

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	December 15, 2020	(X) Consent	() Regular
		() Workshop	() Public Hearing
Department:	<u>Environmental Resources Management</u>		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve an Agreement with the Andrew "Red" Harris Foundation, Inc. (ARHF) providing donated artificial reef material in exchange for placing the material within permitted artificial reef sites offshore of northern Palm Beach County (County) for an amount not to exceed \$300,000 beginning January 1, 2021 and ending December 31, 2023;

B) adopt a Resolution authorizing the Clerk of the Court to disburse \$300,000 from the Vessel Registration Fee Trust Fund to provide the necessary funding for the placement of artificial reef material;

C) approve a Budget Transfer of \$300,000 from the reserves in the Environmental Enhancement Saltwater Fund to the ARHF Reef Project; and

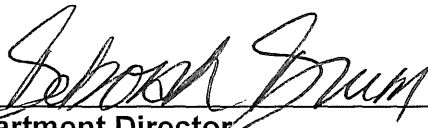

D) authorize the County Administrator, or designee, to sign all future time extensions, task assignments, certifications, and other forms associated with the Agreement, and any necessary minor amendments that do not substantially change the scope of work, terms, or conditions of the Agreement.

Summary: The Agreement with the ARHF provides for the donation and temporary storage of County approved artificial reef material. The County will cover the cost to load, transport, and place the reef material at one or more permitted County artificial reef sites, with funding of \$300,000 from the Vessel Registration Fee Trust Fund. District 1 (SS)

Background and Justification: The Board of County Commissioners has previously approved two agreements (R2015-0721 and R2017-0735) with the ARFH for the donation of artificial reef material. The current Agreement, R2017-0735, expires on December 31, 2020. Through the past two agreements, the County and the ARFH have worked together to create over four acres of artificial reef habitat with an estimated value of \$750,000 in donated artificial reef materials. Under the new ARHF Agreement, any reef created with the donated artificial reef material will be referred to as the Andrew "Red" Harris Reef.

Attachments:

1. Agreement with ARHF
2. Resolution
3. Budget Transfer

Recommended by:		<u>11-3-2020</u>	<small>SAS 10/30/2020</small>
	Department Director	Date	
Approved by:		<u>12/2/20</u>	
	Assistant County Administrator	Date	

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
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 X

Does this item include the use of federal funds? Yes _____ No X

Budget Account No.:

Fund 1224 Department 380 Unit 3098 Object 3401 Program _____

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

Environmental Enhancement-Saltwater \$300,000

C. Department Fiscal Review:

S. Murray

III. REVIEW COMMENTS

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

OFMB AP 11/12 AP 11/12 Dr. J. Jankins 12/1/2020
 Contract Development & Control
12-1-20 TW

B. Legal Sufficiency:

[Signature]
 for S. Stone 12/2/2020
 Assistant County Attorney

C. Other Department Review:

 Department Director

ATTACHMENT 1

**AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND THE
ANDREW RED HARRIS FOUNDATION, INC.**

THIS AGREEMENT is made and entered into on the ____ day of _____ 2020, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "COUNTY") and the ANDREW "RED" HARRIS FOUNDATION, INC., non-profit corporation authorized to do business in the State of Florida ("ARHF") whose Federal Tax ID Number is 47-1322656, both being hereinafter referred to collectively as the "parties".

WITNESSETH:

WHEREAS, ARHF was created in 2014 to honor the memory of Andrew "Red" Harris, a young man who was an avid diver, snorkeler and fisherman, who lost his life in a tragic snorkeling accident; and

WHEREAS, ARHF is dedicated to assuring the long-term health and vibrancy of the coastal waters off of Palm Beach County by building artificial reefs; and

WHEREAS, Palm Beach County has a shared interest in building artificial reefs to provide marine habitat and recreation; and

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

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

WHEREAS, the COUNTY and ARHF previously had two 3-year agreements (R-2015-0721 and R-207-0735) where they worked together to create over four acres of artificial reefs using donated artificial reef materials; and

WHEREAS, ARHF has agreed to continue to donate high quality reef materials that will attract marine growth, sea life and fish; and

WHEREAS, ARHF has agreed to donate artificial reef materials to the COUNTY; and

WHEREAS, the COUNTY agrees to cover the costs of transporting and deploying these artificial reef materials within permitted reef site(s) offshore of northern Palm Beach County at an amount not to exceed a total of \$300,000.

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. ARHF will donate high quality artificial reef material that will be used to construct artificial reef(s) offshore of northern Palm Beach County and provide temporary storage for the reef materials until the COUNTY is ready to load and transport the materials to a staging site. The COUNTY agrees to cover the costs of transporting and deploying the reef materials at COUNTY permitted reef sites offshore of northern Palm Beach County.

3. Party's Representatives/Liaison.

- a) The COUNTY's representative during the performance of this Agreement shall be Jena McNeal, telephone number 561-233-2513, e-mail address jmcneal@pbcgov.org.
- b) ARHF's representative during the performance of this Agreement shall be Scott Harris, President, telephone number 561-718-7348, e-mail address scottharrisins@gmail.com.

4. ARHF's Responsibilities. ARHF shall:

- a) Donate COUNTY approved artificial reef material by June 30th each year for the term of this Agreement, that provides a diversity of habitat spaces for a myriad of sea life and closely mimic coral and sponge habitats; and
- b) Provide temporary storage for the donated material until the COUNTY can transport them to a staging site and load the material onto the COUNTY Contractor's vehicle for transport; 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 ARHF 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 northern 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 (July through September) 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 "Andrew 'Red' Harris Reef" or a similar variation, provided that the reef material is placed at a previously unnamed 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 beginning January 1, 2021 until December 31, 2023 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

Andrew "Red" Harris Foundation, Inc.
18230 River Oaks Drive
Jupiter, FL 33458

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 ARHF. ARHF 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 ARHF's or its agents, employees or contractors performance of the terms of this Agreement or due to the acts or the omissions of ARHF or its agents, employees or contractors.

14. Insurance by ARHF. ARHF shall maintain commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000) combined single limit for property damage and bodily injury per occurrence. Policy shall be endorsed to include, "Palm Beach County Board of County Commissioners" as an Additional Insured. When requested, ARHF shall provide evidence of insurance to COUNTY.

15. 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.

16. 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 FS as amended. 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 ARHF.

17. 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 ARHF 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 ARHF 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 ARHF 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 ARHF 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. ARHF shall include this language in its subcontracts.

18. 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.

19. 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.

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

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

21. 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.

22. 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.

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

24. 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.

25. 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.

26. 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 ARHF.

27. Entirety of Agreement. ARHF 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.

28. Public Records. Notwithstanding anything contained herein as provided under Section 119.0701, F.S., if the ARHF: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the ARHF shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The ARHF is specifically required to:

- a) Keep and maintain public records required by the County to perform services as provided under this Agreement.
- b) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The ARHF further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

- c) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the ARHF does not transfer the records to the public agency.
- d) Upon completion of the Agreement the ARHF shall transfer, at no cost to the County, all public records in possession of the ARHF unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the ARHF transfers all public records to the County upon completion of the Agreement, the ARHF shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the ARHF keeps and maintains public records upon completion of the Agreement, the ARHF shall meet all applicable requirements for retaining public records. All records stored electronically by the ARHF must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the ARHF to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. AHRF acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE ARHF HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ARHF'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

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:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS:

By: _____
Deputy Clerk

By: _____
Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

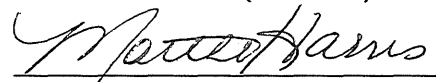
By: _____
County Attorney

By: 
Department Director



Witness Name (Printed)

ARHF: 
By: _____
Signature



Witness Name (Signed)

Scott Harris
Printed Name, President ARHF

ATTACHMENT 2

RESOLUTION NO. R2020-_____

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 ANDREW RED HARRIS FOUNDATION.

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

WHEREAS, the Vessel Registration Fee Ordinance 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 Andrew "Red" Harris Foundation (ARHF) was created in 2014 to honor the memory of Andrew "Red" Harris, a young man who was an avid diver, snorkeler and fisherman and who lost his life in a tragic snorkeling accident; and

WHEREAS, the ARHF and the County previously have had two, three year agreements (R2015-0721 and R2017-0735) where the County and ARHF worked together to create over 4 acres of artificial reef habitat with an estimated value of \$750,000 in donated artificial reef materials; and

WHEREAS, ARHF is dedicated to assuring the long-term health and vibrancy of the coastal waters off of Palm Beach County and has agreed to donate artificial reef material for the term of the new contract; and

WHEREAS, the County has agreed to cover the transportation and placement costs of these artificial reef materials 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 and more diverse populations of fish stocks; and

WHEREAS, this project will provide unique diving opportunities, relieve user pressures on natural reefs and further establish Palm Beach County as a premier diving destination; and

WHEREAS, the new artificial reefs will be named the Andrew Harris Reef; 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 transportation and deploying the Andrew "Red" Harris Foundation Reef 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 COMMISSIONER _____
- District 2 COMMISSIONER Gregg K. Weiss _____
- District 3 COMMISSIONER _____
- District 4 COMMISSIONER Robert S. Weinroth _____
- District 5 COMMISSIONER _____
- District 6 COMMISSIONER Melissa McKinlay _____
- District 7 COMMISSIONER _____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2020.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

By _____
Scott A. Stone
Assistant County Attorney

By _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET TRANSFER

FUND 1224
Environmental Enhance-Saltwater

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED As of 10/28/2020	REMAINING BALANCE
<u>EXPENDITURES</u>								
380-3098	Andrew Harris Reef 3401 Other Contractual Services	5,952	5,952	300,000	0	305,952	5,952	300,000
380-3891	Reserves Salt Water 9902 Operating Reserves	844,820	824,727	0	300,000	524,727	0	524,727
Total Receipts and Balances		1,081,392	1,081,392	300,000	300,000	1,081,392		

Environmental Resources Management
 INITIATING DEPARTMENT/DIVISION
 Administration/Budget Department Approval
 OFMB Department - Posted



Signatures & Dates
Seborah Sum 11-3-2020

By Board of County Commissioners
 At Meeting of
 December 15, 2020
 Deputy Clerk to the
 Board of County Commissioners