

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: November 19, 2024 Consent Regular
 Workshop Public Hearing

Department: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve the Mosquito Control Memorandum of Understanding (MOU) Agreement with the Florida Department of Agriculture and Consumer Services (FDACS) for mosquito control activities performed during contract period upon execution to September 30, 2025; and

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

Summary: Each year, the County applies to FDACS for state aid for mosquito control activities. On August 20, 2024, the Board of County Commissioners (BCC) approved the Detailed Work Plan Budget (R2024-0968) required by FDACS as part of the re-application process for state aid for FY2025. No grant assistance was awarded for FY2025. Although this loss of revenue will reduce the amount of chemicals acquired for mosquito control operations, the Department of Environmental Resources Management (ERM) Mosquito Control Division maintains a sufficient supply for normal operations and can continue to meet the necessary level of service for the County. Moreover, although there was no grant assistance awarded this year, the Mosquito Control Division is still responsible for the completion of monthly deliverables as stated in the MOU. An MOU is required by Florida Administrative Code (F.A.C.) Rule 5E-13.022 for counties that are not eligible to receive state aid for control of arthropods, but want to remain in the state-approved program. The benefit to the County staying in the state-approved program is maintaining the status of Palm Beach County's Mosquito Control Division as "state-approved", providing legitimacy and guidance of the FDACS while servicing Palm Beach County residents. **Countywide (SS)**

Background and Justification: FDACS provides assistance to local governments with arthropod and mosquito control and ensure the tools and techniques meet industry standards and are in compliance with Chapter 388, F.S. and 5E-13, F.A.C. State aid determination is based on a tier system. Based on Mosquito Control Division's Annual Certified Budget, FDACS placed Mosquito Control Division into Tier 1, which receives no state funding.

Attachment:
1. Memorandum of Understanding

Recommended by: 10-25-2024 SAS 10/23/24
 Department Director **Date**

Approved by: 10/30/24
 Deputy County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2025 | 2026 | 2027 | 2028 | 2029 |
|--------------------------|---------------|-------|-------|-------|-------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | <u>\$0.00</u> | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | <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

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

Budget Account No.:

Fund 0001 Department 380 Unit 3241 Object _____ Program _____

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

C. Department Fiscal Review: *Shirley King*

III. REVIEW COMMENTS

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

AS 10/15 *Laura M. Smith* 10/28/2024
 OFMB DA 10/25

Brandi Brock 10/29/24
 Contract Development & Control
 MAMS 10/29/24

B. Legal Sufficiency:
[Signature] 10/30/24
 Assistant County Attorney

C. Other Department Review:

 Department Director



COMMISSIONER
WILTON SIMPSON

Florida Department of Agriculture and Consumer Services
MOSQUITO CONTROL MEMORANDUM OF UNDERSTANDING

This AGREEMENT, made and entered into on _____, by and between the FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, the DEPARTMENT, and **Palm Beach County**, the COUNTY.

TERM PERIOD: October 1, 2024, to September 30, 2025

ARTICLE 1: SERVICES

- 1.1 Scope of Work. The COUNTY agrees to comply with the requirements of Chapter 388, Florida Statutes, Section 215.97, Florida Statutes, and Chapter 5E-13, Florida Administrative Code to conduct arthropod/mosquito control.
- 1.2 Deliverables. The COUNTY must provide the following quantifiable, measurable and verifiable units of deliverables which must be received and accepted in writing by the contract manager. These deliverables are directly related to the Scope of Work specifying minimum levels of service to be performed and criteria for evaluating the successful completion of each deliverable.

The COUNTY agrees to provide mosquito management/control services as specified in the above scope of work. The COUNTY must meet the below minimum levels of services:

- a. If the COUNTY has state funds, they shall submit a monthly financial report to the DEPARTMENT on the form "Mosquito Control Monthly Report - State Funds" for State funds (FDACS-13650, Rev. 09/23, as currently in effect and as may be amended from time to time) and supporting documentation (i.e. receipts, travel vouchers, invoices, purchase orders, expenditure reports, wage statements, account statements) no later than thirty days after the end of each month.
- b. Submit budget amendments on the form "Arthropod Control Budget Amendment" (FDACS-13623, Rev. 09-23, as currently in effect and as may be amended from time to time) as needed. Budget amendments shall be prepared and submitted to the DEPARTMENT prior to over-expending funds in any account or expending funds in non-budgeted accounts. Budget amendments must be explained by an accompanying request for approval of the changes to be made in the detailed budget. DEPARTMENT approval of the amendment(s) must be received before such expenditures are made.
- c. Submit a monthly pesticide activity report to the DEPARTMENT on the form "Mosquito Control Monthly Activity Report" (FDACS-13652, Rev. 02/23, as currently in effect and as may be amended from time to time) no later than thirty days after the end of each month.

The DEPARTMENT agrees to report COUNTY State Approved status to the legislature upon receipt of AGREEMENT execution, not later than October 30, 2025.

ARTICLE 2: PROPERTY

- 2.1 Tangible Property. All equipment purchased pursuant to Chapter 388, Florida Statutes, with state funds made available directly to COUNTY shall become the property of the COUNTY unless otherwise provided, and may be traded in on other equipment, or sold, when no longer needed by the county or COUNTY.
- 2.2 The DEPARTMENT, upon notifying the COUNTY and obtaining its approval, is authorized to transfer equipment, materials, and personnel from one county to another in the event of an emergency brought about by an arthropod borne epidemic or other disaster requiring emergency control.
- 2.3 Surplus property shall be disposed of according to the provisions set forth in section 274.05, Florida Statutes, with the following exceptions: Serviceable equipment no longer needed by COUNTY shall first be offered to any or all other counties or counties engaged in mosquito control at a price established by the board of commissioners owning the equipment. If no acceptable offer is received within two weeks, the equipment shall be offered to such other governmental units or private nonprofit agencies as provided in Section 274.05, Florida Statutes.

The alternative procedure for disposal of surplus property, as prescribed in Section 274.06, Florida Statutes, shall be followed if it has been determined no other county, COUNTY, governmental unit, or private nonprofit agency has need for the equipment. All proceeds from the sale of any real or tangible personal property owned by COUNTY shall be deposited in the county or COUNTY Mosquito Control State Fund account unless otherwise specifically designated by the DEPARTMENT.

ARTICLE 3: TERMINATION

- 3.1 For Convenience. The parties may terminate this AGREEMENT in whole or in part for its convenience by giving at least fifteen (15) days written notice by electronic or registered mail to the other party, specifying the effective date of termination.
- 3.2 For Cause. The DEPARTMENT may terminate this AGREEMENT for cause; provided, however, no right of default shall accrue until thirty (30) days after the defaulting party is notified in writing of the reason(s) for termination and has failed to cure or give adequate assurances of performance within the thirty (30) day period after notice of termination. If, after termination, it is determined that the COUNTY was not in default, or that the default was excusable or the termination for cause was in error, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the DEPARTMENT pursuant to Section 3.1. The rights and remedies of the DEPARTMENT in this clause are in addition to any other rights and remedies provided by law or under this AGREEMENT.
 - 3.2.1 For cause termination shall be defined as default, breach, or failure of the COUNTY to fulfill any of its obligations hereunder.
 - 3.2.2 Opportunity to cure. Prior to the exercise of any remedy provided for herein, the DEPARTMENT shall provide thirty (30) calendar days written notice of default and shall provide the COUNTY the opportunity to cure such failure or default within said thirty (30) day period. Upon the failure or inability to cure, the DEPARTMENT shall have all rights and remedies provided at law or in equity, including without limitation wholly or partly suspend or terminate this AGREEMENT.

3.3 Force Majeure. If either party fails to fulfill its obligations hereunder, when such failure is due to an act of God, or other circumstances beyond its reasonable control, including but not limited to fire, flood, civil commotion, riot, war (declared and undeclared), revolution, or embargoes, then said failure shall be excused for the duration of such event and for such a time thereafter as is reasonable to enable the parties to resume performance under this AGREEMENT.

3.3.1 Upon occurrence of a Force Majeure Event, the nonperforming party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance and its anticipated duration.

ARTICLE 4: GENERAL PROVISIONS

4.1 Independent Contractor. The COUNTY, and any of its employees, agents, or assigns, are independent contractors and are not employees or agents of the DEPARTMENT.

4.1.1 The COUNTY shall not pledge the DEPARTMENT's credit or make the DEPARTMENT a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

4.2 Indemnification. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the COUNTY shall indemnify, defend and hold harmless the DEPARTMENT against any actions, claims or damages arising out of the COUNTY's negligence in connection with this AGREEMENT, and the DEPARTMENT shall indemnify, defend and hold harmless the COUNTY against any actions, claims, or damages arising out of the DEPARTMENT's negligence in connection with this AGREEMENT. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

4.3 Liability. The COUNTY shall maintain, during the period of this AGREEMENT, liability insurance for the services to be rendered in accordance with industry standards as appropriate.

4.4 Amendments. Any changes must be mutually agreed upon and incorporated in written amendments to this AGREEMENT.

4.5 Entire AGREEMENT. The instrument, including any attachments or exhibits, embodies the entire AGREEMENT of the parties. This AGREEMENT supersedes all previous oral or written communications, representations, or agreements on this subject.

4.6 Applicable Law and Venue. This AGREEMENT shall be governed by the laws of the State of Florida with venue in Leon County, Florida.

4.7 Severability. In the event that any one or more of the provisions of this AGREEMENT shall be determined to be void or unenforceable by a court of competent jurisdiction, or by law, such determination will not render this AGREEMENT invalid or unenforceable and the remaining provisions hereof shall remain in full force or effect. In the event that any clause or requirement of this AGREEMENT is contradictory to, or conflicts with the requirements of Florida law, including, but not limited to requirements regarding contracts with Florida's governmental agencies, the offending clause or requirement shall be without

force and effect and the requirements of the Florida Statutes and rules promulgated thereunder on the same subject shall substitute for that clause or requirement and be binding on all parties to this AGREEMENT.

- 4.8 Paragraph Headings. Paragraph headings contained in this AGREEMENT are for convenience or reference only. They shall not be deemed to modify, limit, define or describe in any respect the provisions of this AGREEMENT.
- 4.9 Compliance. COUNTY shall, at its sole cost and expense, comply with all requirements of all Municipal, County, State and Federal rules and regulations, statutes and/or ordinances now in force, or which hereafter come into force, pertaining to the duties and obligations arising from this AGREEMENT.
- 4.10 Subcontracting. COUNTY shall follow its rules and regulations regarding subcontracting and the payment of subcontractors for any services to be performed hereunder.
- 4.11 Survival. The termination of this AGREEMENT (whether by expiry, completion, the exercise of a termination right hereunder, or otherwise) will not relieve either party of any obligation, nor impair the exercise of rights, accrued hereunder prior to such termination. Without limiting the foregoing, the terms of Sections 4.2 and 4.5 hereof will survive the termination of this AGREEMENT.
- 4.12 This AGREEMENT may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Each person signing this AGREEMENT warrants that he or she is duly authorized to do so and to bind the respective party to the AGREEMENT.
- 4.13 The delay or failure by the DEPARTMENT to exercise or enforce any of its rights under this AGREEMENT shall not constitute or be deemed a waiver of the DEPARTMENT's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 4.14 Administration of AGREEMENT.

The contract manager for the DEPARTMENT is Shalinda Woods and is located at Division of Agricultural Environmental Services, 3125 Conner Boulevard, Suite E, Tallahassee, Florida 32399-1650, office number (850) 617-7933, email address: Shalinda.Woods@FDACS.gov.

The contract manager for the COUNTY is Gary Goode, Director and is located at 9011 West Lantana Road, Lake Worth, FL 33467, email address: GGoode@pbc.gov.

Substitution of a contract manager by any party after execution of this AGREEMENT shall not require a formal amendment of this AGREEMENT; however, the other contract manager shall be informed in writing within seven (7) business days of the substitution.

- 4.15 Notices. Any notice required or permitted under this AGREEMENT shall be in writing and shall be sent via email to the contract manager, sent by a nationally recognized courier service which provides written proof of delivery (e.g., UPS, Federal Express) or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed, in either event, to the contract manager, with a copy to:

DEPARTMENT: Florida Department of Agriculture and Consumer Services, Office of General Counsel, The Mayo Building, Suite 520, 407 S. Calhoun Street, Tallahassee, FL 32399, Attn: General Counsel

COUNTY: Palm Beach County Attorney's Office, 301 North Olive Ave., West Palm Beach, Florida 33401

Signed by parties to this AGREEMENT:

FLORIDA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES

Signature

Name (type or print)

Director of Administration

Title

Date

PALM BEACH COUNTY
BOAD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY



Scott A. Stone
Assistant County Attorney

Signature

Name (type or print)

Mayor

Title

Date

APPROVED AS TO TERMS
AND CONDITIONS



Deborah Drum Date
Department Director

ATTEST:
JOSEPH ABRUZZO
Clerk of the Circuit Court
And Comptroller

By: _____
Deputy Clerk