

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>300,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$300,000</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:
Environmental Enhancement-Non-Specific \$300,000

C. Department Fiscal Review:

J. Neary

III. REVIEW COMMENTS

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

for review for comment 1/5/23
Lisa Mante 1/5/23
OFMB 4A 1/5

Dr. J. J. Javelle 1/3/23
Contract Development & Control
md 1/11/23

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

**AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND THE
PALM BEACH COUNTY FISHING FOUNDATION, INC.**

THIS AGREEMENT is made and entered into on the ____ day of _____ 2023, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "COUNTY") and the PALM BEACH COUNTY FISHING FOUNDATION, INC., a non-profit corporation authorized to do business in the State of Florida ("PBCFF") whose Federal Tax ID Number is 65-0213715, both being hereinafter referred to collectively as the "parties".

WITNESSETH:

WHEREAS, West Palm Beach Fishing Club (WPBFC), one of the world's oldest fishing clubs, was founded in 1934 to create a forum for local anglers and promote conservation of the ocean resources; and

WHEREAS, in 1968 the WPBFC built the first permitted artificial reef in Palm Beach County, referred to as the "East Palm Beach Reef" situated offshore of Singer Island, approximately 1-mile north of the Lake Worth Inlet in 70' of water consisting of the three ships namely the Mizpah, PC 111, and the Amaryllis; and

WHEREAS, the site has been a premier diving and fishing reef for nearly 50 years and its success with the local community was the basis for the creation of the County's artificial reef program in 1985; and

WHEREAS, in 1990 the WPBFC established PBCFF to create a not-for-profit organization to address specific educational outreach needs and issues related to fishing and the health of the County's marine resources; and

WHEREAS, the PBCFF has funded many fishery conservation projects including artificial reefs, estuarine enhancement, and mooring buoy and reef monitoring efforts; and

WHEREAS, the COUNTY has a shared interest in building artificial reefs and creating marine habitats to promote conservation, fisheries management, and recreational opportunities; and

WHEREAS, the parties wish to work cooperatively towards the construction of artificial reefs offshore of Palm Beach County; and

WHEREAS, the COUNTY and PBCFF previously had a three year Agreement (R2022-1848) where they worked together to deploy over 1,500 tons of artificial reef material; and

WHEREAS, PBCFF has agreed to fabricate high quality artificial reef material to provide habitat for spawning aggregations for offshore fish species including groupers, snappers and other marine species; and

WHEREAS, the COUNTY agrees to transport and place the artificial reef material within permitted reef site(s) offshore of Palm Beach County at locations mutually agreeable by both parties.

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. PBCFF will fabricate high quality artificial reef material that will be used to construct artificial reef(s) offshore of Palm Beach County. The COUNTY will barge and place the reef material at COUNTY permitted reef sites offshore of Palm Beach County.
3. Party's Representatives/Liaison.
 - a) The COUNTY's representative during the performance of this Agreement shall be Katelyn Armstrong, telephone number 561-233-2513, e-mail address karmstrong@pbcgov.org.
 - b) PCBFF's representative during the performance of this Agreement shall be Tom Twyford, President, telephone number 561-832-6780, e-mail address ttwyford@westpalmbeachfishingclub.org.
4. PBCFF's Responsibilities. PBCFF shall:
 - a) Donate COUNTY-approved artificial reef material by July 31st of each year for the term of this Agreement, that provide profiles to encourage the spawning aggregations of grouper and benthic habitat for other species; and
 - c) Bear all costs, liability, and risk associated with any fabrication of the artificial reef material.
5. The COUNTY's Responsibilities. The COUNTY shall:
 - a) Work constructively with PBCFF to ensure that the donated artificial reef material is compliant with the COUNTY's specifications; and
 - b) Provide the transportation and placement of the reef material at one or more of the Palm Beach County permitted reef sites that will not exceed a total amount of \$300,000 for the term of this Agreement. The transport and placement of the reef material will take place during calmer sea conditions to ensure the work is performed safely and efficiently.
6. Naming of the Reef. The COUNTY agrees that any reef created pursuant to this Agreement will be referred to in any COUNTY publication as the "Reef Dart Reef", provided that the reef material is placed at a previously un-named reef site. However, the

parties understand and agree that any reef to be constructed pursuant to this Agreement will be placed in state or federal waters that the COUNTY does not own and that may be subject to current or future regulation by the state or federal government, which could affect the naming rights to the reef. In addition, the parties understand and agree that the COUNTY has no control over how the state, federal government, or other parties refer to the reef(s) to be constructed pursuant to this Agreement.

7. Term. The term of this Agreement shall take effect upon execution of this agreement until February 7, 2026 unless otherwise provided herein.

8. Availability of Funds. The COUNTY'S performance and obligation to perform under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

9. Notices. All formal notices between the parties shall be deemed received if sent by certified mail, return receipt requested, to the party's representatives identified below, at the below cited address. A copy of all such notice shall also be sent to the following counsel by U.S. Mail. Should any party change its address, written notice of such new address shall promptly be sent to the other party and shall be effective upon receipt.

Palm Beach County
Director, Department of Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, Florida 33411-2743

Copy to:
County Attorney's Office
301 N. Olive Avenue, 6th Floor
West Palm Beach, Florida 33401

Palm Beach County Fishing Foundation
P.O. Box 468
West Palm Beach, FL 33402

10. 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 time period.

b) Either party may terminate this Agreement at any time for convenience upon thirty (30) calendar days prior written notice to the other party.

11. Delegation. Nothing contained herein shall be deemed to authorize the delegation

of the constitutional or statutory duties of state, county, or municipal officers.

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

13. Indemnification by PBCFF. PBCFF and its agents, employees and contractors shall protect, defend, reimburse, indemnify, and hold the COUNTY, its agents, employees, and elected officials harmless from and against all claims, liability, expense, loss, cost, damages, or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of PBCFF's or its agents, employees, or contractors performance of the terms of this Agreement or due to the acts or the omissions of PBCFF or its agents, employees, or contractors.

14. Indemnification by the COUNTY. The COUNTY acknowledges the waiver of sovereign immunity for liability in tort contained in Section 768.28, Florida Statutes, and acknowledges that such statute permits actions at law against the COUNTY to recover damages in tort for money damages up to the amounts set forth in such statute for injury or loss of property, personal injury, or death caused by the negligence or wrongful act or omissions of an employee of the COUNTY while acting in the scope of the employee's office or employment under circumstances in which the COUNTY, if a person, would be liable under the general laws of the State.

15. Insurance Requirements for the COUNTY. Without waiving the right to sovereign immunity as provided by Florida Statute, Chapter 768.28, the COUNTY acknowledges that it is a political subdivision of the State subject to the limitations of 768.28, F.S., as amended. The COUNTY shall maintain a fiscally sound and prudent liability program with regard to its obligations under this Agreement. When requested, the COUNTY shall provide evidence of financial responsibility to PBCFF.

16. Nondiscrimination. The COUNTY is committed to assuring equal opportunity in the award of agreements and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the PBCFF 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.

As a condition of entering into the Agreement, the PBCFF represents and warrants that it will comply with the COUNTY'S Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the PBCFF shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace

discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. The PBCFF understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification, or debarment of the company from participating in County contracts or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. PBCFF shall include this language in its subcontracts.

17. Severability. 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 Agreement, and the same shall remain in full force and effect.

18. 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.

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

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

20. 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.

21. 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.

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

23. 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.

24. 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.

25. 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 PBCFF.

26. Entirety of Agreement. PBCFF 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.

The remainder of this page is intentionally left blank.

WHEREFORE, THE PARTIES have caused this Agreement to be executed by their authorized representatives on the date first written above.

ATTEST:
Joseph Abruzzo
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS:

By: _____
Deputy Clerk

By: _____
Mayor Gregg K. Weiss

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Shannon Fox
Assistant County Attorney

By: Deborah Drum
Deborah Drum
Department Director

JOELLA S Galloway
Witness Name (Printed)
[Signature]
Witness Name (Signature)

PBCFF: _____
By: [Signature]
Signature
Tom Wyford
Printed Name, President PBCFF

RESOLUTION NO. R2023-_____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO AUTHORIZE THE CLERK OF THE COURT TO DISPERSE VESSEL REGISTRATION FEE TRUST FUNDS FOR THE CONSTRUCTION OF ARTIFICIAL REEFS IN PARTNERSHIP WITH THE PALM BEACH COUNTY FISHING FOUNDATION.

WHEREAS, Palm Beach County enacted the Vessel Registration Fee Ordinance, Ordinance No. 88-40, which began collecting fees on June 1, 1989; and

WHEREAS, the Vessel Registration Fee Ordinance 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 Fishing Foundation (PBCFF) was created in 1990 to create a not-for-profit organization to address specific educational outreach needs and issues related to fishing and the health of the County's marine resources; and

WHEREAS, PBCFF has funded many fishery conservation projects including artificial reefs, estuarine enhancement, and mooring buoy and reef monitoring efforts; and

WHEREAS, PBCFF and the County had a three year Agreement that expired December 31, 2022 (R2022-1848) where the County and the PBCFF worked together to deploy over 1,500 tons of artificial reef material and deploy the deepest artificial reef in Florida at a depth of 500 feet to create grouper and snapper juvenile habitat; and

WHEREAS, the County and PBCFF wish to enter into a new agreement starting February 7, 2023, and PBCFF has agreed to fabricate high quality reef material to provide habitat for spawning aggregations for offshore fish species including groupers, snappers, and other marine species; and

WHEREAS, the County has agreed to cover the transportation and placement costs of these artificial reef materials at a cost not to exceed \$300,000; and

WHEREAS, these reef materials will increase the primary productivity of Palm Beach County's coastal waters by providing habitat and shelter for increased numbers of fish and more diverse populations of fish stocks; and

WHEREAS, the new artificial reefs will be named the Reef Dart Reef, when

possible; and

WHEREAS, the Director of Environmental Resources Management recommends that the Board of County Commissioners authorize the Clerk of the Court to disburse Vessel Registration Fee Trust Fund monies in the amount of \$300,000 to provide funding for this project.

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 herein.

Section 2: The Board of County Commissioners hereby authorizes the Clerk of the Court to disburse Vessel Registration Fee Trust funds in an amount of \$300,000 for the purpose of constructing the Palm Beach County Fishing Foundation project.

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 1 : Maria G. Marino _____
- District 2: Gregg K. Weiss, Mayor _____
- District 3: Dave Kerner _____
- District 4: Marci Woodward _____
- District 5: Maria Sachs, Vice Mayor _____
- District 6: Sara Baxter _____
- District 7: Mack Bernard _____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2023.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS JOSEPH ABRUZZO, CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By _____ Assistant County Attorney

By _____ Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET TRANSFER**

FUND 1225 Environmental Enhance-Nons Dec

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED As of 12/20/22	REMAINING BALANCE
REVENUES/EXPENDITURES								
380 3305 3401	Other Contractual services	100,262	94,647	300,000	0	394,647	38,500	356,147
380-3893-9902	Operating Reserve	3,183,194	3,192,722	0	300,000	2,892,722	0	2,892,722
Total Receipts and Balances		4,470,357	4,470,357	300,000	300,000	4,470,357		

Signatures & Dates

**By Board of County Commissioners
At Meeting of
February 7, 2023**

**Office of Financial Management & Budget
INITIATING DEPARTMENT/DIVISION**

Deborah Dumm 12-21-22

Administration/Budget Department Approval

Deputy Clerk to the

OFMB Department - Posted

Board of County Commissioners