

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: June 6, 2017 (X) Consent () Regular
() Workshop () Public Hearing
Department
Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve an Agreement with the Palm Beach County Fishing Foundation, Inc. (PBCFF) providing donated artificial reef units in exchange for placing the material within permitted artificial reef sites for an amount not to exceed \$200,000 beginning upon execution and ending December 31, 2019;

B) adopt a Resolution authorizing the Clerk of the Board to disburse \$200,000 from the Vessel Registration Fee Trust Fund to provide the necessary funding for the placement of artificial reef material;

C) approve a Budget Transfer of \$200,000 from the reserves in the Environmental Enhancement Non-Specific Fund to the Palm Beach County Fishing Foundation Reef Project; and

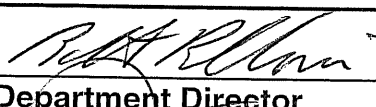
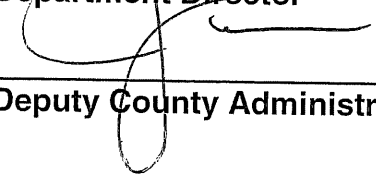
D) authorize the County Administrator, or her designee, to sign all future time extensions, task assignments, and other forms associated with this Agreement, and necessary minor amendments that do not substantially change the scope of work, terms or conditions of this agreement.

Summary: The Agreement with the PBCFF provides for the donation of artificial reef units beginning in 2017. The County will transport and deploy the units at permitted artificial reef sites with funding of \$200,000 from the Vessel Registration Fee Trust Fund and potential future grant opportunities. Countywide (AH)

Background and Justification: The West Palm Beach Fishing Club (WPBFC) was founded in 1934 and built the first permitted artificial reef in the County in 1968. In 1990, the WPBFC established the PBCFF to create a not-for-profit organization to address specific educational outreach needs and issues related to fishing and the health of the County's marine resources. The PBCFF has funded and worked with the County for the construction of several fishery conservation projects including artificial reef and estuarine enhancement. The PBCFF will fabricate high quality artificial reef material to provide habitat for spawning aggregations for offshore fish species including groupers, snappers and other marine species.

Attachments:

- 1. Agreement with PBCFF
- 2. Resolution
- 3. Budget Transfer

Recommended by:  5/11/17
Department Director Date
Approved by:  5/17/17
Deputy County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$20,000</u>	<u>\$90,000</u>	<u>\$90,000</u>	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$20,000</u>	<u>\$90,000</u>	<u>\$90,000</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 \$200,000

C. Department Fiscal Review:

[Handwritten Signature]

III. REVIEW COMMENTS

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

[Handwritten Signature] 5/11/17
 OFMB ET S/10 5/11

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

B. Legal Sufficiency:

[Handwritten Signature] 5-16-17
 Assistant County Attorney

C. Other Department Review:

 Department Director

ATTACHMENT 1

**AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND THE
PALM BEACH COUNTY FISHING 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 PALM BEACH COUNTY FISHING FOUNDATION, INC, non-profit corporation authorized to do business in the State of Florida ("PBCFF") whose Federal Tax ID Number is 65-0213715, both being hereinafter referred to collectively as the "parties".

WITNESSETH:

WHEREAS, West Palm Beach Fishing Club (WPBFC) one of the world's oldest fishing clubs was founded in 1934 to create a forum for local anglers and promote conservation of the ocean resources; and

WHEREAS, in 1968 the WPBFC built the first permitted artificial reef in Palm Beach County, referred to as the "East Palm Beach Reef" situated offshore of Singer Island, approximately 1-mile north of the Lake Worth Inlet in 70' of water consisting of the three ships namely the Mizpah, PC 111 and the Amaryllis; and

WHEREAS, the site has been a premier diving and fishing reef for nearly 50 years and its success with the local community was the basis for the creation of the County's artificial reef program in 1985; and

WHEREAS, in 1990 the WPBFC established PBCFF to create a not-for-profit organization to address specific educational outreach needs and issues related to fishing and the health of the County's marine resources; and

WHEREAS, the PBCFF have funded many fishery conservation projects including artificial reefs, estuarine enhancement, mooring buoy and reef management; and

WHEREAS, the COUNTY has a shared interest in building artificial reefs and creating marine habitats to promote conservation, fisheries management and recreational opportunities; and

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

WHEREAS, PBCFF has agreed to fabricate high quality reef units to provide habitat for spawning aggregations for offshore fish species including groupers, snappers and other marine species; and

WHEREAS, the COUNTY agrees to transport and place the reef units within permitted reef site(s) offshore of Palm Beach County at locations mutually agreeable by both parties.

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. PBCFF will fabricate high quality artificial reef units that will be used to construct artificial reef(s) and provide temporary storage for the reef units until the COUNTY is ready to truck the units to a waterfront staging site. The COUNTY will barge and place the reef units at COUNTY permitted reef sites offshore of Palm Beach County.
3. Party's Representatives/Liaison.
 - a) The COUNTY's representative during the performance of this Agreement shall be Jena McNeal, telephone number 561-233-2513, e-mail address jmcneal@pbcgov.org.
 - b) PCBFF's representative during the performance of this Agreement shall be Tom Twyford, President, telephone number 561-832-6780, e-mail address www.westpalmbeachfishingclub.org.
4. PBCFF's Responsibilities. PBCFF shall:
 - a) Fabricate COUNTY-approved artificial reef units that provide vertical profiles to encourage the spawning aggregations of grouper and benthic habitat for other species. The artificial reef units shall consist of poles/pilings creating a minimum bottom profile of 10-15' with pick-up point(s) to facilitate loading, transport and placement;
 - b) By July 31, 2017, fabricate a minimum of 12 reef units to be donated to the COUNTY;
 - c) By June 30, 2018 and June 30, 2019, fabricate a minimum of 40 reef units each year to be donated to the COUNTY;
 - d) Provide temporary storage for the reef units until the COUNTY can load and truck to a staging site for loading onto barges; and
 - e) Bear all costs for fabrication of the reef units and all liability and risk associated with fabrication of the reef units.
5. The COUNTY's Responsibilities. The COUNTY shall:
 - a) Work constructively with PBCFF to ensure that the reef units are constructed to the COUNTY-approved specifications; and
 - b) Once the reef units are accepted by the COUNTY's Representative, the COUNTY shall provide the transportation, and placement of the reef units

at one or more of the Palm Beach County permitted reef sites. The transport and placement of the reef units 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 "Palm Beach County Fishing Foundation Reef", provided that the reef units are placed at a previously unnamed 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, 2019, 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

Palm Beach County Fishing Foundation
P.O. Box 468
West Palm Beach, FL 33402

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 PBCFF. PBCFF 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 PBCFF's or its agents, employees or contractors performance of the terms of this Agreement or due to the acts or the omissions of PBCFF 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 PBCFF 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.

PBCFF 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 PBCFF does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to the COUNTY that the PBCFF'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. PBCFF 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 PBCFF 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 PBCFF's sole direction, supervision, and control. PBCFF shall exercise control over the means and manner in which it and its employees perform the work, and in all respects PBCFF'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.

PBCFF 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 PBCFF.

26. Entirety of Agreement. PBCFF 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: *Bob K. Lewis*
Department Director

Jena McNeal
Witness Name (Printed)

PBCFF:
By: *Tom Twyford*
Signature

Jena McNeal
Witness Name (Signed)

Tom Twyford
Printed Name, President PBCFF

ATTACHMENT 2

RESOLUTION NO. R2017-_____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO AUTHORIZE THE CLERK OF THE COURT TO DISPERSE VESSEL REGISTRATION FEE TRUST FUNDS FOR THE CONSTRUCTION OF ARTIFICIAL REEFS IN PARTNERSHIP WITH THE PALM BEACH COUNTY FISHING FOUNDATION.

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 Palm Beach County Fishing Foundation (PBCFF) was created in 1990 to create a not-for-profit organization to address specific educational outreach needs and issues related to fishing and the health of the County's marine resources; and

WHEREAS, the PBCFF have funded many fishery conservation projects including artificial reefs, estuarine enhancement, mooring buoy and reef management; and

WHEREAS, PBCFF has agreed to fabricate high quality reef modules to provide habitat for spawning aggregations for offshore fish species including groupers, snappers and other marine species; and

WHEREAS, the County has agreed to cover the transportation and placement costs of these artificial reef materials not to exceed \$200,000; 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, the new artificial reefs will be named the Palm Beach County Fishing Foundation 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 \$200,000 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 \$200,000 for the purpose of constructing the Palm Beach County Fishing Foundation 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 4/25/2017	REMAINING BALANCE
<u>Appropriations</u>							
<u>PBC Fishing Foundation</u>							
380-3305 3401 Other Contractual Services	0	0	200,000		200,000	0	200,000
<u>Reserve -Non-Specific</u>							
380-3893 9902 Operating Reserves	1,871,247	1,692,150		200,000	1,492,150	0	1,492,150
			200,000	200,000			

Attachment 3

Environmental Resources
Management

Signatures & Dates

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

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

Robt Klein 4/29/17

June 6, 2017

Deputy Clerk to the
Board of County Commissioners