

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

Agenda Item No.

6E-3

AGENDA ITEM SUMMARY

Meeting Date: September 15, 2009 Consent [ ] Regular [X]  
Public Hearing [ ]

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

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to:

**A) authorize** the Chairman of the Board of County Commissioners to execute any and all documents necessary to effect the transfer of the Lake Region Water Treatment Plant (LRWTP), and related real property, easements, and agreements, to the Glades Utility Authority (GUA);

**B) adopt** a Resolution approving and concurring in the findings of the Director of the Water Utilities Department and the Consulting Engineer of the Water Utilities Department that the LRWTP, and related real property and easements, are not necessary or useful or profitable in the operation of the Palm Beach County Water and Sewer System, and authorizing the conveyance of said property to the GUA (Transfer Resolution); and

**C) adopt** a Resolution providing a covenant to budget and appropriate legally available non-ad valorem revenues in an amount not-to-exceed ten million dollars (\$10,000,000.00) for certain debt service, operations, and maintenance obligations of the GUA (Covenant Resolution).

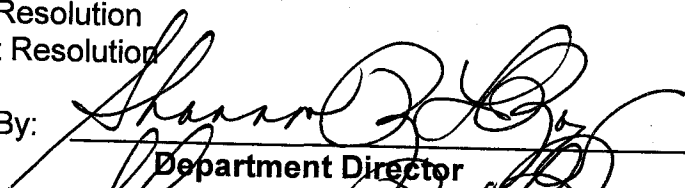
**Summary:** On June 16, 2009, the Board of County Commissioners (BCC) approved an Interlocal Agreement (R2009-1034) creating the GUA and a Transition Agreement (R2009-1035) setting forth the conditions for the transition of certain utility assets and services to the GUA. Pursuant to the Interlocal Agreement and the Transition Agreement, the County shall transfer ownership of the LRWTP, related real property, easements, and agreements to the GUA on the transfer date, which is to occur on or before October 1, 2009. As part of this transfer, the County will be required to execute a deed, bill of sale, and certain other assignment documents. These documents have not yet been finalized, and, in order to meet the October 1, 2009 deadline, the Water Utilities Department (Department) requests that the BCC authorize the Chairman to execute the necessary documents at a later date. The Transfer Resolution is required pursuant to bond covenants of the Department for the transfer of certain assets of the Water Utilities Department. The Covenant Resolution is in accordance with Section 6.10 of the Interlocal Agreement in which the BCC committed to provide a back-up covenant for the operation, maintenance, and management of the GUA system, and is required in order for Wachovia Bank to loan the GUA up to ten million dollars (\$10,000,000) for start-up funds and the assumption of a previous loan made by Wachovia to the City of Belle Glade. 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.

**Attachments:**

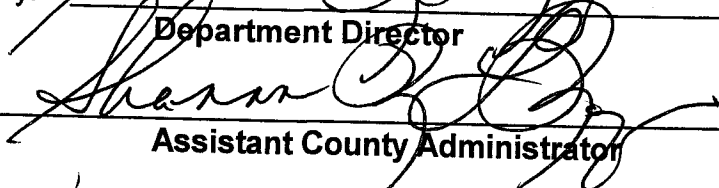
1. Transfer Resolution
2. Covenant Resolution

Recommended By:

  
Department Director

9/8/09  
Date

Approved By:

  
Assistant County Administrator

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>
Operating Expenses	<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>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

**Budget Account No.: Fund Dept Unit Object**

**Is Item Included in Current Budget? Yes No**

**Reporting Category**

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

This item has no fiscal impact.

**C. Department Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

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

A virtual fund was created to budget for the \$10 million.

*[Signature]* 9/10/09  
OFMB  
9/10/09

*[Signature]* 9/11/09  
Contract Development and Control  
9/11/09

**B. Legal sufficiency:**

*[Signature]* 9/14/09  
Assistant County Attorney

**C. Other Department Review:**

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

RESOLUTION NO. 2009-\_\_\_\_\_

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, APPROVING AND CONCURRING IN THE FINDINGS OF THE DIRECTOR OF THE WATER UTILITIES DEPARTMENT AND THE CONSULTING ENGINEER OF THE WATER UTILITIES DEPARTMENT THAT THE LAKE REGION WATER TREATMENT PLANT, AND RELATED REAL PROPERTY AND EASEMENTS, IS NOT NECESSARY OR USEFUL OR PROFITABLE IN THE OPERATION OF THE PALM BEACH COUNTY WATER AND SEWER SYSTEM, AND AUTHORIZING THE CONVEYANCE OF SAID PROPERTY TO THE GLADES UTILITY AUTHORITY.**

**WHEREAS**, on June 16, 2009, Palm Beach County, by and through its Board of County Commissioners ("County"), approved an Interlocal Agreement ("Interlocal Agreement") (County Resolution R2009-1034) with the Cities of Belle Glade, Pahokee, and South Bay establishing the Glades Utility Authority ("GUA"); and

**WHEREAS**, on June 16, 2009, the County adopted a Resolution (County Resolution No. R2009-1033) determining that the transfer of certain utility assets, including the Lake Region Water Treatment Plant, to the GUA was in the public interest; and

**WHEREAS**, pursuant to Palm Beach County Water and Sewer Revenue Bond Resolution ("Bond Resolution") dated August 23, 1984, as supplemented and amended ("Bond Resolution"), the County has issued Water and Sewer System Revenue Bonds; and

**WHEREAS**, the Director of the Palm Beach County Water Utilities Department has made a finding in writing, which is attached hereto and incorporated herein as **Exhibit "A"**, that the Lake Region Water Treatment Plant and related real property and easements ("Property"), are no longer necessary or useful or profitable in the operation of the Water and Sewer System; and

**WHEREAS**, the Consulting Engineer of the Palm Beach Water Utilities Department has made a finding in writing, which is attached hereto and incorporated herein as **Exhibit "B"**, that the Property is no longer necessary or useful or profitable in

the operation of the Water and Sewer System; and

**WHEREAS**, pursuant to the Bond Resolution, prior to the conveyance of a portion of the Water and Sewer System, the Board of County Commissioners shall adopt a resolution approving and concurring in the findings of the Director of the Water Utilities Department and the Consulting Engineer, and authorizing the conveyance of the applicable portion of the Water and Sewer System; and

**WHEREAS**, the Board of County Commissioners of Palm Beach County wishes to adopt a resolution approving and concurring in the findings of the Director of the Water Utilities Department and the Consulting Engineer, and authorizing the conveyance of the Property to the GUA.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

**Section 1.** The foregoing recitals are true and correct and incorporated herein by reference.

**Section 2.** The Board of County Commissioners of Palm Beach County hereby approves and concurs in the findings of the Director of the Water Utilities Department and the Consulting Engineer of the Water Utilities Department, as set forth in **Exhibit "A"** and **Exhibit "B"**, respectively, that the Property is not necessary or useful or profitable in the operation of the Palm Beach County Water and Sewer System, and authorizes the conveyance of the Property to the GUA.

**Section 3.** The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing resolution was offered by Commissioner \_\_\_\_\_ who moved its adoption. The Motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- Commissioner John F. Koons, Chairman -
- Commissioner Burt Aaronson, Vice Chairman -
- Commissioner Karen T. Marcus -
- Commissioner Shelley Vana -
- Commissioner Steven L. Abrams -
- Commissioner Jess R. Santamaria -
- Commissioner Priscilla A. Taylor -

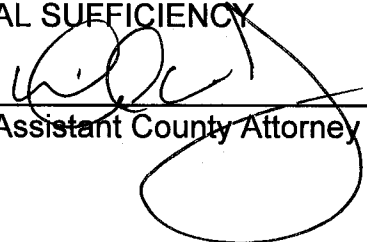
The Chair thereupon declared the resolution duly passed and adopted this  
\_\_\_\_\_ day of \_\_\_\_\_, 2009.

PALM BEACH COUNTY, a  
Political Subdivision of the State of Florida  
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:   
Assistant County Attorney

**EXHIBIT "A"**  
**CERTIFICATE OF DIRECTOR**

The undersigned is the Director of the Water Utilities Department (the "Department") of Palm Beach County, Florida (the "County"). Pursuant to the establishment of the Glades Utility Authority (the "GUA") as approved by the Board of County Commissioners on June 16, 2009, (R2009-1034), the County intends to transfer ownership of the Lake Region Water Treatment Plant (LRWTP), and related real property and easements (the "LRWTP Facilities"), to the GUA on the transfer date, which is to occur on or before October 1, 2009. In accordance with Section 125.3401, Florida Statutes, on June 16, 2009, the Board of County Commissioners adopted Resolution R2009-1033, determining that the transfer of the LRWTP Facilities to the GUA is in the public interest.

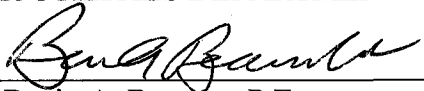
The LRWTP Facilities are being transferred to the GUA at no cost. However, the GUA will be assuming the debt owed to the County Water Utilities Department by the City of Belle Glade, the City of Pahokee, and the City of South Bay (the "Cities"), and the County has a greater chance of collecting the debt from the GUA. Furthermore, the interlocal agreement establishing the GUA provides that the LRWTP Facilities will revert to the County upon termination of that agreement if the indebtedness related to the facilities transferred from the County have not been assumed, refinanced or paid by the GUA and if any backup pledge by the County has not been retired or otherwise paid in full. The alternative to the County's transfer of assets is to maintain the status quo with the Cities each continuing ownership and operation of their individual systems while buying bulk water from the County. However, existing customers should receive better service through the establishment of the GUA, with the long term potential to stabilize and or reduce rates.

In connection with the foregoing, I hereby make the following determination as required by Section 4E of Resolution No. R-84-1206, as amended, originally adopted by the Board of County Commissioners on August 23, 1984:

At the time of the transfer of the LRWTP Facilities to the GUA, the LRWTP Facilities will no longer be necessary, useful or profitable in the operation of the County's Water and Sewer System.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date written below.

PALM BEACH COUNTY  
WATER UTILITIES DEPARTMENT

By:   
Bevin A. Beaudet, P.E.  
Department Director

Date: Sept 11, 2009

**EXHIBIT "B"**  
**CERTIFICATE OF CONSULTING ENGINEER**

The undersigned is the Consulting Engineer for the Water Utilities Department (the "Department") of Palm Beach County, Florida (the "County"). Pursuant to the establishment of the Glades Utility Authority (the "GUA") as approved by the Board of County Commissioners on June 16, 2009, (R2009-1034), the County intends to transfer ownership of the Lake Region Water Treatment Plant (LRWTP), and related real property and easements (the "LRWTP Facilities"), to the GUA on the transfer date, which is to occur on or before October 1, 2009. In accordance with Section 125.3401, Florida Statutes, on June 16, 2009, the Board of County Commissioners adopted Resolution R2009-1033, determining that the transfer of the LRWTP Facilities to the GUA is in the public interest.

The LRWTP Facilities are being transferred to the GUA at no cost. However, the GUA will be assuming the debt owed to the County Water Utilities Department by the City of Belle Glade, the City of Pahokee, and the City of South Bay (the "Cities"), and the County has a greater chance of collecting the debt from the GUA. Furthermore, the interlocal agreement establishing the GUA provides that the LRWTP Facilities will revert to the County upon termination of that agreement if the indebtedness related to the facilities transferred from the County have not been assumed, refinanced or paid by the GUA and if any backup pledge by the County has not been retired or otherwise paid in full. The alternative to the County's transfer of assets is to maintain the status quo with the Cities each continuing ownership and operation of their individual systems while buying bulk water from the County. However, existing customers should receive better service through the establishment of the GUA, with the long term potential to stabilize and or reduce rates.

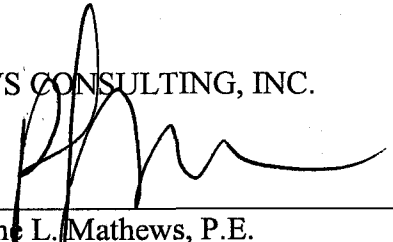
In connection with the foregoing, I hereby make the following determination as required by Section 4E of Resolution No. R-84-1206, as amended, originally adopted by the Board of County Commissioners on August 23, 1984:

At the time of the transfer of the LRWTP Facilities to the GUA, the LRWTP Facilities will no longer be necessary, useful or profitable in the operation of the County's Water and Sewer System.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date written below.

MATHEWS CONSULTING, INC.

By: \_\_\_\_\_

  
René L. Mathews, P.E.  
President

Date: \_\_\_\_\_

9-11-09

RESOLUTION NO. R-2009-

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, PROVIDING A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES IN AN AMOUNT NOT-TO-EXCEED TEN MILLION DOLLARS FOR CERTAIN DEBT SERVICE, OPERATIONS, AND MAINTENANCE OBLIGATIONS OF THE GLADES UTILITY AUTHORITY.**

**WHEREAS**, On June 16, 2009, Palm Beach County, by and through its Board of County Commissioners ("County"), approved an Interlocal Agreement ("Interlocal Agreement") (County Resolution R2009-1034) with the Cities of Belle Glade, Pahokee, and South Bay establishing the Glades Utility Authority ("GUA"); and

**WHEREAS**, Section 6.10 of the Interlocal Agreement included a commitment by the County to provide a back-up covenant in an amount not to cumulatively exceed ten million dollars for the operation, maintenance and management of the GUA; and

**WHEREAS**, the GUA has secured a loan commitment ("Loan Commitment") from Wachovia Bank National Association ("Wachovia Bank"), committing to provide the GUA a loan ("Loan") in an amount not to exceed ten million dollars (a draft copy of the Loan Commitment is attached hereto and incorporated herein as **Exhibit "A"**); and

**WHEREAS**, the Loan Commitment from Wachovia Bank requires that the County provide a back-up covenant to budget and appropriate legally available non-ad valorem revenues in a minimum amount of ten million dollars to provide for payment of debt service on the Loan and payment of operation and maintenance ("O&M") expenses of the GUA where said O&M expenses exceed the GUA revenues available for payment of said O&M expenses,; and

**WHEREAS**, the County wishes to provide a back-up covenant to budget and appropriate legally available non-ad valorem revenues in an amount not-to-exceed ten million dollars for payment of the debt service on the Loan and payment of O&M expenses of the GUA where said O&M expenses exceed the GUA revenues available for payment of said O&M expenses; and

**WHEREAS**, it is the intent of the County that this covenant to budget and appropriate is intended to fully satisfy the County's agreement to provide a back-up covenant in an amount not to cumulatively exceed ten million dollars for the operation,



maintenance and management of the GUA, as set forth in the first sentence of Section 6.10 of the Interlocal Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

1. In the event that (a) the GUA is unable to pay debt service on the Loan, or (b) the O&M expenses of the GUA exceed the GUA revenues available for payment of such O&M expenses, the County covenants that it shall, upon written notice of such deficiency and the amount of such deficiency, promptly amend its budget to appropriate an amount of non-ad valorem revenues to pay the deficiency. This covenant to budget and appropriate shall not exceed a cumulative payment by the County of ten million dollars (including interest). For purposes of this covenant, the term "non-ad valorem revenues" means all revenues of the County derived from any source whatsoever other than ad valorem taxation on real and personal property within the County, which are legally available for payment of such debt service, after the payment from the sources of non-ad valorem revenues pledged thereto of the principal of and interest on any obligations of the County hereafter issued that have a prior pledge on any source of the non-ad valorem revenues, but only after provision has been made by the County for payment of services or programs which are for essential public purpose affecting the health, welfare and safety of the inhabitants of the County or which are legally mandated by applicable law. Notwithstanding the foregoing, the County does not covenant to maintain services or programs that generate non-ad valorem revenues or programs or services that are dependent on the continued collection of such non-ad valorem revenues. Such covenant to budget and appropriate non-ad valorem revenues is not a pledge by the County of such non-ad valorem revenues and is subject in all respects to the payment of obligations secured by a pledge of such non-ad valorem revenues heretofore or hereafter entered into, including the payment of debt service on bonds or other obligations. Such covenant to budget and appropriate is subject to the provisions of Section 129.07, Florida Statutes, insofar as there are not sufficient Non-Ad Valorem Revenues in the County's general fund to comply with such covenant after satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential government services of the County which are mandated by applicable law. Such

covenant does not require the County to levy and collect any particular source of non-ad valorem revenues nor to maintain or increase any regulatory fees or user charges with respect to any particular source of non-ad valorem revenues. Such covenant does not give the owner of the GUA's indebtedness a prior claim on such non-ad valorem revenues as opposed to claims of general creditors of the County until such time as a deposit of such non-ad valorem revenues is transferred to the GUA for the purposes of covering the deficiency. This covenant shall remain in effect until full repayment of the Loan. This covenant shall terminate in its entirety and be of no further effect if the Loan, as contemplated in the Loan Commitment, is not transacted.

2. It is the intent of the County that this covenant to budget and appropriate fully satisfies the County's commitment to provide a back-up covenant in an amount not to cumulatively exceed ten million dollars for the operations, and maintenance obligations of the GUA, as set forth in the first sentence of Section 6.10 of the Interlocal Agreement.

The foregoing Resolution was offered by Commissioner who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

- Commissioner John F. Koons, Chairman -
- Commissioner Burt Aaronson, Vice Chairman -
- Commissioner Karen T. Marcus -
- Commissioner Shelley Vana -
- Commissioner Steven L. Abrams -
- Commissioner Jess R. Santamaria -
- Commissioner Priscilla A. Taylor -

The Chairman thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

SHARON R. BOCK, CLERK & COMPTROLLER

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:   
County Attorney

**EXHIBIT "A"**  
**DRAFT COMMITMENT LETTER DATED 09/16/09**

FORM OF WACHOVIA LOAN COMMITMENT

September 16, 2009

Mr. Bevin A. Beaudet, Executive Director  
8100 Forest Hill Blvd  
West Palm Beach, FL 33413

Dear Mr. Beaudet:

Wachovia Bank National Association (the "Bank") is pleased to submit the Commitment described below to the Glades Utility Authority subject to the following terms and conditions.

**Borrower:** Glades Utility Authority (the "Authority")

**Amount:** Not to exceed \$10,000,000

**Facility:** Term Loan

**Purpose:** To provide financing to take out an existing term loan to City of Belle Glade and provide working capital for start up expenses and smaller capital expenditures.

**Term:** The loan will mature April 1, 2020.

Interest will be due and payable semi annually commencing April 1, 2010 and each October 1 and April 1 thereafter through maturity.

Principal will be due and payable annually commencing April 1, 2011 based on level debt service. Interest on the outstanding balance of the loan will be calculated on a 30/360 day-year basis.

**Security:** The Glades Utility Authority shall pledge all net system revenues, including but not limited to all rates, fees, and other charges ("Net System Revenues"). Furthermore, Palm Beach County shall secure the facility with a Covenant to Budget and Appropriate from legally available Non-Ad Valorem Revenues in an amount of at least \$10,000,000.

**Interest Rate:** **Bank Qualified Fixed Rate:** \_\_\_\_\_