

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

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Meeting Date:      August 18, 2009           Consent [ ]           Regular [X]
                                      Public Hearing [ ]
Submitted By:      Water Utilities Department
Submitted For:     Water Utilities Department
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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Service Agreement with the Glades Utility Authority (GUA) for Operations, Maintenance and Management of the GUA Utility System,

Summary: On June 16, 2009, the Board of County Commissioners approved the Interlocal Agreement (R2009-1034) and Transition Agreement (R2009-1035), establishing the GUA pursuant to Chapter 163, Florida Statutes. The GUA is a regional partnership established for the purpose of providing water, wastewater, and reclaimed water services to the residents of Belle Glade, Pahokee, South Bay, and surrounding areas in an efficient and fiscally responsible manner. The Service Agreement authorizes the County to operate, maintain and manage all utility assets, including the Lake Region Water Treatment Plant (LRWTP), Belle Glade Wastewater Plant, the Pahokee Wastewater Treatment Plant, and all water distribution systems and wastewater collection systems. Countywide (MJ)

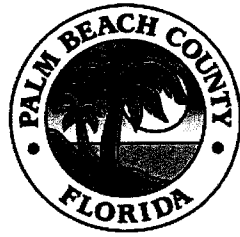
Background and Justification: In 2008, the Department completed construction of the LRWTP to provide potable water on a wholesale basis to the Cities of Belle Glade, Pahokee, and South Bay, which had previously relied on Lake Okeechobee for their water supply. Under the Interlocal Agreement, the GUA will assume ownership of all assets and the debt relating to the LRWTP as well as the remaining outstanding utility debt of the three cities. Currently, residents of the three cities pay the highest water utility rates in the County due to heavy debt burdens, and the cities do not have the financial resources to make the necessary system repairs and comply with various consent orders. A regional approach to provide water utility services has the best chance of providing a stable source of water and wastewater services at the lowest possible cost. The County has the capability to provide operations, maintenance and management services to the GUA economically because of the scope of current utility operations, and the experience gained while operating the Lake Region Water Treatment Plant.

Attachments:

1. Location Map
2. Three (3) Original Agreements

Recommended By:  7/27/09
Department Director Date

Approved By:  8/4/09
Assistant County Administrator Date



**Palm Beach County
Water Utilities
Department
Service Area (SA) and
Major Facilities**

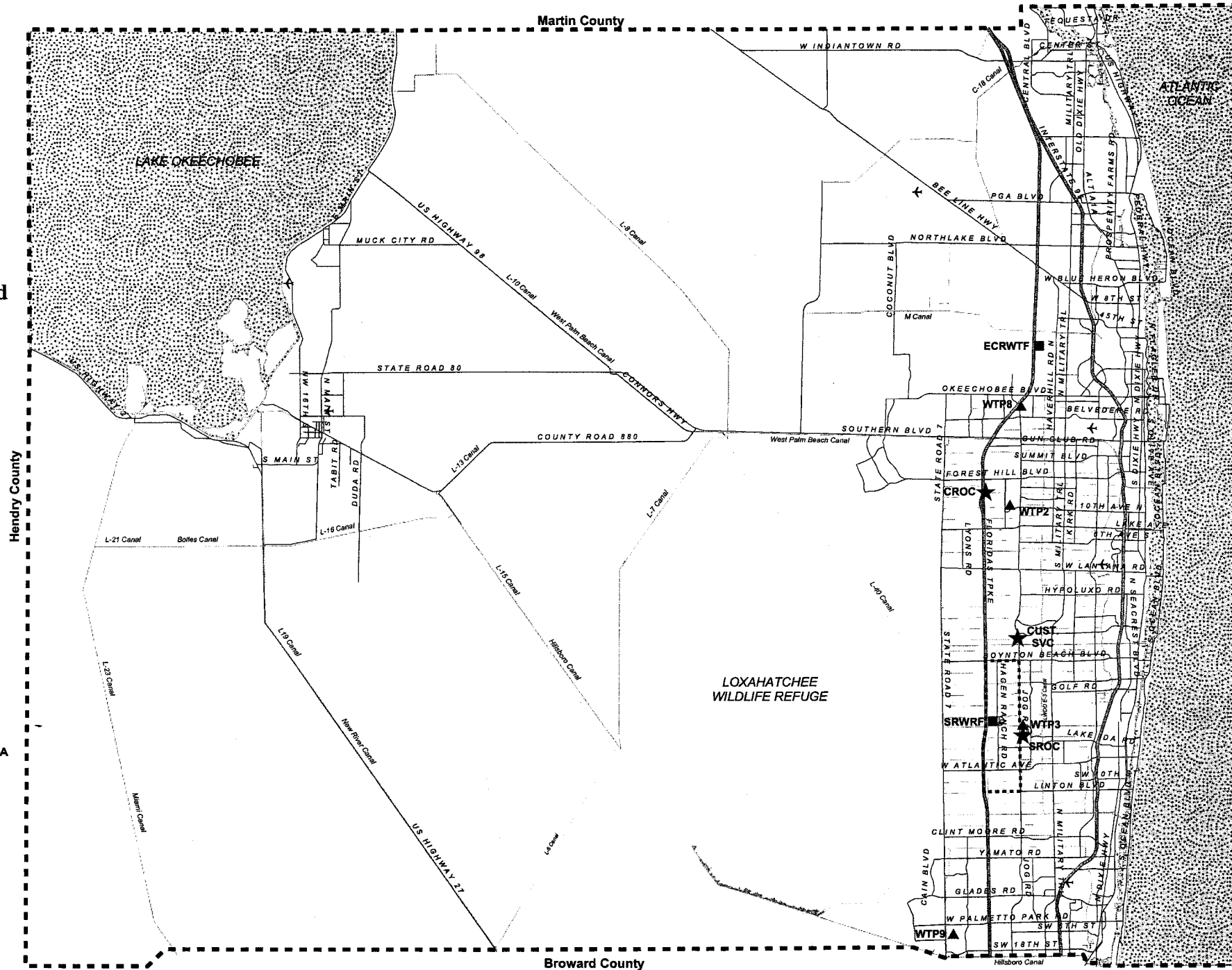
Attachment 1

Legend

- P.B.C.W.U.D. SA
- MANDATORY RECLAIMED SA
- - - - COUNTY LIMITS
- ★ Administration
- Water Reclamation Plant
- ▲ Water Treatment Plant
- ④ Wetlands



NOT TO SCALE



 **DRAFT**

**SERVICE AGREEMENT FOR OPERATIONS, MAINTENANCE, ADMINISTRATION AND
MANAGEMENT OF THE GLADES UTILITY AUTHORITY UTILITY SYSTEM**

THIS AGREEMENT made and entered into this ____ day of _____, 2009 by and between the Glades Utility Authority, a public body and legal entity created by Interlocal Agreement pursuant to Chapter 163, Florida Statutes (the “**Authority**”), and Palm Beach County, Florida, a duly organized and validly existing political subdivision of the State (the “**County**”).

WHEREAS, the County, the City of Belle Glade, Florida, the City of Pahokee, Florida, and the City of South Bay, Florida (hereinafter collectively, the “**Entities**”) entered into that certain Interlocal Agreement adopted as of June 16, 2009 (the “**Interlocal Agreement**”), to create the Authority for the purpose of establishing a regional partnership for providing water, wastewater, and reclaimed water services to the residents of Belle Glade, Pahokee, and South Bay and surrounding areas in an efficient and fiscally responsible manner; and

WHEREAS, the Entities further entered into that certain Transition Agreement dated June 16, 2009 (the “**Transition Agreement**”), to provide for the smooth transition of the facilities and systems identified in the Interlocal Agreement (“the **Utility System**”) and for certain post-closing matters; and

WHEREAS, pursuant to Section 12 of the Transition Agreement, the Authority is obligated to enter into an agreement with the County by August 16, 2009 to provide for the operations, maintenance, administration and management of the Utility System; and

WHEREAS, the Authority desires to enter into this Agreement with the County to perform certain operations, maintenance, administration and management services associated with the Utility System under the terms and conditions set forth herein; and

WHEREAS, the Authority and the County agree that Palm Beach County Water Utilities Department (the “**Water Utilities Department**”) shall perform and provide the services hereunder on behalf of the County.

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

1. The above recitals are true, correct and incorporated herein by specific reference.
2. **Term.** This Agreement shall commence on the Effective Date and continue for a period of seven(7) years or until the occurrence of the events set forth in Section 3.02(F)(1)(a)-(d) of the Interlocal Agreement, whichever occurs later. Thereafter, the County and Authority may extend or amend this Agreement for an additional term upon written agreement of the parties.
3. **Effective Date.** This Agreement shall become effective upon execution by the Authority and the County. While County shall not be responsible for the operation, maintenance, administration and management of the Utility System until the Transfer Date, as that term is defined in the Interlocal Agreement (the “**Transfer Date**”), the parties acknowledge that the County will incur certain external costs prior to the Transfer Date in order to be able to immediately meet its obligations under this Agreement as of the Transfer Date. The Authority shall reimburse County for said costs. These costs shall not include County costs incurred in the creation of the Authority and transfer of the Utility System from the County and the Entities to the Authority, unless otherwise stated to the contrary in the Interlocal Agreement or the Transition Agreement.

4. **Definitions.** The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

- a. "Countywide Policies and Procedures Memoranda (Countywide PPMs)" – Policies and procedures approved and issued by the County Administrator with Countywide application.
- b. "Water Utilities Department Policies and Procedures Memoranda (WUD PPMs)" – Policies and procedures approved and issued by the Director of the Water Utilities Department having application to the operation of the Department.
- c. "Uniform Policies and Procedures (UPAP) Manual" – A codification of the Water Utilities Department's fees, standards, legal documents, policies and procedures governing the provision of potable water, reclaimed water, and wastewater services. Changes to the UPAP must be approved by the Board of County Commissioners.
- d. "Direct Costs" – Those expenditures that are directly and totally chargeable to the Authority. An example of a Direct Cost is the salary and benefits of an employee who is assigned full-time to provide services to the Authority. Another example of a Direct Cost shall be an employee who, while not assigned full-time to the Authority, is assigned to perform a specific task for the Authority. The charge for this latter type of employee shall be the hourly wage of the employee, multiplied by 1.50 to account for benefits.
- e. "Indirect Costs" – Those overhead expenditures which are attributable to the Authority but are part of a cost pool that is allocated on a rational and reasonable basis. An example of an Indirect Cost is the cost of the County's central services such as Finance and Purchasing. Indirect Costs charged by County Administration will be charged in proportion to the Authority's operating budget as compared to the Water Utilities Department's operating budget. The County shall maintain appropriate documentation to support such charges.
- f. "Allocated Costs" – Those expenditures that must be allocated between the County and the Authority. An example of an Allocated Cost is the salary and benefit costs of Water Utilities Department personnel who provide on-going services to the Authority, but whose primary function is to provide services to the Department, rather than the Authority. Allocated Costs for personnel will be charged to the Authority at the employee's hourly rate of pay multiplied by 1.50 to account for benefits. The County shall maintain appropriate documentation to support such charges.
- g. "Cost Center" – An account established for the benefit of the Authority in the County's accounting system used to accumulate costs and provide for a method of reporting.
- h. "Purchasing Ordinance" – An ordinance approved by the Board of County Commissioners setting forth the County's procurement rules.
- i. "Fiscal Year" – October 1 to September 30.
- j. "Utility System" - The system conveyed to the Authority under the provisions of the Interlocal Agreement. For purposes of this Agreement, Utility Systems includes the Utility Assets, as defined in the Interlocal Agreement.

5. **Scope of Agreement.** County agrees to furnish and Authority agrees to purchase utility operations, maintenance, administration and management services in accordance with the terms and conditions of this Agreement, as they may be limited by the permitted capacity and the physical condition of the Utility System. The scope of services shall be limited per the operating and capital budgets approved by the Authority.

6. **Obligations of the County.**

a. **Standard of Performance.** The County shall perform the services with the degree of skill and diligence normally employed by operations, maintenance, administration and management personnel in the water and wastewater utility industry performing the same or similar services.

b. **Applicable Law, Policies, and Procedures.** During the performance of its obligations under this Agreement, the County will comply with all applicable laws, ordinances, Countywide PPMs, WUD PPMs, and the UPAP, except for utility rates, fees, assessments, and other charges for utility services and customer service policies, which shall be separately established by the Authority.

c. **Personnel.** During the Term of this Agreement the County shall staff the Utility System with a sufficient number of qualified personnel who possess the managerial, administrative and technical skills to perform the services specified herein. Personnel shall be trained regarding the County's safety program, and training shall be documented by the County. The County shall comply with all State and federal requirements regarding equal opportunity employment.

d. **Operations, Maintenance, Administration and Management.** The County shall operate, maintain, administer and manage the Utility System.

e. **Customer Service, Meter Reading, Billing and Collection.** The County shall perform customer service, meter reading, billing and debt collection services in accordance with the Interlocal Agreement and Transition Agreement.

f. **Permits.** The County shall make all filings and applications necessary to obtain and maintain all permits, licenses and approvals required to be made, obtained or maintained under applicable law in connection with providing the services enumerated hereunder.

g. **Insurance.** The County shall arrange for all necessary property, liability, auto, and other insurance that may be required.

h. **Accounting, Banking, and Investment Services.** The County shall provide all accounting, banking, and investment services that may be required. The County shall establish specific Cost Centers in its Water Utilities Department's budget to accumulate the costs of services to be provided herein. Any interest accrued on cash balances owned by the Authority shall belong to the Authority.

i. **Information System.** The County shall provide for the storage and the ready retrieval of operating data relating to the processing of water and wastewater related to the Utility System. Upon termination of this Agreement, the County shall provide to the Authority the current electronic database or sets of databases containing the operations records in a format to be agreed upon by the parties.

j. **Operating Reports.** The County shall provide the Authority with monthly operating reports no later than twenty-one (21) days after the end of each month subject to the availability of

analytical results. An annual summary of the statistical data will be provided to the Authority within sixty (60) days of the close of the Fiscal Year.

k. Budget. The County shall provide a proposed annual budget to the Authority in accordance with the Interlocal Agreement providing for the expenditure of funds for providing services under this Agreement. The budget shall include an operating budget and a capital budget, and the budgets shall be fixed unless amended by the Authority. Budgetary control shall be exercised at the total operating and capital budget levels, which are the levels normally approved for Water Utilities Department's accounts, and no additional approvals by the Authority are required for the expenditure of funds included in the budget. The County may shift and expend funds for providing services under the contract among the various budget accounts, as long as the total operating and capital budgets are maintained within authorized levels. A startup operations and repair account shall be included in the first year budget.

l. Emergency Plan. Within one (1) year of the Effective Date, the County shall provide the Authority with a plan of action to be implemented in the event an emergency shall occur. The plan shall provide for interaction and coordination with appropriate departments of the Entities and other jurisdictions. Such plan shall conform to all applicable laws, shall make provision for standby employees ready to address any emergency in an expeditious manner, and shall address and include spill prevention and response measures. The plan shall be reviewed and updated by the parties as frequently as necessary until such time that the County provides the plan, the County shall utilize the County's existing emergency plan in relation to the Utility System.

m. Maintenance and Repair. The County shall perform preventative maintenance and repair for the Utility System. The facilities and the associated areas comprising the Utility System shall be maintained in a clean, neat and orderly fashion and administrative spaces shall be kept clean, dry and habitable.

n. Security. The County shall protect against any losses to the Utility System resulting from theft, damage or unauthorized use of the Utility System, including the utilization of security devices such as, but not limited to, fencing, lockable structures and limited intrusion alarms.

o. Public Records. All records maintained by the County relating to the performance of its obligations under this Agreement shall be public records, except those specifically exempted by Florida Statutes.

p. Capital Projects. The County shall provide for the construction, renewal, and/or replacement of facilities in accordance with the Authority's capital budget.

q. Authority to Contract with other Entities. With prior approval of the Authority, the County may contract with the City of Belle Glade, the City of Pahokee, and/or the City of South Bay for the provision of office space, personnel, or other services related to customer service activities, which may be provided on a more cost-effective basis. The terms and costs related to any such agreements shall be negotiated between the parties.

r. Engineering, Construction, and Plan Review Services. The County shall be responsible for the management of studies, pre-design, design, permitting, bidding, construction, inspection and close-out services of certain improvement projects to the existing potable water and wastewater treatment, distribution, and collection systems (the "Improvement Projects".) The County will also be responsible

for “soft” engineering studies such as financial plans, master plans, capacity analysis reports, management studies and any other study required for the operation of the Utility System. The Improvement Projects will be designed in compliance with the County’s Minimum Engineering and Construction Design Standards for Potable Water, Reclaimed Water and Wastewater Systems as contained in the UPAP, until such time that the Authority adopts their own standards, at which time the Improvement Projects will be designed in accordance with the Authority’s standards. The County shall perform these duties in accordance with the following:

i. The County shall make requests in writing to the Authority for studies, pre-design, design, permitting, bidding, construction, and close-out services of the Improvement Projects where said services are to exceed \$25,000 per project. For Improvement Projects included within the Utility’s budget, County may undertake any study necessary to perform the Improvement Project without seeking further approval of the Authority, unless such study is estimated to exceed \$25,000. . The request will include a budget and scope, and the County will request changes to the scope and budget in writing to the Authority. The Authority will approve the scope and budget for such studies. The County may utilize consultants and contractors hired in accordance with the County’s bidding processes for any duties associated with an Improvement Project.

ii. Following completion of an Improvement Project, the County shall transfer, or cause its contractor to transfer, ownership of any improvements to the Authority by bill of sale or other document. Following such transfer, the Authority shall be responsible for the ownership, operation and maintenance of the improvements to the Utility System in perpetuity, subject to the provisions of this agreement, the Interlocal Agreement, and the Transition Agreement.

iii. The Authority agrees to provide the County, and any contractors or subcontractors of the County, with access to the work site and, where available, with a construction staging area on Authority-owned land. The Authority also shall make available any Authority-owned rights-of-way for use by the County, and any contractors or subcontractors of the County, for use during the Improvement Project. County shall have the right to acquire for itself or its contractors temporary and permanent easements or other property rights as the Improvement Project may require. In addition, the Authority hereby designates the County as its agent for the purpose of acquiring any property rights, including but not limited to permanent utility easements, that will be required for the Authority to own, operate and maintain the improvements to the Utility System in perpetuity.

iv. The County shall also be responsible for plan review and construction inspection services for developer-built projects that will impact or connect to existing potable water and wastewater treatment, distribution, and collection systems owned by the Authority. The developer will pay all plan review and construction inspection fees as per the UPAP Manual effective at the time of initial plan review. The County will issue “GUA Utility Permits” for developer-built projects that will impact or connect to existing potable water and wastewater treatment, distribution, and collection systems owned by the Authority. The developer may be required to obtain right-of-way permits from any of the individual Entities, the Florida Department of Transportation, or other party with jurisdiction.

v. The County shall be responsible for maintaining as-builts for Improvement Projects that are designed or managed under this Agreement. In addition, the County will maintain as-builts for developer-built projects that have been approved and constructed under Section 6.r.iv; both paper copies and electronic version will be maintained. As-built requirements will comply with the UPAP effective at the time of initial plan review.

vi. The Authority may delegate to the County the responsibility for issuing concurrency, developer agreements, and approvals for water, wastewater, or reclaimed service including collection of fees associated with such agreements.

s. Vehicles. The County shall supply, operate and maintain suitable leased County vehicles and rolling stock necessary for operations and maintenance of the Utility System, that are not available from the Authority.

t. Unexpected Expenditures. Notwithstanding anything else in this Agreement to the contrary, the County shall have the authority to perform repairs to the Utility System of up to \$250,000 without the approval of the Authority, where a failure to perform these repairs would be detrimental to the health, safety, or welfare of the general public and/or Authority customers, including, but not limited to, where the repairs are required to prevent, or remedy, a service interruption in the Utility System. Authority shall reimburse County for the costs of any such repair, whether or not said costs are included within the Authority's adopted budget.

7. Obligations of the Authority.

a. Payment for Services. The Authority shall pay the County for the services provided pursuant to this Agreement within thirty (30) days of receiving a properly documented invoice for the services. The Authority agrees to pay monthly for all Direct Costs, Indirect Costs, and /or Allocated Costs chargeable to the Authority Cost Centers maintained by the County.

b. Authority Attorney. The Authority shall be responsible for contracting separately for the services of an Authority attorney and the costs for such services shall be paid directly by the Authority.

c. Debt Service. The Authority shall be responsible for maintaining appropriate debt service accounts and reserves as required for debts owed by the Authority, and the Authority agrees to make timely debt service payments.

8. Other Provisions.

a. Ownership. All land, buildings, facilities, easements, licenses, structures, rights-of-way, equipment and vehicles presently or hereinafter acquired by Authority shall remain the exclusive property of Authority unless specifically provided for otherwise in this Agreement.

b. Transition upon Expiration of Term. Upon the expiration of this Agreement, the County shall assist the Authority in assuming the operation, maintenance and management of the Utility System. If additional costs are incurred by the County at the request of the Authority, the Authority shall pay the County such costs within thirty (30) days of invoice receipt.

c. Fines and Civil Penalties. The Authority shall be liable for fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Transfer Date as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance, except those resulting from County's negligence or willful misconduct during the term of this Agreement. The County will assist the Authority to contest any such fines in administrative proceedings and/or in court prior to any payment by the Authority, provided that any assistance by the County which requires extensive staff time will be reimbursed by the Authority to the County. The County shall not be liable for fines or civil penalties that result from violations that occur prior to the Transfer Date.

d. No Third Party Beneficiaries. This Agreement gives no right or benefits to anyone other than Authority and County and has no third party beneficiary.

e. Force Majeure. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or water plant failures and water main breaks, neither party shall be liable for such non-performance.

f. Remedies. This Agreement shall be 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 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 now or hereafter.

g. Successors and Assigns. The County and the Authority each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither County nor Authority shall assign, sublet, convey, or transfer its interest in this Agreement without prior written consent of the other.

h. Waiver. The failure of either party to insist on the strict performance of any of the agreements, terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.

i. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

j. Amendment and Modification. This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.

k. Entirety of Agreement. County and Authority agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties.

l. Indemnification. The County and the Authority acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. The County and the Authority agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees, agents, contractors, subcontractors or other designees. The parties acknowledge

that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, Palm Beach County and the Glades Utility Authority have caused this agreement to be duly executed and entered into as of the ____ day of _____, 2009.

**ATTEST:
SHARON R. BOCK, CLERK &
COMPTROLLER**

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

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

(SEAL)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
County Attorney

By: _____
Director of Water Utilities

**ATTEST:
GLADES UTILITY AUTHORITY
CLERK**

By: _____
Sylvia L. Sharps

(SEAL)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
Interim Glades Utility Authority
Attorney

**GLADES UTILITY AUTHORITY, BY ITS
BOARD**

By: _____
Shannon LaRocque-Baas, P.E., Chair

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
Interim Glades Utility Authority
Executive Director