

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	0	< \$4,530,000 >	< \$4,077,000 >	< \$4,077,000 >	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	< \$4,530,000 >	< \$4,077,000 >	< \$4,077,000 >	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
 Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
 Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

B. Recommended Sources of Funds/Summary of Fiscal Impact

Proceeds from the agreement will fund restoration project improvements and future maintenance of Natural Areas.

C. Department Fiscal Review: *JF*

III. REVIEW COMMENTS

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

Atwillhite 8-1-08
 OFMB *7/31/08* *CN 7/31/08*

John J. Jacoby 8/14/08
 Contract Development and Control
 8/4/08 At the time of our review, the "draft" contract met our review requirements.

B. Legal Sufficiency:
Mark J. [Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

This Contract complies with our contract review requirements. *8/15/08*

**INTERLOCAL AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE SOLID WASTE AUTHORITY
FOR
THE SUPPLY OF FILL MATERIAL**

THIS AGREEMENT is made and entered into on the ____ day of _____, 2008, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "County") and the SOLID WASTE AUTHORITY, a dependent special district created pursuant to Chapter 2001-331 Laws of Florida, as amended, (the "SWA"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes (hereinafter referred to collectively as "the Parties").

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies such as the County and the SWA to enter into interlocal agreements with each other for their mutual benefit; and

WHEREAS, the County owns the Winding Water Natural Area located north of 45th Street, south of Dyer Park, west of Haverhill Road and east of the Florida Turnpike; and

WHEREAS, the County wishes to create and restore wetlands and lake contours on the Winding Water Natural Area by excavating excess fill material from the Natural Area and the SWA wishes to utilize such excavated fill material for SWA projects; and

WHEREAS, the County wishes to sell approximately 1,400,000 cubic yards of the fill to be excavated from the Winding Waters Natural Area to the SWA, and the SWA wishes to purchase such fill at an agreed upon price; and

WHEREAS, the Parties wish to enter into this Interlocal Agreement for the mutual benefit of both Parties.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the Parties agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein as if fully set forth.

2. Purpose. The purpose of this Interlocal Agreement is for the Parties to undertake a project wherein the County will make approximately 1,400,000 cubic yards of "Acceptable Fill" available to the SWA at agreed upon pricing as set out hereafter in this Agreement. "Acceptable Fill" material shall mean soil substantially free of clay, loam, wood, trash and other objectionable material that may be compressible, degradable, or may not be compacted properly, and may not contain broken concrete, masonry, rubble or similar materials, nor stones or chunks greater than 6 inches in any dimension, soils containing more than 5% by volume of organic material, soil with a plasticity index greater than 10, nor a moisture content in excess of 15%.

3. Term. The term of this Agreement shall commence upon the last date of execution by both Parties (the Date of Execution") and shall terminate no later than five (5) years from the date of first delivery of Acceptable Fill material to the Jog Road Site (the "Commencement Date"). The Commencement Date shall occur not longer than six months from the Date of Execution. These periods may be extended upon written agreement of the Parties.

4. Project.

A. Within three (3) years from the Date of Execution, the County shall produce approximately 1,400,000 cubic yards of Acceptable Fill from Winding Waters Natural Area ("Winding Waters Site") and shall deliver the 1,400,000 cubic yards of Acceptable Fill to the SWA storage/staging area at the landfill or other nearby sites on Jog Road as designated by the SWA, at or near 7501 N. Jog Road, West Palm Beach, Florida (the "Jog Road Site") or, at the request of the SWA, after the County has delivered 1,000,000 cubic yards of Acceptable Fill, the County shall stockpile up to 400,000 cubic yards of said Acceptable Fill on the Winding Waters Site in accordance with the terms and conditions of this Agreement.

B. SWA shall be solely responsible for making scales available for weighing the truckloads of fill delivered by the County to the Jog Road Site and providing a storage/staging area on the Jog Road Site where said Acceptable Fill can be unloaded. SWA shall prepare a storage/staging area on the Jog Road Site so that it is able to receive a minimum of 1,000,000 cubic yards of Acceptable Fill when the County delivers said Acceptable Fill. If the SWA notifies the County that due to space and/or operational constraints, the SWA is unable to receive on the Jog Road Site all of the Acceptable Fill produced and deliverable by the County within the terms of this Agreement, the County will stockpile up to 400,000 cubic yards of Acceptable Fill at the Winding Waters Site (after SWA has accepted 1,000,000 cubic yards of Acceptable Fill). The County will maintain the stockpile area for a period not to exceed five (5) years from the Date of Commencement of this Agreement and will provide the SWA with reasonable access to the stockpile to remove said Acceptable Fill upon notice and agreement as to the reasonable time of removal. The Winding Waters Site stockpile area and ingress and egress to such area are as set out and described on Exhibit "A" attached hereto (the "Winding Waters Stockpile Area"). For so long as Acceptable Fill remains at the Winding Waters Stockpile Area provided pursuant to this Agreement, the County hereby grants SWA a license to access the Winding Waters Stockpile Area Monday through Saturday from 7 A.M. to 5 P.M., without interference, and will provide keys or whatever means is necessary for SWA access.

Notwithstanding the provisions of Paragraphs 4 A and B above, although it is the intent of the Parties for the SWA to accept 1,000,000 cubic yards of Acceptable Fill at the Jog Road

Site before storing Acceptable Fill at the Winding Waters Site, in the event the SWA has an unexpected problem or emergency circumstances that prevents available space at its Jog Road Site then Acceptable Fill will be stock piled at Winding Waters Site until SWA has space available. At such time as space is again available at the Jog Road Site deliveries will resume to the Jog Road Site.

C. Prior to loading of Acceptable Fill and transport by the County or its contractor to the SWA Jog Road Site, the Acceptable Fill shall be allowed to drain in a stockpile at the Winding Waters Site until such time that the moisture content is below 15%. The SWA shall have the right to routinely inspect and test the fill material to determine that it is Acceptable Fill. If the fill is found by testing to have excessive moisture content (i.e. greater than 15%) or to otherwise not meet the definition of Acceptable Fill, the SWA shall have the right to refuse to accept fill deliveries until the fill material achieves Acceptable Fill requirement levels.

D. The County shall be responsible for loading and hauling Acceptable Fill material to the SWA site with the exception of any Acceptable Fill material stockpiled on the Winding Waters site, as described in Section 4.A and 4.B. above, the loading and hauling of which shall be the responsibility of the SWA. The Acceptable Fill delivered by the County to the SWA's Jog Road Site shall be weighed prior to entrance to the SWA's Jog Road Site at the scale house designated by the SWA. The SWA reserves the right to designate an alternative scale house at or near the Jog Road Site at its sole discretion. When the SWA removes Acceptable Fill from the Winding Waters Stockpile Area, hauling operations shall occur within the project boundaries as set forth in the designs and specifications supplied by the Palm Beach County Department of Environmental Resources Management ("ERM"), and ingress/egress shall be as set out on Exhibit "A". Public road access will be by way of access to Dyer Blvd., Haverhill Road, or N. W. 45th Street, or any other route as may be agreed to in writing by the Parties.

E. The County or its contractor shall give the SWA ten (10) days prior written notice (the "Notice to Proceed") before the start of hauling/delivery of Acceptable Fill to the Jog Road Site. Prior to giving Notice to Proceed the following conditions precedent shall have occurred, or been waived in writing by the SWA: 1) The County shall have obtained all permits required to commence the excavation of the Acceptable Fill material; 2) the County shall have signed a contract with its contractor to perform the excavation of the Acceptable Fill material; 3) The County's contractor shall have mobilized; and 4) The County shall ensure that all trucks used to haul Acceptable Fill are registered with and decaled by SWA. SWA will maintain on file a tare weight on each vehicle, which weight will be used to determine the net weight of each load crossing SWA's scales. The County will deliver Acceptable Fill during normal scale house working hours. At no time shall the County deliver more than 300 loads of Acceptable Fill per day through the SWA scale houses to the Jog Road Site nor shall the SWA restrict deliveries of Acceptable Fill to less than 150 loads per day without the consent of the other Party unless, due to mechanical failure or uncontrollable circumstance, the SWA is incapable of weighing trucks. Alternatively, the County may establish, through its contractor, another portable scale that will be set up at the Jog Road Site or at the Winding Waters Site to weigh the trucks. The cost for this portable scale, if elected by the County, shall be solely the County's responsibility. The SWA agrees that if the County establishes a portable scale, it will allow the County to deliver loads per day to the Jog Road Site in excess of 300 during daylight hours (as agreed upon by the parties relative to the seasons during the term of this Agreement) Monday through Saturday, as

long as the Jog Road Site has the capacity to accept the loads in excess of 300 per day. Access to the Jog Road Site by the County or its contractor shall not be unreasonably restricted.

F. For Acceptable Fill delivered by the County to the SWA's Jog Road Site, the County shall be compensated at a rate of \$6.04 per ton. SWA shall notify the County of the actual weight of Acceptable Fill received from the Winding Waters Site on a monthly basis. Within ninety (90) days of the County's first delivery of Acceptable Fill to the Jog Road Site, and provided the County has maintained continuous delivery of an average of at least 200 loads of Acceptable Fill per day for each Business Day (that is each Monday through Friday that is not a holiday), SWA shall make an advanced payment of \$4,530,000 to the County for delivery of the initial 750,000 tons of Acceptable Fill. The County hereby commits to a schedule of continuous production and delivery of Acceptable Fill at an average of at least 200 loads per Business Day until 750,000 tons of Acceptable Fill have been produced and delivered to the Jog Road Site. After delivery of that initial 750,000 tons of Acceptable Fill and payment as provided in this paragraph, the County shall bill the SWA on a quarterly basis based on the County's fiscal year calendar (i.e. January 30th, April 30th, July 30th, and October 30th) for Acceptable Fill delivered to the Jog Road Site or stockpiled on the Winding Waters Site.

G. If at any time during the delivery of Acceptable Fill the SWA scales become inoperative for whatever reason, the County may seek compensation for Acceptable Fill delivered to the Jog Road Site by the cubic yard rather than the ton, and at the choice of the SWA, SWA shall compensate the County at the rate of \$9.06 per cubic yard of Acceptable Fill delivered in the truck or \$10.15 per cubic yard based on the measured and calculated volume in a surveyed stockpile. Such stockpile survey shall be conducted by cordoning off such stockpile in a similar manner as described for the Winding Waters Site in Paragraph H below.

H. For Acceptable Fill placed and stored in a stockpile at the Winding Waters Site, the SWA shall compensate the County at a rate of \$5.81 per cubic yard based on the volume of Acceptable Fill in the stockpile as determined by a survey performed by the SWA. The stockpile shall be surveyed at least quarterly (i.e. January 30th, April 30th, July 30th, and October 30th) by the SWA, and the SWA shall compensate the County based on the increase in volume of the stockpile from the prior survey. The SWA shall provide the County with at least 10 days notice prior to removing Acceptable Fill from the stockpile. Before the SWA commences loading and hauling Acceptable Fill, the SWA and the County shall agree on the area of the stockpile from which Acceptable Fill will be removed. That area of the stockpile shall be cordoned off and surveyed by the SWA, both prior to the commencement of hauling and after the completion of hauling, by a licensed surveyor of the SWA's choosing. During such time that Acceptable Fill is being removed by the SWA, the County shall refrain from depositing additional Acceptable Fill in the area of the stockpile from which Acceptable Fill is being removed until notified by the SWA that the post-removal survey has been completed. The County has the right to conduct its own surveys at its discretion. In the event of a discrepancy between the surveys conducted by the SWA and County, the amount of material removed shall be determined by the average of the results of the two surveys.

J. The County shall be responsible for securing any and all permits and approvals necessary to fulfill its obligations under this Agreement. The SWA shall provide cooperation and assistance, as necessary, to obtain the required approvals.

5. Payment.

A. The SWA shall remit payment to the County within forty-five (45) days of receipt of an invoice from the County.

B. All payments made to the County shall be by check made payable to the Palm Beach County Board of County Commissioners and shall be clearly marked to identify this Agreement. Payments shall be mailed to the Department of Environmental Resources Management at the address given in Section 8. All SWA payments made pursuant to this Agreement shall be deposited in the County's Natural Areas Fund.

6. Acceptance of Fill. SWA shall have three (3) Business Days from the date of delivery or hauling (if SWA picks up stockpiled fill material from the Winding Waters Site) to inspect fill material and determine whether said fill material is Acceptable Fill. If the fill material or any part thereof is deemed unacceptable, SWA shall notify the County in writing within three (3) Business Days from the date of delivery or hauling (if SWA picks up stockpiled fill material from the Winding Waters Site) that the fill material is not acceptable. Such notice shall be delivered to the County and shall identify the amount and location of the fill material that is not acceptable and the reason said fill material is not acceptable. If no objection to fill material is made by the SWA within the timeframe provided herein, the fill material shall be deemed Acceptable Fill and SWA shall compensate the County as provided in this Agreement.

7. Party Representatives. The County's representative during the term of this Agreement shall be the Director of the Department of Environmental Resources Management, whose telephone number is (561) 233-2400. The SWA's representative during the term of this Agreement shall be the Director of Engineering, or his designee, whose telephone number is (561) 640-4000.

8. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, to the respective addresses specified in this paragraph. All notices required by this Agreement shall be considered delivered upon receipt. Should any Party change its address, written notice of such new address shall promptly be sent to the other Party. All notices required under this Agreement shall be forwarded, in writing, to:

Palm Beach County Department of
Environmental Resources Management
Director
2300 N. Jog Road
West Palm Beach, Florida 33411-2743

Copy to:
Shannon Fox
Palm Beach County Attorney's Office
301 North Olive Avenue, Sixth Floor
West Palm Beach, FL 33401

Copy to:
Solid Waste Authority
Executive Director
7501 Jog Road
West Palm Beach, FL 33412

Copy to:
Maureen E. Cullen
Palm Beach County Attorney's Office
301 N. Olive Avenue, Sixth Floor
West Palm Beach, FL 33401

9. Recording. A copy of this Agreement may be recorded and filed with the Clerk and Comptroller in and for Palm Beach County.

10. Indemnification. Each Party shall be liable for its own actions and negligence, and to the extent permitted under Section 768.28, Florida Statutes, The County shall indemnify, defend and hold harmless the SWA against any actions, claims, or damages arising out of the County's negligence or wrongful acts in connection with this Agreement, and the SWA shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out of the SWA's negligence or wrongful acts in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either Party to indemnify the other Party for either Party's negligent, willful or intentional acts or omissions.

11. Insurance. Without waiving the right to sovereign immunity as provided by Section, 768.28, Florida Statues, the County and the SWA acknowledge to be insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the SWA maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance on self-insurance under Section, 768.28, Florida Statues, the SWA shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The County and the SWA agree to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes. When requested, either Party shall provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the other Party agrees to recognize as acceptable for the above mentioned coverages. Compliance with the foregoing requirements shall not relieve the County or the SWA of its liability and obligations under the Agreement or any amendments thereto.

12. 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.

13. Waiver or Breach. It is hereby agreed to by the Parties that no waiver or 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 of any other covenant.

14. Default, Termination and Opportunity to Cure.

A. If a Party fails to fulfill its obligations under this Agreement in a timely and proper manner, the Party not in default shall have the right to terminate this Agreement and/or to bring an action for breach as provided herein by giving written notice of any deficiency and its intent to terminate and/or to bring an action for breach as provided herein. The Party in default shall then have thirty (30) days from receipt of notice to correct the stated deficiency. If the defaulting Party fails to correct the deficiency within such time and unless otherwise agreed by the Parties, the Party not in default may terminate this Agreement and/or bring an action for breach as provided herein.

B. If this Agreement is terminated prior to delivery or production and stockpiling of 1,400,000 cubic yards of Acceptable Fill, the SWA shall pay the County for all Acceptable Fill delivered to the Jog Road Site and/or stockpiled for SWA at the Winding Waters Site and retrieved by SWA as of the date of termination. In the event of such termination, the County shall refund the SWA, at the rates provided in this Agreement, any funds received by the County for Acceptable Fill not delivered by the County or retrieved by SWA (from the Winding Waters Site stockpile) as of the date of termination. Funds due from either Party as provided in this paragraph shall be paid to the other Party within ninety (90) days of termination.

C. In the event that the County stockpiles up to 400,000 cubic yards of Acceptable Fill for SWA on the County's Winding Waters Site and the SWA does not remove any or all of the Acceptable Fill from the Winding Waters Site within the term of this Agreement, the Acceptable Fill remaining on the Winding Waters Site shall become forfeited, and the County shall be able to sell or dispose of the Acceptable Fill at their discretion.

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

16. Remedies. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any Party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any Party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

17. Independent Contractor. The SWA recognizes that it is not an agent or servant of the County. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time,

be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.

18. Equal Opportunity. The County and the SWA agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, age, 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 the Agreement.

19. Records. The Parties shall maintain, in accordance with generally accepted governmental auditing standards, all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this Agreement. The Parties shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this Agreement. Such examination may be made only within three (3) years from the date of final payment under this Agreement and upon reasonable notice, time and place. In the event that the Parties should become involved in a legal dispute with a third party arising from performance under this Agreement, the Parties shall extend the period of maintenance for all records relating to the Agreement until the final disposition of the legal dispute, and all such records shall be made readily available to the Parties.

20. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

21. Amendment. None of the provisions, terms, or obligations in the Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the Parties hereto.

22. Entirety of Agreement. The Parties agree that this Agreement, together with any attached exhibits, sets forth the entire agreement between the Parties, and that there are no promises or understandings other than those stated herein.

23. Limited Liability for Consequential Damages. Under no circumstances shall the SWA be liable to the County its contractors, subcontractors or vendors regardless of whether styled as an action in contract, tort, negligence, strict liability or otherwise, for any consequential damages, including, but not limited to, loss of use, loss of profit, loss of revenue, replacement disposal costs, rental payments, or contractual damages incurred by County its contractors, subcontractors or vendors due to the failure of the SWA to receive or accept delivery of Acceptable Fill. This provision shall in no way relieve the SWA of the obligation to pay for Acceptable Fill received by the SWA under this Agreement.

WHEREFORE, the Parties hereto have set their hands and seals on the day set forth next to their signatures.

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY
IT'S BOARD OF COUNTY
COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

BY: _____
Deputy Clerk

BY: _____
Addie L. Greene, Chairperson

DATE: _____

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO
TERMS AND CONDITIONS:

BY: 
Assistant County Attorney

Richard E. Walesky, Director
Palm Beach County Dept. of
Environmental Resources Management

ATTEST:

SOLID WASTE AUTHORITY
OF PALM BEACH COUNTY

By: _____
Witness

By: _____
John F. Koons, Chair

By: _____
Witness

DATE: _____

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
SWA Special Counsel



EXHIBIT A

Potential stockpile areas and access roads providing Solid Waste Authority ingress/egress access to stockpiled fill at Winding Waters Natural Area.

DEPARTMENT OF ENVIRONMENTAL
RESOURCES MANAGEMENT

DRAWN BY: S. PISANO
DATE: AUGUST 8, 2008

