

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	April 2, 2019	(X) Consent () Workshop	() Regular () Public Hearing
Department:	<u>Environmental Resources Management</u>		
Submitted By:	<u>Environmental Resources Management</u>		
Submitted For:	<u>Environmental Resources Management</u>		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve a Memorandum of Agreement (Agreement) with the Marine Industries Association of Palm Beach County, Inc. (MIAPBC), a Florida not-for-profit corporation to cost-share the development, engineering, design and permitting of the Lake Worth Inlet Flood Shoal Dredging Project (Project) in an amount up to \$168,000 or 50% of the Project cost, commencing upon execution and expiring December 30, 2021;

B) adopt a Resolution to authorize the Clerk and Comptroller to disburse \$168,000 in Vessel Registration Fees to cover the funds specified in the Agreement;

C) approve a Budget Transfer of \$168,000 in the Environmental Enhancement Non Specific Fund (1225) from reserves to fund the Project; and


D) authorize the County Administrator, or designee, to execute the Agreement, as well as any task assignments, certifications, and other forms associated with this Agreement, and any necessary minor amendments that do not significantly change the scope of work, terms, or conditions of this Agreement.

Summary: This Agreement establishes a partnership between the County and the MIAPBC for the planning, design and permitting costs associated with the Project located in Riviera Beach to improve navigation, safety and tidal flushing while reducing sedimentation in the Project area and providing fill material for a habitat restoration project in the Lake Worth Lagoon (LWL). Total cost for the Project, not including construction, is estimated to be \$336,000 with the County's share limited to a not to exceed value of \$168,000. On March 12, 2019, the Board of County Commissioners approved submittal of an application to the Florida Inland Navigation District (FIND) for funding assistance for the Project. If successful in receiving the funding from FIND, the County will be reimbursed up to \$140,000 or 50% of the Project cost. The \$336,000 total cost within this Agreement represents an additional 20% contingency above the \$280,000 funding request to FIND. The remaining project costs will then be cost-shared equally between the County and MIAPBC, representing an amount up to an additional \$28,000 after cost-sharing with MIAPBC. The County's final share for the grant request is anticipated from Vessel Registration Funds. Districts 1 & 7 (SF)

Background and Justification: Ongoing sedimentation on the Lake Worth Inlet Flood Shoal has resulted in accretion to the extent that navigation along the east and north channels is being impacted, flushing in the northern Lake Worth Lagoon is reduced and sediments are encroaching on the Phil Foster Snorkel Trail. The proposed Project would improve navigation in the designated channels, increase the amount of shoreline accessible to boaters recreating on the sandbar, improve access for marine law enforcement within and around the shoal, improve water quality in the northern LWL and provide fill material for habitat restoration in the LWL.

Attachments:

1. Agreement
2. Resolution
3. Budget Transfer

Recommended by:		0-20-19
	Department Director	Date
Approved by:		3/27/19
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

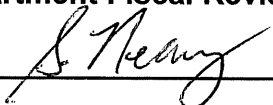
Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>168,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>168,000</u>	_____	_____	_____	_____
# 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 _____	Department _____	Unit _____	Object _____	Program _____	

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

Vessel Registration Fees – Environmental Enhancement Non Specific Fund

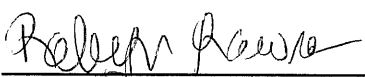

\$168,000 represents maximum fiscal impact if receiving no funding assistance from FIND. If successful in receiving funding from FIND, fiscal impact is reduced to reflect a 50-50 cost share of remaining costs.

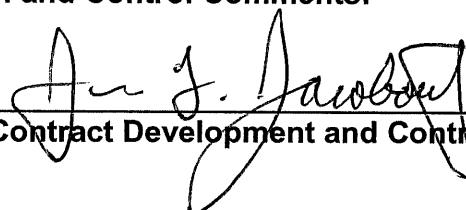
C. Department Fiscal Review:



III. REVIEW COMMENTS

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


OFMB  3/7

 3/25/19
Contract Development and Control

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

ATTACHMENT 1

**MEMORANDUM OF AGREEMENT BETWEEN PALM BEACH COUNTY
AND MARINE INDUSTRIES ASSOCIATION OF PALM BEACH COUNTY, INC.
FOR THE DEVELOPMENT, ENGINEERING, DESIGN, AND PERMITTING OF THE
LAKE WORTH INLET FLOOD SHOAL DREDGING PROJECT**

This Memorandum of Agreement (“**Agreement**”) is made and entered into on the ____ day of _____, 2019 by and between Marine Industries Association of Palm Beach County Inc., a Florida not for profit corporation (“MIAPBC”), and Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the “**County**”), both being hereinafter referred to collectively as the “parties”.

WITNESSETH:

WHEREAS, MIAPBC and the County desires to improve navigation and safety, increase areas of recreational boat use, and reduce sedimentation in the area of the Lake Worth Inlet Flood Shoal Dredging Phase 1 (collectively, the “**Project**”); and

WHEREAS, the County desires to environmentally restore and enhance the Lake Worth Lagoon in order to increase native habitat, improve water quality, and improve habitat for coastal wildlife and fisheries; and

WHEREAS, the MIAPBC promotes and protects the sound growth of the marine industry in Palm Beach County for the benefit and education of the community and the environment; and

WHEREAS, the Project implements recommendations from the Lake Worth Lagoon Management Plan by increasing recreational opportunities, managing lagoon sediments, utilizing the sand to create habitat, and improving water quality and tidal flushing to the northern lagoon.; and

WHEREAS, MIAPBC and County desires to cost share 50% of the cost to develop, engineer, design, and seek environmental approvals through the Florida Department of Environmental Protection and United States Army Corps of Engineers permitting process under the terms and conditions set forth in this Agreement; and

WHEREAS, the County will apply to the Florida Inland Navigation District (FIND) for funding through the 2019 Waterway Assistance Program (WAP) to assist with project costs; and

WHEREAS, the parties agree that the Project will proceed regardless of whether grant funds are obtained from FIND; and

WHEREAS, the parties agree that if grant funds are obtained from FIND, each party’s 50% share of the costs of the Project will be reduced by a 50% share of the grant funds received; and

WHEREAS, the purpose of this Agreement is to document the terms of an agreement reached between the County and MIAPBC with the necessary documentation required to cost share a not to exceed total project cost of \$336,000; and

WHEREAS, the County and MIAPBC will share costs of project elements of engineering and design, hydrodynamic bathymetric survey, benthic resource surveys, geotechnical / metal analysis, current analysis, flushing analysis, numerical and morphodynamic modeling, and permitting; and

WHEREAS, the County and MIAPBC will both need to agree on all expenditures prior to authorizing and providing the necessary documentation required to receive reimbursement; and

WHEREAS, the parties agree that this Agreement may be amended or replaced to further define the roles of each of the parties with regard to the work described herein once those roles are further defined.

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. Lake Worth Inlet Flood Shoal Dredging Phase 1 includes the collection of data for the development, engineering, designing, planning, and permitting of a dredge project that the boating community of Palm Beach County will support. Components of the Project consist of evaluating dredging a portion of the north and east sides of the shoal for navigation and safety in the east and northern navigational channel around the shoal; constructing a secondary channel through the middle of the shoal to provide increased recreational boater and emergency responder access; and evaluating the dredged sand as a sand source to create mangrove islands and seagrass habitat at the County's Tarpon Cove Restoration Project in accordance with Exhibit A, Project Work Plan, which is attached hereto. MIAPBC shall coordinate all work on the Project with the County's Department of Environmental Resources Management ("ERM"), and shall submit all Scopes of Work, invoices, reports, project deliverables, and files to ERM, as specifically set forth in Exhibit A.
- 3) Party's Representatives/Liaison.
 - a) The County's representative during the performance of this Agreement shall be Eric Anderson, ERM Project Manager, telephone number 561-233-2514, e-mail address eanderson1@pbcgov.org or successor.
 - b) PBCMIA's representative during the performance of this Agreement shall be Alyssa Freeman, Executive Director, telephone number 561-863-0012, e-mail address alyssa@marinepbc.org or successor.
- 4) MIAPBC Responsibilities. MIAPBC shall:
 - a) Coordinate all community outreach; notifying the public of the project, sponsor public meetings, prepare media releases, newsletters, etc. Such material shall be provided to the County's Project Manager or designee for approval before release. MIAPBC shall not use the County's logo without the written approval of the County Administrator or her designee. In no case, shall the County's logo be used for any commercial activity or for any other activity resulting in personal monetary gain.
 - b) Provide a 50% cost share towards the development, engineering, and permitting of the project in an estimated amount not to exceed \$336,000.
 - c) Coordinate and submit all draft subcontracts to ERM prior to execution for all subcontracted work and receive ERM approval in writing from ERM's Project Manager or designee prior to authorizing any expenditures associated with the Project to ensure the Project elements are within Project budget and not duplicated by the

County's efforts.

- d) Perform work tasks or portions of work tasks described in Exhibit A upon approval in writing from ERM's Project Manager or designee.
- e) Maintain books, records, documents, and other evidence, which sufficiently and properly reflects all costs of any nature expended in the performance of this Agreement.
- f) MIAPBC shall comply with the requirements of Public Records Law, Chapter 119, and Florida Statutes, as it may be amended from time to time. MIAPBC is specifically required to:
 - i. Keep and maintain public records reacted to the performance of this Agreement.
 - ii. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. MIAPBC further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
 - iii. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if MIAPBC does not transfer the records to the public agency.
 - iv. Upon completion of this Agreement, MIAPBC shall transfer, at no cost to the County, all public records in possession of MIAPBC unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If MIAPBC transfers all public records to the County upon completion of the Agreement, MIAPBC shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If MIAPBC keeps and maintains public records upon completion of the Contract, MIAPBC shall meet all applicable requirements for retaining public records. All records stored electronically by MIAPBC must be provided to the County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County, at no cost to the County.
 - v. Failure of MIAPBC to comply with the requirements of this article shall be a material breach of this Agreement. The County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. MIAPBC acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.
 - vi. IF MIAPBC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO MIAPBC'S DUTY TO PROVIDE

PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

County Responsibilities. County shall:

- a) Apply for FIND WAP Funding to assist with up to 50% of the Project costs.
 - i. If the County is awarded FIND WAP Funding, the awarded funds will be shared equally between the County and MIAPBC for approved tasks.
- b) Provide a 50% cost share towards the development, engineering, and permitting of the projects estimated not to exceed amount of \$336,000.
- c) Coordinate and submit all draft subcontracts to MIAPBC prior to execution for all subcontracted work and receive MIAPBC approval in writing from MIAPBC's Project Manager or designee prior to authorizing all expenditures associated with the project to ensure the project elements are within project budget and not duplicated by the MIAPBC efforts.
- d) Perform work tasks or portions of work tasks described in Exhibit A upon approval in writing from MIAPBC's Project Manager or designee.
- e) Maintain books, records, documents, and other evidence, which sufficiently and properly reflects all costs of any nature expended in the performance of this Agreement.
- f) Maintain all records pertaining to this Agreement pursuant to the Public Records Law, Chapter 119, and Florida Statutes.

5) Payments.

- a) If either party performs work under this Agreement the scopes and costs of such work must be approved in writing by the other party as provided herein. A party seeking reimbursement for approved costs incurred under this Agreement shall provide an invoice seeking reimbursement to the other party after all tasks set forth in Exhibit A have been completed, which is estimated to be September 2020. The invoice shall be accompanied by documentation sufficient to identify the work performed.
- b) Invoice received from MIAPBC pursuant to this Agreement will be reviewed and approved by the County's Project Manager, to verify that services have been rendered in conformity with the Agreement. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following approval by the County's Project Manager.
- c) Invoice received from the County pursuant to this Agreement will be reviewed and approved by the MIAPBC's Project Manager, to verify that services have been

rendered in conformity with the Agreement. Invoices will normally be paid within thirty (30) days following approval by the MIAPBC's Project Manager.

- d) If grant funds are obtained from FIND, each party's 50% share of the Project costs will be reduced by a 50% share of the grant funds received. If FIND provides grant funds, each Party's 50% share of the total Project cost will be determined after one final invoice is sent to FIND upon Project completion, FIND approves all Project tasks, and FIND approves and pays the reimbursement request. The parties understand and agree that the payment of invoices as provided in paragraph 5 b) and c) may be delayed if invoices are received prior to the date reimbursement is received from FIND, in which case approved invoices will be paid as soon as possible after FIND funds are received.
 - e) Any pre-agreement costs occurring prior to execution of the funding agreement with FIND will need to be approved by the FIND board during the funding process and cannot exceed 50% of the total project costs. If approved by the FIND, pre-agreement costs will be limited to a 25% reimbursement.
 - f) All payments made to either party shall be provided at the primary addresses of each party provided in paragraph 7.
 - i) Only MIAPBC pre-approved costs approved by ERM's Project Manager or designee in writing are eligible for cost reimbursement of MIAPBC Contribution associated with the development, planning, design, engineering permitting, as indicated in Exhibit A.
 - ii) Only PBCERM's pre-approved costs approved by MIAPBC Project Manager or designee in writing are eligible for cost reimbursement of PBCERM Contribution associated with the development, planning, design, engineering permitting, as indicated in Exhibit A.
- 6) Term. The term of this Agreement shall begin when executed by both parties and shall remain in effect from the effective date of this Agreement ("Term") until the termination date of December 30, 2021.
- 7) Notices. All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. Notwithstanding the foregoing, written authorization from one party to the other to proceed with contractual obligations as provided in paragraphs 4 and 5 above may be sent by electronic mail.

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

Deborah Drum, Director or Successor
Department of Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743

With copy to:

Attn: County Attorney for ERM
Palm Beach County Attorney's Office
301 North Olive Ave.
West Palm Beach, Florida 33401

If sent to the MIA PBC notices shall be addressed to:

Attn: Alyssa Freeman, Executive Director
Marine Industries Association of Palm Beach County Inc.
P.O. Box 10576
Riviera Beach, FL 33419

With copy to:

Attn: Alyssa Freeman, Executive Director
Marine Industries Association of Palm Beach County Inc.
1208 U.S. Hwy One, Suite B
North Palm Beach, FL 33408

8) 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 period.

9) Delegation. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.

10) Amendments. This Agreement may only be amended by written Agreement executed by the parties hereto with the same formality used to execute this Agreement.

11) Indemnification. Each party shall be liable for its own actions and negligence. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

12) Insurance Requirements for the County. Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, (Statute), 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.

13) Insurance Requirements for MIAPBC

- a) MIAPBC shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. MIAPBC shall agree to provide the County with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as County's review or acceptance of insurance maintained by MIAPBC are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by MIAPBC under the contract.
- b) Commercial General Liability: MIAPBC shall maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. MIAPBC shall provide this coverage on a primary basis.
- c) Business Automobile Liability: MIAPBC shall maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Accident for all owned, non-owned and hired automobiles. In the event MIAPBC doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing MIAPBC to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. MIAPBC shall provide this coverage on a primary basis.
- d) Worker's Compensation Insurance & Employers Liability: MIAPBC shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440.
- e) Professional Liability: MIAPBC shall require any consultants contracted to work on this project to maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 each claim throughout the term of MIAPBC's contract with consultant. Proof of consultant's professional liability insurance coverage shall be provided to COUNTY within five (5) days of a written request
- f) Additional Insured: MIAPBC shall endorse the County as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. 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." MIAPBC shall provide the Additional Insured endorsements coverage on a primary basis.
- g) Waiver of Subrogation: MIAPBC 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 to the policy, then MIAPBC shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or which voids coverage should MIAPBC enter into such an agreement on a pre-loss basis.

- h) Certificate(s) of Insurance: Prior to execution of this Contract, MIAPBC shall deliver to the County's representative as identified in Article 26, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be issued to "Palm Beach County, c/o: ERM Director, 2300 N. Jog Road, 4th Floor, West Palm Beach, FL 33411-2743."
- i) Umbrella or Excess Liability: If necessary, MIAPBC may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- j) Right to Review County by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

14) Non-discrimination the County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the MIAPBC warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, 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. Failure to meet this requirement shall be considered default of the Contract.

15) 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 Contract, or the application of such terms or provision, to persons or circumstances other than those

as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

16) 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.

17) Independent Contractor. MIAPBC 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 MIAPBC 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 MIAPBC's sole direction, supervision, and control. MIAPBC shall exercise control over the means and manner in which it and its employees perform the work, and in all respects MIAPBC'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.

MIAPBC does not have the power or authority to bind the County in any promise, agreement or representation.

18) 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.

19) 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.

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

21) 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.

22) 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.

23) 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 MIAPBC.

24) Entirety of Agreement. MIAPBC 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.

25) Successors and Assigns. The County and MIAPBC each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the County nor MIAPBC shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other party, which such consent shall not be unreasonably withheld, conditioned or delayed.

26) Regulations. MIAPBC and the County shall each comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. PBCMIA and the County are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

27) Access and Audits. MIAPBC and the County shall maintain books, records, and documents to justify all charges, expenses and costs incurred under this Agreement, in accordance with generally accepted accounting principles. The County shall have access to all books, records, and documents as required in the Agreement for the purpose of inspection and/or audits, during normal business hours, during the terms of this Agreement, and for at least five (5) years after completion of the project. In the event any work is subcontracted by MIAPBC, MIAPBC shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. In the event that the parties should become involved in a legal dispute with a third party arising from performance under this Agreement, the parties shall extend the period of maintenance for all records relating to the Agreement until the final disposition of the legal dispute, and all such records shall be made readily available to the parties.

28) Funding Contingency. Completion of the Project under this Agreement is contingent upon the County approving and securing, as applicable, its funding obligation hereunder. Notwithstanding this contingency, the County shall diligently pursue the approval and procurement of its funding obligation.

(Signatures appear on following pages.)

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the County and MIAPBC has hereunto set its hand the day and year above written.

ATTEST:

SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS:
a political subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Mack Bernard, Mayor

WITNESS:

MIAPBC: a Florida not for profit corporation

By: Alyssa Freeman
Signature

Name: Alyssa Freeman
(type or print)

By: George G. Gencare
Signature

Name: George G. Gencare
(type or print)

Title: President

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: Deborah Drum
Deborah Drum, Director
Department of Environmental Resources Management

EXHIBIT A: PROJECT WORK PLAN

PROJECT TITLE: Lake Worth Inlet Flood Shoal Dredging Project: Phase 1- Development, Engineering, Design, and Permitting

PROJECT PARTNERS: Palm Beach County Environmental Resources Management (PBCERM), Marine Industries Association of Palm Beach County Inc. (MIAPBC). PBCERM and MIAPBC will cost share 50-50 all engineering, design, permitting and public outreach components needed to develop the project. PBCERM and MIAPBC will be co-applicants on the regulatory permits required from the Army Corps of Engineers (ACOE) and the Florida Department of Environmental Protection (FDEP). PBCERM will apply for 50% funding assistance through Florida Inland Navigation District’s (FIND) 2019 Waterway Assistance Program.

PROJECT LOCATION: The Lake Worth Inlet Tidal Flood Shoal is located between the City of Riviera Beach and the Town of Palm Beach Shores just south of the Blue Heron Bridge and Phil Foster Park on Palm Beach County and State of Florida submerged lands in the Lake Worth Lagoon. The Lake Worth Inlet Tidal Flood Shoal is also known as the Peanut Island Shoal and is located north of Peanut Island, west of the Sailfish Marina.

PROJECT BACKGROUND: Over the years the tidal flood shoal, has accreted sand creating navigational concerns north of Peanut Island. This Project will improve navigation and safety, increase areas of recreational boat use, reduce sedimentation to Phil Foster Park Snorkel Reef, and increase tidal flushing in northern Lake Worth Lagoon.

PROJECT DESCRIPTION: The proposed project consists of dredging a portion of the north and east sides of the shoal for navigation and safety. A channel will be dredged through the mid shoal to provide increased recreational boater & first responder access. Additional benefits include reduced sedimentation to the Phil Foster snorkel reef and improved flushing and water quality. The dredged sand will be used to create mangrove islands and seagrass habitat at the County’s Tarpon Cove Restoration Project.

PROJECT TIMELINE & BUDGET DETAIL: PBCERM and MIAPBC will cost share 50-50 all tasks outlined below that are needed to develop the project at an estimated cost not to exceed \$336,000. The County and MIAPBC will both need to agree on all expenditures prior to authorizing and providing the necessary documentation required to receive reimbursement. PBCERM and MIAPBC agree to amend or replace this agreement if the roles of each of the parties are further defined. MIAPBC will be responsible for all public outreach components at no cost to the County.

Task No.	Task Title	Estimated Budget Amount	Task Start Date	Task End Date
1	Engineering and Design	\$78,000	April 2019	September 2020
2	Hydrodynamic Bathymetric Survey	\$24,000	April 2019	June 2019
3	Benthic Resource Survey	\$24,000	June 2019	July 2019
4	Geotechnical / metal analysis	\$18,000	June 2019	July 2019
5	Current Analysis	\$24,000	October 2019	March 2020
6	Flushing Analysis	\$60,000	October 2019	March 2020
7	Numerical / Morphodynamics Models	\$60,000	October 2019	March 2020
8	Permitting	\$48,000	May 2019	September 2020
Subtotal		\$336,000		

DIVISION OF TASKS: MIAPBC will be responsible for the completion Tasks 1, 2, 4, 5, 6, 7, and 8. Prior to execution of these tasks PBCERM's Project Manager or designee must approve in writing costs and scope of each task. Once scopes and costs are approved by PBCERM; MIAPBC will be responsible for managing and completing all components of the task. PBCERM shall be able to review all draft deliverables and provide comments to MIAPBC within 20 days of receipt prior to MIAPBC finalization of each deliverable.

PBCERM will be responsible for the completion of Task 3. Prior to execution of task PBCERM will provide MIAPBC Project Manager or designee a Scope of Work with costs, estimated in-kind hours, and scope for MIAPBC approvals. MIAPBC shall be able to review all draft deliverables and provide comments to PBCERM within 20 days of receipt prior to PBCERM finalization of the deliverable.

RESOLUTION NO. 2019-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE PALM BEACH COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT TO UTILIZE A PORTION OF THE COUNTY VESSEL REGISTRATION FEES FOR THE CONSTRUCTION OF AN ENVIRONMENTAL RESTORATION PROJECT IN THE LAKE WORTH LAGOON.

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 (VRFO) 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 Department of Environmental Resources Management (ERM) recognizes that construction of an environmental enhancement project in the Lake Worth Lagoon (LWL) is consistent with the activities authorized for funding under the VRFO; and

WHEREAS, ERM desires to partner and cost share with the Marine Industries Association of Palm Beach County, Inc. (a Florida not for profit corporation) for the development, engineering, design, and permitting of the Lake Worth Inlet Flood Shoal Dredging Project at an estimated total cost of \$336,000; and

WHEREAS, the County share of the project is \$168,000, or 50% of the total project cost; and

WHEREAS, the Director of Environmental Resources Management recommends that the Board of County Commissioners authorize the Clerk and Comptroller to disburse VRFO monies in the amount of \$168,000 to provide a portion of the County's share for this project.

(Intentionally Left Blank)

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:

Section 1: The foregoing recitals are hereby adopted and ratified.

Section 2: The Board of County Commissioners hereby authorizes the Clerk to disburse funds of \$168,000 from VRFO to construct an environmental enhancement project in the LWL.

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 7: MACK BERNARD, MAYOR _____
- District 3: DAVE KERNER, VICE MAYOR _____
- District 1: HAL R. VALECHE _____
- District 2: GREGG K. WEISS _____
- District 4: ROBERT S. WEINROTH _____
- District 5: MARY LOU BERGER _____
- District 6: MELISSA MCKINLAY _____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2019.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By _____
Assistant County Attorney

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

By _____
Deputy Clerk

19-0563

BGEX 022619*1061

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET TRANSFER

FUND 1225 Environmental Enhance-Nonspecific

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED As of 02/26/2019	REMAINING BALANCE
<u>REVENUES/EXPENDITURES</u>								
380-3893-9902	Operating Reserves	1,855,350	992,412	0	168,000	824,412	0	824,412
380-3307-3401	Other Contractual Services	0	0	168,000	0	168,000	0	168,000
Total Receipts and Balances		4,224,757	3,867,527	168,000	168,000	3,867,527		

Signatures & Dates

By Board of County Commissioners

Office of Financial Management & Budget

At Meeting of

INITIATING DEPARTMENT/DIVISION

April 2, 2019

Administration/Budget Department Approval

Deputy Clerk to the

OFMB Department - Posted

Board of County Commissioners