

RESOLUTION NO. 68-09-17

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH PALM BEACH COUNTY FOR CO-UTILIZATION OF THE PALM BEACH COUNTY SURPLUS PROPERTY THRIFT STORE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 163, Florida Statutes (Florida Interlocal Cooperation Act of 1969) as amended, authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage; and

WHEREAS, Part I of Chapter 163, Florida Statute permits public agencies as defined herein to enter into interlocal agreements with each other to jointly exercise any power, privilege or authorization which such agencies share in common and which each might exercise separately; and

WHEREAS, Chapter 125, Florida Statute, as amended, empowers the County to enter into agreement with other governmental units for the joint performance or performance by one unit on behalf of the other of their authorized functions, and empowers the County to establish and administer programs and projects with other governmental entities; and

WHEREAS, the Town has determined it will have surplus tangible property assets to dispose of; and

WHEREAS, the Town has determined it to be beneficial to co-utilize the County's surplus property Thrift Store to dispose of such surplus tangible property assets; and

WHEREAS, the Town Manager recommends approval of the Interlocal agreement between the Town of Lake Park and Palm Beach County, a copy of which is attached hereto and incorporated herein as Exhibit A.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF
THE TOWN OF LAKE PARK, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein as true and correct and are hereby made a specific part of this Resolution.

Section 2. The Mayor is hereby authorized and directed to execute the Interlocal agreement between the Town of Lake Park and Palm Beach County, which is attached hereto and incorporated herein as Exhibit A.

Section 3. This Resolution shall take effect immediately upon adoption.

Certification

I, Shayonta Edwards Clerk of the Town of Lake Park Florida, do hereby certify that the foregoing is a true and correct copy of the original instrument as contained in the official records of the Town.

Witness my hand and the Official Seal of the Town of Lake Park This

09th day of September 2017

Town Seal _____

SEAL Shayonta Edwards

Town Clerk

TOWN

110

The foregoing Resolution was offered by Commissioner Michaud, who moved its adoption. The motion was seconded by Commissioner Lynch and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	/	—
VICE-MAYOR KIMBERLY GLAS-CASTRO	/	—
COMMISSIONER ERIN FLAHERTY	/	—
COMMISSIONER ANNE LYNCH	/	—
COMMISSIONER ROGER MICHAUD	/	—

The Town Commission thereupon declared the foregoing Resolution NO. 68-09-17 duly passed and adopted this 13 day of September, 2017.

TOWN OF LAKE PARK, FLORIDA

BY: [Signature]
MICHAEL O'ROURKE
MAYOR

ATTEST:

[Signature]
VIVIAN MENDEZ
TOWN CLERK
TOWN OF LAKE PARK
SEAL
(TOWN SEAL)
FLORIDA

Approved as to form and legal sufficiency:

BY: [Signature]
THOMAS J. BAIRD
TOWN ATTORNEY

Certification
I, Shequita Edmunds Dopy, Clerk of the Town of Lake Park Florida, do hereby certify that the foregoing is a true and correct copy of the original instrument as contained in the official records of the Town. Witness my hand and the Official Seal of the Town of Lake Park This 13th day of September 2017
Town Seal [Signature]
Town Clerk

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

R2017 1581

This Interlocal Agreement (hereinafter “the Agreement”) is made and entered into this _____ day of OCT 17 2017, by and between Palm Beach County (hereinafter “the County”), a political subdivision of the State of Florida, by and through its Board of County Commissioners, and the **Town of Lake Park** (hereinafter “the Partner”). Witnesseth:

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

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

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

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

SECTION 1: BACKGROUND AND PURPOSE

1. **Purpose.** The purpose of this Agreement is to establish the terms and conditions governing Partner’s co-utilization of the County’s surplus property Thrift Store (hereinafter “the Thrift Store”) for the disposal of Partner’s suitable surplus tangible property assets.
2. County and Partner agree to share the use of the Thrift Store in accordance with the provisions of this Agreement.
3. County and Partner agree that co-utilization of an existing operational system is more cost-effective than creating duplicate systems under separate and independent operation.
4. **County Owns, Manages and Operates the Enterprise.** The parties agree that the County will at all times own, manage and operate the Thrift Store, its proprietary technologies, operating systems and business relationships and resources, for the benefit of the County and the Partner and of all other participating agencies with co-utilization agreements in effect, now and in the future, subject to the rights of the Partner specifically granted herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4: PAYMENT OF FEES AND COSTS

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

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

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

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

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

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

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

SECTION 5: COUNTY REQUIREMENTS

1. REMEDIES – No provision of this Interlocal 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 Interlocal Agreement, including but not limited to any citizen or employees of the COUNTY and/or PARTNER.

2. ACCESS AND AUDITS – 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 power to review past, present and proposed County Interlocal Agreements, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the PARTNER, its officers, agents, employees, and lobbyists in order to ensure compliance with Interlocal Agreement 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.

3. NONDISCRIMINATION – The PARTNER warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, genetic information, familial status, sexual orientation, gender identity and expression.

SECTION 6: INSURANCE AND INDEMNIFICATION PROVISIONS

1. Neither the County nor the Partner assumes any responsibility or liability for any surplus tangible property assets lost, stolen, misplaced, damaged or destroyed while under the control of the Thrift Store.

2. Without waiving the right to sovereign immunity as provided by s.768.28 F.S., the Partner acknowledges to be self-insured for General Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

3. In the event the Partner maintains third-party Commercial General in lieu of exclusive reliance of self-insurance under s.768.28 F.S., the Partner shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

4. When requested, the Partner agrees to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the County agrees to recognize as acceptable for the above-mentioned coverages.

5. Compliance with the foregoing requirements shall not relieve the Partner of its liability and obligations under this Agreement.

SECTION 7: TERMINATION

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

SECTION 8: NOTICE

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

To the County:

Director of Financial Management Division
Room 702.221
Palm Beach County Governmental Center
301 North Olive Avenue
West Palm Beach, FL 33401

With a copy to:

Fixed Assets Manager
Room 1E-04
Palm Beach County Fixed Assets Building
2455 Vista Parkway,
West Palm Beach, FL 33411

To the Partner:

John D'Agostino
Town of Lake Park
Attn: Town Manager
535 Park Avenue
Lake Park, FL 33403
Tel: (561) 881-3304 / Email: JDagostino@lakeparkflorida.gov

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

R2017 1581 OCT 17 2017

ATTEST:

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

SHARON R. BOCK, CLERK &
COMPTROLLER

BY: 
Deputy Clerk

BY: 
Paulette Burdick, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

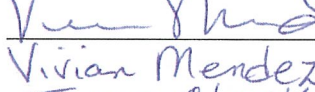
APPROVED AS TO TERMS & CONDITIONS

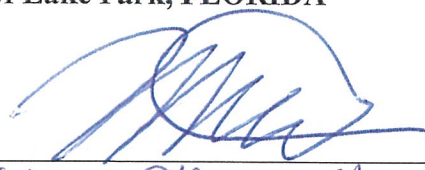
BY: 
County Attorney

BY: 
Sherry Brown, Director of the Office of
Financial Management and Budget

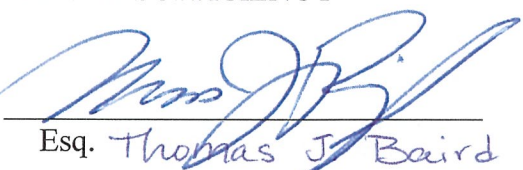
ATTEST:
CITY CLERK

Town of Lake Park, FLORIDA

BY: 
Vivian Mendez
Town Clerk

BY: 
Michael O'Rourke, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: 
Esq. Thomas J. Baird