



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	<u>\$25,751</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>
Capital Reimbursement	<u>0</u>		<u>0</u>	<u>0</u>	<u>0</u>
Operating Revenues	<u>(\$87,480)</u>	<u>(\$273,750)</u>	<u>(\$281,963)</u>	<u>(\$290,421)</u>	<u>(\$299,134)</u>
<b>NET FISCAL IMPACT</b>	<b><u>(\$61,729)</u></b>	<b><u>(\$273,750)</u></b>	<b><u>(\$281,963)</u></b>	<b><u>(\$290,421)</u></b>	<b><u>(\$299,134)</u></b>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

**Budget Account No.:** Fund 4011 Dept 721 Unit W006 Object 6543

Is Item Included in Current Budget? Yes X No     

Reporting Category N/A

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

Fiscal impact is based on 4 months of revenue in FY2010 and half the estimated construction costs. Revenue projections also assume that the Town will take the guaranteed amount (300 thousand gallons per day), and the CPI rate increase is assumed to be 3% per year.

**C. Department Fiscal Review:** Debra M West

**III. REVIEW COMMENTS**

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

<p><u>Jim O'Neil</u> 1-27-10 OFMB</p>	<p><u>Jim J. Jewett</u> 1/28/10 Contract Development and Control</p>
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(MD) 1/25/2010 1:21:10 PM

**B. Legal Sufficiency:**

[Signature] 1/29/10  
Assistant County Attorney

This Contract complies with our contract review requirements.

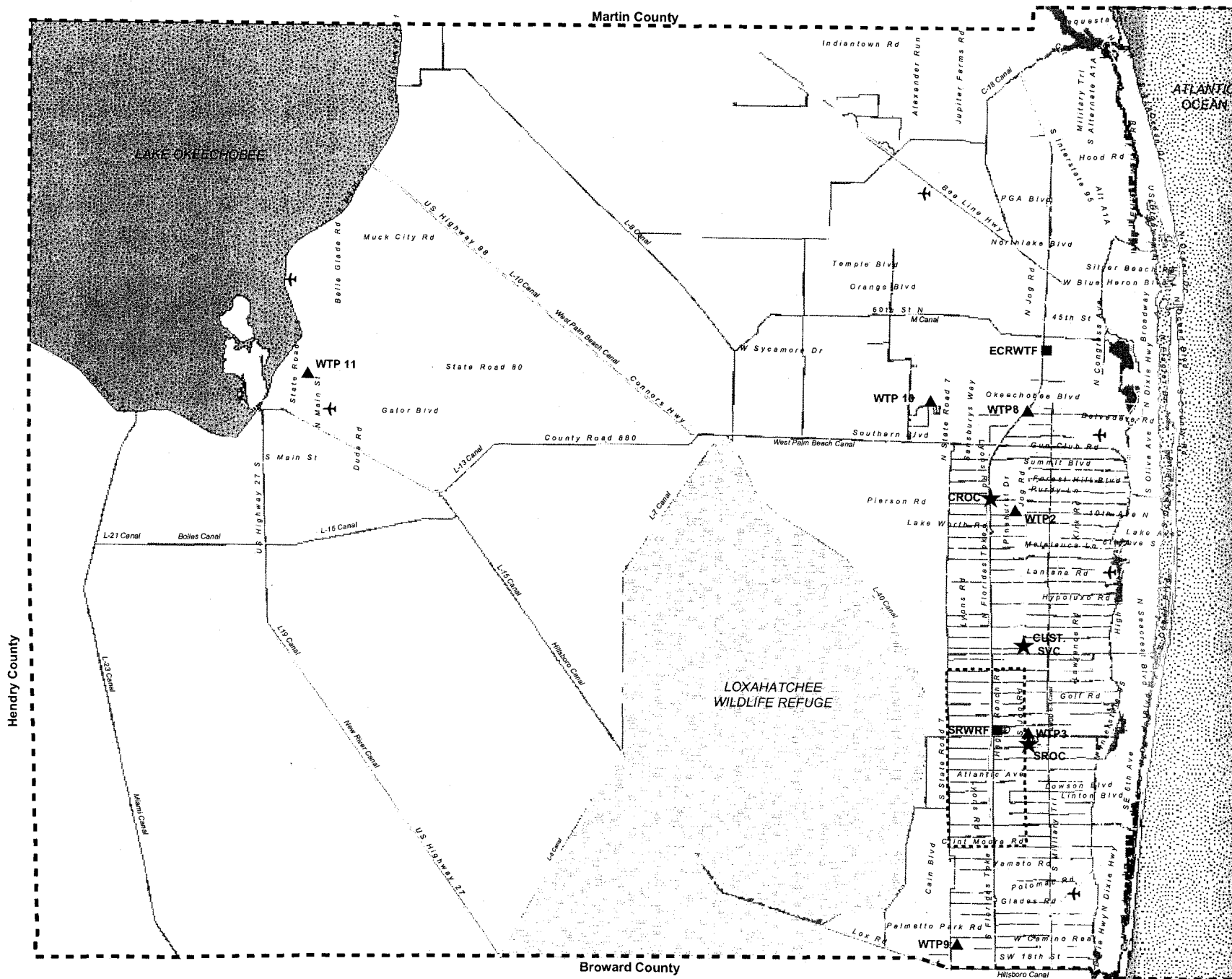
**C. Other Department Review:**

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

**PALM BEACH COUNTY, FLORIDA**  
**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
  - ⊙ Wetlands



NOT TO SCALE

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE TOWN  
OF LAKE CLARKE SHORES FOR THE PURCHASE AND SALE OF BULK POTABLE  
WATER**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), and the **TOWN OF LAKE CLARKE SHORES, FLORIDA**, a municipality organized under the laws of the State of Florida (hereinafter "Town").

**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**, the Town wishes to purchase bulk Potable Water from the County for distribution and sale to customers solely within the Town's Potable Water service area; and

**WHEREAS**, the County wishes to sell the Town bulk Potable Water pursuant to the terms and conditions of this Agreement; and

**WHEREAS**, to encourage and facilitate conservation of water resources, the parties desire to enter into this Agreement.

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

1. The foregoing statements are true and correct.
2. Term. The term of this Agreement shall commence upon execution by both parties and shall continue in full force and effect for thirty (30) years. The term of this Agreement may be extended for successive periods of five (5) years each, upon the same terms and conditions as herein provided, by written agreement of both parties to this Agreement prior to expiration of the initial term of this Agreement or any renewal thereof.
2. Effective Date. This Agreement shall become effective upon approval by both parties. The Effective Date of this Agreement shall be the date the Agreement is approved by the Palm Beach County Board of County Commissioners.
3. 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) "Average Daily Flow" – the average daily flow rate of Potable Water collectively measured

through the Point of Connection. The Average Daily Flow rate is calculated by dividing the total amount of Potable Water flowing through the Point of Connection in any one calendar year by the number of days in that same calendar year;

(b) "Capacity Fee" – A one-time fee to be paid by the Town to the County to reserve permanent capacity in the County's Potable Water System. The Capacity Fee assessed to the Town shall be based upon the Potable Water flow that the Town desires to reserve in the County's Potable Water System. This fee is assessed irrespective of the actual quantity of Potable Water flowing through the Point of Connection;

(c) "Town's Potable Water System" – the system owned and/or operated by the Town for the production and distribution of Potable Water within the Town's Potable Water Service Area, said system being located on the Town's side of the various Points of Connection;

(d) "Commodity Fee" - A fee to be paid by the Town to the County on a monthly basis which is intended to recover the County's variable cost of producing and supplying Potable Water to the Town at the Point of Connection. This fee is assessed per one thousand (1,000) gallons of Potable Water delivered by the County to the Point of Connection;

(e) "Full Cost Recovery Commodity Fee" - A fee to be paid by the Town to the County on a monthly basis which is intended to recover the County's fixed and variable cost of producing and supplying Potable Water to the Town at the Point of Connection. This fee is an alternative billing mechanism which includes the commodity fee and the capacity fee. This fee is assessed per one thousand (1,000) gallons of Potable Water delivered by the County to the Point of Connection;

(f) "County's Potable Water System" – the system owned and/or operated by the County for the production and distribution of Potable Water to all retail, wholesale, and/or bulk customers of the County, said system being located on the County's side of the Point of Connection and including all Potable Water meters and related appurtenances located at the Point of Connection;

(g) "Peak Instantaneous Flow" – The highest collective rate of Potable Water flow measured at the Point of Connection at any moment in time during the Term of this Agreement;

(h) "Point of Connection" – The location where the County's Potable Water System is connected with the Town's Potable Water System, as shown in Exhibit "A" , which is incorporated herein and attached hereto. The Potable Water System of the County shall include the master water meter and related appurtenances located at the Point of Connection, with said master water meter being utilized for the measurement and payment of bulk Potable Water obtained by the Town;

(i) "Potable Water" – Water for human consumption which meets all applicable Federal, state, and County standards;

(j) "Service Initiation Date" – the date the County begins providing Potable Water to Town at the Point of Connection.

(k) "UPAP" - the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as may be amended from time to time.

4. Scope of Agreement. The County agrees to furnish, and the Town agrees to purchase and accept, a supply of Potable Water in accordance with the terms and conditions of this Agreement. The County shall furnish, and the Town shall accept, the Potable Water at the Point of Connection shown in Exhibit "A".

5. Water Pressure. The water pressure of Potable Water delivered by the County to the Point of Connection shall be a minimum of 50 psi at all times, with an expected water pressure of between 50 and 75 psi depending upon water demand conditions.

6. Capacity Reservation. The County shall provide the Town with Potable Water at the varying flow rates required by the Town, not to exceed four hundred thousand (400,000) gallons per day. The County is under no duty to provide more than four hundred thousand (400,000) gallons of Potable Water per day, but may, at its sole discretion, provide Potable Water at a higher flow rate without penalty, if requested by the Town.

7. Capacity Fee. The Town is not required to pay a Capacity Fee to the County for the reservation of capacity under this Agreement, but shall pay a Full Cost Recovery Commodity Fee as provided in paragraph 8.

8. Full Cost Recovery Commodity Fee. The initial monthly Full Cost Recovery Commodity Fee shall be \$2.43 per thousand gallons. Beginning on October 1, 2010, and for each year thereafter, the Full Cost Recovery Commodity Fee shall be adjusted upward or downward by an amount equal to three-fourths (3/4) of the change in the prior year's (measured July to July) Consumer Price Index, all Urban Consumers, Water and Sewerage Maintenance, published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI") or some other mutually agreed-upon index if the CPI is discontinued.

9. Take or Pay. The Town is obligated to take or pay the County a minimum amount of three-fourths (3/4) of the capacity reserved under this Agreement, calculated on an annual basis, regardless of actual usage. Following the anniversary date of each year of this Agreement, County shall make the determination of whether Town has taken this minimum amount, and, if it is determined that Town has not, County will invoice Town for the difference between the total Commodity Fees paid by Town in the previous year and this minimum amount. Payment shall be made in accordance with Section 15 herein.

10. Additional Responsibilities of the County. The County shall provide for the design, construction, operation and maintenance of the County's Potable Water System, up to and including the Point of Connection, including the design and construction of any Potable Water meters and related appurtenances. The County shall be responsible for the securing of any permits or other approvals necessary to provide Potable Water to Town at the Point of Connection. The cost of connecting the County's Potable Water System to the Town's Potable Water System as shown on Exhibit "A" shall be shared equally by the County and the Town.

Upon completion of this connection, County shall invoice Town for their share of these connection costs. Payment shall be made in accordance with Section 15 herein.

11. Additional Responsibilities of the Town. The Town shall comply with all applicable local, State and Federal laws and regulations for the use and sale of Potable Water. The Town shall be responsible for the securing of any permits or other approvals necessary to provide Potable Water to any customers within the Town's service area.

12. Water Quality. The physical, chemical, and biological quality of the Potable Water delivered by County to Town at the Point of Connection shall meet all federal, state, and local laws, regulations, and requirements for Potable Water, as may be amended from time to time. The Town shall be responsible for the water quality of the Potable Water once it enters the Town's Potable Water System. The Town shall be required to perform all testing of the Potable Water as is required by any and all federal, state, and local laws, regulations, and requirements for Potable Water, as may be amended from time to time.

13. Service Areas. The Town and the County are currently parties to an agreement, dated July 7, 2009 (County Resolution No. 2009-1123) establishing a service area boundary between the County and the Town for the provision of Potable Water, reclaimed water, and wastewater service (hereinafter "Service Area Agreement."). Said Service Area Agreement, as may be amended from time to time, is incorporated herein by reference, and is not affected in any way by this new Agreement. The Town expressly acknowledges that the provision of bulk Potable Water, reclaimed water, or wastewater service to a third party for sale within the County's service area, as defined in the Service Area Agreement, is a violation of the Service Area Agreement, and the Town therefore agrees that it will not provide bulk or retail Potable Water, reclaimed water, or wastewater service to any other party for sale within the County's service area, as defined within the Service Area Agreement, without the prior written consent of the County. Nothing in the foregoing will prohibit the Town from providing short-term bulk Potable Water service in response to a local emergency to another entity for sale or use within that entity's service area.

14. Water Shortages. In the event the South Florida Water Management District or other government unit with just cause and authority declares a water shortage, then the County shall have the right to restrict service to the Town by the same percentage, level and/or manner as the County restricts service to customers located within the County limits, and may adjust the Potable Water Commodity Fee in the same manner as rates may be adjusted for customers located within the County limits. If the South Florida Water Management District (SFWMD), as part of its water restrictions, requires the County to decrease the flow to the Town, the take-or-pay provision shall be reduced by the percentage of said decrease in flow.

15. Payment of Bills. The County will bill the Town Full Cost Recovery Commodity Fees on a monthly basis. The Town agrees to pay for all Potable Water received from the County and make payments to the County within thirty (30) days from the date the bill is rendered by the County. A past due notice will be mailed by the County to the Town after thirty (30) days. If payment has not been received after sixty (60) days from the date of the original bill, service may be disconnected and a one percent (1%) per month interest charge will be assessed on the outstanding balance.

16. County to Maintain Master Meters. The County agrees to have an annual inspection and report prepared regarding the condition and accuracy of the master water meters. A copy of the annual report on meter inspection shall be furnished to the Town. The Town shall have the right to make its own meter inspection, or to have an independent company inspect the metering equipment at any time; provided, however, no such inspection shall be made unless the Town shall first give the County written notice of the date and time of its intent to have the inspection made, nor shall any such inspection be made prior to twenty-four (24) hours, excluding Saturdays, Sundays, and holidays, subsequent to the receipt of said notice by County. All costs and expenses of the Town's interim inspection shall be borne by the Town. If the meter is found not to be in good working order, the County shall reimburse the town for the cost incurred as a result of the interim inspection. Normal maintenance of the meter shall be performed by County as an expense of water distribution.

17. Time Period Limitation In Case of Master Meter Inaccuracy. Both parties agree that, should a master meter be found to be inaccurate beyond American Water Works Association (AWWA) standards, the meter will be assumed to have been inaccurate since the time of the event failure or since the last meter inspection or for a period of three months, whichever time should be less, and that the following month's billing will be adjusted to show a credit or additional charge to the Town for that period, based upon the method established in Section 18 herein.

18. Presumed Consumption and Required Payment In Case of Master Meter Inaccuracy. Both parties agree, that if at any time a master meter shall be inaccurate with respect to the quantity of consumption by the Town as provided in Section 17 above, the Town's quantity of consumption shall be based on a daily amount equal to the average consumption of the ninety (90) day period prior to the date the meter became inaccurate. Town's required payment for the period of inaccuracy shall be the quantity of consumption multiplied by the rate in effect.

19. Security. The parties shall be responsible jointly and severally for security of the Point of Connection, including provision of access locking features so that each party can have keyed access to the vault. The Point of Connection will be controlled by valves which can be operated by authorized representatives of either the County or the Town. Only authorized employees of either the County or the Town will operate the valves controlling the Point of Connection. The County and the Town shall provide prior notice to each other prior to operating the valves at the Point of Connection.

20. Termination. The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default ninety (90) days written notice to cure said default before exercising any of its rights as provided for in this Agreement. Failure to cure said default within ninety (90) days following notice may be grounds for termination of this Agreement. Termination of this Agreement by either party shall require thirty (30) days prior written notice to the other party prior to the termination date. The parties may mutually agree to extend the time for cure and/or termination.

21. No Transfer of Powers. Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Agreement is solely an Agreement to provide services as authorized in Florida Statutes, Chapter 163. The governing bodies for the County and the Town shall each maintain all legislative authority with regard to their respective political



subdivision. All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and pensions and relief, disability, workers compensation and other benefits which apply to the activity of officers, agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement.

22. Indemnification. The County and the Town 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 Town 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. 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.

23. 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.

24. 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.

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

26. Waiver. The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and 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 of course or dealing.

27. 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 terms 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.

28. Notice. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to the Town, shall be mailed or delivered to the Town at:

Town of Lake Clarke Shores  
1701 Barbados Road  
Lake Clarke Shores, FL 33406  
Attn: Town Administrator

and if to the County, shall be mailed or delivered to the County at:

Palm Beach County Water Utilities Department  
8100 Forest Hill Boulevard  
P.O. Box 16097  
West Palm Beach, FL 33416-6097.  
Attn: Department Director

29. Filing. This Agreement shall be filed with the Clerk of the Circuit Court for Palm Beach County.

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

31. Entirety of Agreement. The County and the City agree that this Agreement and any Exhibits hereto set 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, superceded or otherwise altered, except by written instrument executed by the parties.

**(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, County and Town have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

**ATTEST:**  
**SHARON R. BOCK**  
**CLERK AND COMPTRROLLER**

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

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

By: \_\_\_\_\_  
Burt Aaronson, Chair

(SEAL)

**APPROVED AS TO FORM AND TO**  
**LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND**  
**CONDITIONS**

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

By: Burt Aaronson  
Director of Water Utilities

**ATTEST:**

**TOWN OF LAKE CLARKE SHORES,**  
**FLORIDA**

By: Mary Pinkerman  
Clerk

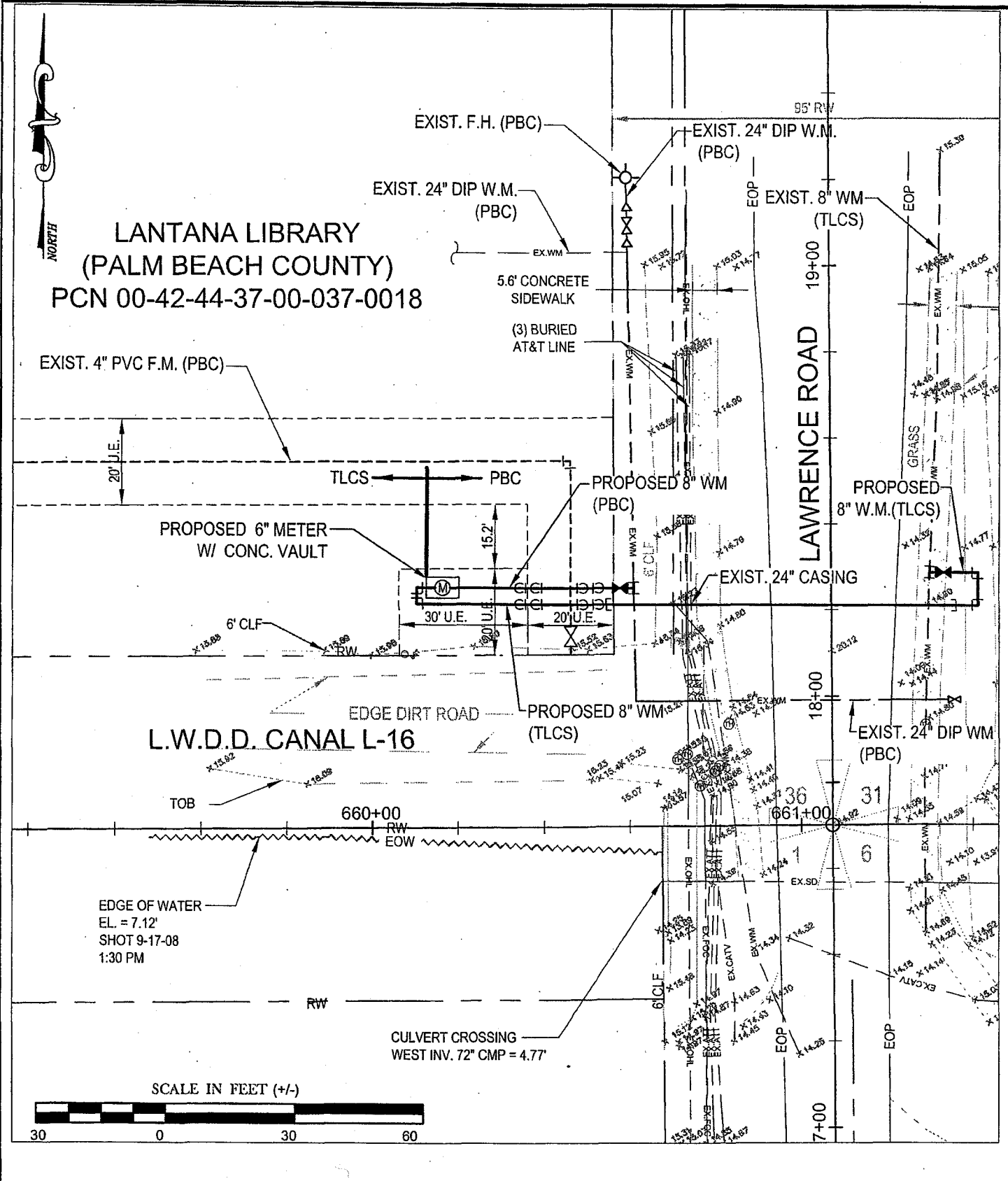
By: Clare Mayes  
Mayor

**APPROVED AS TO FORM AND TO**  
**LEGAL SUFFICIENCY**

By: James S. Watt  
Town Attorney

# INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE TOWN OF LAKE CLARKE SHORES FOR THE PURCHASE AND SALE OF BULK POTABLE WATER

## EXHIBIT "A"



**Town of Lake Clarke Shores Potable Water Interconnect  
with PBC Water Utilities - Total Cost Estimate**

Item No.	Item Description	Quantity	Unit	Unit Price	Total
1	6" Turbo Meter	1	Each	\$3,000.00	\$3,000.00
2	Valve Vault	1	Each	\$5,000.00	\$5,000.00
3	24" x 8" Tap & Valve	1	Each	\$9,500.00	\$9,500.00
4	8" x 8" Tee	1	Each	\$600.00	\$600.00
5	8" Gate Valve	2	Each	\$975.00	\$1,950.00
6	8" Check Valve	1	Each	\$1,350.00	\$1,350.00
7	8" 90-Degree Bend	4	Each	\$405.00	\$1,620.00
8	8" 45-Degree Bend	8	Each	\$350.00	\$2,800.00
9	8" W.M. DIP Restrained Joint	200	L.F.	\$30.00	\$6,000.00
10	Restoration	1	Lump Sum	\$5,000.00	\$5,000.00
11	Mobilization/Demobilization	1	Lump Sum	\$10,000.00	\$10,000.00
12	Sub-Total				\$46,820.00
13	10% Contingency				\$4,682.00
14	Grand Total				\$51,502.00