

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: **January 4, 2022**

Consent

Regular

Ordinance

Public Hearing

Department: **Parks and Recreation**

Submitted By: **Parks and Recreation Department**

Submitted For: **Parks and Recreation Department**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A) A Lease Agreement (Lease) between the Port of Palm Beach District (Port) and Palm Beach County (County) for approximately 42 acres of land on Peanut Island.
- B) A Budget Transfer of \$100,000 from Zone 1 Park Impact Fee Reserves to the Peanut Island Coast Guard Redevelopment project.

Summary: The County has leased 36 acres of land from the Port since 1994 for public park purposes. The initial term of this lease was for a period of 30 years with one automatic renewal option for 25 years. The park opened to the public in 1999. The Port owns an additional +/- 6.4 acres of land on Peanut Island which contains historic structures including the Kennedy Bunker, Coast Guard station, Coast Guard boat house and Coast Guard docks (Historic Facilities). The Port and the County desire to enter into a new Lease Agreement encompassing the original 36 acres with the additional 6.4 acres of land that contain the Historic Facilities. The initial term of the Lease is for 30 years with one 25 year automatic renewal. The Port Commission unanimously approved the lease agreement at their December 16, 2021 Commission meeting. There is a need to establish a program budget for this project so that initial design and permitting work can begin. Adequate funding is available within the Zone 1 Park Impact Fee Reserves to establish the program budget. District 1 (AH)

Background and Justification: In November 1992, the Port leased the Kennedy Bunker, located on Peanut Island, to the Palm Beach Maritime Museum, a non-profit organization. The lease was later expanded to include the former Coast Guard Station, boathouse and dock. The Museum programmed, operated and maintained the property until their lease was terminated in 2017. Following the termination of the lease with the Maritime Museum in 2017, The Port initiated discussions with the Parks and Recreation Department for a possible long term lease of the former Coast Guard buildings and Kennedy Bunker. The Lease requires the County renovate, manage and operate the Historic Facilities for public park, historic and educational purposes. The Lease premises include two legal descriptions; the original premises and the Historic Facilities.

On March 12, 2019, the County entered into a Memorandum of Interlocal Agreement (MOIA) R-2019-0339 with the Port. The MOIA provided for general oversight and maintenance of the Historic Facility grounds. This Lease will supersede and effectively terminate the current MOIA and 1994 Lease Agreement.

The Coast Guard Station, Boathouse and docks were constructed in 1936 and in operation until 1995. The Kennedy Bunker was constructed 1961. Together these buildings and grounds are of historical significance and this agreement will ensure that they are preserved and accessible to the residents of Palm Beach County. There is a need to establish a program budget for this project so that initial design and permitting work can begin. Adequate funding is available within the Zone 1 Park Impact Fee Reserves to establish the program budget.

- Attachments:** 1. Lease Agreement
2. Budget Transfer

Recommended by: 
Department Director

12-21-21
Date

Approved by: 
Assistant County Administrator

12/30/2021
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	<u>100,000</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>100,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes	<u>X</u>	No	_____
Does this item include 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:

Park Impact Fees Z-1/Reserves

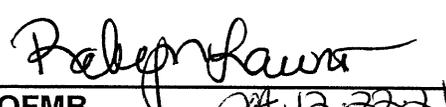
3601-581-9900-9909	<u>\$100,000</u>
Total	<u>\$100,000</u>

*There is no fiscal impact since this a reallocation between projects.

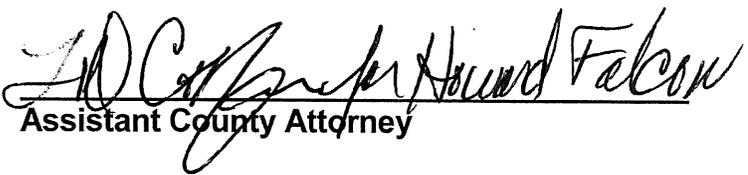
C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal And/Or Contract Development and Control Comments:

<u></u> 12/22/21	<u></u> 12/29/21
OFMB <u>12/22/21</u>	Contract Development and Control <u>12-29-21 TW</u>

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Departmental Review:

REVISED 09/2003
 ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

LEASE AGREEMENT

Between

THE PORT OF PALM BEACH

A SPECIAL INDEPENDENT DISTRICT OF THE STATE OF FLORIDA

(Port)

and

PALM BEACH COUNTY

A POLITICAL SUBDIVISION OF THE

STATE OF FLORIDA

(County)

G:\PREM\PM\Out Lease\Peanut Island\Port of P.B.-Coast Guard area\DRAFT\Port Lease PI County comments 12-3.docx

**LEASE AGREEMENT BETWEEN THE PORT OF PALM BEACH DISTRICT AND
PALM BEACH COUNTY FOR THE MANAGEMENT AND OPERATION OF THE 42
ACRES ON PEANUT ISLAND INCLUSIVE OF THE PARK AND FORMER COAST
GUARD STATION FACILITIES**

THIS LEASE AGREEMENT is made and entered into _____ by and between THE PORT OF PALM BEACH DISTRICT, a special independent taxing district and political subdivision of the state of Florida organized and existing under the laws of the State of Florida, hereinafter referred to as the "Port" and PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County."

WHEREAS, the Port is the owner in fee simple of approximately 42 acres of land located on Peanut Island, 6500 Peanut Island Road, Riviera Beach, Florida, 33404-6900; and

WHEREAS, in 1994 the Port Leased the County land on Peanut Island for the purpose of establishing and operating a County Park; and

WHEREAS, in 1999 the County completed development of the 36 acre park ("Park") that includes a campground, boat docks, restrooms, picnic facilities, snorkeling area, showers, paver walkway and installation of native vegetation; and

WHEREAS, the Port owns an additional approximate 6.4 acres of land on Peanut Island which contains historic structures including the Kennedy Bunker, Coast Guard station, boat house and Coast Guard docks (the approximate 6.4 acres of land, together with the facilities are hereinafter referred to as "Historic Facilities"), as described in the survey attached as Exhibit "A"; and

WHEREAS, the County desires to renovate, manage and operate the Historic Facilities exclusively for public park, historic and educational purposes; and

WHEREAS, the Port and County desire to enter into a long term Lease Agreement ("Lease") for the Park and Historic Facilities for the use and benefit of all residents and visitors to Palm Beach County; and

WHEREAS, Section 163.01, Florida Statutes, permits public agencies to enter into Lease Agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

WHEREAS, both parties desire to increase the recreational, historical and cultural opportunities for residents and visitors to Palm Beach County and to enter into this Lease Agreement.

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

**ARTICLE I
GENERAL LEASE PROVISIONS**

Section 1.01 Lease Premises.

In consideration of the rents, covenants, and agreements hereafter reserved and contained herein on the part of the County to be observed and performed, the Port demises and leases to the County the Park described in Exhibit "B", attached hereto and made part hereof and the Historic Facilities described in Exhibit "C", attached hereto and made part of, LESS and excluding that certain area which shall be retained by and used by Port as a dredged material disposal area "DMDA" as depicted on Exhibit "B-1" attached hereto and made a part hereof, (collectively the property described in Exhibit "B" and Exhibit "C" less the property described in Exhibit "B-1" will hereinafter be referred to as the "Lease Premises").

Section 1.02 Termination of Prior Park Lease.

County currently leases 36 acres from the Port for use as a public park under County Lease Agreement R94-43D. ("Lease R94-43D"). Lease R94-43D provides for an initial term of thirty (30) years from the Effective Date of January 4, 1994 with one automatic renewal for twenty-five (25) years. The initial lease term would have terminated on January 3, 2024. Instead, this Lease, when effective, terminates and replaces Lease R94-43D.

Section 1.03 Termination of Prior MOIA.

On March 12, 2019, the County entered into a Memorandum of Interlocal Agreement (MOIA) R-2019-0339 with the Port. The MOIA provides for general oversight and maintenance of the Historic Facility grounds. This Lease when effective terminates and replaces the MOIA.

Section 1.04 Term.

This Lease shall commence on the date of full execution of this Lease (the "Effective Date"), and shall extend for a period of thirty (30) years ("Initial Term") thereafter, unless sooner terminated pursuant to the provisions of this Lease.

Section 1.05 Option to Renew.

Provided the County is not in default of any term, covenant, condition, or payment of Rent under this Lease, after receipt of notice of default and the passage of the cure period provided herein or if no cure period is provided herein, the passage of a reasonable cure period based upon the nature of the default, the Lease will automatically renew for one (1) twenty five (25) year term under the same terms and conditions as this Lease and commencing upon the expiration of the initial Term.

Section 1.06 Naming Rights of Tenant.

Port hereby grants the County the right to name museum exhibits, renovation projects and other notable capital improvements and components thereof, and displays in recognition of County's major donors, subject to approval by the Port Commission. Approval shall not be unreasonably withheld, conditioned or delayed. County shall submit proposed names to Port for Port's written approval prior to County making the name known to the public. Port shall provide

written response within forty five (45) days after receipt of request by County, failing which Port shall be deemed to have consented to the proposed name. Upon expiration or termination of this Lease, or County's surrender of the Lease Premises, naming rights to the building and all improvements shall revert to Port. The County agrees that names which negatively impact the Port or promote anything offensive to the general public or which will be perceived by the Port to be offensive to the public, will negatively impact the capital generated by the fundraising effort and, thus, will not be permitted.

ARTICLE II RENT

Section 2.01 Annual Rent.

The County shall pay the Port an annual net rent of Ten Dollars and no/100 (\$10.00) (the "Annual Rent"). This Lease is intended to be a "gross" lease and County's obligations with respect to payment of rent, taxes and assessments hereunder shall be limited to those specifically set forth herein.

Section 2.02 Payment

The annual rent payable hereunder shall be due on the Effective Date and each subsequent anniversary thereof. Annual Rent shall be made payable to the Port of Palm Beach and shall be delivered to the Port Finance Department, One East 11th Street, Riviera Beach, Florida 33404. County is a tax-exempt entity. No sales or use tax shall be included or charged with Annual Rent.

Section 2.03 Additional Rent.

Any and all sums of money or charges required to be paid by the County for this Lease other than Annual Rent shall be considered "Additional Rent", whether or not the same is specifically so designated, and the Port shall have the same rights to enforce due and timely payment by the County of all Additional Rent as are available to the Port with regards to Annual Rent.

Section 2.04 Accord and Satisfaction.

In the event the County pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The Port may accept any check or payment without prejudice to the Port's right to recover the balance due or to pursue any other remedy available to the Port pursuant to this Lease or under the law.

ARTICLE III CONDITION OF LEASE PREMISES, MAINTENANCE, REPAIR AND OPERATION

Section 3.01 Acceptance of the Lease Premises by the County.

The County conducted due diligence pertaining to the Historic Facilities prior to entering into this Lease. The County understands and agrees that the Port provides the Lease Premises, including Historic Facilities, in an "as is" condition. All renovation/restoration work to be performed pursuant to Section 4.01 and outstanding code violations, shall be the responsibility of the County.

County shall also be solely responsible for any and all new monitoring and other requirements imposed by any regulatory agency relating to any existing conditions or modifications, construction, improvements or other activities that the County pursues on the Lease Premises.

The County has inspected the Lease Premises and accepts same in its existing condition together with any defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions, and matters of record. The County further acknowledges that the Port has made no representations or warranties of any nature whatsoever regarding the physical condition of the Historic Facilities.

Section 3.02 Alterations.

County agrees that the historic integrity and value of the Historic Facilities will not be diminished and no alterations to these facilities ("Historic Alterations") will be made without prior written Port consent. This Section shall not apply to like for like repairs, routine maintenance, code enforcement corrections and other work required to be performed by law or any Renovation/Restoration work completed pursuant to Section 4.01. The County shall submit detailed plans and specifications for all such Historic Alterations to the Port for the Port's written approval prior to commencing work on same. Port shall provide written response within sixty (60) days after receipt of request by County, failing which Port shall be deemed to have consented to such plans and specifications. The County agrees and acknowledges that all work performed to the Historic Facilities, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of the County, and not for the benefit of the Port, such work being nevertheless subject to each and every provision of this Lease. All work done by the County shall be done in a good and workmanlike manner and shall be diligently pursued to completion in accordance with the approved permits, authorizations, plans and specifications therefor.

Section 3.03 Responsibility of the County and Port.

The Port shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Lease Premises. However, Port shall be responsible for maintaining all boundary fences and gates necessary for the Port to access to the DMDA. The County shall not make improvements, conduct or authorize any activities which limit or interfere with Port's access to or use of the DMDA.

The County shall keep and maintain all portions of the Lease Premises, and all alterations or improvements currently existing or constructed hereinafter on or about the Lease Premises, in good condition and repair, and in compliance with all permits or other governmental authorizations at the County's sole cost and expense, except for the DMDA which shall remain the responsibility of the Port.

Section 3.04 Port's Right to Inspect.

The Port or Port's agents shall have the right, upon 24 hours prior notice to the County (except that no notice need be given in case of emergency) to enter the Lease Premises for the purpose of inspection of the Lease Premises and the improvements located thereon. Any such entrance into the Lease Premises shall be conducted by the Port in a manner calculated to minimize interference with or disruption of the County's operations within the Lease Premises.

Section 3.05 Port’s Security and Communication Equipment.

The Port shall have the right to install, operate and maintain, at its sole cost and expense, security and communication equipment on the Lease Premises, the location of which will be agreed upon by staff of the County’s Department of Parks and Recreation (“Parks”) and the Port.

**ARTICLE IV
HISTORIC FACILITY**

Section 4.01 Renovation/Restoration of the Historic Facilities

On the Effective Date, the County shall take over maintenance, management and operational responsibilities of the Historic Facilities. The County shall be responsible to renovate/restore the Historic Facility’s structures including, but not limited to the Coast Guard station house, boathouse, Kennedy bunker, and docks lying South of the boathouse, to good condition. Alterations, beyond renovation and restoration, shall be subject to the provisions of Section 3.02. All construction and improvements shall be made and performed in a good and workmanlike manner and in full compliance with applicable federal, state, and local requirements, building codes, zoning regulations, and the provisions of this Lease.

Section 4.02 Dock Reconfiguration

The Port and County agree that the current configuration of the docks impairs navigational access and extends into the turning basin for vessels utilizing the Port County and Port agree to work together to reconfigure the docks so the docks do not impair the turning basin. The County agrees to reconfigure, the docks within their existing footprint and to restrict use of the docks to law enforcement and first responders, County staff and commercial vessels only. The reconfiguration shall not impair or restrict vessel access to the Port or the turning basin, as determined by the Port. Within twenty-four (24) months, the County shall submit detailed plans and specifications for all dock reconfiguration to the Port Director for the Port Director’s written approval prior to commencing work on same. The Port Director shall provide a written response within sixty (60) days after receipt of request by County, failing which Port shall be deemed to have consented to such plans and specifications. All work done by the County shall be done in a good and workman like manner and shall be diligently pursued to completion in accordance with the approved permits, plans and specifications therefor.

Section 4.03 Sponsorships, Gifts, Endowments and Grant Funding.

The County shall be responsible for raising the capital funding necessary to renovate/restore the Historic Facility’s structures, through sponsorships, gifts, endowments and grant funding. The Port gives the County permission to apply for grant funding and shall agree to be co-applicant when required, without liability or contribution on behalf of the Port.

Section 4.04 Expenses and “As Builts.”

The County shall be responsible for all expenses associated with renovation/restoration of the Historic Facilities and dock reconfiguration/ including, without limitation those relating to architecture and engineering, site work, utilities, drainage, securing requisite permits and approvals,

and physical renovation/restoration of the Historic Facility. The County shall provide the Port with complete "As Built" plans for all infrastructure, building, stormwater management systems, and lighting systems for the Historic Facilities, together with any alterations upon complete restoration of the Historic Facilities

Section 4.05 Staging Area

During the restoration/renovation of the Historic Facilities, the Port agrees to provide to County subject to availability, and at no additional cost, temporary space within the Port property for staging of equipment and construction material, The use of this temporary space is subject to the insurance and indemnity provisions in Articles VII and VIII.

Section 4.06 Construction Payments.

The County shall ensure, at its expense, that all alterations are constructed to completion in accordance with the approved plans, permits and authorizations therefor and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials.

Section 4.07 Contractor Bond Requirements.

For Alterations costing in excess of \$200,000, the County shall require contractors to furnish for the benefit of the Port a payment and performance bond to the County equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes. The County shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form, in such amounts and in such manner as the County may reasonably require.

Section 4.08 Construction Liens.

County assumes all responsibility for construction liens pertaining to the activities authorized in this lease. County shall comply with the Construction Lien Law, Florida Statutes Chapter 713, Part I, to the extent applicable to County, in the construction of any improvements to the Lease Premises. In the event a construction lien is filed against the Lease Premises in connection with any work performed by or on behalf of the County, the County shall promptly cause such lien to be removed from the Lease Premises, and hold the Port harmless.

Section 4.09 Operational Management Plan.

County shall develop, in consultation with Port, an Operational Management Plan ("OMP") for the Historic Facilities. The OMP shall provide general and specific goals, and discuss management and projected plans for the Historic Facilities. County shall submit the OMP to Port within twenty-four (24) months of the execution of the Lease.

ARTICLE V
CONDUCT OF BUSINESS AND USE OF THE LEASE PREMISES BY COUNTY

Section 5.01 Use of the Lease Premises.

The County shall use and occupy the Lease Premises solely and exclusively for a public park, historical and educational purposes and those ancillary uses specified in sections 5.07 and 5.08 of this Lease. The County shall not use, permit, or suffer the use of the Lease Premises for any other purpose whatsoever without the prior written consent of the Port, which consent may be granted or withheld in the Port's sole discretion.

The County shall provide supervision and strictly enforce the Rules and Regulations set forth in Exhibit "D", the requirements of this Lease, and in general, good standards and practices for the safe and orderly use of the Lease Premises. At all times the Lease Premises are in use by the County or its invitees, such use shall be under the control and supervision of the County. The County shall not use the Lease Premises or allow the Lease Premises to be used for any unauthorized purposes, or by any other groups, foundations, or persons not authorized by the County and consented to by Port. The County shall not commit or permit any reckless or dangerous conduct on the Lease Premises at any time.

The County shall be in full control of the operation of the Lease Premises, and shall set and establish the times of operation and the rules and regulations for use by the public. The County shall ensure that all access areas to the Lease Premises are secured outside of normal operating hours and shall provide twenty-four (24) hour Park manager presence on the Lease Premises. The Port shall have no control or responsibility with regard to the use of the Lease Premises, except as is otherwise set out in this Lease.

The County agrees that the Lease Premises shall be used only and exclusively for lawful purposes, and the County will not use, or suffer anyone to use, the Lease Premises, for any purpose in violation of the laws of the United States, the State of Florida, or the ordinances and regulations of Palm Beach County or any governmental entity having jurisdiction over the Lease Premises.

Section 5.02 Waste or Nuisance.

The County shall not commit or suffer to be committed any waste upon the Lease Premises, commit or permit the maintenance or commission of any nuisance or other act or thing that may result in damage or depreciation of value of the Lease Premises, or that may affect the Port's fee interest in the Lease Premises, or that results in an unsightly condition. All refuse is to be removed from the Lease Premises at the County's sole cost and expense, and the County will keep such refuse in proper containers until removed. The County will keep the access to the Lease Premises, and other contiguous areas to the Lease Premises free and clear of obstruction. The County, at its sole cost and expense, will keep the Lease Premises free of rodents, vermin, and other pests.

Section 5.03 Governmental Regulations.

The County shall, at the County's sole cost and expense, comply with all ordinances, laws,

statutes, and regulations promulgated thereunder of all County municipal, state, federal, and other applicable governmental authorities, now in force or that may hereafter be in force, pertaining to the County and its use of the Lease Premises.

The parties acknowledge and agree that the Port is entering into this Lease in its proprietary capacity as the owner of the Lease Premises and that nothing contained herein shall be construed to constitute any form of approval by the Port in its governmental capacity or limit or alter the Port's obligation to comply with all applicable governmental regulations.

The County shall not use the Lease Premises in a manner which causes the Port to be in violation of any current or future local, state, or Federal permits, rules, regulations, deed restrictions or covenants applicable to the Lease Premises. The County agrees to hold the Port harmless for any notice of non-compliance or violation issued by a governmental entity based on the County's use of the Lease Premises. In the event that the County does not timely address any notice of non-compliance or violation from a governmental entity related to the County's use of the Lease Premises, the Port shall have the right to enter the Lease Premises to address non-compliance or violation issues. The County agrees to reimburse the Port for all expenses incurred to address non-compliance or enforcement issues attributable to the County's use of the Leased Premises.

Section 5.04 Non-Discrimination

Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the parties agree that no person shall, on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of or be subjected to any form of discrimination under any activity conducted pursuant to this Lease. Failure to meet this requirement shall be considered default of this Lease.

Section 5.05 Surrender of the Lease Premises.

Upon termination or expiration of this Lease, or any portion of the Lease Premises, the County, at its sole cost and expense, shall remove the County's personal property, removable fixtures and equipment from the Lease Premises and shall surrender the Lease Premises to the Port, unless the parties agree otherwise in writing. Upon surrender of the Lease Premises, title to any and all remaining improvements, alterations, and structures within the Lease Premises shall vest in the Port.

Section 5.06 Hazardous Substance.

County's use of the Lease Premises shall comply with all applicable Federal, State and local laws, regulations and ordinances protecting the environment and natural resources and regulating hazardous substances.

Section 5.07 Concessions.

The County may enter into contracts with or issue licenses to vendors or third-party contractors for the operation of the concession space(s) on the Lease Premises for education, interpretation and tours and/or the sale of food and/or merchandise. The County shall be entitled to retain the proceeds generated by such contracts and/or licenses to offset the expenses of the Lease

Premises. Such contracts and/or licenses shall not release the County from any obligations under this Lease. In addition to the insurance required in Section 7, the vendor or third party shall indemnify and hold the Port harmless for any and all acts of negligence by the vendor or third-party contractor. Further, the County shall comply with and shall be obligated to ensure that all such contracts and/or licenses comply with the terms of this Lease and all applicable federal, state, and County laws, rules, regulations, and ordinances pertaining to the foregoing, including, without limitation, the sale of retail goods, food, and beverages, and the collection and remittance of sales tax as applicable.

Section 5.08 Park Rules and Special Events.

The County shall be entitled to grant short-term licenses reserving the Lease Premises for user groups. Any such special event license shall incorporate the terms of this Lease by reference. The County shall be entitled to retain the proceeds generated by such licenses. Such licenses shall not release the County from any of its obligations under this Lease. Further, the County shall be obligated to ensure that such licensees comply with the terms of this Lease and all applicable federal, state, and County laws, rules, regulations, and ordinances.

**ARTICLE VI
UTILITIES**

Section 6.0. There is currently water, sewer, and electricity infrastructure to or on the Lease Premises. The County shall be solely responsible for and promptly pay all costs and expenses relating to the provision of existing utility services to the Lease Premises upon execution of the Agreement. The County shall pay directly to the utility company or the provider of such service all charges and assessments for any utility services provided, including, without limitation, water, sewer, gas, electric, or any other utility used or consumed on the Lease Premises. In no event shall the Port be liable for an interruption or failure in the supply of any such utility to the Lease Premises. In the event the County desires any modification to or additional utility infrastructure, the County shall be solely responsible for obtaining and funding any such alterations or additions.

**ARTICLE VII
INSURANCE**

Section 7.01 Liability Insurance.

County is a political subdivision of the State of Florida subject to the limitations of Florida Statutes, Chapter 768.28. Nothing herein shall serve as a waiver of sovereign immunity. County shall maintain a fiscally sound liability program with regard to its obligations under this Lease, and shall provide proof of its liability program to Port within three (3) days of a written request. Should County contract with a third-party to make alterations, additions, repairs, or other improvements, County shall require its third-party to provide commercial general liability insurance with a minimum limit of Two Million Dollars (\$2,000,000) and include Port and County as Additional Insureds.

Section 7.02 Personal Property.

All of County's personal property placed or moved in or to the Lease Premises shall be at the risk of the County. All personal property placed or moved to the Lease premises by a vendor or third party, shall be at the risk of the owner thereof. Except as otherwise provided herein, Port shall not be liable for any damage to such personal property, except to the extent caused by the Port, its agents', or its employees' willful or negligent acts or omissions.

Section 7.03 Insurance by Port.

Port is a special independent taxing district and political subdivision of the State of Florida subject to the limitations of Florida Statutes, Chapter 768.28. Nothing herein shall serve as a waiver of sovereign immunity. Port shall maintain a fiscally sound liability program with regard to its obligations under this Lease.

**ARTICLE VIII
INDEMNIFICATION**

Section 8.01 Indemnification.

Port and County acknowledge their liability for torts to the extent provided and allowed under Section 768.28, Florida Statutes. To the extent the following does not constitute a waiver of sovereign immunity and does not extend either party's liability beyond the limitations provided pursuant to Section 768.28 Florida Statutes, the parties agree to defend, indemnify and hold each other harmless from all claims, losses, liabilities, costs and expenses attributable to the any negligent acts or omissions either party may commit, or those of their respective officials and employees acting within the scope of their employment, in connection with this Lease. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions and/or negligence of the other, or any other person or entity.

The County agrees that all contracts that the County enters into with third-party contractors or vendors shall contain a provision wherein the third-party contractor or vendor agrees to defend, indemnify and hold the Port harmless from all claims, losses, liabilities, costs and expenses attributable to the any negligent acts or omissions by the third-party contractor or vendor including those of their respective officials and employees acting within the scope of their employment, in connection with the Lease Facilities.

**ARTICLE IX
DESTRUCTION OF LEASE PREMISES**

Section 9.01 Damage or Destruction by Fire, War, or Act of God.

In the event the Lease Premises shall be destroyed or so damaged or injured by fire or other casualty during the Term of this Lease, or any extension thereof, whereby the same shall be rendered untenable, in whole or in part, County shall have the right to terminate this Lease, whereupon the parties shall be relieved of all further obligations hereunder occurring subsequent to the date of such casualty. In the event the County elects to terminate this Lease as provided in this Section, the Annual Rent payable hereunder shall be prorated to the date of the casualty. In the event County does not exercise its right to terminate this Lease due to any such casualty, County shall promptly commence restoration of the Lease Premises and diligently pursue such restoration

to completion using materials of like kind and quality or better. The rental due hereunder relating to the portion of the Lease Premises render untenable shall be abated from the date of such casualty until completion of such restoration.

ARTICLE X ASSIGNMENT AND SUBLETTING

Section 10.01 Consent Required.

The County may not assign, mortgage, pledge, or encumber this Lease in whole or in part, nor sublet or rent, except as provided herein, all or any portion of the Lease Premises nor grant any easements affecting the Lease Premises without prior written consent of the Port, which may be granted or withheld at the Port's absolute discretion. Any attempted assignment, mortgage, pledge, encumbrance, or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of this Lease. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

ARTICLE XI DEFAULT

Section 11.01 Default by the County.

The occurrence of any one or more of the following shall constitute an Event of Default by the County under this Lease: (i) the County's failure to pay any sum due hereunder within thirty (30) days after the same shall become due; (ii) the County's use of the Lease Premises for a purpose other than that allowed under this Lease; (iii) the County's failure to perform or observe any of the agreements, covenants, or conditions contained in this Lease on the County's part to be performed or observed if such failure continues for more than thirty (30) days after notice from the Port, unless the same is of such a nature that it cannot reasonably be cured within such a time period, in which event the County shall be entitled to a reasonable period under the circumstances; (iv) the County's vacating or abandoning the Lease Premises; or (v) the County's leasehold estate being taken by execution, attachment, or process of law or being subjected to any bankruptcy proceeding; (vi) failure to maintain the Lease Premises in accordance with the provisions of the Lease and acceptable maintenance procedures with normal wear and tear excepted. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, the Port shall have the right to give the County notice that the Port intends to terminate this Lease upon a specified date not less than thirty (30) days after the date said notice is received by the County, and this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within such period, or within a reasonable period thereafter if the same cannot be cured within such period, and County undertakes such cure within such period and the Port is so notified, this Lease will continue. Port's termination rights set forth above shall only relate to the portion of the Lease Premises upon which the default occurs, meaning either the Historic Facilities or Park. By way of example if the County is in default

relating to the Historic Facilities, the Port shall be entitled to terminate this lease relating to the Historic Facilities alone and termination of the Historic Facilities shall have no effect on the

County's tenancy and leasehold of the Park. Conversely, if the County is in default relating to the Park, the Port shall be entitled to terminate this lease relating to the Park alone and termination of this Lease relating to the Park shall have no effect on the County's tenancy and leasehold of the Historic Facilities.

Section 11.02 Default by the Port.

The Port shall not be in default unless the Port fails to perform obligations required of the Port within a reasonable time, but in no event later than thirty (30) days after written notice by the County to the Port, specifying wherein the Port has failed to perform such obligations; provided, however, that if the nature of the Port's obligations is such that more than thirty (30) days are required for performance, then the Port shall not be in default if the Port commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

**ARTICLE XII
ANNUAL BUDGETARY FUNDING**

This Lease and all obligations of County hereunder are subject to and contingent upon annual budgetary funding by the Board of County Commissioners of Palm Beach County for each fiscal year. Notwithstanding anything in this Lease to the contrary, County shall have the right to cancel this Lease, as to the Historic Facilities, the Park, or both for any reason upon ninety (90) days prior written notice to Port, whereupon the parties shall be relieved of all further obligation hereunder without damages, penalties or recourse against County.

**ARTICLE XIII
QUIET ENJOYMENT**

Upon the observance and performance of all the covenants, terms, and conditions on the County's part to be observed and performed, the County shall peaceably and quietly hold and enjoy the Lease Premises for the Term hereby demised without hindrance or interruption by the Port or any other person or persons lawfully or equitably claiming by, through, or under the Port, subject, nevertheless, to the terms and conditions of this Lease. Accordingly, County's quiet enjoyment and right to use the Lease Premises shall not conflict with use by the Port of the DMDA.

**ARTICLE XIV
MISCELLANEOUS**

Section 14.01 Entire Agreement.

This Lease and any Exhibits attached thereto constitute all agreements, conditions, and understandings between the Port and County concerning the Lease Premises. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change, or addition to this Lease shall be binding upon

the Port or the Port, unless reduced to writing and signed by both parties.

Section 14.02 Notices.

All notices, consents, approvals, and elections (collectively “notices”) to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained). The effective date of any such notice shall be the date of delivery of the notice if by personal delivery, courier service, or national overnight delivery service. The parties designate the following addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the County at:

Property and Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Telephone: (561) 233-0217
Fax: (561) 233-0210

with a copy to:

Palm Beach County Attorney’s Office
Attention: Park’s Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Telephone: (561) 355-2225
Fax: (561) 355-4398

and a copy to:

Palm Beach County Parks and Recreation Department
Attention: Director
2700 6th Avenue South
Lake Worth, Florida 33461
Telephone: (561) 966-6614
Fax: (561) 963-6734

- (b) If to the Port:

Port of Palm Beach
Attn: Executive Director
One East 11th Street, Suite 600
Riviera Beach, Florida 33404
Telephone: (561) 842-4240

With a copy to Port Counsel
John Fumero, Esq.
750 Park of Commerce Blvd.
Boca Raton, Florida 33487
Telephone: (561) 314-3999

Any party may from time to time change the address at which notices under this Lease shall be given such party, upon three (3) days prior written notice to the other parties.

Section 14.03 Severability.

If any term of this Lease or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 14.04 Broker's Commission.

The Port and County both represent and warrant that neither has dealt with any real estate salesperson, agent, finder, or broker in connection with this Lease.

Section 14.05 Recording.

The County shall not record this Lease or any memorandum or short form thereof without the written consent and joinder of the Port, which may be granted or withheld at the Port's sole discretion.

Section 14.06 Waiver of Jury Trial.

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS LEASE.

Section 14.07 Governing Law and Venue.

This Lease shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Lease 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 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.

Section 14.08 Time of Essence.

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

Section 14.09 Waiver.

The waiver by either Party of any default of any term, condition, or covenant herein contained shall not constitute a waiver of such term, condition, or covenant for any subsequent default of the same or any other term, condition, or covenant herein contained.

Section 14.10 Exclusivity of Remedies.

Remedies herein conferred upon any party are intended to be exclusive of any other remedies. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 14.11 Construction.

No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease, and the same shall remain in full force and effect.

Section 14.12 Incorporation by Reference.

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Lease by reference.

Section 14.13 Survival.

Notwithstanding any early termination of this Lease, the County shall remain obligated hereunder to perform any duty, covenant, or obligation imposed upon the County thereunder arising prior to the date of such termination or surviving such termination.

Section 14.14 No Third-Party Beneficiary.

No provision of this Lease 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 Lease, including, but not limited to, any citizen or employees of the Port and/or Port.

Section 14.15 Effective Date of Lease.

This Lease is expressly contingent upon the approval of the Port of Palm Beach District Commission, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners ("Effective Date").

Section 14.16 Public Entity Crimes.

As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Lease or performing any work in furtherance hereof, Port certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida

Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3) (a), Florida Statutes.

Section 14.17 Headings.

The paragraph headings or captions appearing in this Lease are for convenience only, are not part of this Lease, and are not to be considered in interpreting this Lease.

Section 14.18 Condemnation.

If all or part of the Lease Premises shall be taken, condemned or conveyed pursuant to agreement in lieu of condemnation for public or quasipublic use, the entire compensation or award therefor, including any severance damages, shall be apportioned between Port and County in proportion to the value of their respective interests and the rent shall be recalculated effective upon the date of vesting of title in the condemning authority to reflect the reduction in the Lease Premises. County shall also be entitled to receive compensation for the value of any Alterations or other improvements made by County to the Lease Premises and moving expenses. In addition, County may elect to terminate this Lease in which event this Lease shall terminate effective as of the date title is vested in the condemning authority, whereupon the parties shall be relieved of all further obligations occurring subsequent to the date of termination other than those relating to apportionment of the compensation for such condemnation. In the event the County elects to terminate this Lease as provided in this Article, the Rent payable hereunder shall be prorated to the date of termination. County will be allowed not less than sixty (60) days notice to remove its property from the Lease Premises.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease Agreement as of the day and year first above written.

ATTEST:

JOSEPH ABRUZZO
Clerk of the Circuit Court & Comptroller
Palm Beach County

By: _____
Deputy Clerk

COUNTY:

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

By: _____
Robert S. Weinroth, Mayor

**APPROVED AS TO
LEGAL SUFFICIENCY**

By: *JDC [Signature]*
Chief Assistant County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

By: *[Signature]*
Department Director

ATTEST:

PORT:

PORT OF PALM BEACH, a Special Independent Taxing District and Political Subdivision of the State of Florida

By: Jackelin Machado
JACKELIN MACHADO
DEPUTY CLERK - PORT OF
PALM BEACH

By: Joseph Anderson
Joseph Anderson, Chair

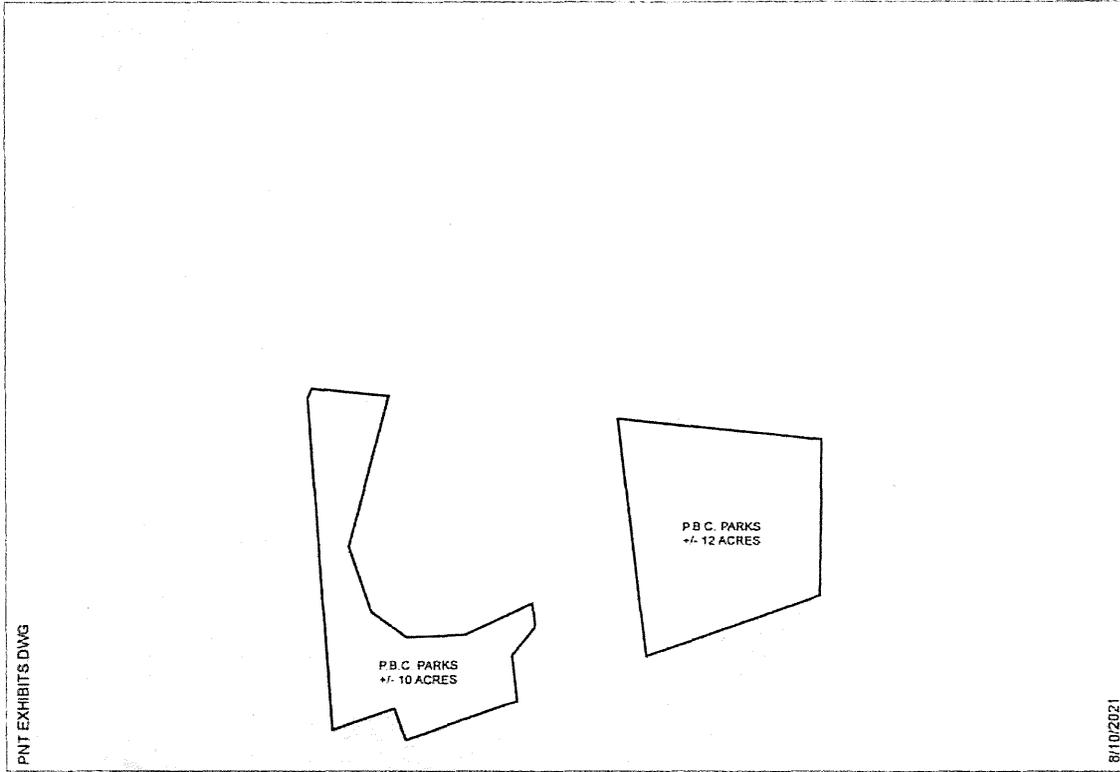
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: John J. Fumero
John J. Fumero, Port Counsel

LIST OF EXHIBITS

Description	Exhibits
Survey of Leased Premises	Exhibit "A"
Park – leased from the Port since 1994 (R94-43D)	Exhibit "B"
Dredge Material Disposal Area	Exhibit "B-1"
Historic Facilities – 6.6 acre Coast Guard Facility including, but not limited to the Coast Guard Station House, Boathouse, Kennedy Bunker and docks lying south of the Boathouse.	Exhibit "C"
Rules and Regulations	Exhibit "D"

Exhibit "A"
Survey



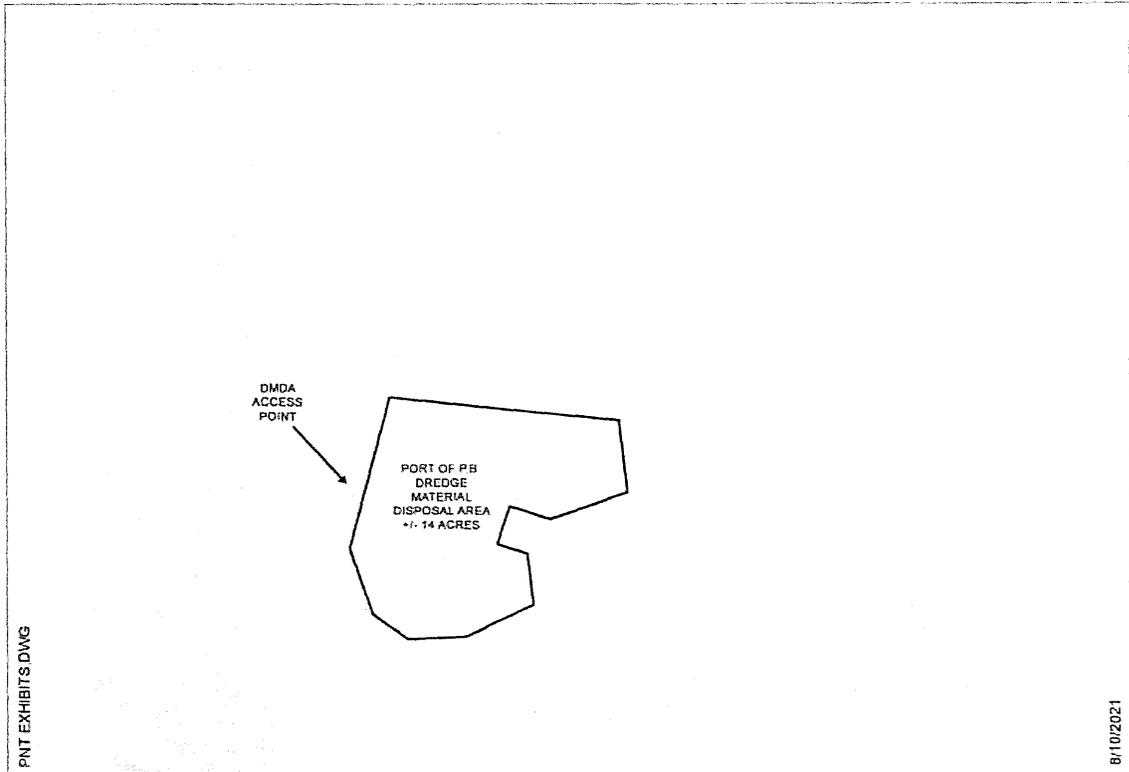
PNT EXHIBITS.DWG

8/10/2021



PEANUT ISLAND PARK WEST END MARSH
EXHIBIT B - PARK
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT - PLANNING, RESEARCH & DEVELOPMENT DIVISION





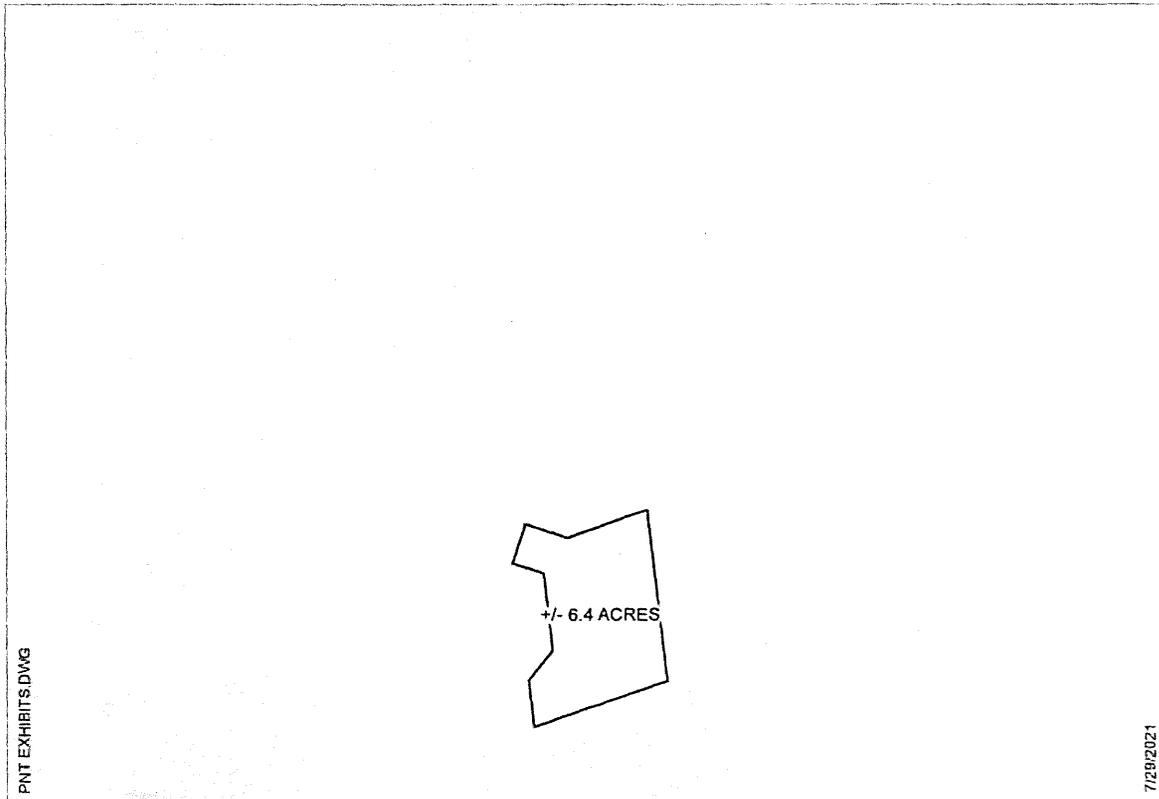
PNT EXHIBITS DWG

8/10/2021



PEANUT ISLAND PARK WEST PALM BEACH
EXHIBIT B-1 - DREDGE MATERIAL DISPOSAL AREA
 PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT - PLANNING, RESEARCH & DEVELOPMENT DIVISION





PNT EXHIBITS.DWG

7/29/2021



PEANUT ISLAND PARK WEST PALM BEACH, FL
EXHIBIT C - HISTORIC FACILITIES
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT - PLANNING, RESEARCH & DEVELOPMENT DIVISION



Exhibit "D"
Rules and Regulations

- All park rules associated with County Code, Chapter 21 will be enforced including, but not limited to the following:
- Balloons of any kind are prohibited on the island.
- Alcohol possession and consumption is prohibited except within the permitted campground or associated with a permitted program.
- All applicable federal and state laws are enforceable within park property.
- No metal detecting or excavation of any material is permitted.
- No person shall cut, trim or carve any tree or vegetation within park property.
- No person shall remove, harm, frighten, kill, trap, chase, shoot or disturb the nest of wildlife on Peanut Island.
- Boats may only be launched, tied up, anchored or moored in areas designated for such activity.
- Lifeguards have seasonal hours within the guarded area. Swim at your own risk.
- Fishing is not permitted in designated swimming areas.
- Except for the reserved picnic spaces, all other picnic spaces are available on a first come, first served basis.
- Dogs are required to be leashed at all times and any droppings are to be retrieved and disposed of properly. Dogs are not permitted in designated swimming areas.
- A limited number of special events are permitted within the park with Department authorization.
- Do not disturb others with loud noises, music or sounds (65 dB max).
- Drone use is prohibited except as specifically allowable under FAA regulations.
- Camping by permit only in the designated tent camping area.
- Campfires are not permitted on the island.
- Park hours are sunrise to sunset unless you are permitted to camp.
- Quiet time in the campground is from 11 PM to sunrise.

Board of Commissioners Agenda Item Report

Meeting Date: December 16, 2021

Submitted by: Beatrice Greffin

Submitting Department: Attorney's Office

Item Type: Lease

Agenda Section: OLD BUSINESS

Subject:

Peanut Island Lease Agreement

Background:

The Port is the owner in fee simple of approximately 42 acres of land located on Peanut Island, 6500 Peanut Island Road, Riviera Beach. In 1994 the Port leased to Palm Beach County approximately 36 acres of land on Peanut Island for the purpose of establishing and operating a County Park. In 1999 the County completed development of the 36 acre park ("Park") that includes a campground, boat docks, restrooms, picnic facilities, snorkeling area, showers, paver walkway and installation of native vegetation. The Port owns an additional approximate 6.4 acres of land on Peanut Island which contains historic structures including the Kennedy Bunker, Coast Guard station, boat house and Coast Guard docks. Both the Port and the County wish to renovate, manage and operate the Historic Facilities exclusively for public park, historic and educational purposes. Both parties seek to increase the recreational, historical and cultural opportunities for residents and visitors to Palm Beach County and to enter into this Lease Agreement. As such, the Port and County are proposing to enter into a long term Lease Agreement for the Park and Historic Facilities for the use and benefit of all residents and visitors to Palm Beach County. Section 163.01, Florida Statutes, permits public agencies to enter into Lease Agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately

Financial Impact:

No

Financial Impact Details:

Additional Information Attached:

No

Action Taken

Approved 5-0 (WMR/KMW)

Lease Agreement approved as presented. Port Attorney will verify all acreage numbers for park, historic DMDA, and remaining portion of island.

Suggested Action:

Motion to consider and vote on entering into the proposed Peanut Island Lease Agreement with Palm Beach County.

Staff will be providing the final lease document for your review and consideration on or before the scheduled December 16, 2021 board meeting.

22-0274

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET TRANSFER

Page 1 of 1

BGEX 581 122121 * 553

FUND 3601 - Park Impact Fees Z-1

ACCT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED 12/21/21	REMAINING BALANCE
EXPENDITURES								
3601-581-9900-9909	Res-Improvement Program	2,670,114	2,226,114		100,000	2,126,114	0	2,126,114
3601-581-P909-6505	Design, Engineering and Management	0	0	100,000		100,000	0	100,000
Total Receipts and Balances		0	0	100,000	100,000	0		
TOTAL								

Parks and Recreation Department
 INITIATING DEPARTMENT/DIVISION
 Administration/Budget Department Approval
 OFMB Department - Posted

Signatures	Date
<i>Eric Lee</i>	12/22/21
<i>Debra Bauer</i>	12/22/21

By Board of County Commissioners
 At Meeting of
 January 4, 2022
 Deputy Clerk to the
 Board of County Commissioners