

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 7, 2009 ☐ Consent ☒ Regular
 ☐ Workshop ☐ Public Hearing

Department

Submitted For: FIRE RESCUE

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends a motion to approve:

- A) an Interlocal Agreement with the City of Lake Worth for the provision of fire protection and emergency medical services; and
- B) a Pension Agreement with the City of Lake Worth.

Summary: Under this Interlocal Agreement with the City of Lake Worth (City), the County will provide fire rescue services within the municipal boundaries of the City beginning October 1, 2009 for a term of 10 years, which will expire September 30, 2019. The City of Lake Worth Fire Rescue employees will be transferred to the Fire-Rescue complement and have been included in the current Palm Beach County Fire-Rescue budget proposal for FY 2010. The estimated net cost to the Fire Rescue MSTU is approximately \$2 million annually. The City will lease to the County two fire-stations for an annual fee of \$1.00. All City Fire-Rescue apparatus and related equipment, staff vehicle, reserve equipment, maintenance and support equipment, and appliances/furnishings, shall be transferred to, and become the property of the County on October 1, 2009.

The City and County have proposed a separate Pension agreement to be incorporated into the Interlocal Agreement, detailing the rights and obligations of each of the parties relating to the pension rights and benefits of the approximately fifty-seven (57) former City Fire Department employees being transferred to County employment. The transferred former City employees will be entitled to exercise any rights they may have to elect to continue to participate as members in the City Plans or become members of the Florida Retirement System. For those employees who remain in the City Plans, the County shall "pick-up" employee/member designated contributions by directly paying a percentage of salary to the City Plan in lieu of the employee/member contribution, in accordance with Section 414(h)(2) of the Internal Revenue Code.

Countywide (SB)

Background and Policy Issues: The City currently has its own fire department. The City has determined that abolishing their fire department and opting into the main Fire/Rescue MSTU is in the best interest of health, safety and welfare of the citizens of the City. Currently, the following municipalities are included in the Fire Rescue MSTU: Cloud Lake, Glen Ridge, Haverhill, Juno Beach, Lake Clarke Shores, Royal Palm Beach, Wellington, Belle Glade, South Bay, Pahokee, Loxahatchee Groves, and Lantana. The Board adopted an Ordinance on December 16, 2008 adding the City of Lake Worth (Ord 2008-062) to the MSTU for the tax year 2009 for services beginning October 1, 2009.

- Attachments:**
- 1. Interlocal Agreement
 - 2. Pension Agreement

Recommended By: _____
Deputy Chief Date

Approved By: *Herman Daico* 3-24-09
Fire-Rescue Administrator Date

(Signature)

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009 (Millions)	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	8.5M	_____	_____	_____
External Revenues	_____	<6.5M>	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	2.0M	_____	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____

Included in Proposed FY 2010 budget request

Budget Account No.: Fund 1300 Dept 441 Unit VARIOUS Object VARIOUS

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

The expenditures necessary to provide services to the City of Lake Worth exceed the estimated revenue that will be collected from the proposed MSTU millage by approximately \$2.7 million annually. This agreement provides for an annual supplemental payment from the City to the County, reducing the net cost to approximately \$2 million annually.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

Ann Dool 3-31-09
OFMB
CN 3/30/09

Dr. J. Jacob 4/1/09
Contract Dev. and Control

B. Legal Sufficiency:

Sharon Sumner 4/13/09
Assistant County Attorney

These Agreements comply with our review requirements. At the time of our review, the Agreements were not executed.

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

**INTERLOCAL AGREEMENT FOR
FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES
BY AND BETWEEN
THE CITY OF LAKE WORTH AND PALM BEACH COUNTY**

THIS INTERLOCAL AGREEMENT, is made and entered into this _____ day of April, 2009, with service by the County to commence on October 1, 2009, by and between the CITY OF LAKE WORTH, a Florida municipal corporation located in Palm Beach County, Florida, (hereinafter the "City") and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter the "County" or "Fire-Rescue"), by and through its Board of County Commissioners, for fire-rescue services.

W I T N E S S E T H

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments 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 that will harmonize geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, Chapter 26, Article II, Division 3, of the Palm Beach County Code, in accordance with the authority set forth in Section 125.01(1)(q) and (r), Florida Statutes, established the Fire/Rescue Municipal Service Taxing Unit (hereinafter the "Fire/Rescue MSTU") as a mechanism for the provision and funding of County fire protection and emergency medical services; and

WHEREAS, in accordance with Section 125.01(2), Florida Statutes, the Palm Beach County Board of County Commissioners is the governing body of the Fire/Rescue MSTU; and

WHEREAS, Section 125.0101, Florida Statutes, authorizes counties to contract with municipalities to provide fire protection and other essential services; and

WHEREAS, the City desires to receive fire protection and emergency medical services from the County, and the County desires to provide such services within the City; and

WHEREAS, representatives of the City and the County have discussed the terms of an Interlocal Agreement on numerous occasions; and

WHEREAS, in accordance with City Ordinance No. 2008-26 and County Ordinance 2008-062, the City has opted into, and has been accepted by the County into, the Fire/Rescue MSTU for the provision of County fire-rescue services within the City beginning October 1, 2009; and

WHEREAS, both the City and the County believe that the public interest is promoted by the City opting into the Fire/Rescue MSTU as a method to receive and fund fire-rescue and related services from the County, while entering into this Agreement to outline certain parameters of the services to be provided.

NOW, THEREFORE, the City and County, in consideration of the terms and conditions set forth herein and the benefits flowing from each to the other, do hereby agree as follows:

SECTION 1. INCORPORATION OF FACTS

The facts set forth above in the preamble to this Agreement are true and correct and are hereby incorporated into this Agreement.

SECTION 2. PURPOSE

The purpose of this Agreement is to outline certain parameters regarding the provision of fire protection and emergency medical services within the City by the County, by and through the Fire/Rescue MSTU. To facilitate the purposes of this Agreement, the City shall cooperate with and assist the County so as to ensure that the services provided by County are coordinated with other municipal services provided by the City, and that complaints and/or inquiries regarding the County's or the City's performance and the services delivered hereunder are appropriately addressed.

SECTION 3. REPRESENTATIVE AND CONTRACT MONITOR

The County's representative and contract monitor during the term of this Agreement shall be the Fire-Rescue Administrator whose telephone number is 561-616-7000. The City's contract monitor during the term of this Agreement shall be the City Manager whose telephone number is 561-586-1630.

SECTION 4. ADMINISTRATION

A. Contract for Services

This Agreement is an interlocal agreement relating to the provision of services as authorized by Chapter 163, Florida Statutes. In accordance with Section 6A of this Agreement,

the City Fire Department employees shall be transferred and merged into, and become permanent-status employees of, the County Fire/Rescue Department.

B. Oversight by the City

The City, through its City Manager, shall oversee and monitor the County's performance of fire-rescue services within the City. Notwithstanding the City's ultimate authority and responsibility for the oversight of services provided hereunder, the rendition of services, standards of performance, discipline of County officers and County employees, and all other matters incidental to County's control of its personnel and the performance of services, including but not limited to equipment, facilities, agreements for automatic/mutual aid, and implementation of its policies and procedures, shall reside with the County.

SECTION 5. SERVICES TO BE PROVIDED

The County, by and through the Fire/Rescue MSTU, shall provide within the City the personnel and equipment necessary to provide fire suppression, emergency medical services, special operations, hazardous materials response and mitigation, emergency communications, confined space rescue, dive rescue, fire code inspections and testimony related thereto, response to all subpoenas related to fire rescue activities, arson investigation, new construction inspection, community education programs, and all other emergency and non-emergency services generally provided by the Palm Beach County Fire-Rescue Department, hereinafter called "Fire-Rescue." Notwithstanding anything in this Agreement that is or may be construed to the contrary, the specific services and levels of services to be provided within the City shall be determined by the County in its role of establishing the services and levels of services to be provided within the Fire/Rescue MSTU generally. County Fire Rescue Department participation in the City's annual civic event (such as holiday parade) shall be made at no additional charge. However, County's participation shall be limited to on-duty personnel assigned to the Lake Worth fire stations and only when it does not impede operational effectiveness.

The County and the City hereby recognize that the County, through Fire-Rescue, provides fire-rescue services throughout Palm Beach County and those services, including services within the City, at the County's discretion, may be provided from facilities and with personnel and apparatus located within or without the municipal boundaries of the City.

SECTION 6. COUNTY RESPONSIBILITIES

A. Staffing

County agrees to hire those full-time City employees who, as of 7:29 a.m. on October 1, 2009, are both employed by the City's Fire Department and meet the County's minimum hiring standards, including being either a Florida State certified Firefighter II/Emergency Medical Technician or a Florida state certified Fire Safety Inspector; provided, however, that the number of employees hired by the County hereunder shall not exceed fifty seven (57), which equals the City's full complement of firefighter and fire safety inspector positions, both filled and vacant, as of the date of approval of this Agreement. The City shall remain the employer of said employees until 7:30 a.m. on October 1, 2009, at which time said employees shall be transferred and merged into, and become permanent-status employees of, the County Fire/Rescue Department. Nothing in this Agreement shall be construed to provide for said employees to be transferred back to the City upon the expiration or earlier termination of this Agreement.

The personnel assigned to staff the City Facilities (as hereinafter defined in Section 7B) shall be within the sole discretion of the County. The City understands that the County makes no representation or promise that the former City employees hired by the County hereunder will be assigned to the City Facilities, except that those employees permanently assigned on October 1, 2009 to these facilities shall remain so assigned for a minimum of twelve (12) months.

The City Facilities shall house equipment capable of responding to both fire and medical calls.

Notwithstanding anything herein that might be construed to the contrary, for those transferred employees who are in the Lake Worth Firefighters' Pension Trust Fund deferred retirement option plan (hereinafter the "Lake Worth DROP") as of October 1, 2009, and for those transferred employees who elect to remain in the Lake Worth Firefighters' Pension Trust Fund upon transfer to County employment on October 1, 2009, employment with the County shall be terminated upon the conclusion of their Lake Worth DROP period, or at the time of their retirement from the Lake Worth Firefighters' Pension Trust Fund if the Lake Worth DROP is not entered. The City shall notify the County when an employee has reached the end of the Lake Worth DROP period or has retired from the Lake Worth Firefighters' Pension Trust Fund without entering the Lake Worth DROP. The provisions of this paragraph shall survive the

expiration or earlier termination of this Fire Protection Agreement and the Pension Agreement referenced in Section 7G.

B. Fire Prevention Services

The County shall conduct fire inspections on applicable buildings and structures located within the incorporated boundaries of the City in accordance with the Florida Fire Prevention Code and Palm Beach County Local Amendments thereto (as may be hereinafter collectively referred to as the "Fire Code"), all as may be amended from time to time.

Community Education programs shall be made available to any resident or business located within the incorporated boundaries of the City. Fire-Rescue currently offers a wide variety of public education programs targeted to a variety of age groups and audience types. These programs shall be offered to City residents in the same manner as are offered to residents within the Fire/Rescue MSTU generally.

Fire-Rescue shall provide new construction plans review and new construction inspections.

Fire Rescue shall conduct fire/arson investigations within the City in cooperation and consultation with the City's Law Enforcement Agency to determine cause and origin and will respond to subpoenas regarding same and provide testimony if needed in code enforcement cases or in any other type of legal proceedings, including quasi-judicial or administrative hearings, relating to the services provided hereunder. Fire Rescue will coordinate with the City's Law Enforcement Agency on any subsequent investigations that require law enforcement assistance.

C. Dispatch Protocol

The County's response to calls within the City will be governed by the County's Dispatch Protocols, as may be amended from time to time at the County's sole discretion.

D. Insurance

Without waiving the right to Sovereign Immunity and pursuant to the provisions and limitations of Section 768.28, Florida Statutes, the County acknowledges that it is self-insured and that it shall self-insure its own General Liability, Wrongful Acts or Omissions and Automobile Liability under State Sovereign Immunity statutes with coverage limits of \$100,000

per person and \$200,000 per occurrence, or such monetary waiver limits as set forth by the legislature.

SECTION 7. CITY'S RESPONSIBILITIES

A. Emergency Calls

All calls for emergency services received by the City which require a fire-rescue/emergency medical response shall be immediately forwarded to the Palm Beach County Emergency Communications Center for operational dispatch.

B. Facilities

Each obligation of the City under this Section 7B shall be considered a material obligation of the City. From October 1, 2009, at 7:30 a.m. until the expiration or earlier termination of this Agreement, the City shall lease to the County the real properties, including all buildings, structures, parking lots and other improvements located thereon, located at 1020 Lucerne Avenue, Lake Worth, Florida (otherwise known as Lake Worth Fire Station #1) and at 1229 Detroit Street, Lake Worth, Florida (otherwise known as Lake Worth Fire Station #2), as depicted in **Exhibit "1"** attached hereto and incorporated herein (hereinafter collectively referred to as the "City Facilities"). The County shall have exclusive use and possession of the entire City Facilities and shall pay the City an annual gross rental of one dollar (\$1.00) for each of the fire stations. The City hereby warrants that it has good, right title to the City Facilities and authority to lease the City Facilities free and clear of any liens, encumbrances, and other matters.

The County has had the right to inspect the City Facilities to determine the condition of the City Facilities, and shall notify the City before April 1, 2009, of any required repairs identified by the County. The City shall maintain the City facilities in the same condition, ordinary wear and tear excepted, between the date of this Agreement and October 1, 2009. In addition, the County shall have the right to re-inspect the City Facilities at any time prior to occupancy to verify that the City facilities have been maintained, and to verify that no major functional defects have occurred after the date of this Agreement, and shall notify the City of any additional repairs required. The City shall, at its own expense, complete, all repairs, agreed to by the parties, prior to October 1, 2009, and prior to the County assuming any maintenance responsibilities.

The County shall be responsible for providing for all utility services, including electricity, gas, water, sewer and trash collection to the City Facilities. City shall provide maintenance to all grounds and parking lots. County shall be responsible for all other repairs and maintenance of the City Facilities, both interior and exterior, necessary to maintain the City Facilities in their existing condition as of the date the County takes possession, normal wear and tear and casualty excepted, including the generator(s), the roofs, air conditioning systems, heating systems, and electrical systems; provided however, that the City shall be responsible for any repairs and maintenance of City Facilities, including the above equipment/systems, if the repair amount exceeds Fifteen Thousand dollars (\$15,000).

The County shall be entitled, in its sole discretion and at its own expense, to make alterations, improvements, additions or repairs to the City Facilities in order to provide additional space, more efficient space, or to allow the County to meet future additional staffing needs or other growth related needs. At such time, if any, that the City no longer receives its fire-rescue services through the County, the City agrees to accept any such alterations, improvements or additions made to the City Facilities by the County. The City, at its own expense, may make improvements to the City Facilities upon approval by both parties' contract monitors.

The City hereby represents to the County that to the best of its knowledge there is not located in, on, upon, over, or under the City Facilities: (i) asbestos in any form; (ii) urea formaldehyde foam insulation; (iii) polychlorinated biphenyls; or (iv) any other chemical, material, or substance which is prohibited, limited, or regulated by federal, state, county, regional, or local authority. If said substance(s) exist, the City shall promptly remove said substance(s) at its sole cost and expense. To the extent permitted by law, the City shall indemnify, defend and hold harmless the County against any actions, claims or damages arising from the existence of any such substances at the City Facilities, including environmental contamination.

Radon Gas Disclosure: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been

found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

In the event that the City Facilities, or any portion thereof, including the sites on which they are located, shall be destroyed, sustain such damage, or for any other reason cannot reasonably be occupied or used as fire stations for the purposes contemplated hereunder, as determined by the County in its sole discretion, then the City shall, at its sole expense, either replace or restore the City Facilities, or provide another mutually agreeable site(s) and building(s) for each unusable station, for the County to use as a fire station(s). Any provision of this Agreement relating to the City Facilities shall apply to any alternative facility provided under this paragraph. Notwithstanding anything in this Agreement that is or may be construed to the contrary, nothing in this paragraph shall be deemed to waive, or estop the enforcement of, any rights accruing to the County, including the County's right to serve the City from a fire station outside of the City on a temporary basis or to terminate this Agreement.

Notwithstanding anything in this Agreement that is or may be construed to the contrary, should the City continue to receive fire-rescue services from the County, through the Fire/Rescue MSTU or otherwise, beyond the expiration or earlier termination of this Agreement, then the provisions of this Section 7B, and any other provisions in this Agreement relating to the City Facilities, shall survive the expiration or earlier termination of this Agreement and shall continue in effect for as long as the City remains in the Fire/Rescue MSTU or otherwise receives fire-rescue services from the County, but not to equal or exceed twenty years, unless and until the parties negotiate a new agreement relating to the County's use of the City Facilities.

The parties agree that County shall be permitted to fuel its vehicles at the City's fuel facility. The City shall bill County for fuel on a monthly basis at the City's purchase price.

C. Transfer of Equipment

Effective 7:30 a.m. on October 1, 2009, all fire-rescue apparatus and related equipment, staff vehicles, reserve equipment, maintenance and support equipment, and appliances/furnishings presently assigned to the City's Fire Rescue Department, as identified in **Exhibit "2"** which may be modified by mutual agreement between the Fire Rescue Administrator and the City Manager, and any additional fire-rescue apparatus, equipment, vehicles, and appliances/furnishings, that may be procured or received by the City prior to the

commencement of County services on October 1, 2009, shall be transferred to, and shall become the property of, the County as of 7:30 a.m. on October, 1, 2009. The City hereby represents and warrants that it has, or will have before October 1, 2009, lawful authority to convey and transfer all such assets to the County. The City shall convey all such assets to the County via a Bill of Sale in a form acceptable to the County. The Fire-Rescue Administrator is hereby authorized to accept said assets on the County's behalf. Any secured interests in the assets to be conveyed shall be paid off, released or terminated by the City, at its own expense, prior to said conveyance.

The City hereby represents and stipulates that all assets to be conveyed hereunder, both fleet and operating, will be in good working condition upon delivery to the County at 7:30 a.m. on October 1, 2009. Any assets not in good working condition, as determined by County, as of October 1, 2009, shall promptly be made so at the City's sole expense.

At such time, if any, that the County no longer provides Fire-Rescue services within the City, either through this Agreement, another Agreement, the Fire/Rescue MSTU or otherwise, the County shall pay to the City Five Hundred Thousand Dollars (\$500,000) to replace the above mentioned assets within ninety (90) days of the termination. This payment may be satisfied by an offset against any amount owed by the City to the County.

D. Insurance

Without waiving the right to Sovereign Immunity and pursuant to the provisions and limitations of Section 768.28, Florida Statutes, the City acknowledges that it is insured and/or self-insured and that it shall insure and/or self-insure for the duration of this Agreement its own General Liability, Wrongful Acts or Omissions and Automobile Liability under State Sovereign Immunity statutes with coverage limits of \$100,000 per person and \$200,000 per occurrence, or such monetary waiver limits as set forth by the legislature. The City acknowledges that it is, and shall remain, insured and/or self-insured for damage to the City Facilities and any alternative facility(ies) agreed upon in accordance with Section 7B above, resulting from "all-risk" perils including but not limited to the perils of fire, windstorm, and flood.

E. Records

The City shall continue to maintain all records created or maintained by the City, prior to or after the commencement of services hereunder, regarding Fire and Rescue services. Upon

approval of this Agreement, the City shall provide the County with access to, and copies of, all such records, including personnel records and related documents, upon request by the County and at no cost to the County. Both parties shall comply with Florida's public records laws.

F. Salary and Benefits

For those City employees who are transferred to County employment in accordance with Section 6A of this Agreement, the City shall be responsible for the cost of all salaries and benefits for the entirety of any shift which commences at any time prior to 7:30 a.m. on October 1, 2009, and the payment thereof to the affected employees. The City agrees to provide workers' compensation coverage and assume responsibility for any ongoing workers' compensation claims accruing before 7:30 a.m. on October 1, 2009, and/or arising from any and all injuries sustained before 7:30 a.m. on October 1, 2009. The County shall not provide workers' compensation benefits or otherwise assume any responsibility for any open or ongoing workers' compensation claims that arose or accrued during a County employee's former employment by the City.

For those City employees transferred to County employment hereunder, unused vacation balances accrued prior to 7:30 a.m. on October 1, 2009, shall be transferred and recorded by the County for each said employee, up to a maximum of 500 hours for shift employees and 416.67 for 40-hour work-week employees. No other balances whatsoever, including but not limited to accrued unused sick leave hours and comp time balances, will be recorded or paid by the County. Except for the vacation balances specifically transferred to the County hereunder, the City shall be responsible to its former employees for all other compensation and balances accrued prior to 7:30 a.m. on October 1, 2009, including but not limited to sick leave and comp time, subject to and in accordance with applicable City policies. The vacation balances to be transferred to the County hereunder shall be determined in accordance with applicable City policies as they existed on February 20, 2009. Notwithstanding anything herein to the contrary, should the City convert any other type of employee leave, compensation, time, or other balances whatsoever to vacation leave, or otherwise provide for additional accruals to an employee's vacation balance, then the portion of the employee's vacation balance attributable to said conversion or additional accrual shall not be transferred to and credited by the County, unless

such conversion or additional accrual was provided for by applicable City policies as they existed on February 20, 2009.

G. Pension

The parties have entered into a separate agreement detailing their rights and obligations relating to the pension rights and benefits of the former City Fire Department employees transferred to County employment pursuant to Section 6A of this Agreement. Said pension agreement is attached hereto as **Exhibit "3"** and is specifically incorporated herein as a part of this Agreement. To the extent permitted by law, the City shall indemnify, defend and hold harmless the County against any and all actions, claims or damages relating to any pension rights and/or benefits arising from the City's former employment of said employees.

SECTION 8. FIRE/RESCUE MSTU:

The parties hereby acknowledge that each has adopted an ordinance to include the City within the County's Fire/Rescue MSTU and therefore any County ordinances applicable within said MSTU, including the Fire Code, shall be applicable within the City and enforceable therein by the County. Although the parties' MSTU ordinances provide that the City is included within the MSTU as of December 31, 2008, the parties understand and agree that the County's provision of fire-rescue services within the City shall not commence until October 1, 2009. Both parties acknowledge that the current level of service in the City of Lake Worth is two (2) fire stations with two (2) engines (staffed with three (3) persons) and two (2) rescues (staffed with three (3) persons), and one (1) command officer. However, both parties acknowledge and agree that the specific fire-rescue services and levels of services to be provided by the County within the City shall be determined by the County in its role of establishing the services and levels of services to be provided within the Fire/Rescue MSTU generally. Accordingly, notwithstanding anything in this Agreement that is or may be construed to the contrary, the County maintains the sole discretion, in accordance with state law, to unilaterally establish, modify, increase, decrease, add and/or eliminate the types, quantity, quality and levels of fire-rescue, emergency medical and related services, including staffing and equipment, provided by and within the Fire/Rescue MSTU, including within the City. Such action may be accomplished by the County without the need for an amendment to this Agreement. Notwithstanding anything

in this Agreement that is or may be construed to the contrary, although Fire-Rescue intends to strive to maintain its current Fire-Rescue level of service, any provision or discussion in this Agreement regarding specific services or levels of services is for informational purposes only and shall not be deemed to be the basis of a contractual obligation upon the County.

SECTION 9. FUNDING FOR SERVICES:

A. The provision of Fire-Rescue services by the County within the City shall be funded through the Fire/Rescue MSTU pursuant to the ordinances adopted by the County and the City providing for the inclusion of the City into the Fire/Rescue MSTU. The City acknowledges and agrees that the level of funding available to fund Fire-Rescue services within the Fire/Rescue MSTU, including within the City, is subject to the non-delegable discretion and determination of the Board of County Commissioners through its budgetary process. The parties agree to promptly discuss, consider, and process an amendment(s) to this Agreement, other than a modification of the supplemental payment set forth in Section 9B, if the County determines that such amendment is warranted due to budgetary limitations or constraints. Should the parties fail to promptly process and approve such an amendment, then either party shall have the right to terminate this Agreement pursuant to Section 12C.

B. To offset the costs incurred by the County in employing the former City employees as set forth in Section 6A, during the term of this Agreement the City shall pay to the County, on an annual basis, supplemental funding in the amount of Seven Hundred Thousand Dollars (\$700,000) for the first two years, Nine Hundred Thousand Dollars (\$900,000) for the third and fourth years, and One Million Three Hundred Thousand Dollars (\$1,300,000) per year for the remaining term of this Agreement. (The City's supplemental funding in years one (1) through four (4) has been reduced in consideration for the Four Hundred Thousand Dollars (\$400,000) annual reduction in employee pay for those same years, which has been represented by the Union.) This supplemental funding shall be paid in four (4) equal payments on December 1, February 1, April 1 and July 1 of each year of this Agreement. If any such payment is not timely paid, or if this Section 9B is determined to be unenforceable for any reason, then the County shall have the right to terminate this Agreement pursuant to Section 12D.

Notwithstanding anything in this Agreement that is or may be construed to the contrary, should the City continue to receive fire-rescue services from the County, through the Fire/Rescue MSTU or otherwise, beyond the expiration or earlier termination of this Agreement, then the provisions of this Section 9B shall survive the expiration or earlier termination of this Agreement and shall continue in effect for as long as the City remains in the Fire/Rescue MSTU or otherwise receives fire-rescue services from the County, unless and until the parties negotiate a new agreement relating to the City's supplemental funding obligation.

C. Other Revenue

1. The parties acknowledge and agree the County may invoice, collect, and retain all revenues from those companies or persons directly receiving hazardous materials mitigation services or benefiting therefrom, in accordance with the Palm Beach County Regional Hazardous Materials Response Ordinance of 1998, as it may be modified from time to time.

2. The parties acknowledge and agree the County may invoice, collect, and retain fees for non-emergency services provided within the City's boundaries, including, but not limited to fire inspection fees, plans review fees, and false alarm fees in accordance with the Fire Code.

3. The parties acknowledge and agree the County may invoice, collect, and retain fees from those persons receiving ALS/BLS transport services pursuant to the transport fee schedule set forth in Chapter 13, Article II, Division 3, of the Palm Beach County Code, as it may be amended from time to time.

4. At the Cities request, the County will conduct the fire safety portion of the Certificate of Use and Local Business Receipt inspections required by the City. The County will conduct such inspections in accordance with the current Florida Fire Prevention Code, including the Palm Beach County Local Amendments and Fire Rescue procedure/practices for occupational license inspections. The County shall bill the Business owner in accordance with fees designated in Section 1.14.7 of the Palm Beach County Local Amendments to the Florida Fire Prevention Code, as it may be amended from time to time.

5. In addition, the City agrees to take all action necessary to ensure that the County is lawfully empowered to invoice and collect the fees described above.

SECTION 10. EMERGENCY MEDICAL SERVICES

Emergency medical services provided by the County shall be governed by Chapter 13, Article II, Division I of the Palm Beach County Code, and the rules and regulations promulgated thereunder, all as may be amended from time to time. The City shall take any and all action necessary to facilitate the delivery of EMS services by the County hereunder, including but not limited to the transfer or assignment of its Certificate of Public Convenience and Necessity ("COPCN"), if any, to County for the provision of ALS and/or BLS services. Notwithstanding anything in this Agreement that is or may be construed to the contrary, should Palm Beach County Fire-Rescue not be granted the necessary COPCNs to provide the contemplated services within the City boundaries during the term of this Agreement, then this Agreement and, all further obligations under this Agreement, shall be terminated without penalty, damages or recourse to either party arising from such termination.

SECTION 11. MONTHLY REPORT

A log of all calls for service within the City shall be maintained and summarized by category of call reflecting average response time for each category and in total; and presented monthly to the City Manager. The log shall contain, at a minimum, the following:

- A. Time call received by Fire-Rescue
- B. Time of dispatch
- C. Time en route
- D. Travel time
- E. Time of arrival

The Battalion Chief shall be the County's contact person for all operational issues within the City and the City's Manager shall be the City's contact person for all operational issues with the County. Nothing contained herein shall prevent the City Manager from directly contacting the Fire Rescue Administrator for any matter under this Agreement.

The City acknowledges that the County is bound by the provisions of the Health Insurance Portability and Accountability Act (HIPAA) and any regulations promulgated thereunder, including but not limited to the privacy and security regulations, all as may be amended from time to time. Should the County determine that any of the provisions set forth in

this Section, or elsewhere in this Agreement, are inconsistent with the requirements of HIPAA and/or the regulations promulgated thereunder, then the County shall immediately be completely and forever discharged and released from said contractual provisions and obligations. The parties further agree to amend this Agreement if the County determines that such an amendment is necessary in order to comply with its obligations under HIPAA and the regulations promulgated thereunder.

SECTION 12. COMMENCEMENT; RENEWAL; and TERMINATION

The services to be provided by County under this Agreement shall commence at 7:30 a.m. on October 1, 2009, and expire at 7:30 a.m. on October 1, 2019, unless terminated earlier in accordance with this Agreement; provided, however, that this Agreement shall be deemed to commence upon its approval by both parties for the purpose of implementing and enforcing any obligations that by their language or nature accrue prior to the commencement of services by the County on October 1, 2009. Upon the expiration of this Agreement, this Agreement may be renewed and renegotiated by mutual agreement of the parties, provided that the City has enacted an ordinance to continue its participation in the Fire/Rescue MSTU with the approval of the County and in accordance with applicable law.

This Agreement shall not be terminated, by either party, at anytime during its term or any renewal thereof, except that this Agreement may be terminated in its entirety as follows:

- A. By written agreement between the parties; or
- B. By either party, upon written notice to the other party, if the non-terminating party has defaulted on any of its material obligations and failed to cure said default in accordance with the cure period, if any, provided for by Section 15; or
- C. By either party in accordance with Section 9A, upon written notice to the other party. In such case, neither party shall be entitled to any recourse, penalty, or damages of any type against the other party; or
- D. By the County in accordance with Section 9B upon thirty (30) days written notice to the City, and without any recourse, penalty or damages of any type against the County, except for the \$500,000 payment provided for in the last paragraph of Section 7C; or
- E. By either party properly enacting an ordinance, adopted and effective prior to April 30,

2009, that repeals, rescinds, terminates, or voids that party's prior consent to the City's inclusion in the Fire/Rescue MSTU commencing with the tax levy for fiscal year 2009-2010. In this event, this Agreement, and all obligations hereunder, shall automatically and immediately terminate, without recourse, penalty, or damages of any type against either party. The party seeking to remove the City from the Fire/Rescue MSTU shall have the obligation of ensuring that the Property Appraiser's Office, Division of Appraisal Administration, is in receipt and actual physical possession of a certified copy of that party's ordinance prior to April 30, 2009, with a copy of said ordinance delivered to, and received by, the other party on the same day. Said other party shall promptly adopt its own ordinance acknowledging the removal of the City from the Fire/Rescue MSTU.

In the event that either party timely enacts said ordinance prior to April 30, 2009, thereby immediately terminating this Agreement, but for any reason the City is not timely removed from the Fire/Rescue MSTU by the Property Appraiser for the tax levy for fiscal year 2009-2010, it is the intent of the parties that the County would not provide fire-rescue services, by and through the Fire/Rescue MSTU, this Agreement or otherwise, within the City during fiscal year 2009-2010, commencing October 1, 2009. In this event, the City, and not the County, shall have full and sole responsibility for the provision of fire-rescue services to and within the City during fiscal year 2009-2010; and the County shall reimburse the City for the taxes collected by the Fire/Rescue MSTU for fiscal year 2009-2010 based on the following calculation: $(95\% \times \text{Fire/Rescue MSTU Millage Rate for Fiscal Year 2009-2010} \times \text{Final Taxable Property Values within the City})$. This amount would be paid to the City by the County according to the following schedule: 80% by January 1, 2010; 10% by April 1, 2010; and 10% by July 1, 2010. All amounts paid by the County to the City under this paragraph shall be utilized by the City to provide fire-rescue services within its boundaries during fiscal year 2009-2010. The provisions of this Section 12E shall survive the expiration or earlier termination of this Agreement.

- F. By the County in accordance with Section 24, upon written notice to the City, and without any recourse, penalty or damages of any type against the County, except for the

\$500,000 payment provided for in the last paragraph of Section 7C. The County's notice of termination to the City may provide for immediate termination of this Agreement or termination upon a set date, at the sole discretion of the County.

- G. By the City, upon written notice to the County prior to August 1st of any given year, of the City's intent to withdraw from the Fire/Rescue MSTU. In this event, this Agreement shall automatically terminate effective 7:30 a.m. on the October 1st of the following calendar year, and the City shall pay to the County Five Hundred Thousand Dollars (\$500,000) within 90 days after said October 1st termination; provided however that said payment shall not be due if the City and the County enter into a new contract for fire-rescue services, at full-cost, commencing said October 1st. This payment from the City is in consideration for employee leave balances that were transferred to the County hereunder and other start-up costs incurred by the County.

Should this Agreement be terminated by either party, as permitted herein, prior to the end of any fiscal year, then, as of said termination date, the County shall cease the provision of fire-rescue services within the City, by and through the Fire/Rescue MSTU, this Agreement or otherwise, and the City shall have full and sole responsibility for the provision of fire-rescue services within the City, including during the remainder of said fiscal year. The County shall reimburse the City, on a pro-rated basis, for the corresponding MSTU revenues and supplemental payments for the remainder of the fiscal year. This payment may be satisfied by an offset against any amount owed by the City to the County. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

SECTION 13. RELATIONSHIP OF EMPLOYEES

Except for the transfer of employees from the City to the County on October 1, 2009, as specifically provided for by Section 6A, this Agreement does not and shall not be construed to make any officer or employee of County an officer or employee of the City for any purpose whatsoever, nor any officer or employee of the City an officer or employee of County for any purposes whatsoever. Neither party is authorized to make or enter into any contract, agreement,

or warranty for or on behalf of the other, unless the parties to this Agreement have entered into a written agreement expressly authorizing such.

SECTION 14. LIABILITY

The parties to this Agreement and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other party or for any third party. Each party shall be responsible for its own negligence. Furthermore, nothing contained herein shall be construed as a waiver of either party's sovereign immunity or the assumption of liability in excess of that allowed by law.

SECTION 15. DEFAULT AND OPPORTUNITY TO CURE

If the County shall default in any of its material obligations under this Agreement, the City shall provide written notice of default to the County and afford the County a period of ninety (90) days to cure such default; provided, however, that if the default in question cannot be cured within such ninety (90) day period, then the County shall be afforded such additional time as shall be reasonably required to cure such default, as agreed upon by both parties. If the County shall be in default hereunder beyond the expiration of the applicable period stated above, the City shall have the right to cure such default, in which event the County shall reimburse the City for all sums paid to effect such cure within thirty (30) days of receipt of an invoice for same from the City.

If the City shall default in any of its material obligations under this Agreement, the County shall provide written notice of default to the City and afford the City a period of ninety (90) days to cure such default; provided, however, that if the default in question cannot be cured within such ninety (90) day period, then the City shall be afforded such additional time as shall be reasonably required to cure such default, as agreed upon by both parties. If the City shall be in default hereunder beyond the expiration of the applicable cure period stated above, then the County shall have the right, but not the obligation, to cure such default, in which event the City shall reimburse County for all sums paid to effect such cure within thirty (30) days of receipt of an invoice for same from the County.

Notwithstanding anything in this Agreement that is or may be construed to the contrary, if the City defaults on any of its obligations under Section 7B, or if any City default leaves the County without two fire station facilities as provided for in Section 7B for any period of time, then any of these events shall be considered an immediate default by the City of a material obligation of this Agreement without a requirement for any notice or cure period to be afforded by County to the City. In this case, the County may, in its sole discretion and option: (a) terminate this Agreement immediately, or at a later date established by the County, pursuant to Section 12B without providing the City with an opportunity to cure the default and notwithstanding any subsequent cure that may be attempted or effectuated by the City; or (b) cure such default by procuring its own facility(ies) within the City to use as a fire station(s) or by serving the City from a fire station(s) outside the City. Should the County exercise its right to cure said default, then the City shall reimburse the County for all sums paid to effect such cure within thirty (30) days of receipt of an invoice(s) for same from the County. The County's exercise of its right to cure said default shall not be deemed to waive, or estop enforcement of, the County's right to terminate this Agreement as provided for in this paragraph, despite the County's continuing cure for a period of time up until the effective date of said termination.

SECTION 16. ASSIGNMENT OF RIGHTS

Neither party shall assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement to any other entity without the prior written consent of the other.

SECTION 17. RECORDS RETENTION

The County and City shall maintain records associated with this Agreement, including, but not limited to, all accounts, financial and technical records, research or reports, in accordance with Florida law.

SECTION 18. AMENDMENTS

The terms of this Agreement may not be amended, supplemented, waived, or changed without the written approval of the parties.

SECTION 19. FILING

A copy of this Interlocal Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

SECTION 20. INDEMNIFICATION

Each party shall be liable for its own actions and negligence and, to the extent permitted by law, County shall indemnify, defend and hold harmless the City against any actions, claims or damages arising out of County's negligence in connection with this Agreement, and the City shall indemnify, defend and hold harmless County against any actions, claims, or damages arising out of the City's negligence in connection with this Agreement, including negligence relating to a County employee's former employment by the City. 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.

SECTION 21. FORCE MAJEURE

Except as otherwise provided in this Agreement, County shall not be deemed in default or in breach of this Agreement to the extent it is unable to perform due to an event of Force Majeure. For the purpose of this Agreement, Force Majeure shall mean and include any act of God, lockout, strike or other labor dispute, riot or civil commotion, act of a public enemy, enactment, rule, order, or act of government or governmental instrumentality (whether domestic or international and whether federal, state or local, or the international equivalent thereof), or any other cause of any nature whatsoever beyond the control of the County which was not avoidable in the exercise of reasonable care and foresight.

SECTION 22. GOVERNMENTAL POWERS

The parties understand, acknowledge and agree that nothing contained in this agreement shall be construed in any way to transfer, divest, contract away, delegate, or otherwise limit the parties' respective legislative, sovereign, and police powers; and therefore this Agreement shall

not implicate Article VIII, Section 4 of the Florida Constitution. The ultimate authority to supervise fire-rescue services to the City shall remain with the City. Each party shall retain all legislative authority with regard to their respective governing body. All of the privileges and immunities from liability; exemptions from laws, ordinances, and rules; pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of any such Interlocal agreement. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of any State, County, City or City officials.

SECTION 23. ANNUAL APPROPRIATIONS

Each party's performance and obligation to pay under this Agreement is contingent upon an annual budgetary appropriation by its respective governing body for each fiscal year.

SECTION 24. LAKE WORTH COMMUNITY REDEVELOPMENT AGENCY

Pursuant to the authority granted in Section 163.387(3)(b), Florida Statutes, the Fire/Rescue MSTU is hereby exempted from the Lake Worth Community Redevelopment Agency and from any and all other Community Redevelopment Agencies created by the City, whether now in existence or subsequently created hereafter, and from the payment of tax increment funds to such Agencies. This exemption shall continue for as long as the City of Lake Worth remains in the Fire/Rescue MSTU. Notwithstanding anything herein that may be construed to the contrary, should such exemption not be implemented, maintained, and/or enforceable, for any reason or no reason whatsoever regardless of fault or causation, then this shall be deemed to be a default of a material obligation by the City, without any requirement for a cure period to be afforded to the City under Section 15. In addition, and notwithstanding anything herein that may be construed to the contrary, should such exemption not be implemented, maintained, and/or enforceable, for any reason or no reason whatsoever regardless of fault or causation, then the County shall have the right to terminate this Agreement pursuant

to Section 12F, without providing a cure period. Notwithstanding anything in this Agreement that is or may be construed to the contrary, this paragraph shall survive the expiration or earlier termination of this Agreement.

SECTION 25. ENFORCEMENT COSTS

Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to this Agreement.

SECTION 26. NOTICE

All notices required to be given under this Agreement shall be in writing and, unless otherwise provided for in this Agreement, shall be deemed sufficient to each party when sent by United States certified Mail, postage prepaid, to the following:

As to the County:
Fire-Rescue Administrator
Palm Beach County Fire-Rescue
405 Pike Road
West Palm Beach, FL 33411

As to City:
City Manager
City of Lake Worth
7 N. Dixie Highway
Lake Worth, FL 33460

SECTION 27. 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 this Agreement shall 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. No provision of this Agreement is intended to, and shall not 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 citizens or employees of the County and/or the City.

SECTION 28. CONFLICT RESOLUTION

Any dispute or conflict between the parties that arises from the provision of services under this Agreement shall be presented in writing to the respective Contract Monitors. The Contract Monitors shall then meet to discuss the disputed issues and attempt in good faith to resolve the dispute or conflict.

SECTION 29. JOINT PREPARATION

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.

SECTION 30. EQUAL OPPORTUNITY

The County and City agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, or sexual orientation, be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of this Agreement.

SECTION 31. CAPTIONS

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

SECTION 32. SEVERABILITY

In the event that any section, paragraph, sentence, clause, or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

SECTION 33. ENTIRETY OF AGREEMENT

This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this

Agreement. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns and successors in interest.

SECTION 34. SURVIVABILITY

Any provision of this Agreement which is of a continuing nature, or which by its language or nature imposes an obligation or right that extends beyond the expiration or earlier termination of this Agreement, shall survive the expiration or earlier termination of this Agreement.

SECTION 35. TERMINATION OF EXISTING AGREEMENTS

The Emergency Services Agreement for Mutual Assistance, Automatic Aid, and Dispatch Services between the parties dated August 16, 2005, shall hereby be terminated upon the County's commencement of the actual delivery of fire-rescue services within the City, which is anticipated to begin at 7:30 a.m. on October 1, 2009, through the Fire/Rescue MSTU and/or this Agreement. Should the delivery of County fire-rescue services within the City not commence for any reason, then said Emergency Services Agreement for Mutual Assistance, Automatic Aid, and Dispatch Services between the parties shall not be terminated hereunder.

SECTION 36. UNION APPROVAL

Notwithstanding anything herein to the contrary, any provision of this Agreement that implicates a term or condition of employment that must be bargained shall not take effect, or remain in effect, until it has been negotiated and agreed to by, IAFF, Local 2928 and ratified, and/or re-ratified, as required by Florida Law.

IN WITNESS WHEREOF, the parties through their duly authorized representatives do hereby execute this Agreement on the date first written above.

ATTEST:
SHARON R. BOCK,
Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: _____
County Fire-Rescue

ATTEST:

CITY OF LAKE WORTH, FLORIDA
BY ITS CITY COMMISSION

By: _____
City Clerk

By: _____
Jeff Clemens, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
City Attorney

By: _____
City Fire-Rescue

Exhibit 1
Lake Worth Fire Station #1

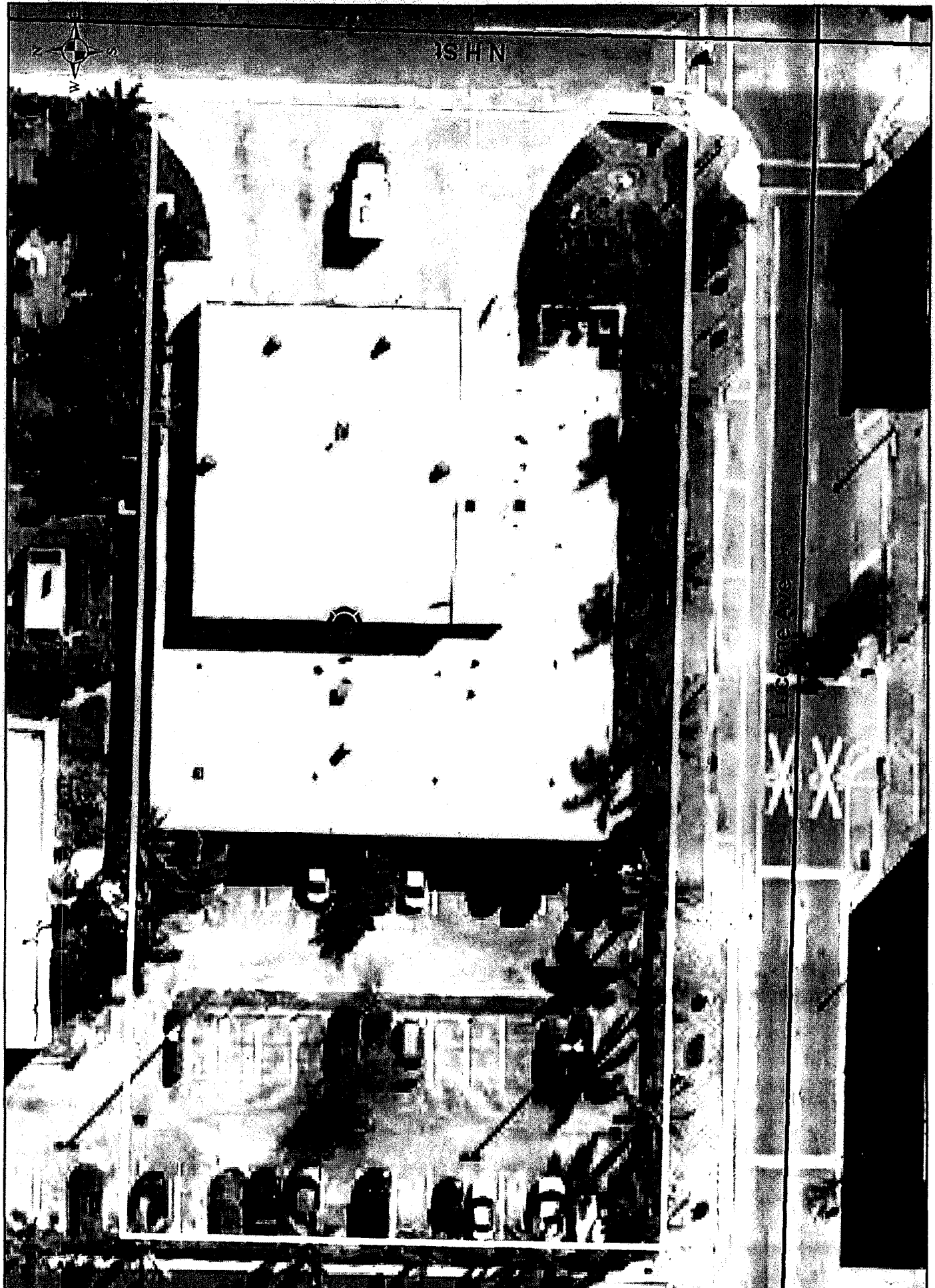


Exhibit 1
Lake Worth Fire Station #2

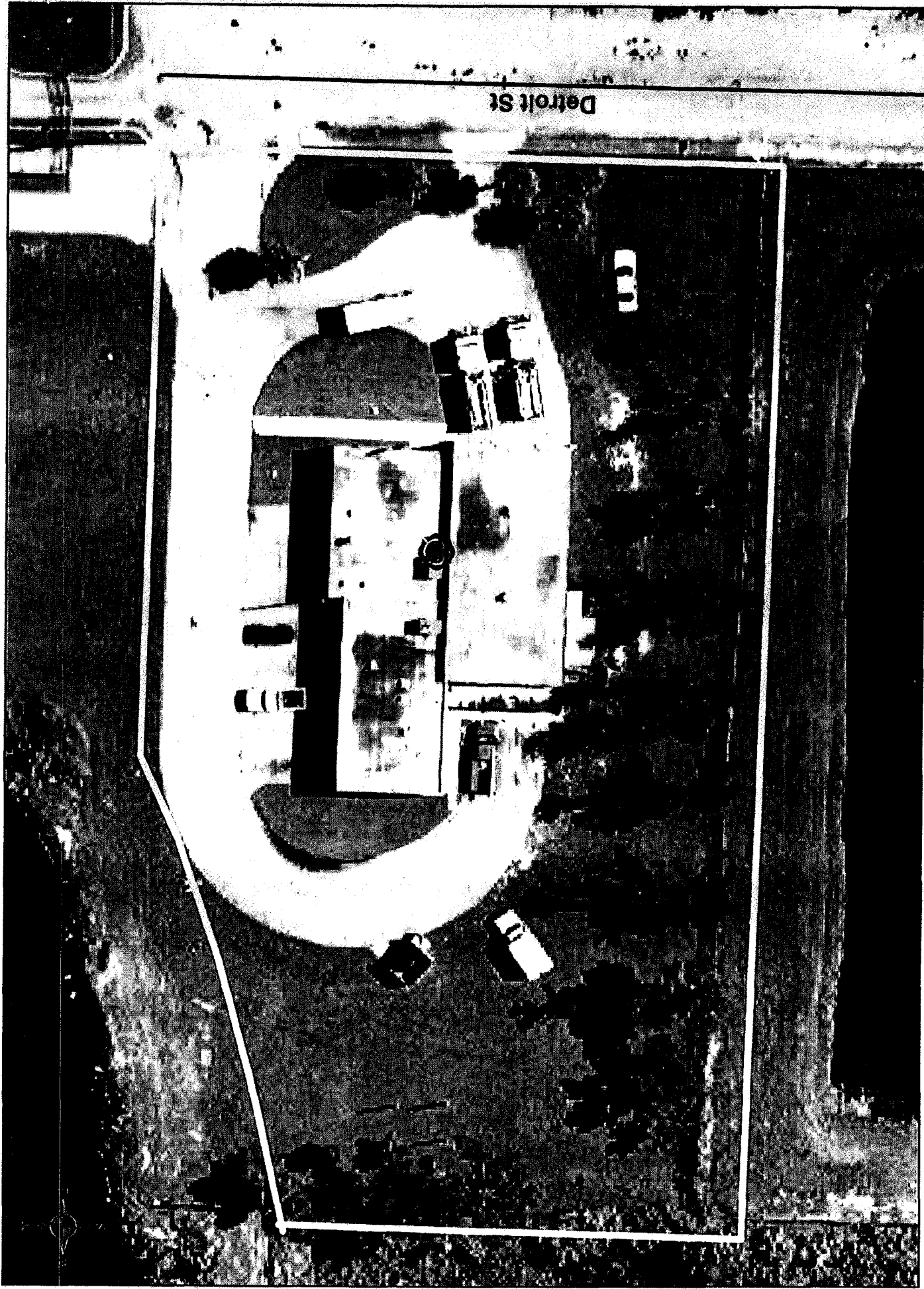


Exhibit 2

Equipment and Vehicles List

[illegible]

This schedule provides a list of emergency apparatus and vehicles only. Per Section 7C of the Agreement this list will be modified to include all fire rescue related assets. Section 7C provides for the modification of this list, upon mutual agreement between the Fire Rescue Administrator and the City Manager.

**INTERLOCAL AGREEMENT RELATING TO PENSION MATTERS SUPPLEMENTING SECTION 7G OF
THE INTERLOCAL AGREEMENT FOR FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES
BY AND BETWEEN
PALM BEACH COUNTY AND THE CITY OF LAKE WORTH**

THIS INTERLOCAL AGREEMENT is made and entered into this ____ day of April, 2009, by and between the City of Lake Worth, a Florida municipal corporation (hereinafter "City"), and Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter "County"), (hereinafter referred to as the "Pension Agreement").

WITNESSETH:

WHEREAS, the parties have approved that certain Interlocal Agreement for Fire Protection and Emergency Medical Services dated April 7, 2009 (hereinafter referred to as the "Fire Protection Agreement"); and

WHEREAS, pursuant to Section 6A of the Fire Protection Agreement, employees of the City's Fire Department will be transferred to County employment as of 7:30 a.m. on October 1, 2009 (hereinafter referred to as "Transferred Employees"); and

WHEREAS, Section 7G of the Fire Protection Agreement incorporates this Pension Agreement as a part of the Fire Protection Agreement; and

WHEREAS, the purpose of this Pension Agreement is to clarify the parties' responsibilities and duties relative to the pension rights of the Transferred Employees; and

WHEREAS, the County has been advised by the Florida Division of Retirement that Transferred Employees shall be entitled to exercise any rights they may have to elect to join the Florida Retirement System (hereinafter "FRS") or to remain in the City's local retirement system; and

WHEREAS, the City has represented to the County that the Transferred Employees include approximately 57 firefighter employees who are members of the Lake Worth Firefighters' Pension Trust Fund and/or the Lake Worth Firefighters Relief and Pension Fund, and one non-firefighter employee, who is a member of the City's general Employees' Retirement System; and

WHEREAS, the Lake Worth Firefighters' Pension Trust Fund and the Lake Worth Firefighters Relief and Pension Fund were established by City ordinances and are codified at Chapter 16, Article III, of the Lake Worth Code of Ordinances; and the City's general Employees' Retirement System was established by City ordinances and is codified at Chapter 16, Article II, of the Lake Worth Code of Ordinances (references hereinafter to "City Plans" or "City Funds" shall mean, singularly and collectively, any and all of the above mentioned city retirement systems, in which at least one Transferred Employee elects to remain upon transfer of employment to the County on October 1, 2009); and

WHEREAS, the County has been advised by the Florida Division of Retirement that the City shall retain ultimate responsibility for the City Plans and their actuarial soundness, regardless of the County's status as employer of the Transferred Employees as of October 1, 2009.

NOW, THEREFORE, in consideration of the mutual representations, terms and covenants hereafter set forth, the parties hereby agree as follows:

SECTION 1. INCORPORATION OF FACTS

The facts set forth above in the preamble to this Pension Agreement are true and correct, and incorporated herein by reference.

SECTION 2. PURPOSE

The purpose of this Pension Agreement is to supplement Section 7G of the Fire Protection Agreement, to clarify the parties' roles and obligations relating to the City Plans, and to preserve and protect the pension rights of the Transferred Employees in accordance with Sections 121.011(3)(b)(2) and 112.0515, Florida Statutes, and Rule 60S-1.0075, FAC.

SECTION 3. EFFECTIVE DATE, TERM, AND TERMINATION

This Pension Agreement shall take effect at 7:30 a.m. on October 1, 2009; provided, however, that this Pension Agreement shall be deemed to commence upon its approval by both parties for the purpose of implementing and enforcing any provisions and obligations that by their language or nature accrue prior to the commencement of fire-rescue services by the County on October 1, 2009. This Pension Agreement shall remain in effect until such time that the final benefit payment has been made to the last Transferred Employee participant or beneficiary under the City Plans and the City Plans then are terminated in accordance with applicable laws and regulations.

This Pension Agreement may not be terminated by either party prior to its expiration, except as follows:

- A. This Pension Agreement may be terminated early by written agreement of the parties;
or
- B. This Pension Agreement shall be terminated immediately if the Fire Protection Agreement is terminated under Section 12E of the Fire Protection Agreement; or

C. This Pension Agreement shall be terminated immediately if for any reason no employees of the City's Fire Department are transferred to County employment on October 1, 2009, pursuant to Section 6A of the Fire Protection Agreement.

SECTION 4. ELECTION UNDER SECTION 121.011, FLORIDA STATUTES

The Transferred Employees will be entitled to exercise any rights they may have to elect to continue to participate as members in the City Plans or to become members of FRS, as of 7:30 a.m. on October 1, 2009. The City and County shall work cooperatively so as to facilitate the exercise of any such rights.

Although the County has been advised by the Florida Division of Retirement that said pension election is required in accordance with Florida law governing retirement systems, neither this Pension Agreement nor the Fire Protection Agreement shall be deemed to constitute or otherwise implicate a transfer or divestment of any powers or functions in the context of Article VIII, Section 4, of the Florida Constitution. Rather, this Pension Agreement and the Fire Protection Agreement are interlocal agreements relating to the provision of fire-rescue services as authorized by Chapter 163, Florida Statutes.

SECTION 5. LIMITED EMPLOYMENT OF CERTAIN TRANSFERRED EMPLOYEES

For those Transferred Employees who are in the Lake Worth Firefighters' Pension Trust Fund deferred retirement option plan (hereinafter the "Lake Worth DROP") as of October 1, 2009, and for those Transferred Employees who elect to remain in the Lake Worth Firefighters' Pension Trust Fund upon transfer to County employment on October 1, 2009, employment with the County shall be terminated upon the conclusion of their Lake Worth DROP period, or at the

time of their retirement from the Lake Worth Firefighters' Pension Trust Fund if the Lake Worth DROP is not entered. The City shall notify the County when an employee has reached the end of the Lake Worth DROP period or has retired from the Lake Worth Firefighters' Pension Trust Fund without entering the Lake Worth DROP. The provisions of this paragraph shall survive the expiration or earlier termination of this Pension Agreement and the Fire Protection Agreement.

SECTION 6. CITY'S RESPONSIBILITY FOR THE CITY PLANS

The parties acknowledge and understand that notwithstanding the County's role as the employer of the Transferred Employees as of October 1, 2009, the City Plans shall remain municipal employee pension plans under Chapters 112 and 175, Florida Statutes, as applicable. The City shall remain the governmental entity responsible for the City Plans, in accordance with Section 112.66(6), (8) and (9), Florida Statutes, and all other applicable laws and regulations. The City shall continue to retain, assume and fulfill the powers, duties and obligations of the City/municipality, employer and plan sponsor under the City Plans and all applicable laws and regulations. For those Transferred Employees who remain in the City Plans and do not join FRS, creditable service accrued and compensation earned while employed by the County shall be treated as if accrued and earned under City employment for the purpose of administering the City Plans. In no event shall any service with the County be the basis for a benefit under both the City Plans and FRS, in accordance with Section 112.65(2), Florida Statutes.

The City represents that it has fulfilled, and will continue to fulfill, all its obligations under the City Plans. The City further represents and agrees that all sums due and owing to the City Plans, including but not limited to employee and employer contributions for service credit

accrued prior to 7:30 a.m. on October 1, 2009, have been, and will be, deposited timely into the City Funds. Despite the County's status as employer of the Transferred Employees as of 7:30 a.m. on October 1, 2009, the City shall continue to timely contribute and deposit into the City Funds, all contributions required of the City/municipality, employer and/or plan sponsor under the City Plans and all applicable laws and regulations. The City shall be responsible for any and all obligations to fund all costs and actuarial deficiencies of the City Plans, and to provide for the actuarial soundness of the City Plans, to the extent required by the City Plans and all applicable laws and regulations, including but not limited to Section 175.091(1)(d), Florida Statutes.

SECTION 7. COUNTY'S LIMITED ROLE

For each Transferred Employee who does not join FRS, the County shall pay to the City the following amounts: for those employees who are in the Lake Worth DROP, the amount that the County would pay into FRS if said employee was in the FRS DROP; and for those employees who are not in the Lake Worth DROP, the amount that the County would pay into FRS if said employee was in FRS. The City shall utilize this money towards its funding obligations under the City Plans. Notwithstanding anything herein that might be construed to the contrary, the County does not assume any obligation whatsoever to make any employer, plan sponsor or City/municipality contributions to the City Plans, which contributions shall continue to be exclusively the responsibility of the City.

For those Transferred Employees who elect to remain in the City Plans, to the extent that the City Plans provide for the City/employer to "pick-up" the employee/member contribution in accordance with Section 414(h)(2) of the Internal Revenue Code (Title 26 USC Section 414(h)(2)), the County shall, to the extent permitted by law, "pick-up" said

employee/member contribution by directly paying to the applicable City Fund, in lieu of the employee/member contribution, the percentage of each employee's salary/compensation as set out in the applicable City Plan, provided that said "pick-up" may legally be made through a deduction from salary.

Except as specifically provided for herein, the County shall have no obligation or responsibility whatsoever for the City Plans, including but not limited to the administration, funding or actuarial soundness of the City Plans, or for any other obligations of the City/municipality, employer, or plan sponsor under the City Plans and/or any applicable laws and regulations, which obligations shall continue to be exclusively the responsibility of the City.

SECTION 8. RECEIPT OF CHAPTER 175 PREMIUM TAX MONIES

The City represents to the County that it has passed an ordinance assessing and imposing the tax authorized under Section 175.101, Florida Statutes, and that it will take no act to repeal or invalidate such ordinance, or to amend it to so as to reduce its impact. The City acknowledges that the continued receipt of the Chapter 175 tax monies and their use as set forth in the City Plans is an important and necessary revenue source to preserve the pension rights of the Transferred Employees.

The parties also acknowledge their understanding that the City Plans receiving Chapter 175 premium tax monies must retain their status as municipal employee pension benefit plans to continue to receive said tax monies. Accordingly, the City agrees that it shall not take any action to impair or threaten the status of said City Plans and the continued receipt of Chapter 175 tax revenues, without the prior consent of the County.

SECTION 9. NOTICE OF CLAIMS

The City agrees to immediately forward to the Fire-Rescue Administrator any notice of any claim, suit, investigation, or the like, it receives from the State of Florida, any former or current employee, City Plan participant or beneficiary, or any other person or entity, relating in any fashion to the City Plans. To the extent permitted by law, the parties agree to provide each other with copies of documents in their possession that are needed by the other party to defend any such claim, suit or investigation.

SECTION 10. COOPERATION

To the extent permitted by law, the County shall provide the City and the Boards of Trustees with requested County information, data, reports and documentation required to implement and/or administer the City Plans for the Transferred Employees; provided that the County's obligation shall be conditioned upon a Transferred Employee's written authorization to release medical records where required.

The City shall forward to the County all actuarial valuations, statements of actuarial impact, reports, financial statements and the like, received from the Board of Trustees, Plan administrator, the State, or any other person, relating to the City Plans. To the extent permitted by law, the City shall provide the County with requested information, data, reports and documentation relating to the implementation and/or administration of the City Plans for the Transferred Employees; provided that the City's obligation shall be conditioned upon a Transferred Employee's written authorization to release medical records where required.

Consistent with the provisions of Chapters 112 and 175, Florida Statutes, the assets and

liabilities of the City Plans shall remain under the ultimate control of the City. Notwithstanding this retention of control, the City shall not initiate, fail to act, or undertake any action which shall be detrimental, in any fashion whatsoever, to the interests of the County under this Pension Agreement and the Fire Protection Agreement, or which shall affect or threaten the actuarial soundness and the continuation of the City Plans, without the prior express consent of the County.

Should it be determined that an amendment to the City Plans is required in order to comply with this Pension Agreement or with any applicable law or regulation, then the City shall promptly process the necessary Plan amendment, upon the consent of the County, subject to the approval of IAFF, Local 2928 if required.

SECTION 11. INDEMNIFICATION

To the extent permitted by law, the City shall indemnify, defend and hold harmless the County against any and all actions, claims and damages arising directly or indirectly from, or relating in any way to, any pension rights or benefits of the Transferred Employees arising from their former employment by the City; any pension rights or benefits of those Transferred Employees who remain in the City Plans upon employment by the County; and any City violation of this Pension Agreement. This Indemnification provision shall survive the expiration or earlier termination of this Pension Agreement and the Fire Protection Agreement.

SECTION 12. MODIFICATION AND AMENDMENT OF PENSION AGREEMENT

No modification, amendment or alteration in the terms or conditions contained in this Pension Agreement shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

SECTION 13. ANNUAL APPROPRIATIONS

The County's performance and obligation to pay under this Pension Agreement is contingent upon an annual budgetary appropriation by its governing body for each fiscal year.

SECTION 14. JOINT PREPARATION

The preparation of this Pension Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial interpretation, be construed more severely against one of the parties than the other.

SECTION 15. SURVIVABILITY

This Pension Agreement shall survive the expiration or earlier termination of the Fire Protection Agreement. Furthermore, any provision of this Pension Agreement which is of a continuing nature, or which by its language or nature imposes an obligation or right that extends beyond the expiration or earlier termination of this Pension Agreement, shall survive said expiration or earlier termination of this Pension Agreement.

SECTION 16. ASSIGNMENT OF RIGHTS

Neither party shall assign, delegate, or otherwise transfer its rights and obligations as set forth in this Pension Agreement to any other entity without the prior written consent of the other.

SECTION 17. RECORDS RETENTION

The County and City shall maintain records associated with this Pension Agreement, including, but not limited to, all accounts, financial and technical records, research or reports, in accordance with Florida law.

SECTION 18. ENFORCEMENT COSTS

Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Pension Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to this Pension Agreement.

SECTION 19. NOTICE

All notices required to be given under this Pension Agreement shall be in writing and, unless otherwise provided for in this Pension Agreement, shall be deemed sufficient to each party when sent by United States certified Mail, postage prepaid, to the following:

As to the County:

Fire-Rescue Administrator
Palm Beach County Fire-Rescue
405 Pike Road
West Palm Beach, FL 33411

As to City:

City Manager
City of Lake Worth
7 N. Dixie Highway
Lake Worth, FL 33460

SECTION 20. REMEDIES

This Pension Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Pension Agreement shall 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. No provision of this Agreement

is intended to, and shall not be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Agreement.

SECTION 21. CONFLICT RESOLUTION

Any dispute or conflict between the parties that arises from the provisions of this Pension Agreement shall be presented in writing to the respective Contract Monitors. The Contract Monitors shall then meet to discuss the disputed issues and attempt in good faith to resolve the dispute or conflict.

SECTION 22. EQUAL OPPORTUNITY

The County and City agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, or sexual orientation, be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of this Pension Agreement.

SECTION 23. CAPTIONS

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

SECTION 24. SEVERABILITY

In the event that any section, paragraph, sentence, clause, or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Pension Agreement and the same shall remain in full force and effect.

SECTION 25. FILING

A copy of this Pension Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

IN WITNESS WHEREOF, the undersigned parties have executed this Pension Agreement

on the day and year first written above.

ATTEST:

**PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY COMMISSIONERS**

SHARON R. BOCK,
Clerk & Comptroller

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions

By: _____
County Attorney

By: _____
Fire-Rescue

ATTEST:

**CITY OF LAKE WORTH, FLORIDA, BY
ITS CITY COMMISSION**

By: _____
City Clerk

By: _____
Jeff Clemens, Mayor

Approved as to Form and
Legal Sufficiency

By: _____
City Attorney

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