

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

THIS AGREEMENT is made and entered into on _____, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (hereinafter the “County”) and the CITY OF DELRAY BEACH, a Florida municipal corporation (hereinafter the “City”).

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 power 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 the regional hazardous materials response teams to be from the County and/or municipal fire departments within the County; and

WHEREAS, the City has coordinated with the other Zone 4 response team partner to provide the Haz Mat response team for Zone 4 since 1998; and

WHEREAS, pursuant to the Interlocal Agreement for Funding of Hazardous Materials Emergency Response Services (R2022-0727) between the Solid Waste Authority of Palm Beach County (hereinafter “SWA”) and the County, as may be amended from time to time (hereinafter “SWA Haz Mat Funding Agreement”), SWA has agreed to provide funding to the County for regional hazardous materials response teams’ services, including emergency response and mitigation in both the incorporated and unincorporated areas of Palm Beach County; and

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

NOW, THEREFORE, the County and the City, in consideration of the items 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 regional hazardous materials response team services by the City within the incorporated and unincorporated areas of Palm Beach County and funding for such services.

SECTION 3. REPRESENTATIVE AND CONTRACT MONITOR:

The County's representative and contract monitor during the performance of this Agreement will be the Fire Rescue Administrator, whose telephone number is 561-616-7000. The City's representative and contract monitor during the performance of this Agreement will be the Fire Chief, whose telephone number is 561-243-7415.

SECTION 4. ADMINISTRATION:

The Regional Hazardous Materials Oversight Committee (hereinafter the "Oversight Committee"), as established by the Haz Mat Response Ordinance, shall oversee and monitor the performance of services by the City's regional hazardous materials response team pursuant to the Haz Mat Response Ordinance and this Agreement.

SECTION 5. SERVICES TO BE PROVIDED:

The City shall coordinate with the other Zone 4 response team partner designated by the Oversight Committee to jointly provide and maintain one regional hazardous materials response team, as authorized by the Haz Mat Response Ordinance. The City shall provide within Zone 4, as identified in Appendix H of the Palm Beach County Regional Hazardous Materials Response Teams Standard Operating Guidelines ("Standard Operating Guidelines"), as may be amended from time to time by the Oversight Committee, hazardous materials emergency response and mitigation services, when necessary or requested by a responsible county or municipal public safety agency pursuant to the Standard Operating Guidelines. Appendix H of the Standard Operating Guidelines, as may be amended, is attached hereto as Exhibit 1 and made a part hereof. In accordance with the Haz Mat Response Ordinance, the Oversight Committee is authorized to modify the initial response zones of the regional hazardous materials response teams, including the City's team, after seeking comment and discussion from the regional hazardous materials response teams. The City shall also provide backup response to the remaining three zones when requested pursuant to the Standard Operating Guidelines.

SECTION 6. CITY’S RESPONSIBILITY:

The City agrees to assure sufficient staffing, apparatus, supplies, and equipment to provide regional hazardous materials response services to, and mitigation of, all hazardous materials emergencies in Zone 4. Furthermore, the City agrees that, upon request, they shall serve any incorporated or unincorporated areas within Palm Beach County as authorized by the Haz Mat Response Ordinance when necessary. In providing regional hazardous materials response team services, the City agrees to comply with the Haz Mat Response Ordinance, as may be amended from time to time, the Standard Operating Guidelines, as may be updated and/or revised from time to time by the Oversight Committee, and any other standards and procedures adopted by the Oversight Committee. All costs associated with maintaining the regional hazardous materials response team shall be borne by the City. The City agrees to provide access to City emergency response records for hazardous materials incidents, upon request, to the County and the Oversight Committee.

SECTION 7. COUNTY’S RESPONSIBILITIES:

A. Funding:

In accordance with the SWA Haz Mat Funding Agreement, the County agrees to provide annual funding to the City, for regional hazardous materials response team services, in the amount of Three Hundred Sixteen Thousand, Seventy Dollars and Thirteen Cents (\$316,070.13) for fiscal year 2023. The annual funding for each subsequent fiscal year will be increased by the same percentage increase, if any, received by the County from the SWA under the SWA Haz Mat Funding Agreement. However, notwithstanding anything to the contrary, the annual amount provided to the City shall not exceed 12.5% of the annual funding received by the County from the SWA pursuant to the SWA Haz Mat Funding Agreement.

B. Payments:

The County shall remit payment to the City in two equal installments, payable on February 1, and May 1, of each fiscal year covered by this Agreement, subject to the County’s receipt of funding from the SWA. The City shall provide an invoice to the County no later than thirty (30) days prior to each due date. Invoices shall include a reference to this Agreement and identify the amount due and payable to the City. Invoices shall be sufficiently detailed to allow prepayment audit thereof. The City shall supply any further documentation deemed necessary by the County.

SECTION 8. OTHER REVENUE

Where the City’s regional hazardous materials response team responds to an incident, the City’s response team may, in accordance with the Haz Mat Response Ordinance, invoice and collect response costs from those persons and/or companies determined to have caused or to be responsible for the hazardous substance release. In calculating the cost of response actions and invoicing the responsible party, the City’s response team shall comply with the Haz Mat Response Ordinance and any applicable standards and procedures adopted by the Oversight Committee. Any recovered funds shall be used in compliance with the Haz Mat Response Ordinance. When

responding to a hazardous materials incident, the City's response team shall keep a detailed record of the costs of all response actions, and shall provide access to such records, upon request, to the County and the Oversight Committee.

SECTION 9. TERM, TERMINATION AND RENEWAL:

The term of this Agreement shall be for ten (10) years commencing on October 1, 2022. This Agreement may be terminated, with or without cause, by either party, at any time upon ninety (90) days written notice to the other party. Should either party terminate this Agreement prior to its expiration, then the City shall promptly make a pro rata reimbursement to the County of payments made to the City hereunder, in proportion to the amount of time between the termination date and the expiration of the applicable funding period.

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 its 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 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 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. Further, nothing 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. Liability for injury to personnel, and /or for loss or damage of equipment, shall be borne by the party employing such personnel, and/or owning or possessing such equipment.

SECTION 13. 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 14. RECORDS RETENTION

Each party shall maintain all records associated with this Agreement and the services provided hereunder, 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 City 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 any 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 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 the County against any actions, claims or damages arising out of the City'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 16. 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 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, 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 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 may 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 City at:
City of Delray Beach Fire Rescue Department
Fire Chief
501 W. Atlantic Avenue
Delray Beach, FL 33444

SECTION 20. 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. 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 one of the parties than the other.

SECTION 22. CAPTIONS:

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

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 actions necessary to enforce the Agreement shall be held in a 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 any 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 obligation under this Agreement is contingent upon an annual budgetary appropriation by its respective governing body, and the County's receipt of funding from the SWA, for the purposes hereunder for each fiscal year.

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 City 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, 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, 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, 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 City.

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.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the undersigned parties made and executed this Agreement on the day and year first written above.

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

ATTEST:

**CITY OF DELRAY BEACH,
FLORIDA**

By: _____
Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
Lynn Gelin, City Attorney

By: _____
L. Keith Tomey III., Fire Chief

EXHIBIT 1
Regional Hazardous Materials Team Response Zones

Zone 1	Northern Boundary: Martin County / Palm Beach County line. Southern Boundary: North Lake Blvd east of State Rd.7, inclusive of Northlake Blvd. Eastern Boundary: Atlantic Ocean Western Boundary: Palm Beach County Line
	1st Due: Palm Beach County Special Operations 19 2nd Due: West Palm Beach HazMat 2 3rd Due: Palm Beach County Special Operations 34 4th Due: Boca Raton HazMat 6, Delray Beach Special Ops 115
Zone 2	Northern Boundary: Northlake Blvd, exclusive of Northlake Blvd. Southern Boundary: Okeechobee Blvd (East of State Rd.7) Boynton Beach Blvd (East of Haverhill) Eastern Boundary: Atlantic Ocean. Western Boundary: State Rd.7, exclusive of State Rd.7 (North of Okeechobee Blvd) Haverhill, exclusive of Haverhill (North of Boynton Beach Blvd)
	1st Due: West Palm Beach HazMat 2 2nd Due: Palm Beach County Special Operations 19 3rd Due: Palm Beach County Special Operations 34 4th Due: Boca Raton HazMat 6, Delray Beach Special Ops 115
Zone 3	Northern Boundary: Northlake Blvd (West of 120 th Ave N, East of Grape View Blvd) Halpatiokee Rd and Stumpers Grade Rd (West of Grape View Blvd) Okeechobee Rd (West of Haverhill, East of State Rd.7) Southern Boundary: Boynton Beach Blvd, exclusive of Boynton Beach Blvd. Broward County / Palm Beach County line Eastern Boundary: State Rd.7 (North of Okeechobee Blvd) Haverhill Blvd (South of Okeechobee Blvd, North of Boynton Beach Blvd) Turnpike, inclusive of the turnpike (South of Boynton Beach Blvd). Western Boundary: Palm Beach County Line
	1st Due: Palm Beach County Special Operations 34 2nd Due: Boca Raton HazMat 6, Delray Beach Special Ops 115 3rd Due: West Palm Beach HazMat 2 4th Due: Palm Beach County Special Operations 19
Zone 4	Northern Boundary: Boynton Beach Blvd, inclusive of Boynton Beach Blvd. Southern Boundary: Broward County / Palm Beach County line Eastern Boundary: Atlantic Ocean Western Boundary: Turnpike, exclusive of the turnpike.
	1st Due: Boca Raton HazMat 6, Delray Beach Special Ops 115 2nd Due: Palm Beach County Special Operations 34 3rd Due: West Palm Beach HazMat 2 4th Due: Palm Beach County Special Operations 19

