

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	May 18, 2021	(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 Artificial Reef Deployment Area Use Agreement (Agreement) with Martin County to use the 96th Street Staging Area within Martin County for the purpose of short term storage, fabrication and deployment of artificial reef materials in connection with Palm Beach County's Artificial Reef Program beginning upon execution and terminating one year from the date of execution. The Agreement will be automatically extended for an additional one year unless either party gives written notice of termination at least sixty days prior to the expiration of the current term; and

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

Summary: The Agreement provides for access and use of Martin County's 96th Street Staging Area for materials associated with the County's Artificial Reef Program. The parcel located along the St. Lucie Canal south of SW 96th Street in Martin County will be utilized by County contractors for short term storage, fabrication, deployment and loading of artificial reef materials for offshore deployment. The Agreement contains indemnification and termination provisions that differ from those adopted for use by the County under PPM CW-F-049. In accordance with PPM CW-F-049, the Risk Management Department and the County Attorney's Office have reviewed the terms and agreed to the deviations, taking in to consideration the County's need to utilize this site for the success of the County's Artificial Reef Program. **There is no cost to the County.** Countywide (SS)

Background and Justification: Martin County and the County wish to enter into a use agreement to use the site as a temporary staging and fabrication area for artificial reef material and to load the County contractor's barge with artificial reef material for offshore deployment. The County does not have consistent access to a property within Palm Beach County for artificial reef projects. Martin County has allowed County contractors to utilize the staging area the past two years, but now requests a use agreement be entered into with the contracting entity for oversight.

Attachment:
1. Artificial Reef Deployment Area Use Agreement

Recommended by:		4-8-21	SAS 4/8/21
	Department Director	Date	
Approved by:		4/21/21	
	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	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>-0-</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 _____ Department _____ Unit _____ Object _____ Program _____

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

No fiscal impacts.

C. Department Fiscal Review:

S. Murray

III. REVIEW COMMENTS

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

ASDelt 4/15/21
OFMB *JFA* 4-14-21 *Jacobson*
4/15/21

Don J. Jacobson 4/20/21
Contract Development & Control
4-19-21 TW

B. Legal Sufficiency:

[Signature]
for S. Stone 4/21/2021
Assistant County Attorney

C. Other Department Review:

Department Director

ATTACHMENT 1

ARTIFICIAL REEF DEPLOYMENT AREA USE AGREEMENT

This Agreement is entered into on the ____ day of _____, 2021, by and between Martin County, a political subdivision of the State of Florida, hereinafter referred to as "Owner", and Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, the County has requested to use Owner's property for the purpose of deposit, short term storage, fabrication and deployment of artificial reef materials in connection with its artificial reef program; and

WHEREAS, the County does not have consistent access to a property within Palm Beach County where it can deposit, store, fabricate and load artificial reef material onto a contractor's barge; and

WHEREAS, the Owner is willing to allow such use of its property under the following terms and conditions:

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. **Request for Deployment Area Use**

The County may request and Owner may permit, in Owner's sole and complete discretion, the County and its Contractors to use the property more particularly described in Exhibit "A" which is attached hereto and incorporated herein, hereinafter referred to as the "Premises", for the purpose of depositing, storing, fabricating and deploying artificial reef materials pursuant to the following procedure:

- County may submit to Owner one written deployment request per calendar year which sets forth the following:

A. The date(s) of deployment for the entire year including the date(s) the materials will be placed on the premises and the date(s) the materials will be removed from the property and deployed to the County's artificial reef.

B. The total tonnage of the materials to be deployed.

C. The source and detailed description of the composition of the materials to be deployed.

D. The number of deployments from the premises to County's artificial reef.

E. The name and licensing documentation for the Contractor(s) County will use to transport, stage and deploy the materials.

F. Provide to the Owner a certificate of insurance from the County's Contractor providing for a commercial general liability insurance policy with broad form extended liability endorsement with policy limits of at least \$5,000,000 to include, but not be limited to, personal injury, bodily injury, advertising injury, property damage, products and completed operations liability and contractual liability. The certificate of insurance shall specifically provide that Martin County, its officers, officials, agents, employees and representatives are named as additional insured. The policies must be specifically endorsed to grant Owner thirty (30) days advance notice of any material change or cancellation of coverage insurance. Coverage shall be written on an occurrence form basis and respond as Primary. A per project aggregate limit shall apply or a separate Event Liability policy shall be procured to ensure the dedicated limits are provided for the User. Failure of the County to provide the certificates of insurance at least thirty (30) days prior to the date of the event or receipt by the Owner of a notice of cancellation of the insurance policies shall constitute a material breach of this Use Agreement and this Use Agreement may be terminated immediately. Proof of workers compensation shall be provided in accordance with Florida law.

2. Owner shall review the County's written request as set forth above and shall notify County in writing within sixty (60) days of submission (of all information required for such request) of Owner's approval with conditions or denial of the request.

3. County Responsibilities upon Approval. Following Owner's approval of County's written request, the County shall:

A. Ensure all materials are inspected and approved by Owner's representatives prior to the delivery to the premises to determine appropriateness for deployment as an artificial reef. Owner may in its sole and complete discretion refuse to permit placement of unsuitable materials on the premises.

B. County agrees and acknowledges that Owner's premises will be locked and secured after each delivery.

C. County shall only use the Contractor(s) pre-approved by Owner.

D. County shall remove all unused materials from the premises within forty-five (45) days of final deployment; Owner's property shall be restored at County's sole cost and expense to the same or better condition existing prior to County's activities on Owner's property.

E. County agrees that Owner shall not be liable for any loss, injury, death or damage to persons or property (including but not limited to vehicles, boats, barges or equipment of any kind) which at any time may be suffered or sustained by County, its contractors, employees or any person whatsoever who may be using or occupying or visiting the Premises.

County agrees to be fully responsible and to defend and indemnify Owner, to the extent provided by Section 768.28, Fla. Stat., for the negligent acts or omissions of County, its employees and agents and agrees to be liable for any damages proximately caused by said acts or omissions. Nothing herein is intended to serve as a waiver of the County's or Owner's sovereign immunity or the provisions

of Section 768.28. Nothing herein shall be construed as consent by the Owner to be sued by third parties in any manner arising out of this Agreement.

In the event of final judgment being obtained against the Owner, either independently or jointly with County, then County will pay such judgment immediately, with all interest and costs thereon, and shall hold the Owner harmless.

F. Promptly advise the Owner of any damage to the Premises, directly or indirectly resulting from its use pursuant to this Agreement.

G. County accepts the site in "as is" condition without any representation or warranty by Owner as the sufficiency, suitability or fitness of the Premises for the uses permitted herein and are undertaken at County's sole risk.

H. County agrees that County's utilization of the property for any use other than the uses specified herein during the specified use period(s) (set forth in County's request) shall constitute a material breach of this Agreement. Owner shall have the absolute right to terminate this Agreement upon twenty-four (24) hours notice to County of such default.

4. Term. The term of this Agreement is for a period of one (1) year. This Agreement shall be automatically renewed for an additional term of 1 year unless either party gives written notice of termination at least sixty (60) days prior to the expiration of the current term.

5. Amendments. This Agreement may be amended by only written agreement of the parties. A party requesting amendment of the Agreement must propose such amendment in writing to the other party at least ninety (90) days prior to the proposed effective date of the amendment.

6. Attorney's Fees. The parties expressly agree that each party will bear its own attorney's fees and court costs incurred in connection with this Agreement.

7. Waive Jury Trial. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.

8. Venue. This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Martin County, Florida.

9. Entire Agreement. This Agreement constitutes the complete, full and wholly independent agreement among the parties to this Agreement with regard to the matter contained herein. This Agreement also supersedes all prior representation, statements, and undertakings among the parties to this Agreement with respect to the matter and things addressed herein, either written or oral. This Agreement may not be assigned by County.

10. The Owner reserves the right to cancel the User Agreement at any time because of any circumstance that in the Owner's sole and complete discretion, determines to necessitate the cancellation. The Owner's shall have the right to terminate this Agreement at any time in the event of a local, state, or federal declaration of emergency.

11. **NOTICES**. All notices or other communications hereunder shall be sufficiently given and shall be deemed given on the date such notice is delivered by electronic mail, courier, or facsimile transmission, or three days after the date mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

Martin County: Martin County Coastal Engineer
2401 S.E. Monterey Road
Stuart, Florida 34996
Phone: (772) 221-2360
Facsimile: (772) 288-5548

Palm Beach County: 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

IN WITNESS WHEREOF, the parties hereto have executed this Artificial Reef Deployment Area Use Agreement as of the day and year first above written.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

CAROLYN TIMMANN, CLERK OF THE
CIRCUIT COURT AND COMPTROLLER

STACEY HETHERINGTON, CHAIR

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

Sarah W. Woods, County Attorney

ATTEST:

**JOSEPH ABRUZZO, CLERK OF THE
CIRCUIT COURT & COMPTROLLER**

**COUNTY:
PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

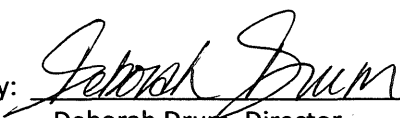
By: _____

Name: Dave Kerner
Its: Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Scott A. Stone, Assistant County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

By:  _____
Deborah Drum, Director
Department of Environmental
Resources Management



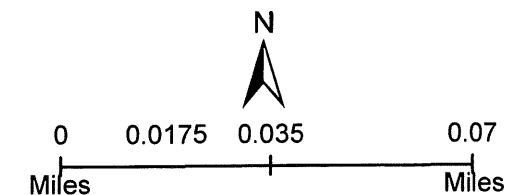
Martin County Coastal Engineering

Project Name:
Created By: Jessica Garland
Plot Date: 12/2/2020

96th Street Staging Area Exhibit A

- Stage Area Boundary
- Bridge Fender
- Fence Line
- Edge of Road
- Base of Embankment
- Vegetation Line
- Rocks
- Water edge
- Reference Monuments

Staging Area



Disclaimer
"This Geographic Information System Map Product, received from Martin County ("COUNTY") in fulfillment of a public records request is provided "as is" without warranty of any kind, and the COUNTY expressly disclaims all express and implied warranties, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. The COUNTY does not warrant, guarantee, or make any representations regarding the use, or the results of the use, of the information provided to you by the COUNTY in terms of correctness, accuracy, reliability, timeliness or otherwise. The entire risk as to the results and performance of any information obtained from the COUNTY is entirely assumed by the recipient."