

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditure	_____	_____	_____	_____	_____
Operating Costs	940,743	968,965	998,034	1,027,975	1,058,814
External Revenues	(1,881,486)	(1,937,930)	(1,996,068)	(2,055,950)	(2,117,628)
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	(940,743)	(968,965)	(998,034)	(1,027,975)	(1,058,814)
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No _____
 Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
 Reporting Category _____

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

This agreement will result in net revenues to the County in the amount of \$940,743 for fiscal year 2013 from the SWA for regional hazmat emergency response. The fiscal impact is based on the annual funding for each subsequent fiscal year being increased by 3%; however the agreement states annual funding shall be increased a percentage not to exceed the lesser of 3% or the general wage adjustment authorized by the SWA Board for SWA general employees as part of the SWA's annual budget.

C. Departmental Fiscal Review: *Michael Monty*

III. REVIEW COMMENTS

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

[Signature] 9/17/12 OFMB
[Signature] 9/17/12 Contract Dev. and Control

B. Legal Sufficiency:

[Signature] 9/17/12
 Assistant County Attorney

C. Other Department Review:

 Department Director

**INTERLOCAL AGREEMENT FOR FUNDING OF HAZARDOUS MATERIALS
EMERGENCY RESPONSE SERVICES BY AND BETWEEN
SOLID WASTE AUTHORITY AND PALM BEACH COUNTY**

THIS INTERLOCAL AGREEMENT, made and entered into this ____ day of _____, 2012; by and between the SOLID WASTE AUTHORITY, a dependent taxing district, (hereinafter the "Authority") and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter the "County").

WITNESSETH

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 252, Florida Statutes, authorizes the Board of County Commissioners of Palm Beach County to provide and maintain for the safety of citizens from hazardous materials emergencies; and

WHEREAS, the Palm Beach County Regional Hazardous Materials Response Ordinance of 1998, set forth in Chapter 11, Article VII, of the Palm Beach County Code, as may be amended from time to time (hereinafter the "Haz Mat Response Ordinance") establishes regional hazardous materials response teams to provide response, investigation and mitigation of releases of hazardous substances; and

WHEREAS, the Haz Mat Response Ordinance provides for regional hazardous materials response teams to be from the County and/or municipal fire departments within the County; and

WHEREAS, the Authority agrees to provide funding for regional hazardous materials response teams to provide emergency response in both the incorporated and unincorporated areas of Palm Beach County; and

WHEREAS, the County agrees to distribute the funds provided by the Authority to the regional hazardous materials response teams for the provision of emergency response services.

NOW, THEREFORE, the Authority and the 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.

SECTION 2. PURPOSE

The purpose of this Agreement is to establish the parties' rights and obligations regarding the provision of hazardous materials emergency response funding within the incorporated and unincorporated areas of Palm Beach County.

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 Authority's representative and contract monitor during the term of this Agreement shall be the Executive Director, or his designee, whose telephone number is 561-640-4000.

SECTION 4. ADMINISTRATION

The Regional Hazardous Materials Oversight Committee (hereinafter "Oversight Committee"), as established by the Haz Mat Response Ordinance, shall oversee and monitor the response teams' performance of services pursuant to the Haz Mat Response Ordinance.

SECTION 5. SERVICES TO BE PROVIDED

The Haz Mat Response Ordinance establishes regional hazardous materials response teams to provide hazardous materials emergency response and mitigation services to the unincorporated and incorporated areas of Palm Beach County, when necessary or requested by a responsible municipal public safety agency. The Authority recognizes that these services will be provided by Palm Beach County Fire Rescue and/or selected municipalities' fire rescue services through response teams designated by the Oversight Committee, and under the authority of the Haz Mat Response Ordinance. The Haz Mat Response Ordinance authorizes the Oversight Committee to establish response zones for the response teams, which zones may be modified by the Oversight Committee in accordance with the Haz Mat Response Ordinance. The Haz Mat Response Ordinance provides for emergency response and mitigation services for all incorporated and unincorporated areas of Palm Beach County, and for all response teams, upon request, to serve all areas of Palm Beach County when necessary.

SECTION 6. COUNTY'S RESPONSIBILITIES

The County agrees to distribute the funding received from the Authority hereunder to the regional hazardous materials response teams designated by the Oversight Committee, and in accordance with agreements entered into between the County and the selected

municipalities for such purpose. The County agrees to provide access to County emergency response records for hazardous materials incidents, upon request, to the Authority.

SECTION 7. AUTHORITY'S RESPONSIBILITIES

A. Funding:

The Authority agrees to provide annual funding to the County, for regional hazardous materials response teams' services, in the amount of One Million Eight Hundred Eighty One Thousand Four Hundred Eighty Six Dollars (\$1,881,486) for fiscal year 2013. The annual funding for each subsequent fiscal year shall be increased by a percentage not to exceed the lesser of 3% or the general wage adjustment authorized by the Authority Board for Authority general employees as part of the Authority annual budget.

B. Payments:

The Authority shall remit payment to the County in two equal installments, payable on January 1 and April 1 of each fiscal year covered by this Agreement. The County shall provide an invoice to the Authority no later than thirty (30) days prior to each due date.

SECTION 8. OTHER REVENUE

Both parties acknowledge and agree that the responding regional hazardous materials response team or the County through its Division of Emergency Management, as applicable in accordance with the Haz Mat Response Ordinance, may invoice and collect response costs from those persons and/or companies determined to have caused or to be responsible for a hazardous substance release. Recovered funds must be used in accordance with the Haz Mat Response Ordinance.

SECTION 9. TERMINATION AND RENEWAL

The term of this Agreement shall be for five (5) years commencing on October 1, 2012. After the initial five (5) year term, this Agreement shall automatically renew for an additional five (5) year period, without further action of the parties, unless either party shall notify the other in writing of its intent not to renew. This notification shall be provided at least ninety (90) days prior to the expiration date. This Agreement shall not be terminated by either party at any time during its term or any renewal thereof, unless agreed to in writing by both parties and upon the recommendation of the Oversight Committee. Should the Oversight Committee recommend termination of this Agreement, it shall do so in writing to both parties.

SECTION 10. NO ASSUMPTION OF LIABILITY

The parties to this Agreement and their respective officers, agents, and employees shall not be deemed to assume any liability for the negligent or wrongful acts or omissions of the other party, its officers, agents, and employees, or for any third party. 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 under Section 768.28, Florida Statutes.

SECTION 11. RECORDS RETENTION

The County and the Authority shall maintain all records associated with this Agreement, including, but not limited to all accounts, financial records, research and emergency response records, in accordance with Florida Law and for a period of at least three years.

SECTION 12. MODIFICATION AND AMENDMENTS

No modification, amendment, waiver, or alteration in the terms or conditions of this Agreement shall be effective without the written approval of the Oversight Committee and written agreement by both parties executed with the same formality and equality of dignity herewith.

SECTION 13. NOTICES

All notices required to be given under this Agreement shall be in writing, and sent by certified mail, return receipt requested, to the following:

To the County:
Fire Rescue Administrator
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, FL 33411

To the Authority:
Executive Director
Solid Waste Authority
7501 N. Jog Road
West Palm Beach, FL 33412

SECTION 14. JOINT PREPARATION

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

SECTION 15. NOTICE OF SUITS

Each party agrees to notify the other of any claim, or the initiation of any legal proceeding, against it which relates, in any manner, to the services provided by the other party pursuant to this Agreement. Each party will cooperate with the other in the defense of any suit or action arising out of, or relating to, the services rendered under this Agreement.

SECTION 16. NONDISCRIMINATION

Each party represents and warrants that all of its employees are treated equally during employment without regard to race, sex, sexual orientation, gender identity or expression,

color, religion, disability, age, marital status, familial status, national origin or ancestry; and that no person shall, based on any of these grounds, 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 17. CAPTIONS

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

SECTION 18. 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 19. SURVIVABILITY

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

SECTION 20. REMEDIES

This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal actions 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 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, or shall 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 municipality and citizens or employees of the County, the Authority and/or any municipality.

SECTION 21. ENFORCEMENT COSTS

Any costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms and/or 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 22. 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 prior to either party initiating the intergovernmental conflict resolution process provided for by Chapter 164, Florida Statutes.

SECTION 23. ENTIRETY OF AGREEMENT

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

SECTION 24. FILING

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

SECTION 25. ANNUAL APPROPRIATIONS

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

SECTION 26. INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Authority, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

SECTION 27. EMPLOYEE FUNCTIONS

No employee of either party to this Agreement shall perform any function or service which is not within the employee's scope of duties as defined or determined by his employer.

SECTION 28. EMPLOYEE CLAIMS, BENEFITS, PRIVILEGES AND IMMUNITIES

No employee, officer, or agent of either party shall, in connection with this Agreement or the performance of services and functions hereunder, have a right or claim to any pension, workers' compensation, unemployment compensation, civil service, or other employee rights, privileges, or benefits granted by operation of law or otherwise except through and against the entity by whom they are employed. No officer, agent or employee of either party shall be deemed the officer, agent or employee of the other, for any purpose, during the performance of services hereunder.

All the privileges and immunities from liability, exemptions from law, ordinance and rules, and all pensions and relief, disability, workers' compensation and other benefits which apply to the activity of the officers, agents or employees of either party 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 extraterritorially.

SECTION 29. BREACH/OPPORTUNITY TO CURE

In the event that either party is in default of its obligations herein, the party not in default shall provide the party in default thirty (30) days written notice to cure said default before exercising any of its rights as provided for in this Agreement.

SECTION 30. 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 Authority against any actions, claims or damages arising out of County's negligence in connection with this Agreement, and the Authority shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out of the Authority's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

SECTION 31. ASSIGNMENT OF RIGHTS

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

SECTION 32. NO DELEGATION OF DUTY

Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of any state, county, city, or Authority officers.

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: _____
Shelley Vana, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: *Sharon B. Bock*
County Attorney

By: *J. St. Pierre*
Fire-Rescue

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

SOLID WASTE AUTHORITY

By: *James C. [Signature]*
Legal Counsel

By: *[Signature]*
Chairman

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: _____
Shelley Vana, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: *Sharon Bunn*
County Attorney

By: *J. St Pierre*
Fire-Rescue

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

SOLID WASTE AUTHORITY

By: *James C. King*
Legal Counsel

By: *Shirley A.*
Chairman