

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

Agenda Item #:

36-1

AGENDA ITEM SUMMARY

Meeting Date: July 22, 2008

☒ Consent

☐

Regular

☐ Workshop

☐

Public Hearing

Department:

Submitted By: Office of Financial Management and Budget

Submitted For: Fixed Assets Management Office

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve the Interlocal Agreement for the Co-Utilization of the Palm Beach County Surplus Property Thrift Store with the Village of Wellington.

Summary: The Palm Beach County Thrift Store is a municipal investment recovery cooperative currently involving 11 other area local governments, in addition to the county government. At present, these eleven partner agencies already have similar interlocal agreements whereby they utilize the facilities and business systems in operation at the Thrift Store for the disposal of their surplus tangible personal property assets. In return, the county receives a sales commission fee for selling items belonging to these agencies. The Village of Wellington has expressed a desire to join the list of municipalities in the co-utilization of the Thrift Store for disposal of its surplus assets. Approval of the Interlocal Agreement, already executed by the village, will permit the village to participate in the same manner as the other agencies.

Countywide (PK)

Background and Policy Issues: During the past fifteen years that the Palm Beach County Thrift Store has been in operation, several local governmental agencies have entered into interlocal agreements for the co-utilization of the Thrift Store for disposal of their surplus tangible personal property assets. At present, the municipalities of Belle Glade, Boca Raton, Boynton Beach, Delray Beach, Palm Beach, Palm Springs, Riviera Beach and West Palm Beach, along with the Sheriff's Office, Solid Waste Authority of Palm Beach County and Healthcare District of Palm Beach County all use the Thrift Store for the disposal of some or all of their surplus tangible personal property assets. This arrangement has worked to the benefit of both the partner agencies and the County. Now, the Village of Wellington wishes to join that list of agencies, and has already authorized the adoption of the interlocal agreement attached hereto. By approving that agreement, the Board of County Commissioners would be extending an arrangement which has been in affect with 11 other local governmental agencies to the Village of Wellington.

Attachments

1. Interlocal Agreement for Co-Utilization of PBC Thrift Store (9 pages)

Recommended by:

Elizabeth Blaes
Department Director

6/20/08

Date

Approved by:

County Administrator

6/24/08

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>(1,000)</u>	<u>(1,000)</u>	<u>(1,000)</u>	<u>(1,000)</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u><u>-0-</u></u>	<u><u>(1,000)</u></u>	<u><u>(1,000)</u></u>	<u><u>(1,000)</u></u>	<u><u>(1,000)</u></u>

ADDITIONAL FTE

POSITIONS (Cumulative) -0- -0- -0- -0- -0-

Is Item Included In Current Budget? Yes No ☒

Budget Account No.: Fund 0001 Department 420 Unit 6160 Object 6999

Reporting Category _____

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

C. Departmental Fiscal Review: atwillhite 6.20.08

III. REVIEW COMMENTS

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

Carl Mallin
OFMB

Jim J. Jacoby 6/23/08
Contract Dev. and Control
James 6/23/08

B. Legal Sufficiency:

This Contract complies with our contract review requirements.

Paul F. S. 6/24/08
Assistant County Attorney

C. Other Department Review:

Department Director

**Interlocal Agreement for
Co-Utilization of
the Palm Beach County Surplus Property Thrift Store**

This Interlocal Agreement (hereinafter "the Agreement") is made and entered into this _____ day of _____, 20__, by and between Palm Beach County (hereinafter "the County"), a political subdivision of the State of Florida, by and through its Board of County Commissioners, and the Village of Wellington (hereinafter "the Partner"). Witnesseth:

WHEREAS, Chapter 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage, and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of the parties; and

WHEREAS, the County has heretofore entered into agreements of a similar nature with local governmental agencies for the co-utilization of the County surplus property Thrift Store for disposal of surplus tangible property assets of such agencies; and

WHEREAS, the County and the Partner wish to enter into the Agreement to establish the terms and conditions governing the co-utilization of the County's surplus property Thrift Store operation.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants, promises, and representations herein, the parties hereto agree as follows:

SECTION 1: BACKGROUND AND PURPOSE

1. **Purpose.** The purpose of this Agreement is to establish the terms and conditions governing Partner's co-utilization of the County's surplus property Thrift Store (hereinafter "the Thrift Store") for the disposal of Partner's suitable surplus tangible property assets.

2. County and Partner agree to share the use of the Thrift Store in accordance with the provisions of this Agreement.

3. County and Partner agree that co-utilization of an existing operational system is more cost-effective than creating duplicate systems under separate and independent operation.

4. **County Owns, Manages and Operates the Enterprise.** The parties agree that the County will at all times own, manage and operate the Thrift Store, its proprietary technologies, operating systems and business relationships and resources, for the benefit of the County and the Partner and of all other participating agencies with co-utilization agreements in effect, now and in the future, subject to the rights of the Partner specifically granted herein.

5. In consideration of this co-utilization, the Partner will pay to the County a sales commission fee and other direct and indirect costs as described in Section 4 of the Agreement.

SECTION 2: RIGHTS AND DUTIES OF THE COUNTY UNDER THE AGREEMENT

1. **Duty of Good Faith and Fair Dealing.** The County will manage and operate a program for the disposal of surplus tangible property assets in an efficient and business-like manner.

2. **No Agency Created.** The County will act as a service provider for, and not as an agent of, the Partner in the disposal of suitable surplus tangible property assets delivered to the Thrift Store, provided the Partner has met all of its obligations hereunder.

3. Representatives of the Thrift Store will meet with authorized representatives of the Partner as needed or requested to determine the suitability of surplus tangible property assets of the Partner proposed for disposal through the Thrift Store, and any other terms and conditions for disposing of such surplus tangible property assets.

4. **What Can Be Accepted For Disposal.** The County will accept all suitable surplus tangible property assets of Partner for sale through the Thrift Store or for reassignment to the active use of the County or any of its other co-utilization partners, as provided herein, subject to the conditions established herein.

5. **Right to Establish Rules for the Operation of the Enterprise.** The County is authorized to establish reasonable rules concerning suitability for disposal, preparation, handling, storage, display, promotion, sale and salvage disposal of all surplus tangible property assets under the control of the Thrift Store, which rules shall apply without discrimination to the assets of the County, the Partner, or of any other participating agencies with which the County has co-utilization agreements in effect. At the time of execution of the Agreement, the Partner expressly acknowledges that the County has already designated the following items or categories of items to be unsuitable for disposal hereunder: (1) inoperative motor vehicles or motorized over-the-road or off-road equipment; (2) inoperative equipment containing hazardous chemicals, including chlorofluorocarbons (CFCs) or polychlorinated biphenyls (PCBs) or terphenyls; (3) any equipment containing bio-hazardous waste materials; (4) machinery leaking fluids of any sort; (5) automotive tires and batteries; (6) uninterruptible power supply units; (7) inoperative or cannibalized computers; (8) computers with fixed disk drives that have not been "scrubbed" to remove user files; (9) inoperative computer terminals and similar cathode ray tubes; (10) equipment used to irradiate by means of x-ray or other penetrating rays; (11) equipment containing mercury switches, but not including operative motor vehicles or motorized over-the-road or off-road equipment; (12) counterfeit branded items, such as watches or jewelry, commonly referred to as "knock-offs"; (13) firearms; (14) pornographic material; and (15) pharmaceutical substances.

6. **Right to Reassign Surplus Assets.** Subject to the limitations of Section 4 hereof, the County may reassign any of the Partner's surplus tangible property assets delivered to the Thrift

Store for disposal hereunder to the active use of the County or of any of its other participating co-utilization agencies.

7. Record Keeping and Payment Remittance. Not later than the 10th calendar day of each month, the County shall provide the Partner a detailed accounting of all the Partner's assets disposed of hereunder during the preceding month, together with payment for all such assets sold, less the County's sales commission fees and authorized expenses, pursuant to Section 4 hereof. Any interest earned on funds held by the County belongs to the County, and the Partner hereby expressly agrees that it has no right of ownership or claim to such interest.

8. Removal and Disposition of Partner's Unsold Assets. The County will notify the Partner when the Partner's surplus tangible property assets have not sold or been reassigned to the active use of the County or any of its other co-utilization partners, as provided herein, within a reasonable time and require pick-up by the Partner for the purpose of alternate means of disposal by the Partner. At the County's option, any such assets not retrieved by the Partner within one week of notification may be disposed of as salvage, and any proceeds thereof shall become the property of the County, and any costs thereof shall be charged to the Partner and withheld from any proceeds due the Partner.

SECTION 3: RIGHTS AND DUTIES OF THE PARTNER UNDER THE AGREEMENT

1. In its sole discretion, the Partner will determine which items of its surplus tangible property assets it wishes to dispose of through the Thrift Store, subject only to the limitations of suitability which the County is authorized to establish pursuant to Section 2, Part 5 hereof.

2. **Setting Minimum Sales Price.** In its sole discretion, the Partner will determine the minimum sales price to set for each asset or asset type it delivers to the Thrift Store; provided, however, if the Partner fails to establish such minimum sales price in writing on the transfer of custody form, or other form provided for such purpose by the County, management of the Thrift Store shall determine the sales price(s), consistent with its established pricing practices.

3. **Advance Notice of Surplus Asset Delivery.** The Partner will notify the County in advance of its intent to deliver surplus tangible property assets for disposal hereunder, and will meet with authorized representatives of the County as needed or requested to arrange for transfer of custody of such assets, and to determine other terms and conditions for the disposal of the assets, including minimum sales price, if any.

4. **Transportation of Surplus Assets To/From Thrift Store.** The Partner is responsible for the transportation and delivery of all surplus tangible property assets to the County, which delivery shall be made only on dates and at times and places established by the County for that purpose. The Partner agrees that it will supply all necessary labor for loading and unloading of surplus tangible property assets delivered to or retrieved from the Thrift Store.

5. If requested by the County, the Partner will assist in the set-up and display of the surplus tangible property assets at the time of their delivery by the Partner to the Thrift Store.

6. **Delivery of Unsuitable Assets Prohibited.** The Partner will not attempt to deliver any surplus tangible property assets which the County has designated as unsuitable now and in the future, pursuant to its authority under Section 2, Part 5 hereof.

7. **Transfer of Vehicle Ownership Documents; Authorized Signatory.** Whenever vehicles or other motorized equipment of the Partner requiring registration by a governmental authority are sold at the Thrift Store, the Partner will send an authorized signatory to the sale event to execute the appropriate title transfer and registration documents on behalf of the Partner for delivery to the buyer; provided, however, at the Partner's option, the Partner can designate management of the Thrift Store to act on the Partner's behalf to execute the appropriate transfer of ownership and vehicle registration documents in lieu of sending an authorized signatory.

8. **Asset Inspection and Viewing; Due Diligence.** Bidders are required to conduct any research or due diligence of an asset proposed for disposal hereunder that they wish to conduct prior to making a bid. Bidders wishing to inspect assets belonging to the Partner which are not delivered to the Thrift Store for disposal hereunder, but rather are retained in the custody of the Partner, may make arrangements to do so at the Partner's discretion; provided, however, the Partner is required to establish at least one public inspection and viewing period during normal business hours, and to include the date and time for such inspection and viewing in its asset listing information supplied to the County.

9. **Removal of Unsuitable or Unsalable Items.** When notified by the County, the Partner will promptly retrieve and remove for alternate means of disposal by the Partner, all surplus tangible property assets which the County has determined to be unsuitable or unsalable.

10. **Reassignment of Surplus Property to Partner.** The Partner may acquire by reassignment any surplus tangible property assets of the County or of any of its other co-utilization partners which have been delivered to the Thrift Store, by payment of the marked prices for shelved (retail) items or suggested minimum bid prices for auction items.

11. **Source of Asset Information; Limitations on Liability.** The Partner is solely responsible for providing accurate, comprehensive information about each asset or category of assets it proposes for disposal hereunder, in the form and manner prescribed by the County. The County does not assume any responsibility for the content of information supplied by the Partner, and does not verify the validity or accuracy of that information. The County is not liable for any damages, losses, expenses or other injuries incurred by anyone as a result of relying on such information.

12. **Exclusivity; Outside Negotiations Not Permitted.** The Partner agrees that it will not withdraw, or separately negotiate to sell, agree to sell, promise to sell, or sell to a buyer, any surplus tangible property asset belonging to the Partner: (a) once such asset has been delivered to the County for disposal under this co-utilization Agreement as long as the County has not determined the asset to be unsuitable or unsalable; or (b) during the term of the listing of an asset offered for competitive bidding at an auction conducted by the Thrift Store; provided, however, the Partner may withdraw any such asset without prejudice or penalty after the first sale attempt

by the Thrift Store or at the end of the term of the auction listing, respectively. If the Partner sells or withdraws an asset in violation of this provision, the County shall be entitled to collect the full sales commission fee that it would have received for a successful sale, based upon the marked price or suggested minimum bid price of the asset, and the Partner agrees that the County may withhold such sales commission fee from any funds it is holding for the Partner then or in the future.

13. Linking to the Thrift Store Website; Non-Interference With Computer Network. The Partner agrees to incorporate a hyperlink from its Internet website, if any, to the Internet website of the Thrift Store (hereinafter "the Website") in the manner specified by the County, but that it will take no actions which are intended to have, or will have, or can reasonably be expected to have, the effect of hindering or interfering with the proper or efficient operation of the Website, its functionality, security and/or supporting network infrastructure.

SECTION 4: PAYMENT OF FEES AND COSTS

1. **In General.** In consideration of its services hereunder, the County is entitled to receive from the Partner a sales commission fee and reimbursement for various direct and indirect costs incurred by the County on behalf of the Partner. The Partner expressly agrees that any sales commission fees assessed by the County against defaulting bidders or buyers are penalties due the County, and do not relieve the Partner of responsibility for payment of any sales commission fees otherwise due the County pursuant to this Agreement.

2. **Sales Commission Fee.** This fee for services is assessed by the County at the following rates, for which the County provides sales staff, storage and display space, general publicity in print and electronic media, financial accounting of proceeds, collection and payment of state sales taxes, assistance with transfer of vehicle title and Florida vehicle registration, routine appraisals as deemed necessary by management of the Thrift Store, and other necessary or convenient activities, as further qualified by Paragraphs A.(2) and D.(2) below, but not including placement of legal notice advertising, special security and loss prevention measures, specialized appraisals, or casualty insurance coverage desired by the Partner or specifically required for the type of tangible personal property involved:

A. For the sale of motor vehicles and motorized over-the-road or off-road equipment:

- (1) If consigned to the County and delivered into the possession of the Thrift Store for auction storage, inspection and viewing, processing of ownership and/or registration documents and transfer of possession to the buyer or his/her representative, a flat fee of Two Hundred Fifty Dollars (\$250.00) for each such vehicle or equipment, or Four Percent (4.0%) of the sales price, excluding sales tax, whichever amount is greater.
- (2) If retained in the possession of the Partner for storage, inspection and viewing, processing of ownership and/or registration documents and transfer of possession to the buyer or his/her representative, a flat fee of Two Hundred Twenty-Five

Dollars (\$225.00) for each such vehicle or equipment, or Three and Six-Tenths Percent (3.6%) of the sales price, excluding sales tax, whichever amount is greater.

- B. For the sale of in-store shelved (retail) items priced as marked, not bid, except items pursuant to Paragraph C of this Part, a flat fee of Twenty-Five Percent (25%) of the sales proceeds, excluding sales tax, for all such items sold.
- C. For the sale of unclaimed police evidence, found/abandoned property, and forfeiture/seizure property, except items covered by Paragraphs A or D of this Part, a flat fee of Two Hundred Fifty Dollars (\$250.00) of proceeds, excluding sales tax, per sale date; provided, however, if sales proceeds for the Partner's items total less than Two Hundred Fifty Dollars (\$250.00) per sale date, the total sales proceeds, excluding sales tax.
- D. For the sale of collectible and limited circulation items, including fine art, china and jewelry; rare books, photographs, textiles, coins and stamps; exotic furs and haute couture apparel:
- (1) If consigned to the County and delivered into the possession of the Thrift Store for auction storage, inspection and viewing and transfer of possession to the buyer or his/her representative, a flat fee of Two Hundred Fifty Dollars (\$250.00) for each such item or grouped collection of items (such as coins or stamps), or Four Percent (4.0%) of the sales price, excluding sales tax, whichever amount is greater.
 - (2) If retained in the possession of the Partner for auction storage, inspection and viewing and transfer of possession to the buyer or his/her representative, a flat fee of Two Hundred Twenty-Five Dollars (\$225.00) for each such item or grouped collection of items (such as coins or stamps), or Three and Six-Tenths Percent (3.6%) of the sales price, excluding sales tax, whichever amount is greater.
 - (3) A one-time charge of One Hundred Seventy-Five Dollars (\$175.00) per item or grouped collection of items (such as coins or stamps) will be assessed to cover the cost of a specialized appraisal or provenance certificate. If the Partner can supply a certificate of authentication from a recent appraisal, this charge will be waived.
- E. For all other items, a fee to be negotiated between the parties.

3. **Reassignment of Partner's Surplus Tangible Property Assets.** In lieu of disposal by sale to the public, the County may reassign any of the Partner's surplus tangible property assets hereunder to the active use of the County or of any of its other partners with which it has co-utilization agreements in effect. The County will report each such reassignment as a sale in its monthly accounting to the Partner, as required by Section 2, Part 7 hereof, and will remit the sales price of such reassigned asset(s) to the Partner as part of the periodic payment of sales proceeds required by Section 2, Part 7 hereof, less its fees and costs pursuant to Section 4 hereof.

SECTION 5: INSURANCE AND INDEMNIFICATION PROVISIONS

1. Neither the County nor the Partner assumes any responsibility or liability for any surplus tangible property assets lost, stolen, misplaced, damaged or destroyed while under the control of the Thrift Store.
2. Without waiving the right to sovereign immunity as provided by s.768.28 F.S., the Partner acknowledges to be self-insured for General Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.
3. In the event the Partner maintains third-party Commercial General in lieu of exclusive reliance of self-insurance under s.768.28 F.S., the Partner shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.
4. When requested, the Partner agrees to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the County agrees to recognize as acceptable for the above-mentioned coverages.
5. Compliance with the foregoing requirements shall not relieve the Partner of its liability and obligations under this Agreement.

SECTION 6: TERMINATION

This Agreement shall continue in full force and effect until terminated by either party upon thirty (30) days written notice to the other; provided, however, if the County or the Partner fails to perform its responsibilities under this Agreement, either party may, upon notice to the other, immediately terminate this Agreement. If this Agreement is terminated, each party shall retain its respective rights to any surplus tangible property assets held by the Thrift Store, and the Partner agrees to remove all remaining surplus tangible property assets for alternate means of disposal by the Partner within one week of notification, or the County may dispose of all such assets pursuant to Section 2, Part 8 hereof.

SECTION 7: NOTICE

All notices required to be given hereunder shall be deemed sufficient when delivered by certified mail as follows:

To the County:

Director of Financial Management Division
Room 702.25
Palm Beach County Governmental Center
301 North Olive Avenue
West Palm Beach, FL 33401

IN WITNESS WHEREOF, the parties have executed this Agreement effective the date first above written.

ATTEST:

SHARON R. BOCK, CLERK &
COMPTROLLER

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
Addie Greene, Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS & CONDITIONS

BY: Paul F. J.
County Attorney

BY: Walter K. Munchheimer
Walter K. Munchheimer, Fin Mgt Dir

ATTEST:
CITY CLERK

VILLAGE OF WELLINGTON, FLORIDA

BY: Awilda Rodriguez
Awilda Rodriguez, Village Clerk

BY: Darell Bowen
Darell Bowen, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: Jeffrey S. Kurtz
Jeffrey S. Kurtz, Village Attorney