

City of Palm Coast, Florida Agenda Item

Agenda Date: 8/21/2018

Department FIRE Item Key 3899	Amount Account #
Subject RESOLUTION 2018-XX APPROVING AN INTERLOCAL AGREEMENT WITH FLAGLER COUNTY SCHOOL BOARD FOR THE DONATION OF FIRE EQUIPMENT	
Background: <u>UPDATE FROM THE AUGUST 14, 2018 WORKSHOP</u> This item was heard by City Council at their August 14, 2018 Workshop. There were no changes suggested to this item. <u>ORIGINAL BACKGROUND FROM THE AUGUST 14, 2018 WORKSHOP</u> This is an updated Interlocal Agreement with the Flagler County School Board to provide surplus resources to the Flagler Leadership Academy. The City's 2004 Pierce Kenworth Firetruck has been retired. In the spirit with the City's Interlocal Agreement, the 2004 Pierce Kenworth will be given to the Flagler School Board for use at the Flagler Palm Coast High School Fire Academy. All resources donated to the Flagler County School Board are considered training props for "non-real" learning use and not intended for "live" fire use.	
Recommended Action: Adopt Resolution 2018-XX approving an Interlocal Agreement with the Flagler County School Board for the donation of Fire Equipment.	

RESOLUTION 2018-_____
INTERLOCAL AGREEMENT
FLAGLER SCHOOLS FOR FIRE EQUIPMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT WITH FLAGLER SCHOOLS FOR FIRE EQUIPMENT, AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City desires to contribute to the FCSD's Fire Academy at Flagler Palm Coast High School (FPCHS)'s Fire Fighting training program by donating fire equipment to enhance the FPCHS Fire Academy for students; and

WHEREAS, the donated equipment may include, but is not limited to, a fire engine, fire hand tools, hoses, nozzles, EKG machine, and EMT/Paramedic supplies; and

WHEREAS, the City Council of Palm Coast, desires to enter into an Interlocal Agreement with the FCSD for the above referenced donations.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. APPROVAL OF INTERLOCAL AGREEMENT. The City Council hereby approves the terms and conditions of an Interlocal Agreement with Flagler County School District to enhance the Fire Fighting training program, as attached hereto and incorporated herein by reference as Exhibit "A."

SECTION 2. AUTHORIZATION TO EXECUTE. The Mayor is hereby authorized to execute the Interlocal Agreement as depicted in Exhibit "A."

SECTION 3. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 21st day of August 2018.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit A – Interlocal Agreement with FCSD for Fire Fighting Training Program

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney

Prepared by:
Catherine D. Reischmann
Asst. City Attorney
111 N. Orange Ave., Suite 2000
Orlando, FL 32801

Return to:
City Clerk
160 Lake Avenue
Palm Coast, FL 32164

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF PALM COAST
AND FLAGLER COUNTY SCHOOL DISTRICT REGARDING FIRE
EQUIPMENT**

This INTERLOCAL AGREEMENT (“Agreement”) is made and entered into by and between the CITY OF PALM COAST, a Florida municipal corporation (“Palm Coast”), whose address is 160 Lake Avenue, Palm Coast, Florida 32164, and FLAGLER COUNTY SCHOOL DISTRICT (“FCSD”), whose address is 1759 East Moody Blvd., Bldg. 2, Bunnell, Florida 32110. PALM COAST and FCSD shall be referred to as the “Parties.”

WITNESSETH:

WHEREAS, the Parties wish to terminate the Interlocal Agreement which was recorded on August 24, 2016, in O.R. Book 2152, page 440, et seq., Public Records of Flagler County, Florida, and replace it with this Agreement; and

WHEREAS, the purpose of this Agreement is for PALM COAST to contribute to the FCSD’s Fire Academy at Flagler Palm Coast High School (FPCHS)’s Fire Fighting training offered to high school students. Students enrolled in this academic program (“Program”) earn industry certifications in CPR, First Responder, Firefighting 1 and Firefighting 2; and

WHEREAS, Palm Coast Fire Department has, from time to time, certain equipment which is declared surplus for various reasons, including that it may not meet industry standards for emergency medical services or for fire department use, and it has minimal or no resale value; and

WHEREAS, the parties agree that donation of this surplus equipment to the FCSD would enhance the FPCHS Fire Academy; and

WHEREAS, this Agreement is authorized pursuant to the provisions of Chapter 166, *Florida Statutes*, and other applicable laws, since the donation is for a public purpose and confers a public benefit.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. TERM. This Agreement shall become effective upon the date of execution by all Parties and shall continue until April 30, 2021. This Agreement will automatically renew for a period of one year and each year thereafter, unless a Party gives the other written notice of termination as referenced below.

SECTION 2. RESPONSIBILITIES OF PALM COAST.

A. PALM COAST agrees to provide the FCSD with certain firefighting equipment, which PALM COAST has declared surplus, and which will assist FCSD in offering a quality Program. The donated equipment may include, but is not limited to, a fire engine, fire hand tools, hoses, nozzles, EKG machine, and EMT/Paramedic supplies. PALM COAST will transport the equipment to the FPCHS. The parties' responsibilities regarding the Fire Engine are described in Section 4. PALM COAST has no obligation to the FCSD to donate any surplus equipment.

B. PALM COAST makes no agreement, warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or use of the donated surplus equipment.

C. PALM COAST Fire Department will continue to allow students in the Program to participate in the Department's "Ride Along" program with written approval of the student's parent or guardian.

SECTION 3. RESPONSIBILITIES OF FCSD.

A. FCSD shall provide the facilities and instructional and technical support necessary to conduct the Program at FPCHS.

B. FCSD acknowledges that the City is not a manufacturer or dealer of any donated equipment, and that the equipment is being provided "as is" and "with all faults".

SECTION 4. FIRE ENGINE DONATION.

A. Any fire engine donated by PALM COAST to FCSD shall be considered only a training prop for the students, since it is not recognized by Florida Bureau of Standards and Training as a designated training engine at the Flagler County Fire Training Center.

B. PALM COAST agrees to inspect and pump test the engine annually and provide FCSD with the results of the inspection and test.

C. Maintenance of the fire engine, to include the motor, power train, chassis and body, power take off (PTO), pump, pump housing and valves, will be the responsibility of the FCSD.

D. If, at any time, FCSD is not able to maintain the fire engine to minimum standards to pass the PALM COAST annual inspections, then FCSD agrees to exercise one of the following two options:

- i. FCSD may request that PALM COAST make the necessary repairs, but FCSD acknowledges that PALM COAST has no obligation to do so, and PALM COAST will decide whether to make the repairs at its sole discretion; or
- ii. FCSD may return the fire engine to PALM COAST.

SECTION 5. RETURN OF ENGINE AND EQUIPMENT. If, for any reason, the Program should be canceled or this agreement is terminated by either party, FCSD must return the fire engine, and any other equipment that was donated to the Program, to PALM COAST.

SECTION 6. INSURANCE. During the term of this Agreement, the parties shall provide to each other certificates of insurance evidencing comprehensive and general liability insurance coverage in a sum not less than \$1,000,000 Aggregate and \$1,000,000 per occurrence. The parties shall provide written endorsements naming the other Party as an additional insured, and such endorsement shall also state "Such insurance as afforded by this policy shall be primary, and any insurance carried by (FCSD or PALM COAST) shall be excess, and noncontributory." Any and all insurance coverage may be provided by PALM COAST's Self-Insurance program. Coverage shall provide notice to the additional insureds of any change in or limitation of coverage or cancellation of the policy no less than 30 days prior to the effective date of the change, limitation or cancellation.

SECTION 7. INDEMNIFICATION:

A. Insofar as permitted by law, FCSD shall assume the defense and hold harmless PALM COAST and any of its officers, agents or employees from any liability, damages, costs or expenses of any kind whatsoever, including attorneys' fees, which may arise by reason of the sole fault or negligence of FCSD, its officers, agents or employees.

B. Insofar as permitted by law, PALM COAST shall assume the defense and hold harmless FCSD and any of its officers, agents or employees from any liability, damages, costs, or expenses of any kind whatsoever, including attorneys' fees, which may arise by reason of any harm to person(s) or property received or suffered by reason of the sole fault or negligence of PALM COAST, its officers, agents or employees.

C. It is the intent of the FCSD and PALM COAST that where negligence or responsibility for any harm to person(s) or property is determined to have been shared, the principles of comparative negligence shall be followed and each Party shall bear the proportionate cost of any liability, damages, costs or expenses attributable to that Party.

D. FCSD and PALM COAST agree to notify the other Party of any claims, administrative actions, or civil actions determined to be within the scope of this Agreement within ten (10) calendar days of such determination. PALM COAST and FCSD further agree to cooperate in the defense of any such actions. Nothing in this Agreement shall establish a standard of care or create any legal right for any person not a Party to this Agreement.

E. Neither Party waives its sovereign immunity through this Agreement.

SECTION 8. NO PARTNERSHIP. Nothing contained in this Agreement shall be deemed or construed so as to create the relationship of employer-employee, principal-agent, joint venturers, co-adventurers, or partnership between the PALM COAST and FCSD, and they are and shall remain independent one as to the other.

SECTION 9. NO THIRD PARTY BENEFICIARIES. The provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person unless otherwise expressly provided for herein.

SECTION 10. TERMINATION. This Agreement may be terminated without cause by any Party upon 60 days prior written notice to the other Party.

SECTION 11. NOTICES. Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is personally delivered or sent by first class mail, postage prepaid, addressed to the respective Parties as follows:

TO FCSD:

Flagler County School District
Attn: Kristy Gavin, Legal Counsel
1759 East Moody Blvd., Bldg. 2
Bunnell, FL 32110

TO PALM COAST:

City of Palm Coast
Attn: City Manager
160 Lake Avenue
Palm Coast, FL 32164

SECTION 12. MODIFICATION OF AGREEMENT. This Agreement may only be modified by written agreement of the Parties, adopted with the same formalities as the adoption of this Agreement.

SECTION 13. SEVERABILITY. Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal, or unenforceable.

SECTION 14. RECORDATION AND EFFECTIVE DATE. After execution, this Agreement shall be forwarded to the Palm Coast City Clerk for recordation with the Clerk of Court in and for Flagler County, Florida.

SECTION 15. TERMINATION OF PRIOR INTERLOCAL AGREEMENT. The Parties hereby acknowledge that the Interlocal Agreement recorded on August 24, 2016, in O.R. Book 2152, Page 440, et seq., is hereby terminated.

IN WITNESS WHEREOF, the duly authorized officials of the Parties have made and executed this Agreement on the respective dates indicated below.

ATTEST:

CITY OF PALM COAST, FLORIDA

Virginia A. Smith, City Clerk

Milissa Holland, Mayor

Approved as to Form

Date: _____

William E. Reischmann, Jr.
City Attorney

ATTEST:

FLAGLER COUNTY SCHOOL DISTRICT

By: _____
Trevor Tucker, Chairperson of Board

James Tager, Superintendent

Date: _____

Approved as to Form

Kristy J. Gavin
School Board Attorney

G:\Does\Cities\Palm Coast\Agreements\Flagler Co School Dist\Fire Engine Interlocal\Fire engine interlocal 4-19-18.docx