

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 12, 2022

Consent  
 Ordinance

Regular  
 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: Second Amendment to Airspace Agreement between Palm Beach County (County) and the Florida Department of Transportation (FDOT), which expires on April 11, 2022. This amendment will extend use of the Blue Heron Bridge Causeway right-of-way property located adjacent to Phil Foster Memorial Park until a new agreement is executed.

**Summary:** On April 12, 2002, the County entered into a 20 year Airspace Agreement (R2002-0358) with FDOT for the causeway property underneath the Blue Heron Bridge adjoining Phil Foster Memorial Park for public park purposes. In 2004, the agreement (R2004-1458) was modified to allow launching of non-motorized vessels under the bridge. The current Agreement expires on April 11, 2022 and the County and FDOT have been working on a new agreement for several months. Since the terms and conditions of the new agreement have yet to be finalized, FDOT is providing the County with a Second Amendment to the Airspace Agreement with language allowing the County to continue to occupy the premises until a new agreement can be finalized. This Amendment continues for an indefinite period and only expires upon execution of a new Lease Agreement with FDOT.  
District 7 (AH)

**Background and Justification:** The County has operated Phil Foster Memorial Park for over 50 years. In 1968, after the construction of the new Blue Heron Bridge, FDOT granted the County an easement over the northern half of the old causeway road for public parking and park access purposes. From 1968 to 2002 the public utilized the area underneath the bridge for swimming and boating access without a formal lease agreement in place. On April 12, 2002, the County entered into a 20 year Airspace agreement with FDOT for the causeway property in order to incorporate this area into the park's overall master plan. This Lease Agreement grants the County continued use of the causeway right-of-way underneath the Blue Heron Bridge, including the public beach area and the old bridge/fishing pier.

**Attachment:** Second Amendment to Airspace Agreement

Recommended by:

Eric Coee  
Department Director

3-21-22  
Date

Approved by:

2021 J. J. [Signature]  
Assistant County Administrator

4/7/2022  
Date

**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)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

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

Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_ / Revenue Source \_\_\_\_\_ Program \_\_\_\_\_

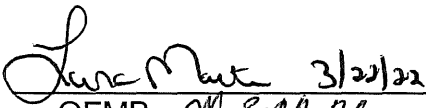

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

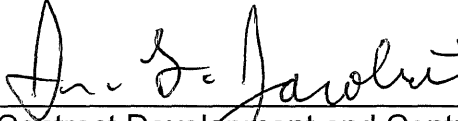
There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: 

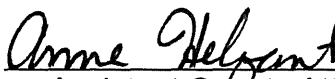
**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

 3/22/22  
 OFMB  LM  
3/22

 3/30/22  
 Contract Development and Control  
3-30-22 TD

**B. Legal Sufficiency:**

 3-30-22  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

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

**SECOND AMENDMENT TO AIRSPACE AGREEMENT  
BETWEEN  
PALM BEACH COUNTY  
AND THE  
FLORIDA DEPARTMENT OF TRANSPORTATION**

Item/Segment No.	:	228962-1
State Project No.	:	93080-2506
Federal Project No.	:	N/A
State Road No.	:	Blue Heron Blvd (A-1-A)
County	:	Palm Beach
Excess Parcel No.	:	2204

The Agreement between The State of Florida Department of Transportation (Lessor) and Palm Beach County (Lessee), originally entered into on April 12, 2002 and amended on July 15, 2004, is hereby amended on this date, \_\_\_\_\_, 20\_\_\_\_, subject to the following revisions:

1. This amendment shall extend the terms of the original Agreement until such time that a renewal for the original Agreement is executed.
2. This lease is subject to all utilities remaining in place and in use or relocated at the expense of Lessee.
3. Any changes in the use of or improvements/alterations made on or to the leased property shall require a permit issued from Lessor's Permits Office and/or a lease amendment, as applicable. Lessor will advise Lessee of the appropriate document upon request.
4. Lessee agrees that this lease shall not be recorded in the public records without the express written consent of the Lessor.
5. Lessee shall not obtain any grant, award, donation, endowment, subsidy, or allotment, on, over, or including the leased property for any reason, including approval of site plans for development of the property adjacent to, or part of, the leased property without prior written approval from Lessor. Written approval may be provided by letter, or email between the parties. If as a result of the terms of the lease, including termination of the lease, Lessee shall suffer losses or damages under any grant, award, subsidy or allotment applied for or received by Lessee for the leased property, Lessor shall not be liable for such losses or damages. Lessee hereby releases Lessor of and from any and all manner of actions, causes of action, suits, claims and demands whatsoever, in law or in equity, which Lessee may have against Lessor, its agents, administrators, managers, officers, employees and representatives, relating or arising from such losses or damages suffered by Lessee. Lessor does not endorse the legality of any grants, awards, donation, endowment, subsidy, or allotment, obtained by Lessee before, or after the date of this Amendment.
6. Lessee agrees to provide Lessor with a copy of any local, state, or federal permit(s) obtained that include the leased property.
7. Nothing is permitted to be discharged into drains/inlets on or adjacent to the leased property, if applicable.

8. This Amendment also serves to clarify that the use of subject lease is for public parking and public access.

All other provisions, terms and conditions in the original Airspace Agreement and Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed below and the Amendment shall be effective on \_\_\_\_\_, 20\_\_.

**PALM BEACH COUNTY, a political subdivision of the  
State of Florida  
BOARD OF COUNTY COMMISSIONERS**

Attest:

Joseph Abruzzo, Clerk of the Circuit Court  
and Comptroller Palm Beach County

Palm Beach County, Florida, By  
Its Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Commissioner Robert Weinroth, Mayor

Approved as to Form and Legal Sufficiency

Approved as to Terms & Conditions

By: Anne Helfant  
Anne Helfant, Assistant County Attorney

By: Eric Call  
Eric Call, Director  
Parks & Recreation Department

DEPARTMENT SIGNATURE ON NEXT PAGE

**STATE OF FLORIDA**  
**DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Gerry O'Reilly, P.E.

Title: District Four Secretary

ATTEST:

\_\_\_\_\_  
Signature (Seal)

Name: Alia E. Chanel

Title: Executive Secretary

Legal Review:

\_\_\_\_\_  
Signature

Name: Elizabeth Quintana

Title: Senior Attorney