

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 12, 2022 [X] Consent [ ] Regular  
[ ] Workshop [ ] Public Hearing

Department: Fire-Rescue

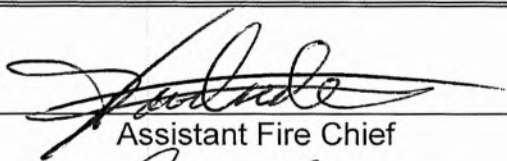
I. EXECUTIVE BRIEF

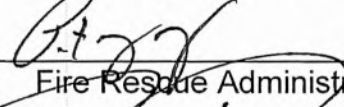
**Motion and Title:** Staff recommends motion to approve: an Interlocal Agreement with Solid Waste Authority of Palm Beach County ("SWA"), for Funding of Hazardous Materials Emergency Response Services for a period of ten (10) years, commencing on October 1, 2022, through September 30, 2032.

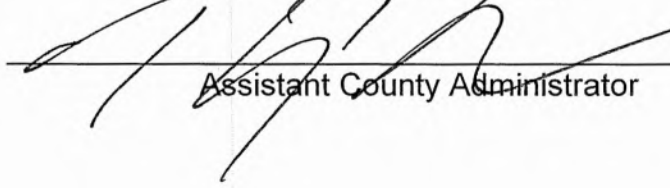
**Summary:** This agreement provides \$2,528,561 of funding from SWA for FY2023 for the services of the countywide regional hazardous materials response teams, which are established through the Palm Beach County Regional Hazardous Materials Response Ordinance of 1998. The agreement provides for the County to disburse the funding to the regional hazardous materials response teams, which are comprised of local fire rescue departments as designated by the Regional Hazardous Materials Oversight Committee. The yearly funding shall be increased by a percentage not to exceed the lesser of 3% or the wage adjustment authorized by the SWA for their general employees, and it will be disbursed equally amongst the existing four teams. The County's two teams will receive \$1,264,281 for FY2023, which is already included in the FY2023 budget. Funds for the other two teams will be disbursed in accordance with interlocal agreements with those municipalities. **Countywide (SB)**

**Background and Justification:** The Palm Beach County Regional Hazardous Materials Response Ordinance of 1998, set forth in Chapter 11, Article VII, of the Palm Beach County Code, established regional hazmat response teams to provide response, investigation and mitigation of releases of hazardous substances. The SWA has been providing funding since 2002, and has agreed to continue providing funding for emergency response in both the incorporated and unincorporated areas of Palm Beach County.

**Attachments:**  
Agreement

Recommended by:  6-16-2022  
Assistant Fire Chief Date

Approved by:  6-16-2022  
Fire Rescue Administrator Date

Approved by:  7/1/2022  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

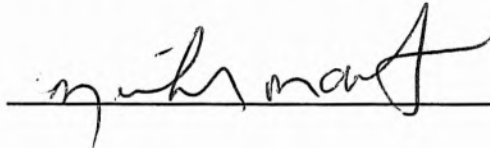
Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	<u>1,264,281</u>	<u>1,302,209</u>	<u>1,341,276</u>	<u>1,381,514</u>
External Revenues	_____	<u>(2,528,561)</u>	<u>(2,604,418)</u>	<u>(2,682,550)</u>	<u>(2,763,027)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	<u>(1,264,281)</u>	<u>(1,302,209)</u>	<u>(1,341,276)</u>	<u>(1,381,514)</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<u>0</u>	_____	_____	_____	_____

Is Item Included in *Proposed* Budget? Yes X No \_\_\_\_\_  
 Does this item include the use of federal funds Yes \_\_\_\_\_ No X

Budget Account No.: Fund 1300 Dept 440 Unit 4245 Rev Source 4225

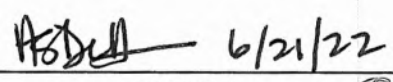

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

This agreement will result in net revenues to the County in the amount of \$1,264,281 for FY2023 from the SWA for regional hazmat emergency response. The fiscal impact is based on the annual funding for each subsequent year being increased by 3%; however, the agreement states annual funding shall be increased by a percentage not to exceed the lesser of 3% or the general wage adjustment authorized by the SWA Board for the SWA's general employees as part of its annual budget.

C. Departmental Fiscal Review: 

**III. REVIEW COMMENTS**

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

<u></u> OFMB <span style="margin-left: 50px;">6-17-22</span>	<u></u> Contract Dev. and Control
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**B. Legal Sufficiency**

  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**INTERLOCAL AGREEMENT FOR FUNDING OF HAZARDOUS MATERIALS  
EMERGENCY RESPONSE SERVICES**

**THIS AGREEMENT**, is made and entered into on \_\_\_\_\_, by and between the SOLID WASTE AUTHORITY OF PALM BEACH COUNTY, a dependent special district created pursuant to Chapter 2001-331 of the State of Florida, hereinafter the "Authority" and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter the "County," and when referred to together, collectively the Parties.

**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 for and maintain the safety of the citizens of the County including protection from hazardous chemical and similar 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 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 the 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 and incorporated into this Agreement.

**SECTION 2. PURPOSE**

The purpose of this Agreement is to establish the parties' respective rights and obligations regarding the provision of hazardous materials emergency response funding within the incorporated and unincorporated areas of the 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, or designee, 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 designee, whose telephone number is 561-640-4000.

**SECTION 4. ADMINISTRATION**

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

**SECTION 5. SERVICES TO BE PROVIDED BY HAZ MAT RESPONSE TEAMS**

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 the 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 the County, including for all response teams, upon request, to serve all areas of the 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 the regional hazardous materials response teams' services in the amount of Two Million, Five Hundred Twenty-Eight Thousand, Five Hundred Sixty-One dollars (\$2,528,561) for fiscal year 2023. 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 the Authority's general employees as part of its 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**

The Parties acknowledge and agree that the responding regional hazardous materials response team, 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 be responsible for a hazardous substance release. Recovered funds must be used in accordance with the Haz Mat Response Ordinance.

**SECTION 9. TERM AND TERMINATION**

The term of this Agreement shall be for ten (10) years commencing on October 1, 2022. This Agreement may be terminated by either party, at any time, upon one hundred and eighty (180) days written notice to the other party and with the prior approval of the Oversight Committee. The Agreement may also be terminated upon the recommendation of the Oversight Committee; any such termination shall be effective one hundred eighty (180) days following written notice to both Parties.

**SECTION 10. 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 the employee's employer.

**SECTION 11. RELATIONSHIP OF EMPLOYEE**

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 to or claim 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 employee of either party shall be deemed the employee of the other, for any purpose, by or 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 12. LIABILITY**

The Parties to this Agreement and their respective officers, agents and employees shall not be deemed to assume any liability for the acts, omissions, or negligence 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, as may be amended.

**SECTION 13. BREACH/OPPORTUNITY TO CURE:**

In the event that either of the Parties 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 14. RECORDS RETENTION**

Each party shall maintain all records associated with this Agreement, including, but not limited to, all accounts, financial and technical records, research or reports, in accordance with Florida law and for a period of at least five (5) years. To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the County or at its expense will be kept confidential by the Authority and will not be disclosed to any other party, directly or indirectly, without the County's prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Agreement for or at the County's expense shall be and remain the County's property and may be reproduced and reused at the discretion of the County.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by either party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

**SECTION 15. 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, as may be amended, 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 16. ASSIGNMENT OF RIGHTS**

Neither party shall assign, transfer or convey, in whole or in part, its rights, duties, or obligations without the prior written consent of the other.

**SECTION 17. 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 18. MODIFICATION AND AMENDMENTS**

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

**SECTION 19. NOTICE**

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by messenger, courier services, or national overnight delivery service (provided in each case a receipt is obtained), or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5 P.M. on a business day and on the next business day if transmitted after 5 P.M. or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The Parties hereby designate the following addresses as the addresses to which notices shall be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the County at:  
Palm Beach County Fire Rescue  
Attn: Fire Rescue Administrator  
405 Pike Road  
West Palm Beach, FL 33411

with a copy to:

Palm Beach County Attorney's Office  
Attn: Fire Rescue Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Telephone 561-355-2225  
Fax 561-355-4398

- (b) If to the Authority at:  
Executive Director  
Solid Waste Authority  
7501 N. Jog Road  
West Palm Beach, FL 33412

**SECTION 20. NOTICE OF SUITS**

Each party agrees to immediately 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. 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 21. 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 either one of the parties than the other.

**SECTION 22. CAPTIONS**

The captions and section appearing in this Agreement are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Agreement.

**SECTION 23. 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 24. 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 25. 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 26. 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 or interpret this Agreement will be held in a State court of competent jurisdiction located 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 either party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**SECTION 27. FILING**

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

**SECTION 28. ANNUAL APPROPRIATIONS**

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

**SECTION 29. NONDISCRIMINATION**

The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Authority warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

**SECTION 30. 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 is authorized with the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or

impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, as may be amended, in the same manner as a second degree misdemeanor.

**SECTION 31. NO DELEGATION OF DUTY**

This Agreement is an Interlocal agreement for the provision of services, as authorized by Section 163.01, Florida Statutes, as may be amended, and shall not in any way or manner whatsoever be deemed to constitute a transfer of powers or functions. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, Authority, or municipal officers.

**SECTION 32. NO THIRD PARTY BENEFICIARY**

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 citizen or employees of the County and/or Authority.

**SECTION 33. E-VERIFY - EMPLOYMENT ELIGIBILITY**

Each party warrants and represents that it is in compliance with Section 448.095, Florida Statutes, as may be amended. Each party has registered with and uses, and shall continue to use, the E-Verify System (E-Verify.gov), to electronically verify the employment eligibility of all newly hired employees. If either party has a good faith belief that the other party has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, said party shall terminate this Agreement with the violating party.

**SECTION 34. PUBLIC RECORDS, ACCESS AND AUDITS:**

Each party shall comply with the provisions of Chapter 119, Florida Statutes.

**IF ANY PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OTHER PARTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS**

**AS TO THE COUNTY:  
PUBLIC AFFAIRS DEPARTMENT  
301 N. OLIVE AVENUE  
WEST PALM BEACH, FL 33401  
OR BY E-MAIL AT  
RECORDSREQUEST@PBCGOV.ORG**

**OR BY PHONE AT:  
562-355-6680**

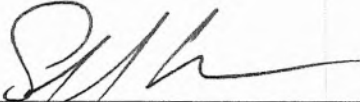
**AS TO THE AUTHORITY:  
RECORDS MANAGER  
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY  
7501 NORTH JOG ROAD  
WEST PALM BEACH, FL 33412  
561-640-4000 EXT. 4606  
RECORDS CUSTODIAN@SWA.ORG**

**[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]**

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

ATTEST:

SOLID WASTE AUTHORITY OF  
PALM BEACH COUNTY

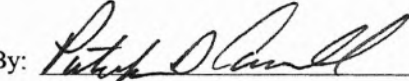
By:   
Sandra Vassalotti, Clerk to the Board

By:   
Dan Pellowitz, Executive Director

APPROVE AS TO LEGAL SUFFICIENCY

APPROVE AS TO TERMS AND CONDITIONS

By: \_\_\_\_\_  
Howard J. Falcon, III  
General Counsel

By:   
Signature  
Patrick D. Carroll, COO  
Print Name and Title

ATTEST:

JOSEPH ABRUZZO  
CLERK OF THE CIRCUIT  
COURT & COMPTROLLER

PALM BEACH COUNTY, a political  
subdivision of the State of Florida

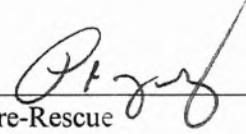
By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Robert S. Weinroth, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
County Attorney

By:   
Fire-Rescue