

3H-1

Agenda Item #:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: December 4, 2018	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file:

- A) Standard Equipment Use Agreement with the Palm Beach County Sports Commission, Inc. for a period of July 6, 2018 through July 13, 2018, for the use of seventeen (17) radios and three (3) chargers during the Kids Fitness Festival of the Palm Beaches;
- B) Standard Equipment Use Agreement with State of Florida All Hazard Incident Management Team for a period of September 14, 2018 through October 5, 2018, for the use of one (1) Ford F350 and one (1) Generator during Hurricane Florence emergency response; and
- C) Standard Equipment Use Agreement with State of Florida All Hazard Incident Management Team for a period of October 9, 2018 through October 26, 2018, for the use of one (1) Ford F350 and one (1) Generator during Hurricane Michael emergency response.

Summary: The attached standard Agreements have been fully executed on behalf of the Board of County Commissioners (Board) by the County Administrator or designee. The Equipment Use Agreement was approved by the Board on October 1, 2013, Agenda 3H-2. These executed documents are now being submitted to the Board to receive and file. In accordance with County PPM CW-O-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. **(FDO Admin) Countywide (LDC)**

Background & Justification: The delegation of authority which provided authority for the County Administrator or designee to execute standard equipment use agreements was designed to expedite and streamline the process for use of county owned equipment for short-term use. There is usually no fee for use if the applicant demonstrates that (i) the activity is for the purpose of promoting community interest and welfare and (ii) the applicant will not realize a profit based on the use.

Attachments:

- 1. Standard Equipment Use Agreement with the Palm Beach County Sports Commission, Inc. for a period of July 6, 2018 through July 13, 2018, for the use of seventeen (17) radios and three (3) chargers during the Kids Fitness Festival of the Palm Beaches;
- 2. Standard Equipment Use Agreement with State of Florida All Hazard Incident Management Team for a period of September 14, 2018 through October 5, 2018, for the use of one (1) Ford F350 and one (1) Generator during Hurricane Florence emergency response; and
- 3. Standard Equipment Use Agreement with State of Florida All Hazard Incident Management Team for a period of October 9, 2018 through October 26, 2018, for the use of one (1) Ford F350 and one (1) Generator during Hurricane Michael emergency response.

Recommended By: <u>MB</u>	<u>Arman Wong</u>	<u>11/14/18</u>
	Department Director	Date
Approved By: <u>[Signature]</u>	<u>[Signature]</u>	<u>11/26/18</u>
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
(County)					
In-Kind Match (County)					
NET FISCAL IMPACT	0.00	0.00	0.00	0.00	0.00
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget: Yes No
Does this item include the use of federal funds? Yes No

Budget Account No:
Fund Dept Unit Revenue Source
Fund Dept Unit Revenue Source

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

No Fiscal Impact

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

OFMB 11/11/18 11/11 10/31

Contract Development and Control 11/8/18

B. Legal Sufficiency: Assistant County Attorney 11/9/18

C. Other Department Review: Department Director

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

STANDARD EQUIPMENT USE AGREEMENT

THIS EQUIPMENT USE AGREEMENT is made and entered into July 6th, 2018, by and between Palm Beach County, a political subdivision of the State of Florida ("County") and the Palm Beach County Sports Commission, Inc., a Florida not-for-profit corporation, whose Federal I.D. number is 65-0641013, hereinafter referred to as "User".

In consideration of the covenants and agreements hereinafter set forth the County hereby grants User the use of equipment as set forth herein.

SECTION ONE: EQUIPMENT USE AND TERM

County hereby agrees to provide for the use of the equipment identified on the attached Exhibit "A", incorporated herein by reference (the "Equipment") and User acknowledges receipt of said Equipment. This Equipment Use Agreement is subject to the Special Conditions of Use as set forth in Exhibit "B", attached hereto and incorporated by reference.

This Agreement commences on July 6, 2018 and ends on the earlier of July 13, 2018, or immediately upon County notice of termination as set forth herein (the "Term"). The User shall discontinue use/return the Equipment at the conclusion of the Term.

The User acknowledges that the County is providing use of the Equipment without charge for the benefit of the public, and that the County may have occasions when the Equipment is required for County purposes. Therefore, the parties agree that, in the event the Equipment is needed by the County during the Term, or if either party desires to terminate the Agreement, for any reason whatsoever, either party may immediately terminate this Agreement and the User shall immediately discontinue use/return the Equipment to the County following the notice of termination.

SECTION TWO: COSTS

The User will not incur a fee for use or rental of the Equipment during the Term of this Agreement. However, User may incur other costs and expenses as further set forth in this Agreement or the Special Conditions of Use.

SECTION THREE: RISK OF LOSS AND DAMAGE

User shall be responsible for risk of loss and damage to the Equipment to the extent set forth in the attached Special Conditions of Use.

SECTION FOUR: INSURANCE AND INDEMNIFICATION

User shall provide the insurance and indemnity requirements as set forth in the attached Special Conditions of Use.

SECTION FIVE: NOTICES

All notices to the County concerning this Equipment Use Agreement shall be directed to the Business & Community Agreements Manager, Facilities Development & Operations, 2633 Vista Parkway, West Palm Beach, FL 33411-5603, MBroderick@pbcgov.org with a copy to Palm Beach County, Attn: County Attorney, 301 North Olive Avenue, 6th Floor, West Palm Beach, FL 33401, (561) 355-6461(fax). All notices to the User shall be directed to Jared Fleet, Event Manager, Palm Beach County Sports Commission, Inc., 2195 Southern Blvd., Suite 550, West Palm Beach, FL 33406 at JFleet@PalmBeachSports.com For purposes of this Agreement, notice shall be in writing, and may be provided by U.S. Mail, hand delivery, other delivery service, or by email.

SECTION SIX: PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL

Pursuant to Palm Beach County Code, Sections 2-421 through 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to have the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 through 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

SECTION SEVEN: NO THIRD PARTY BENEFICIARY

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 User.

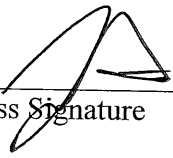
SECTION EIGHT: NON-DISCRIMINATION

The User 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 or expression, or genetic information.

(Remainder of this page intentionally left blank)

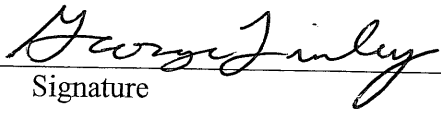
IN WITNESS WHEREOF, County and User have executed this Equipment Use Agreement, on the day and year first above written.

WITNESS

By: 
Witness Signature

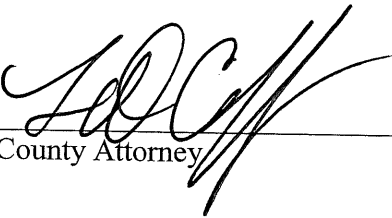
JARED FLEET
Witness Name

PALM BEACH COUNTY SPORTS
COMMISSION, INC., a Florida not-for-profit corporation

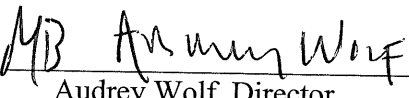
By: 
Signature

By: George Linley
Print Name and Title

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
County Attorney

PALM BEACH COUNTY, a political subdivision
of the State of Florida

By: 
Audrey Wolf, Director
Facilities Development & Operations

PALM BEACH COUNTY
RISK MANAGEMENT DEPARTMENT


By: 
Scott Marting, Director

EXHIBIT “A”

Equipment Inventory
(Subject to change)

Motorola Radios

Asset#	Serial#	Model#	Valued
R-2098	687TGG2290	H67UCD9PW5BN	\$900.00
R-2427	687CJF0899	H67UCD9PW5BN	\$900.00
R-2129	687TGG2340	H67UCD9PW5BN	\$900.00
R-2125	687TGG2336	H67UCD9PW5BN	\$900.00
R-2103	687TGG2295	H67UCD9PW5BN	\$900.00
R-2124	687TGG2335	H67UCD9PW5BN	\$900.00
R-2102	687TGG2295	H67UCD9PW5BN	\$900.00
R-2128	687CNB1164	H67UCD9PW5BN	\$900.00
R-2091	687TGG2283	H67UCD9PW5BN	\$900.00
R-2105	687TGG2298	H67UCD9PW5BN	\$900.00
R-2099	687TGG2291	H67UCD9PW5BN	\$900.00
R-2126	687TGG2337	H67UCD9PW5BN	\$900.00
R-2094	687TGG2286	H67UCD9PW5BN	\$900.00
R-2116	687TGG2327	H67UCD9PW5BN	\$900.00
R-2109	687TGG2302	H67UCD9PW5BN	\$900.00
R-2318	687THL0202	H67UCD9PW5BN	\$900.00
R-2322	687THJ0236	H67UCD9PW5BN	\$900.00

Multi-unit charger			
WPLN4121BR	\$700		
WPLN4121BR	\$700		
WPLN4121BR	\$700		
Total Cost Replacement			\$17,400.00

EXHIBIT "B"
Special Conditions of Equipment Use Agreement

1. The User acknowledges that the County is providing use of the Equipment without charge for the benefit of the public and that there is to be no private "for-profit" uses of the Equipment. This prohibition extends to private businesses, entities or persons who are providing services for a fee during a not-for profit or governmental event.

User hereby certifies that the Equipment will be used solely by governmental or not-for-profit agencies and employees or volunteers, and that the Equipment will not be provided to any "for-profit" business or entity, or its contractors or employees. If User authorizes other governmental agencies or not-for-profit entities to use the Equipment, the User certifies that this prohibition will be explained to each user and each user must also comply with this use restriction.

2. The User acknowledges that the County is providing use of the Equipment during the hurricane season and that the County may have occasions when the Equipment is required for County purposes. In the event the Equipment is needed by the County during the Term, at the sole discretion of the Facilities Development & Operations Department/Electronic Services & Security Division, County shall email a notice of termination to JFleet@PalmBeachSports.com and the User shall immediately discontinue use/return the Equipment, in no event later than within forty-eight (48) hours after email notice of termination. Notice of termination is final.

User understands that the Equipment would not be authorized for this proposed use, but for, User's agreement to return the Equipment as set forth herein in the event of a termination. User has accepted the Equipment being fully aware of the risk of this contingency. User takes full and complete responsibility for contingency planning to avoid disruption to its communications/operations and agrees that User will not rely solely on the Equipment for its safety or security communications.

3. User is solely responsible for the performance and the operation of the Equipment and any damages or liability resulting from the use thereof. Should the County or User identify any malfunctioning Equipment, the User shall notify County and return the malfunctioning equipment to the County. In the case of stolen or lost Equipment, the User shall notify the County of the same, in writing or via e-mail, and shall include within such notice the serial number of the Equipment that is lost or stolen.

4. User assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever. No loss or damage to the Equipment or any part thereof shall impair any obligation of User under this Agreement. In the event of loss or damage of any kind whatsoever to the Equipment, User shall, at County's option: (i) reimburse the County for the entire cost and expense of the repair of the Equipment; or (ii) pay to the County the full replacement cost of the Equipment without deduction for depreciation. User shall provide County with the

reimbursement of repair costs and/or the replacement cost, if applicable, within fourteen (14) calendar days of User's receipt of an invoice from the County regarding the same.

5. User acknowledges without waiving the right to sovereign immunity as provided by Florida Statutes 768.28, that User is self-insured for general liability and automobile liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature. In the event that User maintains third-party commercial general liability in lieu of exclusive reliance on self-insurance under Florida Statutes 768.28. User shall maintain said insurance policy at limits not less than \$500,000 each occurrence. User shall add the County to the commercial general liability as an "additional insured" with a CG 2026 Additional Insured-Designated Person or Organization endorsement or similar endorsement. 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. The additional insured endorsement shall provide coverage on a primary basis. Compliance with the foregoing insurance requirements shall not relieve User of its liability and obligations under this License Agreement. User's self-insurance or general liability insurance shall be primary with respect to any coverage afforded to or maintained by the County.

6. Each party shall be liable for its own actions and negligence and to the extent permitted by law; User shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out of the User's acts, errors or omissions in connection with this License Agreement. In the event the County shall be made a party to any litigation commenced against User or by User against any third party, then User shall protect and hold the County harmless in connection with such litigation and any appeals thereof. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's own negligent, willful or intentional acts or omissions. This Section shall survive termination of this Equipment Use Agreement.

STANDARD EQUIPMENT USE AGREEMENT

THIS EQUIPMENT USE AGREEMENT is made and entered into by and between Palm Beach County, a political subdivision of the State of Florida ("County") and State of Florida All Hazard Incident Management Team, a Florida Government Entity hereinafter referred to as "User".

In consideration of the covenants and agreements hereinafter set forth the County hereby grants User the use of equipment as set forth herein.

SECTION ONE: EQUIPMENT USE AND TERM

County hereby agrees to provide the use of the equipment identified on the attached Exhibit "A", incorporated herein by reference (the "Equipment") and User acknowledges receipt of said Equipment. This Equipment Use Agreement is subject to the Special Conditions of Use as set forth in Exhibit "B", attached hereto and incorporated by reference.

This Agreement commences on September 14, 2018 and ends on the earlier of October 5, 2018 or upon County notice of termination as set forth herein (the "Term"). The User shall discontinue use/return the Equipment at the conclusion of the Term.

The User acknowledges that the County is providing use of the Equipment without charge for the benefit of the public, and that the County may have occasions when the Equipment is required for County purposes. Therefore, the parties agree that, in the event the Equipment is needed by the County during the Term, or if either party desires to terminate the Agreement, for any reason whatsoever, either party may immediately terminate this Agreement and the User shall immediately discontinue use/return the Equipment to the County following the notice of termination.

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SECTION THREE: RISK OF LOSS AND DAMAGE

User shall be responsible for risk of loss and damage to the Equipment to the extent set forth in the attached Special Conditions of Use.

SECTION FOUR: INSURANCE AND INDEMNIFICATION

User shall provide the insurance and indemnity requirements as set forth in the attached Special Conditions of Use. Proof of insurance, if applicable, is required prior to delivery of the Equipment.

SECTION FIVE: NOTICES

All notices to the County concerning this Equipment Use Agreement shall be directed to the Business & Community Agreements Manager, Facilities Development & Operations, 2633 Vista Parkway, West Palm Beach, FL 33411-5603, (561) 233-0206 (Fax) with a copy to Palm Beach County, Attn: County Attorney, 301 North Olive Avenue, 6th Floor, west Palm Beach, FL 3340], (561) 355-6461(fax).

All notices to the User shall be directed to Chief Doug Clark at dclark@pbcgov.org 561-233-2379. For purposes of this Agreement, notice shall be in writing, and may be provided by U.S. Mail, hand delivery, other delivery service, or by facsimile or email.

SECTION SIX: PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Sections 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 entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 through 2440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

SECTION SEVEN: NO THIRD PARTY BENEFICIARY

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 User.

SECTION EIGHT: NON-DISCRIMINATION

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

IN WITNESS WHEREOF, County and User have executed this Equipment Use Agreement, on the day and year first above written.

USER:

By: Jeffrey Alan Clark
Witness Signature

Jeffrey Alan Clark
Witness Name

By: DJ/UC
Signature

By: Douglas J Clark Division Chief
Print Name and Title

Date: 9/13/2018

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: [Signature]
County Attorney

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: Audrey Wolf
Audrey Wolf, Director FDO

Date: 9/18/18

APPROVED AS TO TERMS AND CONDITIONS

By: MRM
FDO Business and Community Agreements Manager

EXHIBIT "A"
Equipment Inventory
(Subject to change)

EQUIPMENT TYPE AND/OR SERIAL NO.	ASSET NUMBER	REPLACEMENT COST
Tradewind Generator	10189437	\$130,000
Ford F350	10196003	\$75,000
TOTAL REPLACEMENT COST		\$205,000

EXHIBIT "B"
SPECIAL CONDITIONS OF USE

1. Costs. The User acknowledges that the County is providing use of the Equipment without charge for the benefit of the public and that there is to be no private "for-profit" uses of the Equipment. This prohibition extends to private businesses, entities or persons who are providing services for a fee during a not-for profit or governmental event.

User hereby certifies that the Equipment will be used solely by governmental or not-for-profit agencies and employees or volunteers, and that the Equipment will not be provided to any "for-profit" business or entity, or its contractors or employees. If User authorizes other governmental agencies or not-for-profit entities to use the Equipment, the User certifies that this prohibition will be explained to each user and each user must also comply with this use restriction.

2. Return of Equipment. The User acknowledges that the County is providing use of the Equipment during the hurricane season or during a period when County operations may require that the County must use the Equipment for County purposes. In the event the Equipment is needed by the County during the Term, at the sole discretion of the Facilities Development & Operations Department, County shall email a notice of termination to User at dclark@pbcgov.org and the User shall immediately discontinue use/return the Equipment, in no event later than within forty-eight (48) hours after email notice of termination. Notice of termination is final.

User understands that the Equipment would not be authorized for this proposed use, but for, User's agreement to return the Equipment as set forth herein in the event of a termination. User has accepted the Equipment being fully aware of the risk of this contingency. User takes full and complete responsibility for contingency planning to avoid disruption to its communications and/or operations and agrees that User will not rely solely on the Equipment for its safety or security communications and/or operations.

3. Operation of Equipment. User is solely responsible for the performance and the operation of the Equipment and any damages or liability resulting from the use thereof. Should the County or User identify any malfunctioning Equipment, the User shall notify County and return the malfunctioning equipment to the County. In the case of stolen or lost Equipment, the User shall notify the County of the same, in writing or via e-mail, and shall include within such notice the serial number of the Equipment that is lost or stolen.

4. Risk of Loss and Damage. User assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever. No loss or damage to the Equipment or any part thereof shall impair any obligation of User under this Agreement. In the event of loss or damage of any kind whatsoever to the Equipment, User shall, at County's option: (i) reimburse the County for the entire cost and expense of the repair of the Equipment; or (ii) pay to the County the full replacement cost of the Equipment without deduction for depreciation. User shall provide County

with the reimbursement of repair costs and/or the replacement cost, if applicable, within fourteen (14) calendar days of User's receipt of an invoice from the County regarding the same.

5. Insurance. Florida Government Entity. User acknowledges without waiving the right to sovereign immunity as provided by Florida Statutes 768.28, that User is self-insured for general liability and automobile liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature. In the event that User maintains third-party commercial general liability in lieu of exclusive reliance on self-insurance under Florida Statutes 768.28, then User shall maintain said insurance policy at limits not less than \$500,000 each occurrence. User shall add the County to the commercial general liability as an "additional insured" with a CG 2026 Additional Insured-Designated Person or Organization endorsement or similar endorsement. 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." The additional insured endorsement shall provide coverage on a primary basis. Compliance with the foregoing insurance requirements shall not relieve User of its liability and obligations under this License Agreement. User's self-insurance or general liability insurance shall be primary with respect to any coverage afforded to or maintained by the County.

6. Indemnity. Florida Government Entity. Each party shall be liable for its own actions and negligence; and, to the extent permitted by law, User shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out of the User's acts, errors or omissions in connection with this License Agreement. In the event the County shall be made a party to any litigation commenced against User or by User against any third party, then User shall protect and hold the County harmless in connection with such litigation and any appeals thereof. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's own negligent, willful or intentional acts or omissions. This Section shall survive termination of this Equipment Use Agreement.

STANDARD EQUIPMENT USE AGREEMENT

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In consideration of the covenants and agreements hereinafter set forth the County hereby grants User the use of equipment as set forth herein.

SECTION ONE: EQUIPMENT USE AND TERM

County hereby agrees to provide the use of the equipment identified on the attached Exhibit "A", incorporated herein by reference (the "Equipment") and User acknowledges receipt of said Equipment. This Equipment Use Agreement is subject to the Special Conditions of Use as set forth in Exhibit "B", attached hereto and incorporated by reference.

This Agreement commences on October 9, 2018 and ends on the earlier of October 26, 2018 or upon County notice of termination as set forth herein (the "Term"). The User shall discontinue use/return the Equipment at the conclusion of the Term.

The User acknowledges that the County is providing use of the Equipment without charge for the benefit of the public, and that the County may have occasions when the Equipment is required for County purposes. Therefore, the parties agree that, in the event the Equipment is needed by the County during the Term, or if either party desires to terminate the Agreement, for any reason whatsoever, either party may immediately terminate this Agreement and the User shall immediately discontinue use/return the Equipment to the County following the notice of termination.

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All notices to the User shall be directed to Captain Roberto M'Causland at rmcausla@pbcgov.org 561-723-1944. For purposes of this Agreement, notice shall be in writing, and may be provided by U.S. Mail, hand delivery, other delivery service, or by facsimile or email.

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IN WITNESS WHEREOF, County and User have executed this Equipment Use Agreement, on the day and year first above written.

USER:

By: Jeffrey Alan Childs
Witness Signature

JEFFREY ALAN CHILDS
Witness Name

By: [Signature]
Signature

By: R. M. Cowsland
Print Name and Title

Date: 10.09.18

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: [Signature]
County Attorney

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: Audrey Wolf
Audrey Wolf, Director FDO

Date: 10/9/18

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]
FDO Business and Community Agreements Manager

EXHIBIT "A"
Equipment Inventory
(Subject to change)

EQUIPMENT TYPE AND/OR SERIAL NO.	ASSET NUMBER	REPLACEMENT COST
Tradewind Generator	10189437	\$130,000
Ford F350	10196699	\$75,000
TOTAL REPLACEMENT COST		\$205,000

EXHIBIT "B"
SPECIAL CONDITIONS OF USE

1. Costs. The User acknowledges that the County is providing use of the Equipment without charge for the benefit of the public and that there is to be no private "for-profit" uses of the Equipment. This prohibition extends to private businesses, entities or persons who are providing services for a fee during a not-for profit or governmental event.

User hereby certifies that the Equipment will be used solely by governmental or not-for-profit agencies and employees or volunteers, and that the Equipment will not be provided to any "for-profit" business or entity, or its contractors or employees. If User authorizes other governmental agencies or not-for-profit entities to use the Equipment, the User certifies that this prohibition will be explained to each user and each user must also comply with this use restriction.

2. Return of Equipment. The User acknowledges that the County is providing use of the Equipment during the hurricane season or during a period when County operations may require that the County must use the Equipment for County purposes. In the event the Equipment is needed by the County during the Term, at the sole discretion of the Facilities Development & Operations Department, County shall email a notice of termination to User at rmcausla@pbcgov.org and the User shall immediately discontinue use/return the Equipment, in no event later than within forty-eight (48) hours after email notice of termination. Notice of termination is final.

User understands that the Equipment would not be authorized for this proposed use, but for, User's agreement to return the Equipment as set forth herein in the event of a termination. User has accepted the Equipment being fully aware of the risk of this contingency. User takes full and complete responsibility for contingency planning to avoid disruption to its communications and/or operations and agrees that User will not rely solely on the Equipment for its safety or security communications and/or operations.

3. Operation of Equipment. User is solely responsible for the performance and the operation of the Equipment and any damages or liability resulting from the use thereof. Should the County or User identify any malfunctioning Equipment, the User shall notify County and return the malfunctioning equipment to the County. In the case of stolen or lost Equipment, the User shall notify the County of the same, in writing or via e-mail, and shall include within such notice the serial number of the Equipment that is lost or stolen.

4. Risk of Loss and Damage. User assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever. No loss or damage to the Equipment or any part thereof shall impair any obligation of User under this Agreement. In the event of loss or damage of any kind whatsoever to the Equipment, User shall, at County's option: (i) reimburse the County for the entire cost and expense of the repair of the Equipment; or (ii) pay to the County the full replacement cost of the Equipment without deduction for depreciation. User shall provide County

with the reimbursement of repair costs and/or the replacement cost, if applicable, within fourteen (14) calendar days of User's receipt of an invoice from the County regarding the same.

5. Insurance. Florida Government Entity. User acknowledges without waiving the right to sovereign immunity as provided by Florida Statutes 768.28, that User is self-insured for general liability and automobile liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature. In the event that User maintains third-party commercial general liability in lieu of exclusive reliance on self-insurance under Florida Statutes 768.28, then User shall maintain said insurance policy at limits not less than \$500,000 each occurrence. User shall add the County to the commercial general liability as an "additional insured" with a CG 2026 Additional Insured-Designated Person or Organization endorsement or similar endorsement. 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." The additional insured endorsement shall provide coverage on a primary basis. Compliance with the foregoing insurance requirements shall not relieve User of its liability and obligations under this License Agreement. User's self-insurance or general liability insurance shall be primary with respect to any coverage afforded to or maintained by the County.

6. Indemnity. Florida Government Entity. Each party shall be liable for its own actions and negligence; and, to the extent permitted by law, User shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out of the User's acts, errors or omissions in connection with this License Agreement. In the event the County shall be made a party to any litigation commenced against User or by User against any third party, then User shall protect and hold the County harmless in connection with such litigation and any appeals thereof. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's own negligent, willful or intentional acts or omissions. This Section shall survive termination of this Equipment Use Agreement.