Agenda Item # 3K-8

## PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Submitted By: Water Utilities Department	Meeting Date:	July 10, 2007	Consent [X] Public Hearing [ ]	Regular [ ]
Submitted For: Water Utilities Department	Submitted By:	Water Utilities Department		
Submitted For, water officies Department	Submitted For:	Water Utilities Department		

#### I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to the Interlocal Agreement with the Seacoast Utility Authority for the purchase and sale of bulk potable water and wastewater service.

Summary: On April 18, 2006, the Board approved an Interlocal Agreement (R-2006-0687) with the Seacoast Utility Authority (Authority) for the County to provide up to five (5) million gallons per day (MGD) of bulk potable water and wastewater service. During the initial five-year term, the Authority is required to pay an annual fee of \$0.11 per gallon in 100,000 gallon increments to lease potable water capacity and \$0.09 per gallon to lease wastewater capacity. The Authority also must pay \$1.45 and \$1.22 per 1,000 gallons respectively for potable water and wastewater service. The Authority has the option of extending the Agreement for a period of 25 years and may permanently reserve potable water capacity for \$2.84 per gallon and wastewater for \$2.33 per gallon. The Authority has requested that the Agreement be modified to automatically renew for successive periods of 25 years unless otherwise terminated pursuant to other provisions of the Agreement. The Authority has also requested the ability to purchase capacity in 10,000 gallon increments and to pay connection charges on an incremental basis during the initial term of five (5) years with four (4) years remaining of the Agreement as services are connected in the Park of Commerce.

District 1

(MJ)

Background and Justification: The Authority and the County are parties to a 2005 Utility Service Area Agreement (R-2005-1769) delineating the areas to be served by the respective entities. The Interlocal Agreement benefits existing and future customers of the Authority and the County by ensuring the most efficient method of delivering utility services.

#### Attachments:

- 1. Location Map
- Two (2) Original Amendments 2.

Recommended E Department Director

Approved By:

Assistant County Administrator

## II. FISCAL IMPACT ANALYSIS

# A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	0	0	0	0	0
Operating Revenues	0	0	0	0	0
Guaranteed Revenues	0	0	0	0	0
Connection Fee	0	0	0	0	0
NET FISCAL IMPACT (Additional Revenues)	0	0	0	0	0
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0

Is Item Included in Current Budget?

Yes N/A No

N/A

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

This amendment has no fiscal impact. Future revenue will depend on the actual amount of capacity purchased and the amount of service provided.

Delira MWest Department Fiscal Review: C.

### III. REVIEW COMMENTS

## A. OFMB Fiscal and/or Contract Development and Control Comments:

Legal Sufficiency:

Assistant County Attorn ۱ev

C. Other Department Review:

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**Department Director** 

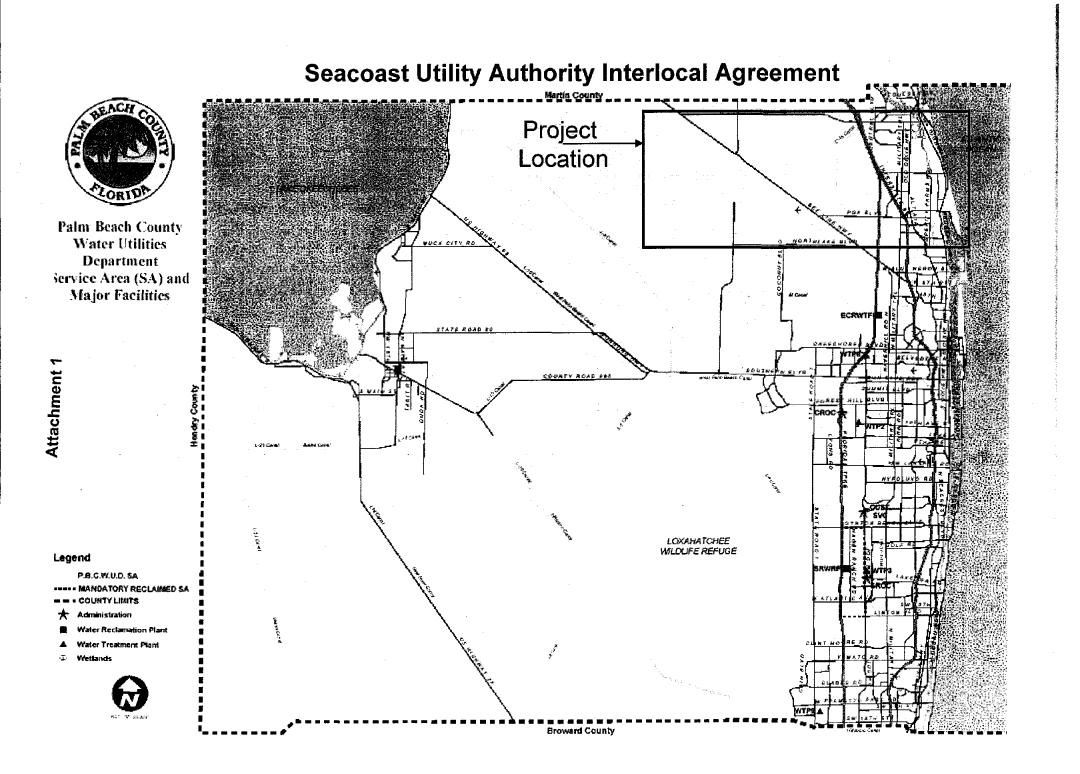
This summary is not to be used as a basis for payment.

Contract and Development TI al

**Reporting Category** 

This amendment complies with our review requirements.

At the time of cocis neview, the Amendment was in "draff" Form



## FIRST AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND SEACOAST UTILITY AUTHORITY FOR THE PURCHASE AND SALE OF BULK POTABLE WATER AND WASTEWATER SERVICE

THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT between PALM BEACH COUNTY and SEACOAST UTILITY AUTHORITY for the purchase and sale of bulk potable water and wastewater service is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (hereinafter "County") and SEACOAST UTILITY AUTHORITY, a separate legal public entity created pursuant to the provisions of Chapter 163, Florida Statutes (hereinafter "Authority").

#### WITNESSETH

WHEREAS, the County and the Authority are parties to agreement between them for the purchase and sale of bulk potable water and waste water services dated April 18, 2006 (County Resolution No. R-2006-0687) (the "Agreement") and

WHEREAS, the parties desire to amend certain provisions of the Agreement.

**NOW THEREFORE,** in consideration of the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Paragraph 2 of the Agreement is hereby amended to read, in its entirety:

2. Term. Notwithstanding the Effective Date, the Initial Term of the Agreement shall commence on the Service Initiation Date and extend for a period of up to five (5) years. Should the Authority exercise the Long Term Option as discussed in Article 10 below, this Agreement shall extend for an additional term of twenty-five (25) years, for a total of up to thirty (30) years. Thereafter, this Agreement shall automatically renew for successive periods of 25 years, unless terminated pursuant to other provisions of this Agreement.

2. Paragraph 10 of the Agreement is hereby amended to read, in its entirety:

10. Long Term Option At its sole option, the Authority shall notify the County, in writing anytime prior to six months of the end of the five-year Initial Term, of the Authority's intention to exercise the Long Term Option. Such notice shall contain the following items: (i) the permanent reservation of Potable Water system capacity expressed in gallons of potable water on an Average Daily Flow basis; (ii) the permanent reservation of Wastewater system capacity expressed in gallons of wastewater on an Average Daily Flow basis; (iii) the date upon which permanent County Potable Water capacity is requested, not later than five years

following the Service Initiation Date; (iv) the date upon which permanent County Wastewater capacity is requested, not later than five years following the Service Initiation Date, and (v) a timeline not to exceed three years in length as to when specific quantities of Potable Water capacity and Wastewater capacity, as defined by Average Daily Flow, will be permanently reserved by the Authority. The quantities of Potable Water and Wastewater service to be reserved by the Authority shall be in ten thousand gallon per day increments subject to the limitations below. The Authority may purchase increments of capacity at various times during the Initial Term, subject to the conditions and limitations below. As to those increments, the purchased capacity will be treated as Long Term Option capacity pursuant to this agreement.

Under the Long Term Option, the Average Daily Potable Water Flow rate to be reserved by the Authority shall be up to five million (5,000,000) gallons per day and the Average Daily Wastewater Flow rate to be reserved by the Authority shall be up to five million (5,000,000) gallons per day. During the Long Term Option, measured Potable Water on any single day shall not exceed 1.33 times the Potable Water capacity reserved by the Authority. During the Long Term Option, measured Wastewater on any single day shall not exceed 1.33 times the Wastewater capacity reserved by the Authority. If the Authority exceeds 1.33 times the reserved Potable Water Capacity on any given day as determined by an examination of metering records at the Points of Connection, the Authority shall pay 150 percent of the then current potable water Commodity Fee for all such excess use. If the Authority exceeds 1.33 times the reserved Wastewater Capacity on any given day as determined by an examination of metering records at the Points of Collection, the Authority shall pay 150 percent of the then current wastewater Commodity Fee for all such excess use. The County shall not be considered in default of Section 6 of this agreement regarding the maintenance of minimum system and static pressures on those days if the Authority exceeds 1.33 times the reserved Potable Water Capacity.

The Authority shall pay the County a bulk Potable Water Capacity Fee of \$2.84 per gallon of Potable Water System capacity and a bulk Wastewater Capacity Fee of \$2.33 per gallon of Wastewater System capacity. The Authority shall be required to pay all applicable Capacity Fees three months prior to commencement of the Long Term Option. However, if the Authority elects to purchase permanent capacity over a three year period in accordance with 10(v) defined above, it shall pay Capacity Fees at the beginning of each 12-month period in said schedule. The Authority shall also continue to pay Carrying Costs at the beginning of each 12-month period on any permanent capacity amounts defined in 10(i) and 10(ii) for which Capacity Fees have not yet been paid.

At any time during the three year period defined in 10(v) above, potable water and wastewater Capacity Fees may be increased by the County at its sole discretion in accordance with the general level of Potable Water and Wastewater connection fee increases affecting County retail customers, if any such increases have been implemented during the Initial Term or subsequent 10(v) period. Notwithstanding the foregoing, Capacity Fees shall be held fixed at the amounts defined above for that portion of permanently reserved Potable Water and Wastewater capacity represented by the maximum Potable Water and Wastewater capacity on which the Authority paid Annual Carrying Costs during the Initial Term.

All other terms of this Agreement shall be applicable to both the Initial Term and the Long Term Option, and shall remain in full force and effect throughout the entire term of this Agreement.

3. Authority has reviewed the Agreement between Palm Beach County and Florida Power & Light Company for the Temporary Purchase of Bulk Water, dated June 19, 2007 (County Resolution No. R-2007-<u>1028</u>)("FPL Agreement.") Authority acknowledges that the Florida Power & Light Company, under the FPL Agreement, is not similarly situated to the Authority under this Agreement, and therefore, the rates and fees charged in the FPL Agreement have no effect on the rates and fees charged under this Agreement. Authority specifically acknowledges that it shall have no right to be charged the rates and fees set forth in the FPL Agreement at any time during the term of this Agreement.

4. All other provisions of the Agreement, dated April 18, 2006, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

#### THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

**IN WITNESS WHEREOF,** County and Authority have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

#### **AS TO COUNTY:**

ATTEST:

Sharon R. Bock, Clerk and Comptroller

By: \_\_\_\_\_\_Clerk

(SEAL)

APPROVED AS TO FORM AND TO SUFFICIENCY

By: County Attorney

**AS TO AUTHORITY:** 

ATTEST: tiles, Authority Clerk ĥn

APPROVED AS TO FORM AND TO LEGAL SUFFICIENCY

uthority Attorney

H:\6337\13710\DFirstAmendmentPBC Bulk Sale Agreement3NEN/sjj

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

By: \_

Addie L. Greene, Chairperson

# APPROVED AS TO TERMS AND LEGAL CONDITIONS

By: \_

Department Director of Water Utilities

SEACOAST UTILITY AUTHORITY

By in is, Chairman Ron Ferr