

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: March 22, 2022

Consent

Regular

Ordinance

Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: Standard Equipment Use Agreement for the period of December 3, 2021 through November 30, 2022, with Ric L. Bradshaw, Sheriff of Palm Beach County for the use of a County-owned bucket truck on an as-needed basis.

Summary: In accordance with County PPM CW-O-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. The attached standard Agreement has been fully executed on behalf of the Board of County Commissioners (Board) by the County Administrator or designee, who in this case was the Director of Facilities Development & Operations Department. The Standard Equipment Use Agreement was approved by the Board on October 1, 2013, Agenda 3H-2. This executed document is now being submitted to the Board to receive and file. (FDO Admin) Countywide (DB)

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

Attachment:

Standard Equipment Use Agreement

Recommended By:

Sandra P. Ayala Kelley
Department Director

Date

3/10/22

Approved By:

W Baker
County Administrator

Date

3/11/22

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2022 | 2023 | 2024 | 2025 | 2026 |
|--|-------------|-------------|-------------|-------------|-------------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

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

Budget Account No:

Fund 5000 Dept 410 Unit 7100 Revenue Source 9101
 Fund _____ Dept _____ Unit _____ Revenue Source _____

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

*Actual revenue will vary depending on usage.

C. Departmental Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Handwritten: Sovarony, 2/18/22]
[Signature] 2/18/22
 OFMB *[Handwritten: JA]* 2.18.22

[Signature] 2/22/22
 Contract Development and Control
 2-22-22 TW

B. Legal Sufficiency:

[Signature] 2/23/22
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

STANDARD EQUIPMENT USE AGREEMENT

THIS EQUIPMENT USE AGREEMENT is made and entered into by and between Palm Beach County, a political subdivision of the State of Florida ("County") and Ric L. Bradshaw, in his official capacity as Sheriff of Palm Beach County, Florida, a constitutional officer, hereinafter referred to as "User".

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

SECTION ONE: EQUIPMENT USE AND TERM

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

This Agreement commences on December 1, 2021 and ends on November 30, 2022 or County notice of termination as set forth herein (the "Term"). The User shall discontinue use/return the Equipment at the conclusion of the Term.

The User acknowledges that the County may have occasions when the Equipment is required for County purposes. Therefore, the parties agree that, in the event the Equipment is needed by the County during the Term, or if either party desires to terminate the Agreement, for any reason whatsoever, either party may immediately terminate this Agreement and the User shall immediately discontinue use/return the Equipment to the County following the notice of termination.

SECTION TWO: COSTS

The User will incur a fee for use or rental of the Equipment during the Term of this Agreement as set forth in the Special Conditions of Use. User may also incur other costs and expenses as further set forth in this Agreement or the Special Conditions of Use.

SECTION THREE: RISK OF LOSS AND DAMAGE

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

SECTION FOUR: INSURANCE AND INDEMNIFICATION

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

SECTION FIVE: NOTICES

All notices to the County concerning this Equipment Use Agreement shall be directed to the Business & Community Agreements Manager, Facilities Development & Operations (FDO), 2633 Vista Parkway, West Palm Beach, FL 33411-5603, (561) 233-0206 (Fax) with a copy to

Palm Beach County, Attn: County Attorney, 301 North Olive Avenue, 6th Floor, West Palm Beach, FL 33401, (561) 355-6461(fax).

All notices to the User shall be directed to Jeff Hawthorne, Division Manager, Fleet Management, Palm Beach Sheriff's Office, 3350 Gun Club Road, West Palm Beach, FL 33406 at (561) 688-3482 or (cell) 561-319-2999.

For purposes of this Agreement, notice shall be in writing, and may be provided by U.S. Mail, hand delivery, other delivery service, or by facsimile or email.

SECTION SIX: INTENTIONALLY DELETED

SECTION SEVEN: NO THIRD PARTY BENEFICIARY

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or User.

SECTION EIGHT: NON-DISCRIMINATION

The 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 User warrants and represents that throughout the term of the Agreement, 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 Agreement.

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

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

USER: RIC L. BRADSHAW, in his official capacity as SHERIFF OF PALM BEACH COUNTY, FLORIDA, a constitutional officer or his designee

By: Ly, Sandy C. Digitally signed by Ly, Sandy C.
Date: 2021.11.30 14:55:50 -0500
Witness Signature

Witness Name

By: Feeney, Terence P. Digitally signed by Feeney, Terence P.
Date: 2021.11.30 14:48:02 -05'00'
Signature

By: Terence Feeney, CPO
Print Name and Title

Date: November 30, 2021

APPROVED AS TO LEGAL SUFFICIENCY

By: Michael W. Jones Digitally signed by Michael W. Jones
DN: DC=org, DC=pbcbgov, OU=Enterprise, OU=CATT, OU=Users, CN=Michael W. Jones, E=MJones@pbcbgov.org
Reason: I am the author of this document
Date: 2021.12.01 15:38:58-05'00'
County Attorney

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

By: Isami C. Ayala-Collazo
Isami Ayala-Collazo
Director FDO

Date: 12/03/2021

APPROVED AS TO TERMS AND CONDITIONS

By: Mark Broderick Digitally signed by Mark Broderick
DN: DC=org, DC=pbcbgov, OU=Enterprise, OU=FDO, OU=Users, CN=Mark Broderick, Email=broderick@pbcbgov.org
Reason: I am the author of this document
Location: your signing location
Date: 2021.11.29 15:04:49'00'
Fax PDF Editor Version: 11.1.0
FDO Business and Community Agreements Manager

EXHIBIT "B"
Special Conditions of Equipment Use Agreement

1. Costs. The User acknowledges that there is to be no private "for-profit" uses of the Equipment. This prohibition extends to private businesses, entities or persons who are providing services for a fee during a not-for profit or governmental event.

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

2. Rental Process and Terms. User shall follow the following rental process and abide by the rental terms:

- Only one of the two available bucket trucks may be rented at one time.
- User shall fill out a Rental Request Form, to be provided by County, each time User's seeks to rent either bucket truck.
- Fulfillment of the rental request is solely subject to County's discretion.
- In case of a County emergency, User shall return the bucket truck within 48 hours after notice from the County.
- Bucket truck to be returned clean with a full tank of fuel or additional charges may occur.
- User will be responsible for repair cost or additional overhead costs related to operator abuse and/or crash repairs.
- Any tolls, fines, parking tickets or traffic violations/tickets incurred during the rental are User's financial responsibility.
- User shall inspect vehicle at time of pick-up and report any issues with vehicle at time of pick-up to Fleet Management. Failure to report any issues at pick-up may result in repair costs at User's expense.

3. Rental Fee. The rental rate for a bucket truck is as follows:

- Hourly (0 to 5.9 hours of use) - \$12.00/hr
- Daily (6 hours to 7 day limit of use) - \$72.00/day
- If the bucket truck is not returned on its due date, a \$100 per day late fee will be assessed until the bucket truck is returned
- This fee is subject to change at the discretion of County upon notice to User.

4. Rental Term. While the Equipment Use Agreement shall be for a term of one year, the maximum, consecutive days, time a bucket truck may be rented for is seven (7) days.

5. **Representatives.** County's representative/liason for the rental process shall be Chris Grunder, Fleet Operations Supervisor, 561.233.4564, Cgrunder@pbcgov.org.

User's representative/liason for the rental process shall be Jeff Hawthorne, Division Manager, Fleet Management, PBSO, 561-688-3482, hawthornej@pbsso.org.

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

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

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

8. **Risk of Loss and Damage.** User assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever. No loss or damage to the Equipment or any part thereof shall impair any obligation of User under this Agreement. In the event of loss or damage of any kind whatsoever to the Equipment, User shall, at County's option: (i) reimburse the County for the entire cost and expense of the repair of the Equipment; or (ii) pay to the County the full replacement cost of the Equipment without deduction for depreciation. User shall provide County with the reimbursement of repair costs and/or the replacement cost, if applicable, within fourteen (14) calendar days of User's receipt of an invoice from the County regarding the same.

9. **Insurance.** Florida Government Entity. User acknowledges without waiving the right to sovereign immunity as provided by Florida Statutes 768.28, that User is self-insured for general liability and automobile liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature. In the event that User maintains third-party commercial general liability in lieu of exclusive reliance on self-insurance under Florida Statutes 768.28, then

User shall maintain said insurance policy at limits not less than \$500,000 each occurrence. User shall add the County to the commercial general liability as an “additional insured” with a CG 2026 Additional Insured-Designated Person or Organization endorsement or similar endorsement. The additional insured endorsement shall read “Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its officers, employees and agents.” The additional insured endorsement shall provide coverage on a primary basis. Compliance with the foregoing insurance requirements shall not relieve User of its liability and obligations under this License Agreement. User’s self-insurance or general liability insurance shall be primary with respect to any coverage afforded to or maintained by the County.

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