

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: July 10, 2007

Consent

Regular

Workshop

Public Hearing

Department

Submitted By: Environmental Resources Management

Submitted For: Environmental Resources Management

**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to approve:** First Amendment to the Interlocal Agreement (R2002-2091) with the Town of Palm Beach for the restoration and environmental enhancement of three (3) Town-owned emergent and submerged lands in the Lake Worth Lagoon.

**Summary:** On April 9, 2007, the Town of Palm Beach approved this First Amendment to the Interlocal Agreement. This Amendment strengthens the formal partnership with the Town by adding three (3) additional Town-owned emergent and submerged lands: west of Phipps Ocean Park, north of Southern Boulevard, and west of Bradley Park in the Lake Worth Lagoon for the purpose of environmental restoration and enhancement by the County. These three (3) additional project areas on Town property are identified in the County's Lake Worth Lagoon Management Plan as sites for preservation and habitat restoration to include: mangrove wetlands, coastal hammock, and seagrasses and oyster habitats. The County will continue to provide long-term, twenty-five (25) year management of the four (4) Town-owned spoil islands under the original Interlocal Agreement (R2002-2091) with the addition of three (3) new sites through the First Amendment. Districts 1, 7 (SF)

**Background and Justification:** The County and the Town of Palm Beach first entered into a five (5) year Interlocal Agreement (R97-1045D) on August 19, 1997 to environmentally restore and enhance four (4) Town-owned spoil island in the Lake Worth Lagoon: Fisherman's Island, Government Lot 6, Hunter's Island, and Government Lots 17 and 6, otherwise known as John's Island. On November 19, 2002, the County and the Town executed a second Interlocal Agreement (R2002-2091) to extend the agreement period from the five (5) years to twenty-five (25) years to continue to pursue restoration, environmental enhancement, and management of the four (4) Town-owned spoil islands.

**Attachments:**

1. First Amendment
2. Interlocal Agreement (R2002-2091)

---

Recommended by: Richard E. Walsby 6/18/07  
 Department Director Date

Approved by: [Signature] 6/26/07  
 County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

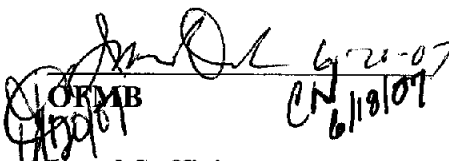
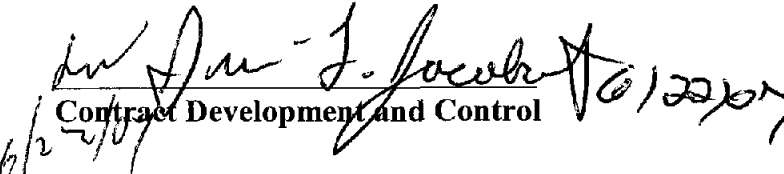
**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No _____		
Budget Account No.:	Fund _____	Department _____	Unit _____	Object _____	
	Program _____				

- B. **Recommended Sources of Funds/Summary of Fiscal Impact:** Items will go to the BCC for approval when projects are identified along with funding, which will be on a case by case basis. Fiscal Impact will be addressed at this time. There is no fiscal impact associated with this item, or any annual maintenance cost being incurred. This agreement gives the County authority to manage the submerged lands and allows ERM to pursue grants on its behalf. There is only a fiscal impact if a restoration project is identified and matching funds are required.
- C. Department Fiscal Review: \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and /or Contract Dev. and Control Comments:**

**B. Legal Sufficiency:**

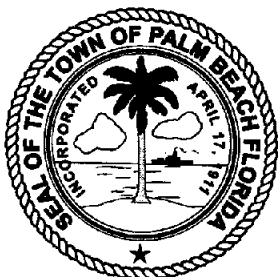
  
 \_\_\_\_\_  
 Assistant County Attorney

**This amendment complies with our review requirements.**

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

Res 19-07



**FIRST AMENDMENT  
TO THE INTERLOCAL AGREEMENT  
FOR THE RESTORATION & ENVIRONMENTAL  
ENHANCEMENT OF TOWN-OWNED  
SPOIL ISLANDS AND SUBMERGED LANDS  
BETWEEN PALM BEACH COUNTY AND  
THE TOWN OF PALM BEACH**

THIS FIRST AMENDMENT is made and entered into on this 9 day of April, 2007, by and between Palm Beach County, a subdivision of the State of Florida and hereinafter referred to as "COUNTY," and the Town of Palm Beach, a municipality organized under the laws of the State of Florida and hereinafter referred to as "TOWN."

WITNESSETH:

WHEREAS, on November 19, 2002, the COUNTY and the TOWN entered into an AGREEMENT (County Resolution No. R2002-2091) for the COUNTY to pursue restoration and environmental enhancement of up to four Town-owned spoil islands in the Lake Worth Lagoon, Fisherman's Island, Government Lot 6, Hunter's Island, and Government Lots 17 and 6, otherwise known as John's Island; and

WHEREAS, the COUNTY and TOWN desire to add Town-owned spoil islands and submerged lands to the list of sites to be environmentally restored and enhanced pursuant to the AGREEMENT.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein contained,, the COUNTY and the TOWN hereby covenant and agree as follows:

1. Paragraph 1. of the AGREEMENT entitled Purpose of Interlocal Agreement is deleted in its entirety and replaced with the following: The purpose of this AGREEMENT is to create a formal partnership between the COUNTY and the TOWN for the purpose of environmentally restoring and enhancing the submerged and emergent wetland habitats and coastal hammock on John's Island; to provide long-term management of the Town-owned spoil islands (Fisherman's Island, Government Lot 6, Hunter's Island, and Government Lots 17 and 6,

otherwise known as John's Island) and Town-owned emergent and submerged lands off of Phipps Ocean Park, north of Southern Boulevard and west of Bradley Park; and to set forth the terms, conditions, and obligations of each of the respective parties hereto. The Town-owned lands depicted in **Exhibit "A"** attached hereto, both emergent and submerged off of Phipps Ocean Park, north of Southern Boulevard and west of Bradley Park are hereby added to the list of approved environmental restoration and enhancement project sites.

2. Paragraph 13. of the AGREEMENT entitled **Notices** is deleted in its entirety and replaced with the following: All notices required under this AGREEMENT shall be forwarded, in writing, to:

Board of County Commissioners of  
Palm Beach County  
Governmental Complex  
301 N. Olive Ave.  
West Palm Beach, FL 33401

The Town of Palm Beach  
Dept. of Public Works  
P.O. Box 2029  
Palm Beach, FL 33401

and

and

Palm Beach County Department of  
Environmental Resources Mgmt.  
2300 North Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, FL 33411

The Town of Palm Beach  
Town Manager's Office  
P.O. Box 2029  
Palm Beach, FL 33480

with a copy to:

Palm Beach County  
Attorney's Office  
301 North Olive Avenue – 6<sup>th</sup> floor  
West Palm Beach, FL 33401

3. All other provisions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the COUNTY and the TOWN, each through its duly authorized representative, has caused this Amendment to the AGREEMENT to be signed by its

chair and its seal to be affixed hereto, attested to by its Clerk, on the date and year first above written.

ATTEST:

~~SHARON R. BOCK, CLERK & COMPTROLLER~~  
Sharon R. Bock, CLERK & COMPTROLLER

PALM BEACH COUNTY:  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
~~Addie Greene, Chairperson~~  
Addie L. Greene, Chairperson

Printed Name

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
County Attorney

By: Richard E. Wabnitz  
Director, Palm Beach County  
Department of Environmental  
Resource Management

ATTEST:

TOWN OF PALM BEACH:

By: Susan A. Eichhorn  
Susan A. Eichhorn, Town Clerk

By: Jack McDonald  
Jack McDonald, Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

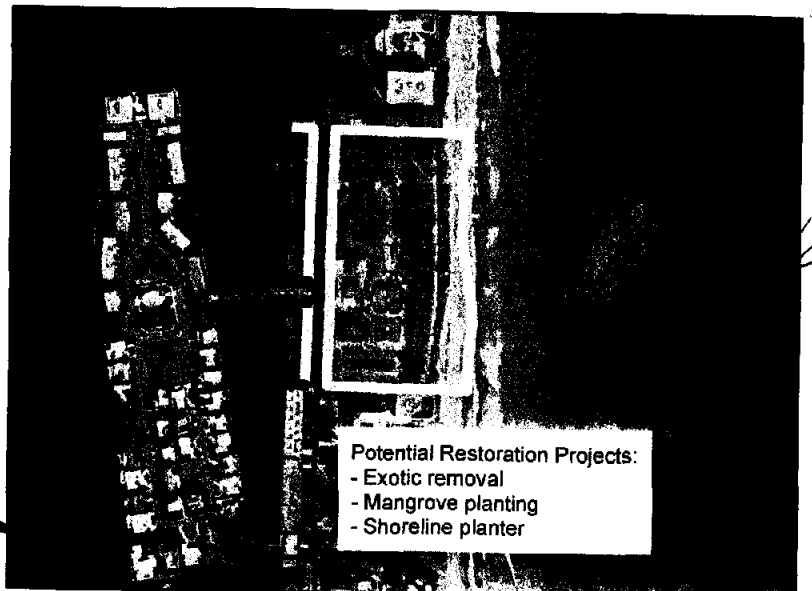
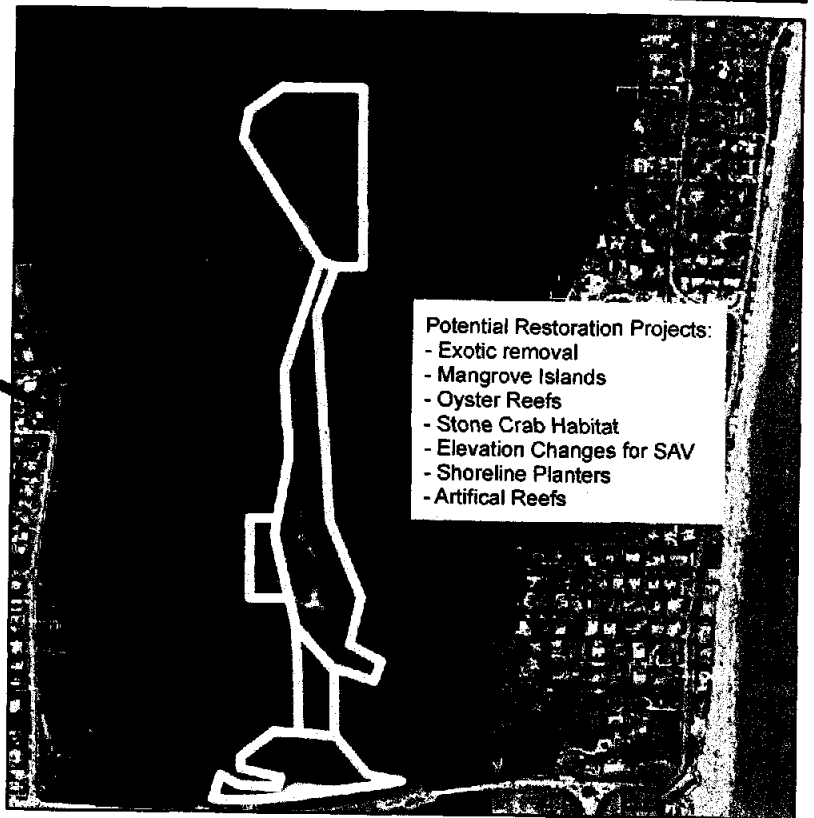
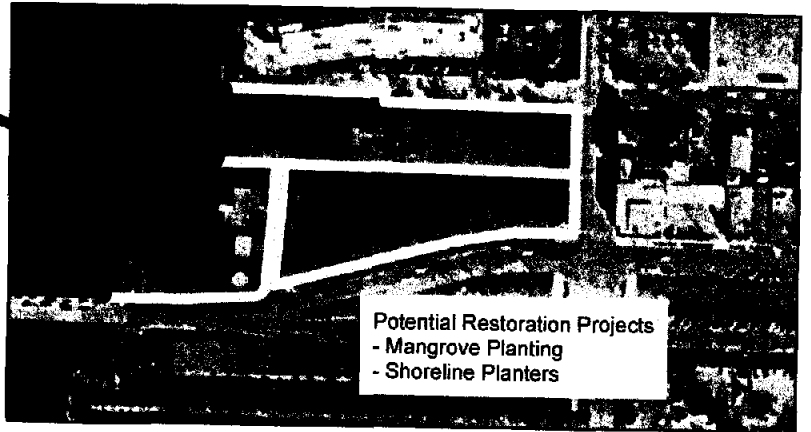
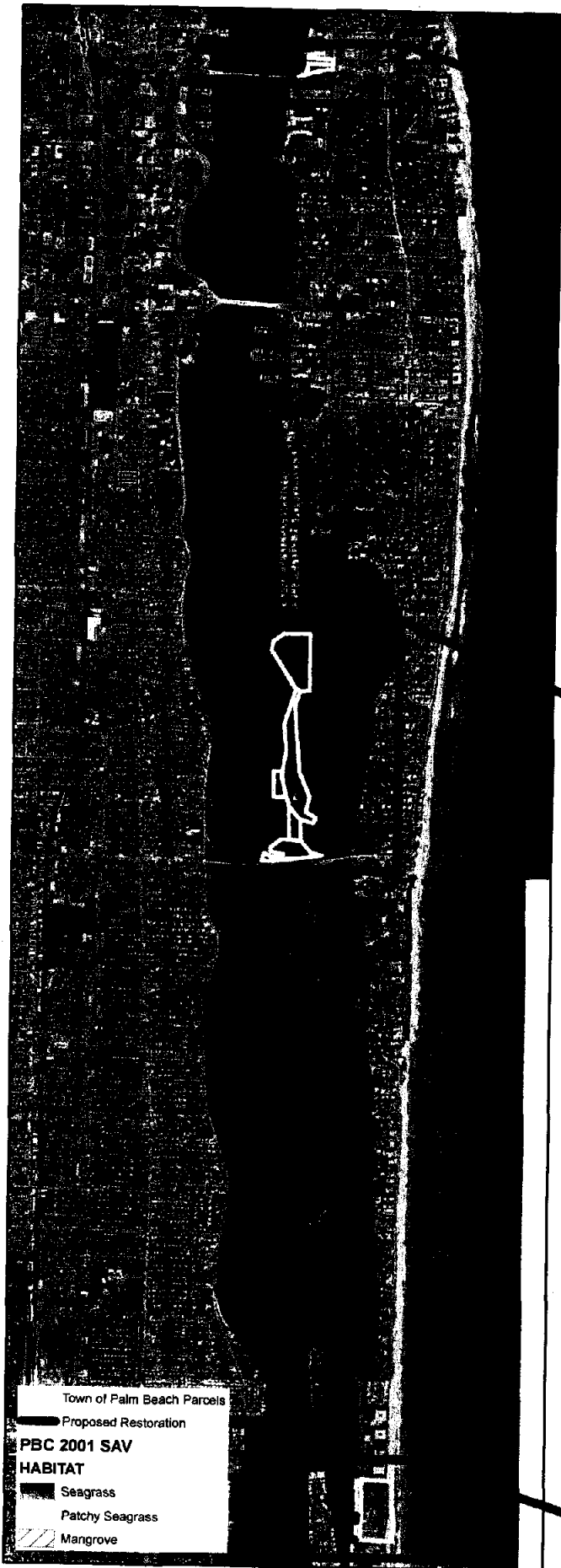
John C. Randolph  
John C. Randolph  
Attorney for the Town of Palm Beach

H. Paul Brazil, P.E.  
H. Paul Brazil, P.E.  
Director of Public Works

5



# Exhibit A: For First Amendment to Interlocal Agreement (R2002-2091) Conceptual Habitat Restoration Project Area for Town of Palm Beach Owned Property



Attachment 2  
R2002 2091

**INTERLOCAL AGREEMENT  
BETWEEN  
PALM BEACH COUNTY  
AND  
TOWN OF PALM BEACH**

**THIS INTERLOCAL AGREEMENT**, is made and entered into on the \_\_\_\_\_ day of NOV 19 2002, 2002, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "County"), and the TOWN OF PALM BEACH, a municipality of the State of Florida (the "Town").

**WITNESSETH:**

**WHEREAS**, the Town and the County are authorized to enter into this Interlocal Agreement "Agreement" pursuant to Section 163.01, Florida Statutes, as amended, which permits 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

**WHEREAS**, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners of the County is empowered to establish and administer programs of conservation and to enter into agreements with other governmental agencies within or outside the boundaries of the County for joint performance, or performance by one unit on behalf of the other, of any of either governmental entity's authorized functions; and

**WHEREAS**, the County has an active environmental enhancement program with funds available, upon appropriation, for estuarine enhancement, restoration and management; and

**WHEREAS**, on August 19, 1997 an Interlocal Agreement (R97-1045D) was executed between the Town and the County to implement a joint project to environmentally restore and enhance up to four Town owned spoil islands in the Intracoastal Waterway; and

**WHEREAS**, the County and the Town have the common interest to environmentally restore and enhance Town-owned spoil islands; and

**WHEREAS**, these areas included Fisherman's Island, Government Lot 6 (situated immediately southwest of Bingham Island), Hunter's Island, and Government Lots 17 and 6, otherwise known as John's Island (across from the West Palm Beach Canal (C51)).

**WHEREAS**, for clarification purposes, these four defined areas include the small satellite islands located in close proximity to each of the prospect sites (EXHIBIT "A"); and

**WHEREAS**, since the execution of the first Agreement, three of the four spoil islands have been restored; and

**WHEREAS**, the County and the Town wish to continue a partnership to complete the restoration project on John's Island as well as manage and maintain all four spoil islands; and

**WHEREAS**, at the September 10, 2002 regular business meeting, the Town approved the final plan to restore John's Island with an anticipated restoration date beginning December 2002 (EXHIBIT "B");

**NOW, THEREFORE** in consideration of the mutual covenants set forth hereinafter the County and Town agree as follows:

1. **Purpose of Interlocal Agreement.** The purpose of this Agreement is to create a formal partnership between the County and Town for the purpose of environmentally restoring and enhancing the submerged and emergent wetland habitats and coastal hammock on John's Island, provide long-term management of the Town owned spoil islands, and to set forth the terms, conditions, and obligations of each of the respective parties hereto.

2. **Representatives.** The County's representative and monitor of this Agreement shall be Richard E. Walesky, whose telephone number is (561) 233-2400. The Town's representative and monitor of this Agreement shall be Albert P. Dusey, whose telephone number is (561) 838-5440.

3. **Term.** This Agreement shall take effect on the date of execution by both parties. The term of this Agreement shall be twenty-five (25) years unless terminated in accordance with Paragraph 10 of this Agreement.

4. **Responsibilities of the Town.** Within twenty (20) business days from receipt of a notice from the County of an approved Agreement, the Town shall authorize any work associated with the environmental restoration and enhancement of John's Island and management of the Town-owned spoil islands, as previously described, on behalf of the Town.

5. **Responsibilities of the County.** The County agrees to perform or have performed all activities related to developing plans and specifications, permitting, obtaining funding, contracting restoration work, and long-term management and monitoring associated with the environmental restoration and enhancement of the indicated spoil islands.





6. **Review by National Audubon Society.** The Town and County recognize that the National Audubon Society (AUDUBON) is lessee of the Town-owned spoil islands. The Town and County agree to work cooperatively with AUDUBON during the design process. The Town, as owner of the spoil islands, shall have final approval on the design.

7. **Joint Responsibilities.** It shall be the responsibility of both parties to work together to accomplish the environmental restoration and enhancement of the indicated spoil islands.

8. **Funding Source.** On behalf of the Town, the County has obtained commitments for the necessary funding to restore the John's Island Project including, but not limited to, funds from the United States Army Corps of Engineers Section 1135 Program, the Lake Worth Lagoon Partnership Program, and County in-kind staff contributions.

9. **Access and Audits.** The Town shall have access to all books, records and documents as required in this paragraph for the purpose of inspection or audit during normal business hours.

10. **Termination.** This Agreement may be terminated by either party upon 90 days prior written notice to the other party.

11. **Enforcement Costs.** Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties, provided, however, that this paragraph pertains only to the parties to this Agreement.

12. **Annual Appropriation.** This Agreement is subject to annual budgetary funding by the County and procurement of outside funding. In an effort to reduce overall costs of the projects, the parties shall encourage volunteer efforts throughout implementation and long-term management of the sites.

13. **Notices.** All notices required under this Agreement shall be forwarded, in writing, to:

Board of County Commissioners of  
Palm Beach County  
Governmental Complex  
301 N. Olive Ave.  
West Palm Beach, FL 33401

The Town of Palm Beach  
Dept. of Public Works  
P.O. Box 2029  
Palm Beach, FL 33401

and

and

Palm Beach County Department of  
Environmental Resources Mgmt.  
3323 Belvedere Rd., Bldg. 502  
West Palm Beach, FL 33406

The Town of Palm Beach  
Town Manager's Office  
P.O. Box 2029  
Palm Beach, FL 33480

9

with a copy to:

Palm Beach County  
Attorney's Office  
P.O. Box 1989  
West Palm Beach, FL 33401

14. **Filing**. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

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 Town against any actions, claims or damages arising out of the County's negligence in connection with this Agreement, and the Town shall indemnify, defend and hold harmless County against any actions, claims, or damages arising out of the Town's negligence in connections 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.

16. **Waiver of Breach**. No waiver of breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

17. **Amendment**. This Agreement may be amended only by a written document signed by both parties.

18. **Equal Opportunity Provision**. The County and the Town agree that no person shall, on the grounds of race, color, gender, national origin, disability, religion, ancestry, marital status, or sexual orientation, be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

19. **Severability**. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

20. **Delegation of Duty**. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state or county officers.

10

21. Entirety of Agreement. This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, whether verbal or written, relating to this Agreement.

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Chairman of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board, and the Town of Palm Beach has caused the Agreement to be signed by the Mayor of the Town of Palm Beach and the seal of said Town to be affixed hereto and attested by the Clerk of said Town, pursuant to authority granted by said Council, date and year first above written.

ATTEST:

DOROTHY H. WILKEN, CLERK  
Board of County Commissioners  
By Diana C. Hickman  
DEPUTY CLERK  
FLORIDA

By: \_\_\_\_\_  
Deputy Clerk  
(SEAL)

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

By: Karen T. Marcus  
Chair  
KAREN T. MARCUS  
NOV 19 2002

R2002 2091

ATTEST:

TOWN OF PALM BEACH, FLORIDA  
BY ITS TOWN COUNCIL

By: Mary A. Pollett  
Clerk  
(SEAL)

By: Lesly S. Sente  
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

[Signature]  
Town Attorney

Nancy J. Dolan  
Assistant County Attorney

RECOMMENDATION FOR APPROVAL:

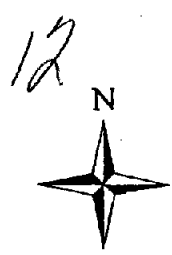
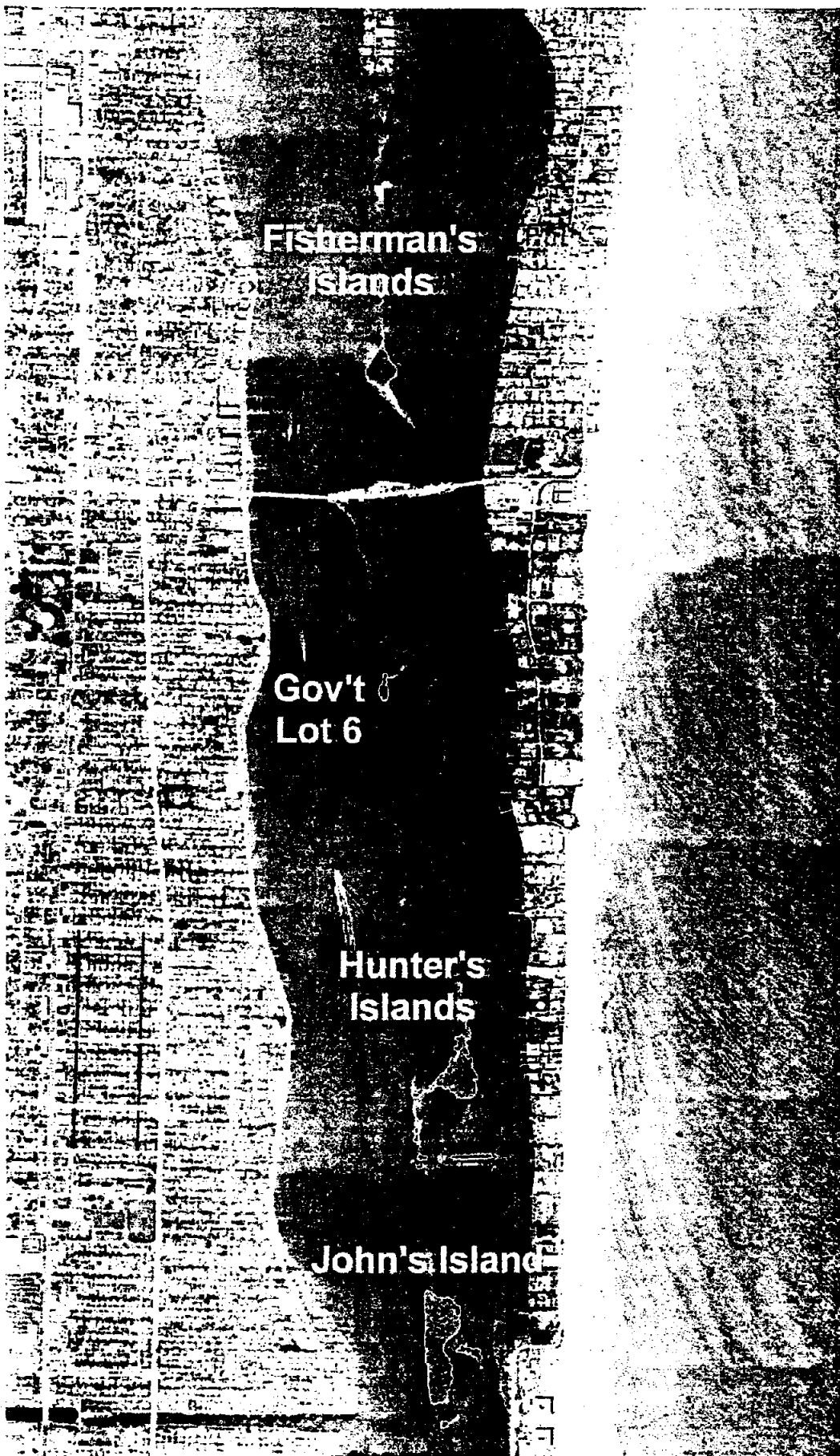
Albert P. Dusey  
Albert P. Dusey, Director of Public Works  
Town of Palm Beach

APPROVED AS TO TERMS AND  
CONDITIONS:

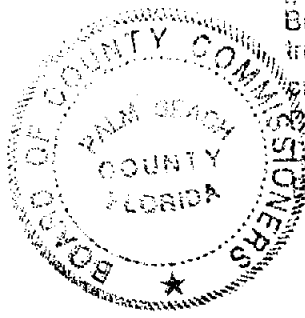
Richard E. Walesky  
Richard E. Walesky, Director  
Dept. of Environmental Resource Mgmt.  
Palm Beach County

EXHIBIT A

# Palm Beach Islands



STATE OF FLORIDA, COUNTY OF PALM BEACH  
I, DOROTHY H. WILKEN, ex-officio Clerk of the  
Board of County Commissioners certify this to be a  
true and correct copy of the original filed in my office



Witness my hand and seal at West Palm Beach, FL on November 19, 2002  
DOROTHY H. WILKEN, Clerk  
*Barbara J. Volkman* D.C.

EXHIBIT B



13