimum vertical navigational clearance above any substantial structural part of the vessel of at least fifty (50) feet. For the purpose of this contract, "level position" shall mean the vessel shall be resting upright on its keel and listing no more than twenty (20) degrees from vertical to port or starboard.

8. The CONTRACTOR shall provide all appropriate lines, cables, shackles, chains, and (3) anchors, etc., as required by the COUNTY for use at the artificial reef site to locate and hold the vessel in position while it is scuttled. The two bow anchors set forty-five degrees apart on separate rodes of a minimum of 40 feet each or greater shall be used as well as a stern anchor, depending on prevailing conditions at the time the vessel is secured on site for scuttling. Additionally, 120 tons of weight shall be added to the vessel to meet the stability criteria for it to be placed in 110 feet of water.
9. A written Contingency Plan to be implemented in the event of anchor or rode failure or any other condition that may cause the vessel to move out of the desired position shall be submitted to and approved in writing by the COUNTY at least seven (7) days prior to the date of the proposed scuttling by the CONTRACTOR.
10. The CONTRACTOR shall abide by all State, Federal and U.S. Coast Guard requirements, as stated in the COUNTY's artificial reef permit for the site where the vessel will be placed.

RESOLUTION NO. -----

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO UTILIZE A PORTION OF THE COUNTY VESSEL REGISTRATION FEES FOR CONSTRUCTING AN ARTIFICIAL REEF BY SCUTTling A SEIZED SHIP FROM THE U.S. CUSTOMS SERVICE.

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 U.S. Customs Service has offered the County the *M/V Ana Cecilia* for no cost; and

WHEREAS, this ship will be placed within the County's permitted artificial reef site to provide habitat and unique recreational opportunities for anglers and scuba divers; and

WHEREAS, Bunnell Foundation, Inc., will provide a "turn-key" service for \$103,750 that includes assuming all liability in addition to covering the costs for dockage, cleanup, environmental remediation, towing and scuttling to the County's permitted artificial reef site; 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 Trust Fund monies in the amount of \$125,000 to provide funding for this project including contingencies.

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 \$125,000 for purpose of cleaning, towing and scuttling a ship for use in the County's Artificial Reef Program.

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:

COMMISSIONER Mary Lou Berger, Mayor	_____
COMMISSIONER Hal R. Valeche, Vice Mayor	_____
COMMISSIONER Paulette Burdick	_____
COMMISSIONER Shelley Vana	_____
COMMISSIONER Steven L. Abrams	_____
COMMISSIONER Melissa McKinlay	_____
COMMISSIONER Priscilla A. Taylor	_____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2016.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

_____, Clerk

By _____
Assistant County Attorney

By _____
Deputy Clerk

2016 - 0741

BGEX - 020216*839

ATTACHMENT 5

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

BUDGET TRANSFER

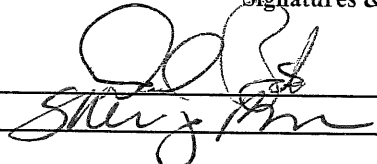
FUND 1224 Environmental Enhancement Saltwater

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENC/EXP 2/2/2016	REMAINING BALANCE
<u>Appropriations</u>							
<u>Reserves</u>							
380-3891 9902 Operating Reserves	724,784	265,507	0	125,000	140,507	0	140,507
<u>Ana Cecilia Artificial Reef</u>							
380-3007 3401 Other Contractual Services	0	0	125,000	0	125,000	0	125,000
			125,000	125,000			

Environmental Resources
Management

INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

Signatures & Dates

 4-1-16
4-22-16

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

May 3, 2016

Deputy Clerk to the
Board of County Commissioners