

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 10, 2018 (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 Interlocal Agreement (Agreement) with the Town of Lantana (Town) for the construction of two mangrove planters at Lyman Kayak Park (Project) at a cost of \$15,000 for a term beginning upon execution through December 31, 2019;
B) approve a budget transfer of \$15,000 from the Manatee Protection Program to the Project; and
C) authorize the County Administrator or designee to sign all future time extensions and necessary minor amendments that do not significantly change the terms or conditions of the Agreement.

Summary: The Project includes placement of armor stone to protect the planting areas and provide habitat for colonizing oysters. The Town is committed to provide the necessary armor stone and long-term maintenance of the site upon completion. The County's cost is estimated at \$15,000, which will come from Manatee Funds. District 4 (AH)

Background and Justification: The Project will provide mangrove wetland habitat and shoreline resilience against sea level rise. The purpose of Living Shorelines is to make it easier for coastal property owners to take a softer, more environmentally friendly, and cost effective approach to shoreline stabilization wherever needed and appropriate.

- Attachments:
1. Interlocal Agreement
2. Budget Transfer

Recommended by: [Signature] 3/8/2018 Department Director Date
Approved by: [Signature] 3/26/18 Deputy County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$15,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$15,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____	No <u>X</u>			
Does this item include the use of federal funds?	Yes _____	No <u>X</u>			

Budget Account No.:

Fund 226 Department 390 Unit ³²⁵²3306 Object 3401 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:
Manatee Protection Plan

C. Department Fiscal Review:

_____ *S. Neary*

III. REVIEW COMMENTS

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

<p><i>Lisa Ponz</i> 3/15/18 OFMB <i>PKD</i> 3/15 <i>Gina S/15</i> 3/13/18</p>	<p><i>Dr. S. Jacobson</i> 3/21/18 Contract Development & Control 3/24/18 <i>TW</i></p>
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B. Legal Sufficiency:

Anne Helgent 3-26-18
Assistant County Attorney

C. Other Department Review:

Department Director

INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND THE TOWN OF LANTANA

THIS INTERLOCAL AGREEMENT, hereinafter referred to as "Agreement", is made this 13th day of November 2017, by and between the Town of Lantana, whose mailing address is 500 Greynolds Circle, Lantana, Florida 33462 ("Town"), and Palm Beach County, a political subdivision of the State of Florida, whose mailing address is 2300 North Jog Road, (4th Floor), West Palm Beach, Florida 33411 ("County"), for the purpose of participating in the LYMAN KAYAK PARK MANGROVE PLANTER PROJECT hereinafter referred to as the "Project".

WITNESSETH:

WHEREAS, the County has worked with several municipalities to enhance the water quality and habitat of the Lake Worth Lagoon by creating mangrove planters along the waterfront; and

WHEREAS, the County and Town wish to protect and enhance the coastal environment by constructing the Project on park property owned by the Town; and

WHEREAS, the County has secured funding and Environmental Resource Permits from the Florida Department of Environmental Protection and United States Army Corps of Engineers for the Project; and

WHEREAS, the County and the Town desire to undertake the Project for the benefit of all citizens who enjoy Lyman Kayak Park, but the County is unable to do so unless access to the Park is granted to the County; and

WHEREAS, the Town is willing to grant access to the County for completion of the Project under circumstances that will not damage or unduly hinder public use of the Park; and

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, entering into this Agreement serves a public purpose.

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

1. Purpose of Agreement. The purpose of this Agreement is to set forth the terms, conditions and obligations of each of the parties with respect to the Project.
2. The Project. The goal is to construct two (2) mangrove planters through the placement of riprap and the planting of mangroves and Spartina along the shoreline of Lyman Kayak Park. (See Exhibit A). The proposed mangrove planters will extend 17 feet waterward of the mean high water line.
3. Commencement and Term. This Agreement shall commence on the date approved by both the Town the County and shall remain in effect until 12/31/19, unless terminated earlier by either party, or extended by the mutual agreement of County and Town.
4. County's Use. The Park may be used by the County, its contractors, agents or employees for the purpose of constructing the Project.
5. County's Obligations.
 - A. The County shall complete the construction of the living shoreline activities as described in (Exhibit A.)
 - B. Limit work on the Project to weekdays between 7:00 a.m. and 7:00 p.m.
 - C. Give notice to the Town at least thirty (30) days prior to actual commencement of the Project.
 - D. Hold a pre-construction meeting with its contractor for the Project and the City prior to mobilization.
 - E. Submit an operation plan for Town approval prior to mobilization which shall, at a minimum, include security and signage, protection of existing utilities and resources, equipment list, construction schedule.
 - F. County shall install turbidity curtains waterward of the Project site during all shoreline and in-water construction activities.
 - G. County shall provide project management including daily inspections and construction oversight.
6. Town Obligations. The Town shall not commit any act that would interfere with or impede the rights granted to the County, its subcontractors, agents or employees or the public under this Agreement. Acts which would interfere with said rights include, but are not limited to: Hindering reasonable ingress and egress to Lyman Kayak Park. The Town specifically understands and agrees that based upon the rights granted by this Agreement, the Town shall provide and deliver the necessary armor stone for use in building the two mangrove planters. Any offsite removal or disposal of sand excavated for the creation of the planters shall be the Town's responsibility. Excavated sand can also be utilized to supplement the existing coastal berm onsite as directed by the Town. The Town also agrees to accept responsibility of any repairs to the Park that construction may cause including but not limited to the repairs and replacement irrigation, sidewalks, replacement of sod, supplemental berm plantings resulting from the Project, ongoing vegetative maintenance and any structural repairs of this Project once construction is complete.

7. Town's Representations. The Town represents that it is the lawful owner of and has good and marketable legal title to the Park, that to the best of the Town's knowledge and subject to easements, claims and matters of public record, the Town has the full right, power and authority to grant all other rights granted hereunder to the County, If any person shall seek to set aside this Agreement or to nullify the rights granted hereunder based upon an alleged superior right in the Park, then the Town shall, upon the County's request and at Town's expense, take any action reasonably necessary to secure to the County the rights and interest granted hereunder.

8. Authority to Execute this Agreement. Any person executing this Agreement hereby warrants and represents that he or she has received all corporate, government, association, or entity authorization necessary to enter into this Agreement.

9. Termination. This Agreement may be terminated by either party upon thirty days written notice to the other party.

10. Assignment. Neither party shall assign, delegate or otherwise transfer its rights and obligations as set forth in this Agreement to any other entity without the prior written consent of the other party.

11. Amendment. This Agreement may be amended, altered, released or revoked only by written agreement between the parties hereto and their assigns or successors, which shall be recorded in the public records in Palm Beach County.

12. Party Representatives.

a) The County's representative/contract monitor during the term of this Agreement shall be the Director of the Department of Environmental Resources Management whose telephone number is (561) 233-2400.

b) The Town's representative/contract monitor during the term of this Agreement shall be the Town Manager, whose telephone number is (561) 540-5004.

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

Director
Palm Beach County Department of Environmental Resources Management
2300 North Jog Road, 4th floor
West Palm Beach, FL 33411-2743

Town Manager
Town of Lantana
500 Grevnolds Circle
Lantana, FL 33462

Should either party change its address, written notice of such new address shall promptly be sent to the other party and shall be effective upon receipt.

14. Default and Opportunity to Cure. The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default sixty (60) days written notice to cure said default before exercising any of its rights as provided for in this Agreement. If the defaulting party fails to correct the default within this time, unless otherwise agreed by the parties, the party not in default may terminate this Agreement at the expiration of the sixty (60) day time period.

15. Recording. A copy of this Agreement shall be recorded and filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

16. Remedies. This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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.

17. Compliance with Laws. The Parties and their employees, subcontractors, or assigns, if any, shall comply with all applicable federal, state, and local laws and regulations relating to performance of this Agreement.

18. Indemnification. Each party to this Agreement and its respective officers and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by either party or an agreement to indemnify each other in excess of the monetary limits set forth at Section 768.28, Florida Statutes.

19. 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 employee of the County and/or Town.

20. Insurance. Each party shall maintain a fully funded program of self-insurance pursuant to Section 768.28 Florida Statutes. Each party agrees to require any consultant performing work on the Project to maintain adequate insurance coverage, naming both the Town and County as an additional insured and providing that the consultant shall save, defend and hold harmless the Town and the County from any and all suits, actions, claims, demands, liabilities, interests, attorneys' fees, costs and expenses of whatsoever kind or nature arising or occasioned or contributed to in whole or in part by reason of any act, omission, fault or negligence of the consultant.

21. Non-Discrimination: Each party warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

The Town has submitted to the County a copy of its non-discrimination policy which is consistent with the above sentence, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the Town 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 County that the Town will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

22. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

23. Waiver of Breach. The failure to insist on strict performance of or the waiver of any covenant, condition, or provision of this Agreement by any party shall not relieve the other party from performing any other obligation strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

24. Entirety of Agreement. The Town and 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.

25. Independent Contractor. Each party recognizes that it is an independent contractor and not an agent or servant of the other party. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.

26. Enforcement Costs. Except as otherwise provided herein, 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.

27. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

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

29. Palm Beach County Office of the 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 and 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.

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Mayor of Palm Beach County and the seal of Board of County Commissioners to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board; and the Town of Lantana has caused this Agreement to be signed in its corporate name by its Mayor and its corporate seal to be affixed hereto, attested by its Town Clerk, the date and year first above written.

TOWN OF LANTANA, FLORIDA

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By David J. Stewart
David J. Stewart, Mayor

By _____
Melissa McKinlay, Mayor

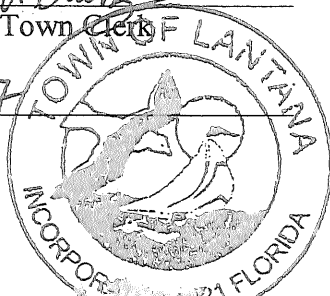
ATTEST:
By Heidi R. Ditz
Town Clerk

ATTEST:
Sharon R. Bock, Clerk and Comptroller
By _____
Deputy Clerk

Date: 11-13-17

Date: _____

SEAL



SEAL

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

By [Signature]
Town Attorney

By _____
Assistant County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By Michael Stahl
Michael Stahl, Interim Director

**BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET TRANSFER**

BGEX 380 022218-990

FUND 1226 Natural Areas Fund

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED 02/22/18	REMAINING BALANCE
<u>EXPENDITURES</u>								
380-3306-3401	Other Contractual Services	0	0	15,000	0	15,000	0	15,000
380-3252-3401	Other Contractual Services	366,336	402,842	0	15,000	387,842	170,285	217,557
Total Receipts and Balances				15,000	15,000			

ATTACHMENT 2

Signatures & Dates

By Board of County Commissioners
At Meeting of

Office of Financial Management & Budget
INITIATING DEPARTMENT/DIVISION

Robert J. ... 3/8/2018

Administration/Budget Department Approval

Deputy Clerk to the

OFMB Department - Posted

Board of County Commissioners