

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date:	December 5, 2006	Consent <input checked="" type="checkbox"/>	Regular <input type="checkbox"/>
		Public Hearing <input type="checkbox"/>	
Submitted By:	Water Utilities Department		
Submitted For:	Water Utilities Department		

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I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** Cross Access Agreement with the Village of Royal Palm Beach to reduce the size of the Village's access easement from that previously contained in the warranty deed.

**Summary:** On April 27, 2006, the Village conveyed a parcel of land to the County as part of the purchase and sale of the Village's utility system (R2006-0410). The warranty deed reserved to the Village a non-exclusive easement for the Village to access the land surrounding the conveyed plant site. However, the recorded plat reflects an access area of approximately 60 feet by 140 feet, which is larger than the Village requires. As part of the purchase and sale, the Village and County entered into a transition agreement that provided for the easement to be reduced in size at a future date because time did not permit the preparation and execution of the documents in advance of the closing. This agreement reduces the size of easement as originally contemplated in the purchase and sale agreement.

District 6

(MJ)

**Background and justification:** On February 28, 2006, the County purchased the Village's utility system and acquired certain real property as part of the purchase and sale transaction (R2006-0410), which was closed on April 27, 2006. This cross access agreement re-defines the boundaries of the easement that allows the Village to access the Village's property surrounding the County's plant site.

**Attachments:**

1. Location Map
2. Two (2) Original Cross Access Agreements

Recommended By: *Lisha L. Pica* 11/27/06  
 Department Director Date

Approved By: *[Signature]* 11/27/06  
 Assistant County Administrator Date



## CROSS-ACCESS AGREEMENT

**THIS CROSS-ACCESS AGREEMENT** ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2006, by and between the Village of Royal Palm Beach, a Florida municipal corporation ("Village"), and Palm Beach County, Florida, a political subdivision of the State of Florida ("County").

**WHEREAS**, on April 27, 2006, the Village conveyed to County a certain parcel of land in Palm Beach County, as shown in the Warranty Deed recorded in Official Record Book 20266/Page 0598 of the Official Records for Palm Beach County, Florida ("Warranty Deed"); and

**WHEREAS**, said Warranty Deed reserved to the Village a non-exclusive easement for ingress and egress ("Access Easement"), as dedicated on the plat recorded in Plat Book 107, Pages 173 through 174, Public Records of Palm Beach County, Florida ("Plat"); and

**WHEREAS**, also on April 27, 2006, Village and County entered into a Transition Agreement, a copy of which is attached hereto and incorporated herein as **Exhibit "A"**; and

**WHEREAS**, the Transition Agreement contemplated that the parties would enter into this Agreement to (1) reduce the size of the Access Easement from its platted size and (2) to set forth certain maintenance and liability responsibilities related to the Access Easement; and

**WHEREAS**, the parties now wish to enter into this Cross-Access Agreement as contemplated by the Transition Agreement.

**NOW, THEREFORE**, for ten (\$10.00) dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree:

1. Recitals. The foregoing statements are true and correct and are incorporated herein.
2. Effective Date. This Agreement shall become effective upon approval by both parties. The Effective Date of this Agreement shall be the date the Agreement is ratified by the Palm Beach County Board of County Commissioners (the "Effective Date").
3. Scope of Easement. The parties agree that the Access Easement shall be reduced in size from the size shown on the Plat recorded in Plat Book 107, Pages 173 through 174, to the size shown on the Amended Access Easement, which is attached hereto and incorporated herein as **Exhibit "B."** The Village agrees that the Amended Access Easement shall prevail over the Access Easement shown on the Plat and the reservation contained in the Warranty Deed, and that the Village will

no longer have any legal access rights to any portion of the Access Easement shown on the Plat or reserved in the Warranty Deed and not shown on the Amended Access Easement. The Village agrees that the Amended Access Easement shall have the same legal effect as if it has been shown on the Plat and reserved in the Warranty Deed.

4. Maintenance of Access Easement/Liability for Damages. The County will be responsible for the routine maintenance of the Amended Access Easement area. The Village shall be responsible for damage caused to the Amended Access Easement area beyond ordinary wear and tear and for injuries sustained on the Amended Access Easement area if caused by the negligence of Village. This section shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes Section 768.28.
5. Recording/Filing. The County shall be responsible for recording this document in the Public Records for Palm Beach County. This Agreement shall also be filed with the Clerk & Comptroller for Palm Beach County.

[REMAINDER OF PAGE LEFT BLANK; SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Village and County have executed this Agreement on the day and year first written above.

ATTEST:

*Diane DiSanto*  
Diane DiSanto, Village Clerk

VILLAGE OF ROYAL PALM BEACH,  
FLORIDA, a municipal corporation

BY: *David A. Lodwick*  
David A. Lodwick, Mayor

Approved as to form and legality:

*Trela White*  
Trela White, Village Attorney

ATTEST:  
SHARON R. BOCK, CLERK &  
COMPTROLLER

PALM BEACH COUNTY, FLORIDA,  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Addie L. Greene, Chairperson

(Seal)

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

\_\_\_\_\_  
County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS:

By: *Lisha R. Pua*  
Director of Water Utilities

**EXHIBIT "A" – TRANSITION AGREEMENT**

## TRANSITION AGREEMENT

**THIS TRANSITION AGREEMENT** ("Agreement") is made and entered into as of the 27<sup>th</sup> day of April, 2006, by and between the Village of Royal Palm Beach, a Florida municipal corporation ("Village"), and Palm Beach County, Florida, a political subdivision of the State of Florida ("County").

**WHEREAS**, Assignor and Assignee have entered into that certain Agreement for Purchase and Sale of Water and Wastewater Assets dated February 28, 2006 ("Purchase Agreement");

**WHEREAS**, the parties desire to provide for the smooth transition of utility services and for certain post-closing matters, as set forth below.

**WHEREAS**, in order to provide for the smooth transition of utility services and for certain post-closing matters, as set forth below, the parties desire to enter into this Agreement.

**NOW, THEREFORE**, for ten (\$10.00) dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree:

1. Use of Village Property. The Village shall make available for use by the County a four mile strip of land more particularly described in Exhibit "M" to the Purchase Agreement, which is also attached hereto, for the purpose of the County constructing up to 15 Floridan Aquifer water withdrawal wells. The parties understand that this strip of land is currently subject to an easement in favor of Florida Power & Light (hereafter "FP&L") and the Village shall assist the County in obtaining FP&L's consent to the use of such land if the easement granted is an exclusive easement in favor of FP&L or if FP&L otherwise objects to the County's use of the strip of land. If the County is unable to use the FP&L easement for water well withdrawal purposes, the Village shall consent to the use by the County of the 200 foot wide by 4,000 foot long strip of land through which State Road 7 extends for such purposes, said lands depicted as parcel numbers 72 41 43 14 0203 00010 and 72 41 43 14 0101 90010.

2. Fill of Proposed Pump Station. As soon as practicable after the Closing Date, the Village shall take appropriate steps to fill in the proposed pump station site. In so doing, the Village shall use fill materials suitable for construction of large buildings and water-bearing structures. Structural fill shall be gravel, sandy gravel or gravelly sand free

of organic material, loam, wood, trash and other objectionable material. The fill shall be 100 percent finer than a four-inch sieve and no more than seven percent finer than a No. 200 sieve. All materials shall be placed in six-inch lifts and properly compacted. Fill shall not be placed and compacted when materials are too wet to properly compact (no more than three percentage points above the optimum moisture content) and each layer of fill and the top 12-inches shall be compacted to 95 percent modified proctor (ASTM D1557). Core samples and copies of all density testing results shall be provided to the County.

3. Use of Village Property. The Village shall cooperate with the County as to the use of Village property, privileges, easements, licenses and/or prescriptive rights for the construction, reconstruction, installation, maintenance and operation of the Utility Systems following the Closing Date; however, nothing in this section is intended to affect or modify the provisions of Section 337.403, Fla. Stat., regarding relocation of utilities in any public right-of-way or easement.

4. Employment of Village Employees. The County shall offer employment to all Village utility personnel as identified by the Village, subject to the paragraph immediately below. Such employment shall be conditioned upon the employee's meeting the necessary legal requirements for County employment, and the County completing the necessary background and substance abuse checks. Such employment shall be at or above their existing salaries and such employees shall receive equal credit with the County for years of Village service for purposes of calculating employment benefits, e.g. vacation time and sick leave, but not retirement all as determined as of the Closing Date. The salary and benefits of key Village utility personnel to be included but not limited to the Utilities Director, shall be determined and agreed upon in writing prior to the Closing Date. The Village's Director of Utilities shall remain employed by the Village until October 2, 2006 and, thereafter, shall become a County employee. The Village shall be responsible for all obligations for all Village utility personnel for accrued retirement, sick leave, vacation, workers compensation claims, and all other employment related claims all as accrued during employment by the Village. The Village and the affected employees shall continue contributing existing costs/contributions in accordance with present Village policies for paying health insurance costs (COBRA or otherwise) during the County's waiting period for a time frame of no longer than 90 days. The County shall start Village employees with 40 hours of annual leave or vacation time, whichever is applicable.

County and Village acknowledge that one Village employee (L.T. Moore) is on long-term disability and will not be offered County employment until released by his physician and cleared by the County's Occupational Health Clinic for employment as a

Water Treatment Plant Operator II with the County. County agrees to hold the position open until July 31, 2006, after which time, the County shall have no further obligation to place him in a County position.

5. Abandonment of Wastewater Treatment Plant and Related Matters. On or before June 30, 2007 or when the County diverts the wastewater flow to its own facilities, whichever first occurs, the County shall abandon the Village's Wastewater Treatment Plant. Notwithstanding the foregoing, the County may continue to use and operate at its expense the Village's Water Treatment Plant until such time as the County completes construction of its regional water plant, for a period not to exceed ten years from the Closing Date, whichever first occurs or until such other time as the parties may agree. Upon the County's abandonment of a Village Plant, the Village shall, at its own expense, decommission the Plant.

6. Emergency Generators. The County and Village are both responsible for the health, safety and welfare of their residents during hurricanes and other civil emergencies. A total of fifty-two (52) wastewater pump stations are currently located within the Village's Retained Utility Service Area ("Village Area"). Power outages that occur during hurricanes and other emergencies require operation of a system of emergency generators at wastewater pump stations in order that wastewater not back up into streets, swales and the homes of residents. The County shall assign emergency generators to pump stations within the Village Area as set forth below. The Village shall provide the staffing to assist the County in operating these generators during emergencies as set forth below.

The Village currently has two (2) stationary and eleven (11) portable generators in inventory for use as backup power for the fifty-two (52) existing lift stations within the Village Area. The Village's wastewater system was constructed as a cascading flow network of lift stations. Based upon previous experiences, the Village has developed a generator staging and rotation program ("Program") utilizing a total of twenty-five (25) emergency generators. The Program requires nineteen (19) emergency generators to be stationed at lift stations 1, 5, 7, 11, 12, 13, 15, 19, 21, 24, 27, 28, 32, 33, 34, 37, 39, 46 and 47, as shown on Exhibit "L" to the Purchase Agreement, which is also attached hereto. These nineteen (19) generators shall be placed at the identified lift stations prior to June 1<sup>st</sup> of each year beginning in 2007 for operation during hurricane season. The County may remove these generators for maintenance and storage at its discretion in November of each year. The Program also requires six (6) portable generators to accommodate flows from the remaining lift stations.

The County shall pay the cost required to fully equip the Program with twelve (12) additional emergency generators. The County will purchase six (6) additional emergency generators within twelve (12) months of the execution date of this Agreement. The County shall purchase an additional six (6) generators to be dedicated for primary use within the Village Area within twenty-four (24) months after the date of this Agreement. The twelve (12) new and thirteen (13) existing generators shall be for use primarily within the Village Area and shall not be deployed to another location while there is a need for backup power at lift stations within the Village Area.

The County shall train Village personnel on the operation and refueling of the portable generators during a state of emergency. The Village shall assign the appropriate number of personnel to handle an emergency and suitable trucks during a state of emergency to operate or refuel emergency generators within the Village Area. The Village acknowledges that the operation of these emergency generators requires Village staff to enter upon County property and to operate the County's equipment ("Facilities"), both for training purposes and during emergency events. The Village's use of the Facilities shall be limited to emergency situations that require operation of the Facilities or for training of Village personnel for same. Village personnel shall not operate the Facilities without the express permission of one of the following County officials: the Director, Deputy Director, or Assistant Director of Palm Beach County Water Utilities Department ("PBCWUD"), the Director of Lines Operation and Maintenance of PBCWUD or the Director of PBCWUD's Emergency Operation Center. Where possible, this request to enter upon or operate the County Facilities shall be made and responded to in writing; however, it is recognized that during an emergency situation it may only be possible to rely on verbal communications between the parties. Notwithstanding anything to the contrary contained herein, the County's permission to operate the facilities shall be deemed granted on and after June 1 through November 30 each calendar year.

Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the Village shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out of the Village's negligence in connection with this Agreement, and County shall indemnify, defend and hold harmless the Village against any actions, claims or damages arising out of the County'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 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other for such other's negligent, willful or intentional acts or omissions.

7. Billing for Garbage/Trash Collection. The County will bill for the Village's garbage and trash collection services on the water/wastewater bill to the individual