

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

Meeting Date: June 6, 2017

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 Amendment Number One to Agreement (R2015-0721) with the Andrew "Red" Harris Foundation, Inc. (ARHF) increasing the number of donated artificial reef modules in an amount not to exceed \$162,252 in transportation and deployment costs beginning upon execution and ending June 30, 2017;

B) approve an Agreement with the Andrew "Red" Harris Foundation, Inc. (ARHF) providing donated artificial reef material in exchange for placing the material within permitted artificial reef sites offshore of northern Palm Beach County for an amount not exceed \$300,000 beginning January 1, 2018 until December 31, 2020;

C) authorize the County Administrator, or her designee, to sign all future time extensions, task assignments, and other forms associated with this Agreement, and any necessary minor amendments that do not significantly change the scope of work, terms or conditions;

D) adopt a Resolution authorizing the Clerk of the Board to disburse \$300,000 from the Vessel Registration Fee Trust Fund to provide the necessary funding for the placement of artificial reef material; and

E) approve a Budget Transfer of \$300,000 from the reserves in the Environmental Enhancement Non-Specific Fund to the Andrew "Red" Harris Foundation reef project.

Summary: Amendment Number One to the ARHF Agreement increases the donation of reef modules to over 100 for placement this summer and utilizes the remaining funds of \$162,252 for transportation/deployment costs. The new Agreement with ARHF provides for the donation of artificial reef material and up to \$300,000 in transport/deployment costs for the Agreement beginning in 2018. District 1 (AH)

Background and Justification: On June 2, 2015 the Board of County Commissioners approved Agreement R2015-0721 with the ARHF accepting up to 100 donated artificial reef modules per year for the term of the Agreement in exchange for the County providing trucking, barge transport and installation costs. Through the existing Agreement, the County and ARHF have worked together to create over 2 acres of artificial reef habitat with an estimated value of \$450,000 in donated artificial reef modules. Under the new ARHF Agreement, any reef created with the donated artificial reef material will be referred to as the Andrew 'Red' Harris Reef.

Attachment:

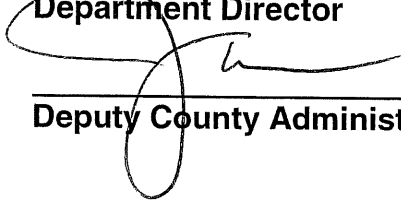
1. Amendment Number one to ARHF Agreement R2015-7021
2. Agreement R2015-7021
3. Agreement with ARHF
4. Resolution
5. Budget Transfer

Recommended by:


Department Director

4/17/17
Date

Approved by:


Deputy County Administrator

5/17/17
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2017 | 2018 | 2019 | 2020 | 2021 |
|--|------------------|------------------|-------------|--------------|-------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | <u>\$300,000</u> | _____ | _____ | _____ | _____ |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | <u>\$300,000</u> | _____ | _____ | _____ | _____ |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |
| Is Item Included in Current Budget? | Yes _____ | | No <u>X</u> | | |
| Budget Account No.: | Fund _____ | Department _____ | Unit _____ | Object _____ | |
| | Program _____ | | | | |

B. Recommended Sources of Funds/Summary of Fiscal Impact:
 Environmental Enhancement-Non-Specific \$300,000

C. Department Fiscal Review: *S. Neary*

III. REVIEW COMMENTS

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

[Signature] 5/11/17
 OFMB Ex 5/10 *[Signature]* 5/11

[Signature] 5/11/17
 Contract Development and Control
[Signature] 5/15/17

B. Legal Sufficiency:

Anne Delmont 5-16-17
 Assistant County Attorney

C. Other Department Review:

 Department Director

**ANDREW RED HARRIS FOUNDATION, INC.
AND
PALM BEACH COUNTY
AGREEMENT
AMENDMENT NUMBER ONE**

THIS AMENDMENT is made and entered into on the ____ day of _____, 2017, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "COUNTY") and the ANDREW "RED" HARRIS FOUNDATION, INC., a non-profit corporation authorized to do business in the State of Florida ("ARHF"), both being hereinafter referred to collectively as the "parties".

WITNESSETH:

WHEREAS, on June 2, 2015 the parties entered into an Agreement (R2015-0721), hereinafter referred to as the "Agreement", wherein the ARHF agreed to donate 40 to 100 reef modules to the COUNTY per year and the COUNTY agreed to cover the costs to transport and place the reef modules within permitted reef site(s) offshore of northern Palm Beach County and hereinafter referred to as the "Project"; and

WHEREAS, the parties desire to amend the Agreement wherein the ARHF agrees to donate additional reef modules and the COUNTY agrees to transport and place such modules up to an amount not to exceed \$162,252; and

WHEREAS, the parties hereto mutually agree that this Amendment is in their best interest, and serves a public purpose.

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. Paragraph 4 (d) of the Agreement is amended to state: "By June 30, 2017 fabricate and donate Reef Modules to the COUNTY that will not exceed \$162,252 in costs to the COUNTY to transport and place the Reef Modules within permitted reef site(s)."

All provisions, covenants, terms and conditions of the Agreement between the parties as originally set forth therein, which are not hereby expressly amended or modified shall remain the same and be unaffected by this Amendment.

The remainder of this page is intentionally left blank.

WHEREFORE, the parties have caused this Amendment 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, Paulette Burdick

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: _____
Department Director

Jena McNeal
Witness Name (Printed)

ARHF: _____
Signature

Jena McNeal
Witness Name (Signed)

Scott Harris Scott Harris
Printed Name

President President
Title

ATTACHMENT 2

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

R2015#0721

THIS AGREEMENT is made and entered into on the ____ day of JUN 02 2015, 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, 4th Floor
West Palm Beach, Florida 33411-2743

Copy to:
County Attorney's Office
301 N. Olive Avenue, 6th 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, 4th 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 employees 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

R2015-10721 JUN 02 2015
PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS:

By: [Signature]
Deputy Clerk
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
By: [Signature]
County Attorney

By: [Signature]
Mayor Shelley Vanna

APPROVED AS TO TERMS
AND CONDITIONS
By: [Signature]
Department Director

ARHF: [Signature]
Signature

Martha Harris
Witness Name (Printed)
Martha Harris
Witness Name (Signed)

Scott Harris
Printed Name
President
Title

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk and Comptroller
certify this to be a true and correct copy of the original
filed in my office on JUN 02 2015
dated at West Palm Beach, FL on 6-9-15
By: [Signature]
Deputy Clerk

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

THIS AGREEMENT is made and entered into on the ____ day of _____, 2017, 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, 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, the COUNTY and ARHF previously had a three year Agreement (R-2015-0721) where they worked together to create over two acres of artificial reefs using donated artificial reef materials; and

WHEREAS, ARHF has agreed to continue to donate high quality reef materials that will attract marine growth, sea life and fish; and

WHEREAS, ARHF has agreed to donate artificial reef materials to the COUNTY; and

WHEREAS, the COUNTY agrees to cover the costs of transporting and deploying these artificial reef materials within permitted reef site(s) offshore of northern Palm Beach County at an amount not to exceed a total of \$300,000.

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 donate high quality artificial reef material that will be used to construct artificial reef(s) offshore of northern Palm Beach County and provide temporary storage for the reef materials until the COUNTY is ready to load and transport the materials to a staging site. The COUNTY agrees to cover the costs of transporting and deploying the reef materials 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 Ms. Jena McNeal, telephone number 561-233-2513, e-mail address jmcneal@pbcgov.org.

b) ARHF's representative during the performance of this Agreement shall be Scott Harris, telephone number 561-718-7348, e-mail address scottharrisins@gmail.com.

4. ARHF's Responsibilities. AHRF shall:

a) Donate COUNTY-approved artificial reef material by June 30th each year for the term of this Agreement, that provides a diversity of habitat spaces for a myriad of sea life and closely mimic coral and sponge habitats; and

b) Provide temporary storage for the donated material until the COUNTY can transport them to a staging site and load the material onto the COUNTY Contractor's vehicle for transport.

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

a) Work constructively with ARHF to ensure that the donated material is compliant with the COUNTY's specifications; and

b) Cover the cost to load, transport, and place the material at one or more of the northern Palm Beach County permitted reef sites that will not exceed a total amount of \$300,000 for the term of this Agreement. The transport and precise placement of the material 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, will be referred to in any COUNTY publication as the "Andrew 'Red' Harris Reef", provided that the donated material is 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. This Agreement shall take effect beginning January 1, 2018 until December 31, 2020, 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, 4th Floor
West Palm Beach, Florida 33411-2743

Copy to:
County Attorney's Office
301 N. Olive Avenue, 6th 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 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

23. 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.

24. 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.

25. 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 ARHF.

26. 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:

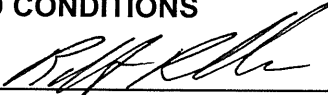
By: _____
Deputy Clerk

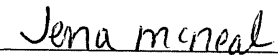
By: _____
Mayor, Paulette Burdick

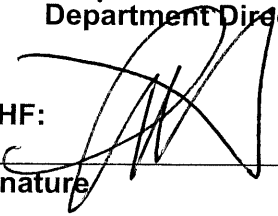
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

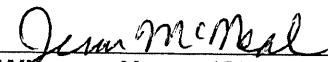
APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: 
Department Director


Witness Name (Printed)

ARHF: 
Signature


Witness Name (Signed)

Scott Harris Scott Harris
Printed Name

President President
Title

RESOLUTION NO. R2017-_____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO AUTHORIZE THE CLERK OF THE COURT TO DISPURSE VESSEL REGISTRATION FEE TRUST FUNDS 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, a young man who was an avid diver, snorkeler and fisherman and who lost his life in a tragic snorkeling accident; and

WHEREAS, ARHF and the County previously had a three year Agreement (R2015-0721) where the County and ARHF worked together to create over 2 acres of artificial reef habitat with an estimated value of \$450,000 in donated artificial reef modules; 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 donate artificial reef material for the term of the new contract; and

WHEREAS, the County has agreed to cover the transportation and placement costs of these artificial reef materials not to exceed \$300,000; and

WHEREAS, these reef materials 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 reefs 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 Trust Fund monies in the amount of \$300,000 to provide funding for this project.

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 herein.

Section 2: The Board of County Commissioners hereby authorizes the Clerk of the Court to disburse Vessel Registration Fee Trust funds in an amount of \$300,000 for the purpose of constructing the Andrew Harris Reef project.

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 2 COMMISSIONER Paulette Burdick, Mayor _____
- District 6 COMMISSIONER Melissa McKinlay, Vice Mayor _____
- District 1 COMMISSIONER Hal R. Valeche _____
- District 3 COMMISSIONER Dave Kerner _____
- District 4 COMMISSIONER Steven L. Abrams _____
- District 5 COMMISSIONER Mary Lou Berger _____
- District 7 COMMISSIONER Mack Bernard _____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2017.

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

PALM BEACH COUNTY, FLORIDA

BUDGET TRANSFER

FUND 1225 Environmental Enhancement Non-Specific

| ACCOUNT NAME AND NUMBER | ORIGINAL BUDGET | CURRENT BUDGET | INCREASE | DECREASE | ADJUSTED BUDGET | ENC/EXP 4/11/2017 | REMAINING BALANCE |
|---|-----------------|----------------|----------|----------|-----------------|-------------------|-------------------|
| <u>Appropriations</u> | | | | | | | |
| <u>Andrew Harris Reef</u> | | | | | | | |
| 380-3098 3401 Other Contractual Services | 0 | 0 | 300,000 | | 300,000 | 0 | 300,000 |
| <u>Reserve -Non-Specific</u> | | | | | | | |
| 380-3893 9902 Operating Reserves | 1,871,247 | 1,692,150 | | 300,000 | 1,392,150 | 0 | 1,392,150 |
| | | | 300,000 | 300,000 | | | |

ATTACHMENT 5

Environmental Resources
Management

Signatures & Dates

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

June 6, 2017

Deputy Clerk to the

Board of County Commissioners

INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted

