

Meeting Date
October 24, 2017



AGENDA	
Section	Consent
Item No.	<i>II.A.1</i>

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT: Memorandum of Agreement (MOA) Between East Coast Zoological Society of Florida (Brevard Zoo) and Brevard County for Countywide Oyster Gardening Program FY2017-18
 Fiscal Impact: \$150,000

DEPT/OFFICE: Natural Resources Management Department (NRM)

Requested Action:

It is requested that the Board of County Commissioners: 1) authorize the Chairman to execute a MOA substantially in the form of Attachment A, subject to County Attorney and Risk Management final approval; 2) authorize the County Manager or designee to execute up to four annual renewals, future amendments and change orders; and 3) authorize budget change requests as required to support the Brevard Zoo's implementation of work under this MOA.

Summary Explanation & Background:

On October 17, 2013 the Board of County Commissioners launched a local Oyster Gardening program to engage the public in helping to restore the natural filtration by shellfish and thereby improve ecosystem resilience within waters of the Indian River Lagoon (IRL). The Oyster Gardening Program is executed through a partnership with the Brevard Zoo.

Background: Oyster Gardening is a citizen-based oyster propagation program where juvenile oysters (spat) are raised under lagoon-front homeowner's docks and eventually used to populate constructed oyster reef sites. Oyster Gardening participants receive spat-on-shell oysters plus all supplies needed to care for their oysters until they are returned six to nine months later at a significantly larger size and placed at new reef sites in the lagoon. Oyster Gardening workshops are held throughout the county to increase and accommodate public interest, and to provide training and education about oyster gardening, oyster reef living shorelines, and issues facing the lagoon.

To date, over 1,100 waterfront property owners have been trained as citizen scientists and equipped with oyster garden supplies. Public interest and participation has been exceptional. This interest provides a unique opportunity to increase public engagement and knowledge of lagoon issues. Oyster Gardening has proven successful in returning hundreds of thousands of robust oysters annually. Oysters collected at the end of each oyster gardening season have been deployed as a "live" top reef layer at constructed oyster reef sites in Brevard, including shorelines located in the North IRL, Banana River, Newfound Harbor, and Central IRL. These reefs filter the IRL, reduce erosion, provide habitat, and remove nitrogen from the water through denitrification. The oysters produced during this year's oyster gardening season and future years will be used to populate oyster reef living shorelines installed as part of the Save Our Indian River Lagoon Project Plan.

Fiscal Impact: FY17-18: Stormwater Fund 1110, \$150,000
 FY18-19: Stormwater Fund 1110, \$150,000, if contract is renewed

Staff: Jane Hart or Virginia Barker, NRM
Phone: 321-633-2016

Clerk to the Board instruction: *Please execute two original MOAs.*

Exhibits Attached: **Attachment A – MOA**
Attachment B – AO-29 Form

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager ✓ Frank Abbate	Assistant County Manager <i>[Signature]</i> John Denninghoff	Department Director/Extension <i>[Signature]</i> Virginia Barker/X52435
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**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**



INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: East Coast Zoological Society d/b/a Brevard Zoo	
2. Fund/Account #: 1110	3. Department Name: Natural Resources
4. Contract Description: County-wide Oyster Gardening Program - FY2017-18	
5. Contract Monitor: Jane Hart	7. Contract Type: SERVICES
6. Dept/Office Director: Virginia Barker	

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>	9/26/17
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>	9/24/17

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**



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User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>J. Balm</i>	<i>9/25/17</i>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>ML</i>	10-5-2017
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

SECTION IV - CONTRACT MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
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Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

October 25, 2017

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director

RE: Item II.A.1., Memorandum of Agreement (MOA) with East Coast Zoological Society of Florida (Brevard Zoo) for Countywide Oyster Gardening Program FY 2017-2018

The Board of County Commissioners, in regular session on October 24, 2017, authorized the Chairman to execute a MOA with East Coast Zoological Society of Florida (DBA Brevard Zoo) for Countywide Oyster Gardening Program FY 2017-2018, substantially in the form of Attachment A, subject to County Attorney and Risk Management final approval; authorized the County Manager, or his designee, to execute up to four annual renewals, future amendments, and change orders; and authorized budget change requests as required to support the Brevard Zoo's implementation of work under this MOA. Enclosed are three executed MOA's.

Upon execution by East Coast Zoological Society (DBA Brevard Zoo), please return a fully-executed MOA to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encls. (3)

cc: Contracts Administration
Finance
Budget

**BREVARD COUNTY OYSTER GARDENING PROGRAM
MEMORANDUM OF AGREEMENT**

**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS
AND
BREVARD ZOO**

This Memorandum of Agreement (the "Agreement") is entered into this 24 day of Oct., 2017 by and between Brevard County Board of County Commissioners, whose address is 2725 Judge Fran Jamieson Way, A-219, Viera, Florida 32940 (hereinafter referred to as "BREVARD COUNTY") and East Coast Zoological Society of Florida whose address is 8225 North Wickham Road, Viera, Florida 32940 (doing business as and hereafter referred to as "BREVARD ZOO").

WITNESSETH

WHEREAS, BREVARD ZOO, in furtherance of its local conservation mission, has knowledge, experience and expertise in community-based live oyster propagation, oyster restoration, and living shoreline installation projects of interest to BREVARD COUNTY; and

WHEREAS, BREVARD COUNTY is desirous of engaging BREVARD ZOO as a team to provide services as described in this Agreement, unless otherwise amended.

NOW THEREFORE, in consideration of the above recitals and of the mutual promises and other good and valuable consideration set forth below, these parties intending to be bound, agree in advance as follows to the general terms and conditions under this Agreement.

1. STATEMENT OF WORK

BREVARD ZOO agrees to provide services to be performed under this Agreement in accordance with the specific Statement of Work attached as EXHIBIT A.

2. PERIOD OF PERFORMANCE

This Agreement shall begin October 1, 2017 and shall remain in effect until September 30, 2018, unless otherwise amended. The parties may agree in writing to renew this Agreement, under the same terms and conditions, up to four (4) additional one year terms.

3. CONSIDERATION AND PAYMENT

(a) BREVARD COUNTY hereby agrees to pay to BREVARD ZOO \$ 150,000.00 on a fixed price basis of \$ 37,500.00 at the end of each quarter to perform the services associated with the Brevard County Oyster Gardening Project as specifically described in the attached Statement of Work (EXHIBIT A).

(b) BREVARD ZOO shall submit quarterly invoices in accordance with the compensation guidelines / payment schedule as set forth in the Statement of Work attached as EXHIBIT A, to the following address:

BREVARD COUNTY
Natural Resources Management Department
2725 Judge Fran Jamieson Way, Bldg A, Room 219
Viera, FL 32940

Attn: Jane Hart

(c) BREVARD COUNTY shall send payment of the invoice amounts to BREVARD ZOO within 30 days of receipt of a complete invoice and quarterly reporting package.

4. PERFORMANCE

BREVARD ZOO will provide diligent efforts in performing the services under this Agreement and services will be rendered at a level commensurate with professional standards acceptable in the discipline and within the scope of the project to the satisfaction of BREVARD COUNTY.

5. REPORTS

BREVARD ZOO shall prepare and submit to BREVARD COUNTY all necessary technical information as reasonably required by BREVARD COUNTY in the performance of the Agreement, including quarterly reports with invoices.

6. SUBAGREEMENTS

BREVARD ZOO shall not sublet, assign or transfer any work under this Agreement without the written consent of BREVARD COUNTY. If applicable, and upon receipt of such consent in writing, the names of the firms responsible for such sublet, assigned or transferred portions of the work shall appear on the Invoices for Services performed.

7. TERMINATION

This Agreement and the performance of all work under this Agreement may be terminated by either party with three (3) months written notice to the other party. BREVARD COUNTY will pay all reasonable allowable costs associated with this Agreement up to the date of termination, including any non-cancellable obligations.

8. FORCE MAJEURE

(a) No party shall be liable for any delays in or failure of performance due to strike, riot, fire, storm, and explosion, War, act of God, governmental action, embargo, epidemic or any other cause beyond the reasonable control of such party. The Party affected shall promptly notify the other in writing of the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion dates will be affected thereby.

(b) In the event of any delay resulting from such causes and provided the affected party has promptly notified the other and exercised due diligence as provided in Section 10 (a), the time of performance of each of the Parties hereunder (including payment of monies) shall be extended for a time period equal the period of such delay.

9. AUDIT

BREVARD ZOO agrees to keep full, clear and accurate books and records. Within 15 days following written request by BREVARD COUNTY, BREVARD ZOO shall make available for inspection and/or audit any and all records related to its performance under this Agreement. Said records are subject to inspection and audit, at the sole expense of BREVARD COUNTY, by representatives of BREVARD COUNTY and the Comptroller General of the United States during reasonable business hours throughout the term of this Agreement and for the five (5) years immediately following BREVARD COUNTY'S final payment to BREVARD ZOO under this Agreement. In the event an audit is initiated by BREVARD COUNTY during the five (5) years following the BREVARD COUNTY'S final

payment, BREVARD ZOO agrees to retain any and all records associated with this Agreement until such time as any disputes arising therefrom are resolved. If any provision of this section is inconsistent with BREVARD COUNTY audit requirements, the more stringent shall prevail.

10. INDEMNITY

- (a) To the extent permitted by Florida law, BREVARD COUNTY agrees to indemnify, hold harmless and defend BREVARD ZOO and its respective directors, officers, employees and agents against any and all claims for death, illness, personal injury, property damage, and improper business practices arising from the negligence or misconduct of BREVARD COUNTY or its employees or agents in connection with the performance of this Agreement. To the extent permitted by Florida law, BREVARD ZOO agrees to indemnify, hold harmless and defend BREVARD COUNTY and its respective trustees, officers, employees and agents against any and all claims for death, illness, personal injury, property damage, and improper business practices arising from the negligence or misconduct of BREVARD ZOO or its employees, students or agents in connection with the performance of this Agreement.
- (b) Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages, however caused and whether grounded in tort (including negligence), or any other theory of liability, even if such other Party has been advised of the possibility of such damages.
- (c) Both Parties shall at all times comply, through insurance or self-insurance, with all statutory workers' compensation and employers' liability requirements covering any and all employees with respect to activities performed under this Agreement.
- (d) BREVARD COUNTY agrees to assume any and all liabilities and claims that may be incurred by BREVARD COUNTY in commercial ventures conducted by BREVARD COUNTY in connection with this Agreement; provided such liabilities and claims are not the result of the negligence or willful misconduct of BREVARD ZOO or its employees, students or agents. Additional hold harmless clauses, if applicable, shall be added to subsequent Task Orders.

11. WARRANTY

Other than to complete the Agreement in accordance with any statements of work, BREVARD ZOO makes no warranty, express, implied or otherwise, with respect to use, operation, effectiveness or fitness for any particular purpose of its services performed under this Agreement or their results.

12. INDEPENDENT CONTRACTOR

BREVARD COUNTY contracts for the services of BREVARD ZOO as an independent contractor and not as an employee. Nothing herein shall be construed to create a partnership, joint venture or agency relationship between the parties. Neither party shall have the authority to enter into any agreements of any kind on behalf of the other, or to bind or obligate the other to any third party.

13. PUBLICITY

Neither party shall make reference to the other party in any advertising or publicity matter without prior written approval of the other party.

14. CONTRACTOR REPRESENTATIVES

The following serve as the representatives of the areas indicated:

BREVARD ZOO:

TECHNICAL MATTERS:

Jody Palmer
Director of Conservation
8225 North Wickham Road
Melbourne, FL 32940
Ph: 321-254-9453 Ext.265
Email: JPalmer@brevardzoo.org

ADMINISTRATIVE MATTERS:

Frank Fieseler
Chief Operating/Financial Officer Brevard Zoo
8225 North Wickham Road
Melbourne, FL 32940
Ph: 321-254-9453 Ext.246
Email: FFieseler@brevardzoo.org

BREVARD COUNTY:

TECHNICAL MATTERS:

Jane Hart
Natural Resources Management
2725 Judge Fran Jamieson Way
Bldg A, Suite 219
Viera, Florida 32940
Ph: 321-633-2016
Jane.Hart@brevardcounty.us

ADMINISTRATIVE MATTERS:

Paul Bessler
Natural Resources Management
2725 Judge Fran Jamieson Way
Bldg A, Suite 219
Viera, Florida 32940
Ph: 321-633-2016
Paul.Bessler@brevardcounty.us

15. REGULATORY COMPLIANCE AND GOVERNING LAW

This Agreement, and any disputes arising under it, shall be governed by and construed in accordance with the laws of the State of Florida. Brevard County shall be the venue and forum for any legal actions arising from or incident to this Agreement. Where a dispute arises from a conflict between BREVARD ZOO's application of this Master agreement, BREVARD ZOO shall be responsible for addressing the resolution of the conflict to the satisfaction of BREVARD COUNTY.

16. SERVABILITY AND SURVIVABILITY

The illegality or unenforceability of the whole or any part of the provisions of this Agreement will not affect the continued operation of the remaining provisions. The provisions of Sections 7, 10, 11, 13 and 15 shall survive the termination of this Agreement for a period of five (5) years.

17. ENTIRE AGREEMENT

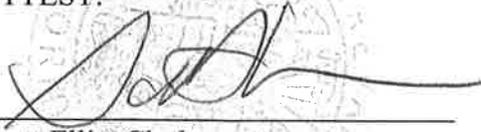
This Agreement represents the entire understanding of BREVARD COUNTY and BREVARD ZOO, and may only be modified in writing and duly executed by both parties.

THE UNDERSIGNED BY THEIR AUTHORIZED AGENTS HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST WRITTEN BELOW.

-Signature Page Follows-

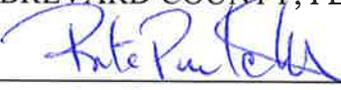
Signatures of Authorized Officials

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

RITA PRITCHETT VICE CHAIRWOMAN

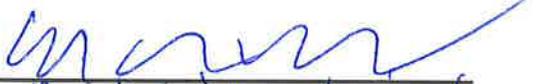
As approved by the Board on 10/24/17

Reviewed for legal form and content:



Christine Valliere, Assistant County Attorney

EAST COAST ZOOLOGICAL SOCIETY (DBA BREVARD ZOO)

By: 

Name: D. Keith Winsten
Title: Executive Director
Date: 12/11/12

EXHIBIT A
Statement of Work

Project: Brevard County Oyster Gardening Program – Phase 5: FY 2017-18

Background: Oyster Gardening is a citizen-based oyster propagation program where juvenile oysters are raised under lagoon-front homeowner’s docks and eventually used to populate constructed oyster reef sites in Brevard County. Oyster Gardening participants receive spat-on-shell oysters plus all supplies needed to care for their oysters until they are returned six to nine months later and placed at new reef sites in the Indian River Lagoon. Oyster Gardening workshops are held throughout the county to increase and accommodate public interest, and to provide training and education about oyster gardening, living shorelines, and issues facing the lagoon. The Oyster Gardening Program is executed in partnership with the Brevard Zoo.

Scope:

Live Oyster Propagation:

- Brevard Zoo will secure required permits for oyster gardening (FWC-Special Activity License) and submit associated required reporting directly to FWC.
- Brevard Zoo will conduct sufficient oyster gardening workshops to accommodate public interest and provide all oyster gardening materials/supplies for oyster gardeners and oyster buddies.
- Brevard Zoo will purchase and distribute about 1-million spat on shell to trained oyster gardeners during the fall of each year.
- Brevard Zoo will coordinate oyster gardener engagement in the care and propagation of oysters during the timeframe of this agreement. This will include about six months of oyster propagation and habitat maintenance per spat distribution to produce oysters grown to approximately 1” or larger oysters.
- Brevard Zoo will maintain contact with approximately 1000 oyster gardeners engaged to date and provide regular communication through e-newsletters and social media.

Monitoring:

- Oyster Gardens: Brevard Zoo will conduct site visits one day per week during gardening season of oyster garden locations where site access is allowed.

Reporting:

- Brevard Zoo will provide quarterly draft and final reports to Brevard County summarizing oyster propagation success and milestones.
- Brevard Zoo will provide copies of FWC permits, required reports to FWC, site visit data, workshop registrations and sign-in sheets, presentations, and handouts upon request by Brevard County.

Invoicing:

- Brevard Zoo will submit quarterly invoices for a lump sum reimbursement for costs associated with the tasks of this project for periods ending 12/31/17, 3/31/18, 6/30/18, and 9/30/18.

Timeline for completion: October 1, 2017 – September 30, 2018.

Contractual: \$ 150,000.

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