

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

Meeting Date: April 7, 2009

Consent [x] Regular []
Public Hearing []

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A) Second Amendment to Agreement of Purchase and Sale of Water and Wastewater Assets with the Village of Royal Palm Beach; and B) Second Amendment to the Transition Agreement with the Village of Royal Palm Beach.

Summary: The County and the Village entered into an Agreement of Purchase and Sale of Water and Wastewater Assets on February 26, 2006 (R2006-0410) in which the Village agreed to sell the majority of its utility system assets to the County. A First Amendment was approved by the Board on March 11, 2008 (R2008-0386). The County and Village also entered into a Transition Agreement (R2006-2660) on February 26, 2006 regarding certain issues involved in the transition of the Village utility system assets to County. A First Amendment to the Transition Agreement was approved by the Board on March 11, 2008 (R2008-0387). Both agreements included certain provisions related to the post-closing responsibilities of the County and the Village related to the wastewater treatment plant site.

The Agreement of Purchase and Sale of Water and Wastewater Assets is being amended to: extend the deadline for decommissioning the 3 million gallon water storage tank at the wastewater treatment plant site to April 30, 2012; create a procedure for the selection of a decommission contractor utilizing the Village's public bidding process; and extend the deadline for filling the wastewater treatment plant site to June 15, 2011. The Transition Agreement is being amended to extend the deadline for filling of the percolation pond to June 15, 2011.
District 6 (MJ)

Background and Policy Issues: Under the terms of the agreements, as amended, the Village permitted the County to operate the Village's water and wastewater treatment plants, and required the County to abandon the Village's existing wastewater treatment plant by April 30, 2008. Under the terms of the agreements, both the County and the Village have certain post-closing responsibilities related to the wastewater treatment plant site. The County and the Village agree to extend the date of decommissioning the 3 million gallon water storage tank at the wastewater treatment plant site to April 30, 2012, and filling of the wastewater treatment plant site and percolation pond to June 15, 2011.

Attachments:

1. Location Map
2. Three (3) Original Second Amendments to Agreement of Purchase and Sale of Water and Wastewater Assets
3. Three (3) Original Second Amendments to Transition Agreement

Recommended By: _____

Department Director

3/23/09
Date

Approved By: _____

Assistant County Administrator

3/30/09
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>0</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>
NET FISCAL IMPACT (Additional Revenues)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No:

Fund _____ Agency _____ Org. _____ Object _____

Is Item Included in Current Budget? Yes No

Reporting Category N/A

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

N/A

C. Department Fiscal Review: Selma M. West

III. REVIEW COMMENTS

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

[Signature] 3-27-09
 OFMB TM 3/26 EW 3/25/09
 3/26/09

[Signature] 3/27/09
 Contract and Development Control
 These Amendments comply
 with our review requirements.

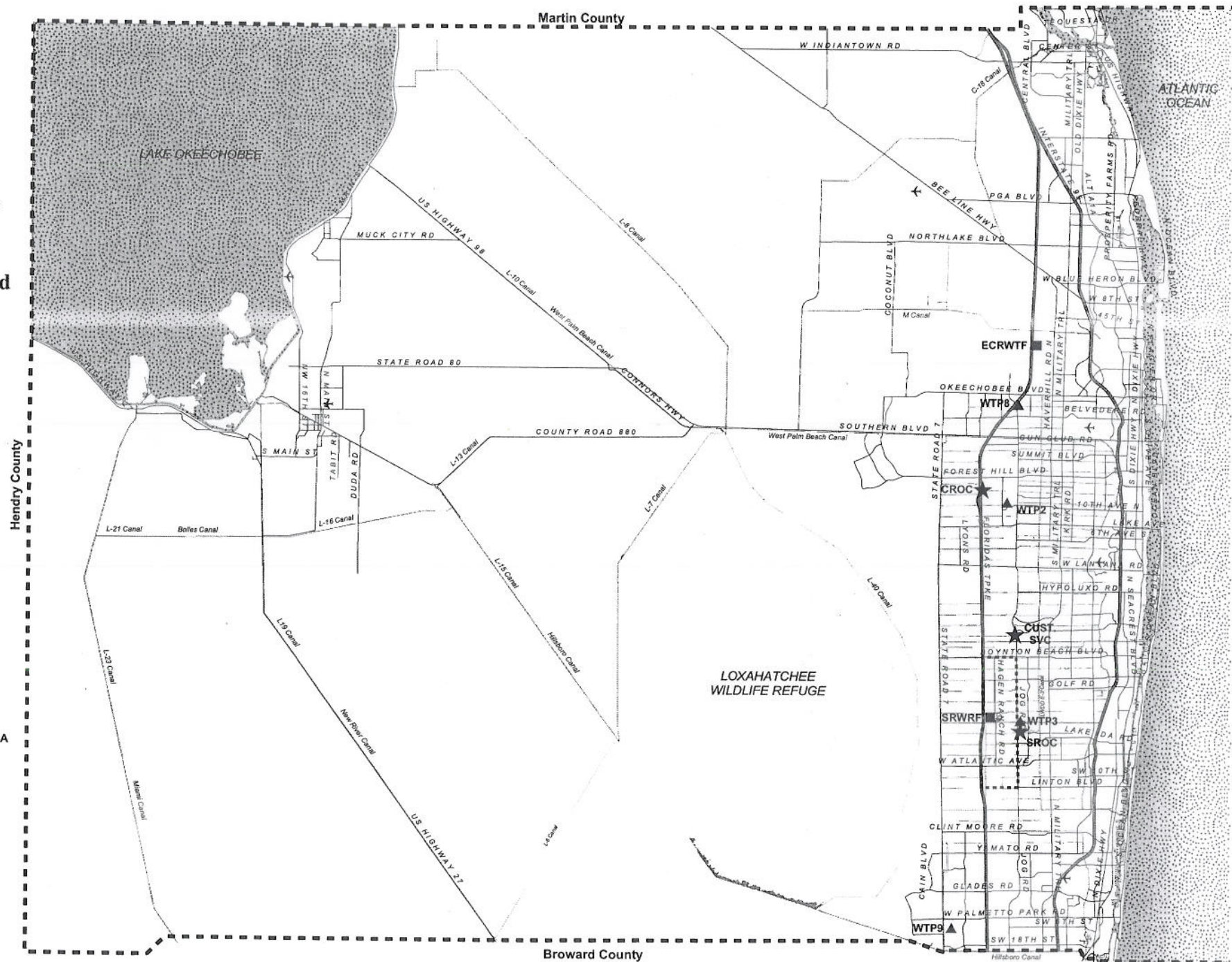
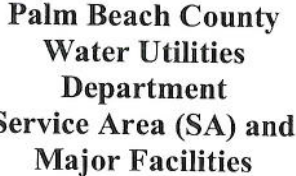
B. Legal Sufficiency:

[Signature] 3/30/09
 Assistant County Attorney

C. Other Department Review:

 Department Director

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



**SECOND AMENDMENT TO
AGREEMENT OF PURCHASE AND SALE OF WATER AND WASTEWATER ASSETS**

THIS SECOND AMENDMENT is made and entered into this _____ day of _____, 2009, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), and the **VILLAGE OF ROYAL PALM BEACH**, a Florida municipal corporation (hereinafter "Village").

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 economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the County and the Village entered into an Agreement of Purchase and Sale of Water and Wastewater Assets on February 28, 2006, in which the County agreed to purchase, and the Village agreed to sell, the Village's Water and Wastewater system [County Resolution No. 2006-0410] and a First Amendment to that Agreement on March 11, 2008 [County Resolution No. 2008-0386] (hereinafter the "Agreement"); and

WHEREAS, the Village's three million gallons water storage tank was to be decommissioned at the County's expense no later than April 30, 2008 which has not yet been accomplished; and

WHEREAS, there appears to be no urgency in filing the Conveyed Plant Site on the date originally agreed upon by the parties; and

WHEREAS, both the County and the Village agree to the two (2) extensions of time.

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

SECTION 1: The foregoing statements are true and correct and are incorporated herein by specific reference.

SECTION 2: Section 4.5 of the Agreement, "County Lease of Village's Existing Plants and Underlying Real Estate," is hereby amended to read as follows:

4.5 County Lease of Village's Existing Plants and Underlying Real Estate. The County shall enter into a lease of the underlying real estate with respect to the Village's Plants for one dollar (\$1.00) per year, a copy of which is attached to and incorporated in this Agreement as Exhibit K. The County shall operate the Village's Plants and assume all operational

and maintenance obligations associated with the Plants. County shall abandon the Village's Wastewater Treatment Plant on or before April 30, 2008. 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, or 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 will, at its own expense, decommission the Plant. After the County's abandonment of both Village Plants, the lease shall expire and be of no further force and effect. The County agrees not to install fluoridation equipment at the existing Village water treatment plant during the entire term of the lease. The Village acknowledges that the County will fluoridate the potable water at its new regional water treatment plant. In addition, the Village acknowledges that the County fluoridates water at all of its water treatment plants and that fluoridated water may be distributed from these plants to customers within the Royal Palm Beach Retained Utility Service Area following the Closing Date. The Village's three million gallons water storage tank located at the Village's wastewater plant site shall be decommissioned by the Village but at the County's expense no later than April 30, 2012. The Village will utilize the public bidding process in order to decommission the water storage tank. Upon receipt by the Village of a satisfactory bid to accomplish the decommissioning process of the water storage tank, referenced above, the Village will provide notice to the County. If the bid price is not acceptable to the County, notice must be provided to the Village within fifteen (15) days of receipt of the bid notice, at which time the County agrees to decommission the water storage tank, itself, at its own expense, within three hundred sixty-five (365) days of the County's notice to Village that the price is not acceptable. If the bid price is acceptable to the County, the County will submit twenty percent (20%) of the bid amount to the Village within thirty (30) days after receipt of the bid notice and the Village will proceed to accomplish the decommissioning project. The remainder of the project cost shall be paid by the County to the Village within thirty (30) days of notice from the Village that the project has been completed. Notice shall be provided in accordance with Section 16 of the Agreement.

SECTION 3: Section 4.10 of the Agreement, "Technology for Odor Control" is hereby amended to read as follows:

4.10 Technology for Odor Control. The County must use scrubbers or other mutually agreed upon technology for odor control on the Conveyed Plant Site and the wastewater pumping facility must be an in-line booster station with no open wet well. The Conveyed Plant Site shall include buffering in accordance with Village site plan requirements. Access to the site shall be from 40th Street. The Conveyed Plant Site will be filled by

the Village to a minimum elevation of 18.5 feet no later than June 15, 2011.

SECTION 4: This Amendment shall become effective upon execution by both parties and filing with the Clerk of the Circuit Court for Palm Beach County.

SECTION 5: All other provisions of the Agreement dated February 28, 2006, and the First Amendment dated March 11, 2008, including all exhibits thereto, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE
PAGE FOLLOWS**

IN WITNESS WHEREOF, County and Village have executed or have caused this Amendment to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Amendment.

ATTEST:

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

(SEAL)

Date: _____

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

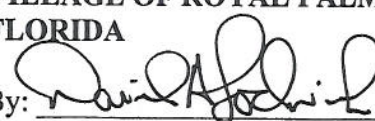
By: 
County Attorney

By: 
Director of Water Utilities, Bevin Beaudet

ATTEST:

VILLAGE OF ROYAL PALM BEACH,
FLORIDA

By: 
Diane DiSanto, Village Clerk

By: 
David A. Lodwick, Mayor

(SEAL)

Date: 2/6/09

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

By: 
Trela J. White, Village Attorney

SECOND AMENDMENT TO TRANSITION AGREEMENT

THIS SECOND AMENDMENT is made and entered into this ____ day of _____, 2009, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (hereinafter "County"), and the VILLAGE OF ROYAL PALM BEACH, a Florida municipal corporation (hereinafter "Village".)

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 economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, in conjunction with the County's purchase of Village's water and wastewater assets, County and Village entered into a Transition Agreement on April 27, 2006 (County Resolution No. 2006-2660)(hereinafter "Agreement"); and

WHEREAS, the Agreement was amended to extend the abandonment date for the wastewater treatment plant until April 30, 2008 by means of the First Amendment to the Transition Agreement dated March 11, 2008 (County Resolution No. 2008-0387); and

WHEREAS, the County and the Village have agreed to amend the Agreement of Purchase and Sale of Water and Wastewater assets in order to extend other deadlines and now need to amend the Transition Agreement for internal consistency.

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

- I. The foregoing statements are true and correct and are incorporated herein by specific reference.
- II. Section 8 of the Agreement, "Filling of Plant Site" is hereby amended to read as follows:

8. Filling of Plant Site. The percolation pond situated on the Conveyed Plant Site shall be filled by the Village to a minimum elevation of 18.5 feet no later than June 15, 2009 2011 ~~or within two years from the date the sewer plant is decommissioned~~. The fill materials and related requirements shall be the same as the requirements shall be the same as the requirements set forth in Section 2 of this Agreement above.
- III. This Second Amendment to the Agreement shall become effective upon execution by both parties and filing with the Clerk of the Circuit Court for Palm Beach County.

- IV. All other provisions of the Agreement dated April 27, 2006 and the First Amendment to the Agreement dated March 11, 2008 are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

IN WITNESS WHEREOF, County and Village have executed or have caused this Amendment to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Amendment.

ATTEST:

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

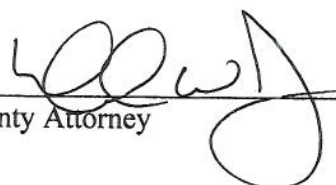
By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

(SEAL)

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By:  _____
County Attorney

By:  _____
Director of Water Utilities, Bevin Beaudet

ATTEST:

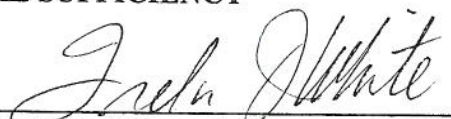
VILLAGE OF ROYAL PALM BEACH,
FLORIDA

By:  _____
Diane DiSanto, Village Clerk

By:  _____
David A. Lodwick, Mayor

(SEAL)

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

By:  _____
Trela J. White, Village Attorney