



**II. FISCAL IMPACT ANALYSIS**

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

<b>Fiscal Years</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Capital Expenditures	<u>\$280,000.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>NET FISCAL IMPACT</b>	<b><u>\$280,000.00</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>

**Budget Account No.:** Fund 4011 Dept. 721 Unit W006 Revenue Source 6546

Is Item Included in Current Budget? Yes X No     

Reporting Category N/A

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

One-time capital expenditure to be funded by user fees.

**C. Department Fiscal Review:** Fred W. Jenkins

**III. REVIEW COMMENTS**

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

Jan Omb 11-20-07  
OFMB  
LD 11/20/07 CW 11/19/07

Jim J. Facet 11/20/07  
Contract Development and Control  
E. Facet 11/20/07

**B. Legal Sufficiency:**

**This item complies with current County policies.**

H. J. J. J. 11/21/07  
Assistant County Attorney

**C. Other Department Review:**

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



### High Point on Congress

Map Scale 1:10784

Map produced on 11/8/2007

AMENDMENT TO  
SDA # 01-01188-000

**FIRST AMENDMENT TO STANDARD POTABLE WATER AND WASTEWATER  
DEVELOPMENT AGREEMENT**

**THIS FIRST AMENDMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida, hereinafter referred to as "County," and **HIGH POINT ON CONGRESS, LLC**, a **Florida limited liability company**, hereinafter referred to as "Property Owner."

**WITNESSETH**

**WHEREAS**, County and Property Owner entered into a Standard Potable Water and Wastewater Development Agreement ("Agreement") on February 15, 2007 (R07-0787), and recorded in the Official Records of Palm Beach County, Florida, at Official Records Book 21469, Page 0538; and

**WHEREAS**, in order to receive potable water and wastewater service, Property Owner is required to either construct a private lift station or construct a new, oversized, public lift station, to provide service to its site as well as customers other than the Property Owner; and

**WHEREAS**, County owns a lift station adjacent to the property covered by the Agreement which requires replacement; and

**WHEREAS**, Property Owner wishes to install an oversized public lift station to replace the existing lift station and to service its project and other properties in the future; and

**WHEREAS**, having Property Owner replace the existing lift station with a larger public lift station will provide benefits to the County and the County's customers, including the avoidance of future construction costs to replace the existing lift station; and

**WHEREAS**, County now wishes to reimburse Property Owner \$280,000.00 as contribution toward the work associated with the abandonment of the existing lift station (including the clearing, sodding and installation of a fence along the south line of a County owned parcel described as PCN 00-43-44-05-20-001-0000), the installation of the new public lift station and gravity sewer mains, and related work as specified by County; and

**WHEREAS**, Property Owner now agrees to accept the amount of \$280,000.00 as reimbursement for all claims related to the abandonment of the existing lift station (including the clearing, sodding and installation of a fence along the south line of a County owned parcel described as PCN 00-43-44-05-20-001-0000), the installation of the new public lift station and gravity sewer mains, and related work as specified by County

**NOW, THEREFORE**, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Property Owner and County hereby covenant and agree as follows:

1. The foregoing statements are true and correct and are incorporated herein by specific reference.
2. The County shall reimburse Property Owner the amount of \$280,000.00 as full compensation for the abandonment of the existing lift station (including the clearing, sodding and installation of a fence along the south line of a County owned parcel described as PCN 00-43-44-05-20-001-0000), the installation of the new public lift station and gravity sewer mains, and related work as specified by

County. The County shall make this reimbursement after final acceptance of the lift station and completion of all required work.

3. Property Owner for itself and its successors, assigns, predecessors, affiliated entities, directors, officers, employees, principals, agents and servants, hereby releases, acquits, and forever discharges any and all claims it may have against the County, its departments, divisions, elected officials and employees, for any additional payments or credits related to the abandonment of the existing lift station (including the clearing, sodding and installation of a fence along the south line of a County owned parcel described as PCN 00-43-44-05-20-001-0000), the installation of the new public lift station and gravity sewer mains, and related work as specified by County
4. All other provisions of the Agreement, dated February 15, 2007, 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, Property Owner and County have executed or have caused this First Amendment to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this First Amendment.

ATTEST:

SHARON R. BOCK, CLERK  
AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

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

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

BAS 11/19/67

[SEAL]

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY

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

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]  
Department Director (M)

WITNESSES:

Linda M. Collins

Linda M. Collins  
Type or Print Name

[Signature]

TAMMY TRAGAS  
Type or Print Name

PROPERTY OWNER:

By: [Signature]  
Signature

DRUS R. HEDRICK  
Title

MANAGING MEMBER  
Typed or Printed Name

[ Corporate Seal ]

NOTARY CERTIFICATE

STATE OF \_\_\_\_\_  
COUNTY \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_ He/she is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Typed, Printed, or Stamped Name of Notary

Notary Public

\_\_\_\_\_  
Serial Number

Prepared by & Return to:  
Katrina Gilbert Boyd  
Palm Beach County  
Property & Real Estate Management Division  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605

PCN: 00-43-44-05-20-001-0000

## DECLARATION OF EASEMENT

**THIS IS A DECLARATION OF EASEMENT**, made \_\_\_\_\_,  
by **PALM BEACH COUNTY**, a political subdivision of the State of Florida ("County"),  
whose address is 301 North Olive Avenue, West Palm Beach, Florida, 33401-4791.

**WHEREAS**, County is the owner of that certain real property located within Palm  
Beach County, Florida, (the "Property"); to-wit:

**All of Tract "A", Flamango Lake West, according to the Plat thereof, as  
recorded in Plat Book 32, Pages 61 & 62, of the Public Records of Palm Beach  
County, Florida.**

**WHEREAS**, County desires to create an easement over, upon and under the Property  
for the purposes set forth hereinafter; and

**WHEREAS**, County desires that such easement not be extinguished by the doctrines  
of merger or unity of title and remain valid and in effect upon a subsequent conveyance of  
the Property by County.

### WITNESSETH:

**NOW THEREFORE**, County does hereby declare, grant and create a perpetual in  
gross utility easement for the benefit of County upon the Property. This easement shall be for  
the purpose of water and sewer utilities and shall include the right at any time to install,  
operate, maintain, service, construct, reconstruct, remove, relocate, repair, replace, improve,  
expand, tie into, and inspect potable water, reclaimed water and/or wastewater lines and  
appurtenant facilities and equipment in, on, over, under and across the Property. The  
Property or portion thereof can be utilized for a wastewater pump station and said pump  
station may be fenced in for access control purposes.

The easement created hereby shall not be extinguished by operation of law, including, without limitation, the doctrines of merger or unity of title and shall inure to the benefit of County and run with the land and encumber and burden the Property upon the conveyance thereof by County notwithstanding County's failure to specifically reserve or reference such easement in the instrument of conveyance.

**IN WITNESS WHEREOF**, the County has caused this Declaration of Easement to be executed as of the day and year first above written.

**ATTEST:**

**COUNTY:**

**SHARON R. BOCK  
CLERK & COMPTROLLER**

**PALM BEACH COUNTY, a political  
subdivision of the State of Florida**

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

By: \_\_\_\_\_  
Addie L. Greene, Chairperson  
BAT 11/15/07

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS  
AND CONDITIONS**

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

By: \_\_\_\_\_  
Department Director



## TEMPORARY CONSTRUCTION EASEMENT

**THIS EASEMENT** is made \_\_\_\_\_ by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida ("County") whose mailing address is 301 North Olive Avenue, West Palm Beach, Florida 33401-4791 and **HIGH POINT ON CONGRESS, LLC**, a Florida limited liability company, whose mailing address is 2200 Centrepark West Drive #100, West Palm Beach, FL 33409-6473 ("Grantee").

### RECITALS

**Whereas**, County is the owner of the land described in Exhibit "A" attached hereto (the "County Property" or "Easement Premises"); and

**Whereas**, on \_\_\_\_\_ Grantee and County made and entered into that certain First Amendment to Standard Potable Water and Wastewater Development Agreement (R2007-\_\_\_\_\_) (the "First Amendment") incorporated herein by reference and made a part hereof, which amends portions of that certain Potable Water and Wastewater Development Agreement (R2007-0787) dated February 15, 2007, recorded in Official Record Book 21469, page 538, of the public records of Palm Beach County, Florida, incorporated herein by reference and made a part hereof; and

**Whereas**, the First Amendment requires Grantee to complete certain work on the County Property, including the construction and installation of an oversized public lift station, the removal of an existing lift station, clearing, sodding and the installation of fencing; and

**Whereas**, Grantee has requested that County grant a Temporary Construction Easement to allow Grantee to enter the County Property to conduct the activities provided for in the First Amendment.

**Now, therefore**, for and in consideration of the sum of TEN DOLLARS (\$10.00) to the County in hand paid by said Grantee, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County does hereby grant to the Grantee, a non-exclusive Temporary Construction Easement (the "Easement") upon the real property legally described in Exhibit "A" attached hereto ("the Easement Premises"). The rights granted pursuant to this Easement shall be limited to the right to utilize the Easement Premises solely to: (i) construct and install an oversized public lift station; (ii) remove the existing lift station; (iii) clear and sod the Easement

Premises; and (iv) install perimeter fencing on the Easement Premises (the "Project"). The rights granted pursuant to this Easement shall expire and this Easement shall automatically terminate upon the earlier of Grantee's completion of the Project or one (1) year after the Effective Date. Notwithstanding such automatic termination, Grantee shall promptly deliver to County a Bill of Sale and a Release of Easement, each in a form satisfactory to County, upon completion of the Project, if so requested by County.

1. **Conditions to Right of Usage.** Grantee shall obtain from County written approval of all plans relating to construction of any improvement within the Easement Premises prior to commencement of construction thereof. County's approval of the plans shall be obtained from the Director of County's Water Utilities Department, or designee. Grantee shall also obtain, at Grantee's sole costs and expense, all other approvals, including but not limited to County, state and federal permits and consents necessary for construction of any improvements and shall further be responsible for all conditions which may be imposed in connection with such approvals. All improvements shall be constructed at Grantee's sole cost and expense and within the confines of the Easement Premises in accordance with the approved plans and all permits and applicable statutes, rules, regulations, codes and ordinances. Grantee shall install and maintain a construction fence to secure the Easement Premises area at all times. Grantee shall give County ten (10) days written notice prior to commencement of construction; Grantee shall not be entitled to construct any improvements within the Easement Premises other than those specifically identified herein or authorized in writing by the Director of County's Water Utilities Department, or his designee.

2. **Location of Existing Utilities.** Prior to exercising the rights conferred hereunder, Grantee or any party acting as its agent, shall locate the existing utility facilities within the Easement Premises, if any, and shall conduct and coordinate with all utilities that have facilities within the Easement Premises.

3. **Use Limitation.** Grantee acknowledges and agrees that the rights granted by this Easement are and shall be strictly limited to those specifically granted herein and that Grantee may not utilize the Easement Premises for any purpose not specifically permitted hereby, including, without limitation, staging or storage of construction equipment or materials.

4. **Maintenance, Repair, and Restoration.** Grantee shall be solely responsible for and shall, at all times, maintain and repair at its sole cost and expense the Easement Premises and all improvements currently existing or constructed hereafter therein during the term of this Easement. Grantee shall be solely responsible for and shall, at its own cost and expense, promptly repair any damage arising out of Grantee's exercise of the rights granted hereby and restore any improvements or landscaping now existing or constructed or installed hereinafter within the Easement Premises to the condition it was in prior to such damage, using materials of like kind and quality. In the event that Grantee fails to fulfill these obligations, County may complete the work and Grantee shall reimburse County for all costs and expenses incurred as a result of such failure.

5. **Other Obligations.** Grantee agrees to diligently pursue all work performed hereunder to completion and to exercise the rights granted hereunder in a manner that does not unreasonably interfere with and minimizes the impact on the County's use of the County Property.

6. **As-Built Drawings.** Upon Grantee's completion of the Project provided for herein and as provided for in the First Amendment, Grantee shall deliver to County as-built drawings showing the location of all improvements on the County Property.

7. **Personal Property.** County shall have no liability or responsibility whatsoever for Grantee's improvements, equipment, personal or other property, nor that of any other person or entity, placed upon or located within the Easement Premises.

8. **Prohibition Against Liens.** Neither County's nor Grantee's interest in the Easement Premises shall be subject to liens arising from Grantee's or any other person or entity's use of the Easement Premises, or exercise of the rights granted hereunder. Grantee shall promptly cause any lien imposed against the Easement Premises or the County Property to be discharged or bonded off, pursuant to Chapter 255.05 and Chapter 713 of the Florida Statutes. In addition, Grantee shall either require all contractors to furnish a payment and performance bond in accordance with Florida Statutes Section 255.05, naming County as an obligee or, require such contractors to comply with County's Bond Waiver Program as set forth in PPM #CW-F-016 as the same may be amended from time to time, which is hereby incorporated herein by reference. Any required payment or performance bond shall be delivered to County prior to commencement of construction.

9. **Insurance.** Grantee shall provide, maintain and keep in full force and effect Automobile Liability and General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability coverage and Workers Compensation covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for the Easement Premises, Operations, Contractual Liability, Independent Contractors Contractual Liability, and Broad Form Property Damage Liability coverages.

Except for Workers Compensation, all insurance policies shall name the County as Additional Insured. Such insurance shall be underwritten by an insurance company licensed to do business in the State of Florida and approved by the County. A Certificate of Insurance evidencing such insurance coverage shall be provided to County's Property & Real Estate Management Division at the address set forth in Section 16 below prior to the commencement of any work pursuant to this Easement. Such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage. Grantee shall ensure that any contractor or subcontractor entering the Easement Premises on its behalf has and maintains insurance coverage at least equal to that required of the Grantee under the provisions of this Paragraph.

In no event shall the limits of said insurance policies be considered as limiting the liability of Grantee under this Easement. Furthermore, Grantee shall and hereby agrees to hold County harmless from any loss or damage incurred or suffered by County due to Grantee's failure to maintain such insurance.

10. **Indemnification.** Grantee, its successors and assigns shall indemnify, defend and hold the County harmless from and against any damages, liability, actions, claims or expenses (including reasonable attorney's fees and expenses at trial and all appellate levels) arising out of the exercise of the rights granted hereby and use of this Easement by any person whomsoever, including, without limitation, loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Easement Premises or access routes or in connection with the use or operation of the Easement Premises or access routes.

11. **No Dedication.** The grant of Easement contained herein is solely for the use and benefit of Grantee, and Grantee's authorized agents and employees, and is not intended, and shall not be construed as a dedication to the public of any portion of the Easement Premises for public use.

12. **Time of Essence.** The parties expressly agree that time is of the essence in this Easement.

13. **Matters of Record.** Grantee hereby accepts the Easement Premises "As-Is", without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the Easement Premises, and all other easements, restrictions, conditions, encumbrances and other matters of record.

14. **Non-Discrimination.** The parties agree that no person shall, on the grounds of race, color, sex, 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 Easement.

15. **Construction.** The terms of this Easement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Easement and the same shall remain in full force and effect.

16. **Entire Understanding.** This Easement represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Easement.

17. **Notices.** All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

COUNTY:

Palm Beach County Water Utilities Department  
Attn: Director  
8100 Forest Hill Boulevard  
West Palm Beach, FL 33413  
Telephone: 561-493-6000  
Fax 561-493-6008

With a copy to:

Property & Real Estate Management Division  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Telephone: 561-233-0217  
Fax: 561-233-0210

And with a copy to:

Palm Beach County Attorney's Office  
Attn: Real Estate  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Telephone: 561-355-2225  
Fax 561-355-4398

GRANTEE:

High Point on Congress, LLC  
Attn: Dale R. Hedrick, Managing Member  
2200 Centrepark West Drive #100  
West Palm Beach, FL 33409-6473  
Telephone: 561-689-8880  
Fax: 561-689-8860

Any party may from time to time change the address to which notice under this Easement shall be given such party, upon three (3) days prior written notice to the other parties.

18. **Default.** In the event Grantee fails or refuses to perform any term, covenant, or condition of this Easement for which a specific remedy is not set forth in this Easement, County shall, in addition to any other remedies provided at law or in equity, have the right of specific performance thereof.

19 **Governing Law & Venue.** This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

20. **Prohibition Against Assignment.** This Easement may not be assigned by Grantee.

21. **Effective Date of Easement.** This Easement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

22. **Reservation of Rights.** County hereby retains all rights relating to the Easement Premises not specifically conveyed by this Easement including the right to use the Easement Premises and any improvements now existing or constructed hereinafter therein, and the right to grant to third parties additional easements in the Easement Premises or the right to use the improvements therein.

***REMAINDER OF PAGE INTENTIONALLY LEFT BLANK***

IN WITNESS WHEREOF, the parties have executed this Temporary Construction Easement as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

Grantee:

HIGH POINT ON CONGRESS, LLC  
a Florida limited liability company

By: [Signature]  
Signature

Dale R. Hedrick  
Print Name

Managing Member  
Title

(Seal)

[Signature]  
Witness Signature  
Allen W. McCurdy  
Witness Name Printed

[Signature]  
Witness Signature  
Allen W. McCurdy  
Witness Name Printed

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this day of Nov. 16, 2007, by Dale R. Hedrick, the Managing Member of High Point on Congress, LLC, a Florida limited liability company, (Dale) who is personally known to me OR ( ) who has produced \_\_\_\_\_ as identification and who ( ) did ( ) did not take an oath.

(Notary Seal)

[Signature]  
Notary Public, State of Florida

\_\_\_\_\_  
Type, print or stamp name

Commission Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



Kimber Lea Goblisch  
Commission #DD338918  
Expires: Jul 19, 2008  
Bonded Thru  
Atlantic Bonding Co., Inc.

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

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

County:

PALM BEACH COUNTY, a  
political subdivision of the State of  
Florida

By: \_\_\_\_\_  
Addie L. Greene, Chairperson  
BAS 11/19/07

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_  
Department Director



**EXHIBIT "A"**

**COUNTY PROPERTY  
and  
EASEMENT PREMISES**

**ALL OF TRACT "A", FLAMANGO LAKE WEST, ACCORDING TO  
THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 32, PAGES  
61 & 62, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY,  
FLORIDA.**