

4E-1

Agenda Item #: \_\_\_\_\_

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 1, 2011

( ) Consent

(X) Regular

( ) Workshop

( ) Public Hearing

Department

Submitted By: Environmental Resources Management

Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) **approve:** Interlocal Agreement with the City of Delray Beach for \$37,137 to share in the costs of the Wellfield Protection Program; and

B) **approve:** Interlocal Agreement with the City of Lake Worth for \$14,802 to share in the costs of the Wellfield Protection Program; and

C) **authorize:** the County Administrator, or his designee, to sign all future time extensions and other necessary amendments that do not significantly change the scope of work or terms and conditions of the Agreements listed in A) and B) above; and

D) **authorize:** staff to make the necessary changes to the Wellfield Protection Ordinance to limit the applicability of the Ordinance to only those jurisdictions participating in the Water Utility Cost Share Program.

**Summary:** Since 1988, ERM has implemented the County-wide Wellfield Protection Program, Unified Land Development Code (ULDC) Article 14 Chapter B, using both ad valorem funding and revenue from permit fees charged to the regulated community. For fiscal year 2011-12, the Board of County Commissioners eliminated ad valorem funding to this program. Going forward, Wellfield Protection by County staff will only be implemented within County wellfields and those utilities that participate in a Water Utility Cost Share Program. In recent years, ad valorem funding provided approximately \$500,000 per year to the total program cost of approximately \$600,000. The remaining approximately \$100,000 was provided through permit fees imposed on regulated businesses. The cost for each business within a wellfield protection zone ranges from \$60 to \$200 per year. Countywide (LB)

(Continued on page 3.)

**Attachments:**

1. Interlocal Agreement with City of Delray Beach
2. Interlocal Agreement with City of Lake Worth

Recommended by: \_\_\_\_\_

Bob McLean  
Department Director

10/19/11  
Date

Approved by: \_\_\_\_\_

W. A. Deen  
County Administrator

10/24/11  
Date

**II. FISCAL IMPACT ANALYSIS**

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

<b>Fiscal Years</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Capital Expenditures</b>	_____	_____	_____	_____	_____
<b>Operating Costs</b>	<u>\$51,939</u>	_____	_____	_____	_____
<b>External Revenues</b>	<u>(\$51,939)</u>	_____	_____	_____	_____
<b>Program Income (County)</b>	_____	_____	_____	_____	_____
<b>In-Kind Match (County)</b>	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>- 0-</u>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No \_\_\_\_\_

Budget Account No.: Fund 0001 Department 380 Unit 3221  
 Rsrc 4399  
 Program \_\_\_\_\_

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

Cost share from City of Delray Beach and City of Lake Worth

**C. Department Fiscal Review:** *JP*

**III. REVIEW COMMENTS**

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

*[Signature]* 10/17/11  
 OFMB

*[Signature]* 10/25/11  
 Contract Development and Control

**B. Legal Sufficiency:** *10/14/11*  
*[Signature]*  
 Assistant County Attorney

*these Agreements comply with all review requirements.*

**C. Other Department Review:**

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

**Background and Justification:** Approximately 80% of Palm Beach County's potable water supply is from groundwater sources that can be contaminated by the use, handling, production and storage of hazardous and toxic materials. In January 1985, the Palm Beach County Utilities Council requested that the County pursue the adoption of a Wellfield Protection Ordinance. In April 1985, the South Florida Water Management District informed utilities that any request for an increase in water consumption would not be granted until such an Ordinance was developed. In addition, the 1985 growth management legislation (Comprehensive Plans) requires that counties and municipalities throughout the State protect wellfields.

The County set up a Water Resources Management Advisory Board in April 1985 to develop a Wellfield Protection Ordinance. The ordinance was adopted in March 1988. Since that time, Palm Beach County has operated a wellfield protection program that covers all the municipalities within the county. The program protects existing and proposed wells and wellfields. The program accomplishes this through the regulation of nonresidential use, handling, storage and production of hazardous and toxic materials within certain zones of influence of the 44 wellfields in the incorporated and unincorporated portions of Palm Beach County.

The Department of Environmental Resources Management (ERM) operates the program which provides for operating permits, closure permits, groundwater monitoring, bonds, cleanup and reimbursement, permit fees, revocation and revision of permits, enforcement hearings, appeals, exemptions, transfers, trade secrets, compensation for businesses which must close or move and penalties for violations.

The attached interlocal agreements are required for the County to continue to provide Wellfield Protection Program (Program) regulatory activities for the wellfields used by Lake Worth and Delray Beach water utilities departments. In exchange for providing this service, Lake Worth and Delray Beach will pay the County \$14,802 and \$37,137, respectively, to defray the costs of the Program for FY 2012. Due to the elimination of all ad valorem revenue to fund the Program, the Department no longer has the budget to implement it countywide and will only carry out Program activity for wellfields of utility providers that agree to pay for such services. Payment is based on each utility provider's permitted consumptive use allocation of ground water. In coming months, the Department will be presenting amendments to the Wellfield Protection Ordinance and the wellfield protection maps to reflect this change, and may present additional interlocal agreements from other utilities that elect to participate in the Program.

Palm Beach County staff convened a working group in which all public and private water utility providers with more than five wells were invited, encompassing nearly all of the County's consumptive use supply. Working group meetings were held on January 14, 2011, April 21, 2011 and July 6, 2011.

The working group attempted to arrive at a cost share structure acceptable to all or nearly all utilities. In the end, many of the larger utilities decided that they would provide their own wellfield protection primarily due to costs. Utilities with 5 or less wells would no longer be covered under the ordinance. As a result, only Delray Beach and Lake Worth have formally chosen to join the cost share program. As of this writing, the utilities for Lantana, Tequesta and Palm Springs are considering the proposed cost share.

**INTERLOCAL AGREEMENT BETWEEN  
PALM BEACH COUNTY  
AND THE  
CITY OF DELRAY BEACH**

**THIS INTERLOCAL AGREEMENT**, which is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between PALM BEACH COUNTY, (“COUNTY”) a political subdivision of the State of Florida, and the CITY OF DELRAY BEACH, a municipal corporation in the State of Florida, (“CITY”) each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes and both being hereinafter referred to collectively as the “parties.”

**WITNESSETH:**

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

**WHEREAS**, Part I of Chapter, 163 Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

**WHEREAS**, pursuant to Section 3.3, Charter of Palm Beach County, the Board of County Commissioners is empowered to enact countywide ordinances to protect present and future wells and wellfields; and

**WHEREAS**, the COUNTY operates a Wellfield Protection Program (the “Program”) as authorized by Palm Beach County, Unified Land Development Code (ULDC), Article 14.B, Wellfield Protection; and

**WHEREAS**, the CITY and its utility customers benefit from the COUNTY’S ability to operate the Program across jurisdictional boundaries in order to protect the raw water supply from potential contamination; and

**WHEREAS**, the COUNTY’S operation of the Program prevents the CITY from having to operate a comparable program in order to meet Comprehensive Plan requirements and/or water allocation/consumptive use requirements; and

**WHEREAS**, the parties wish to enter into this Agreement to set forth the CITY’S desire to cost share with the COUNTY in order to ensure the continued operation of the Program.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and representations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which the parties expressly acknowledge, the parties hereto agree as follows:

1. The foregoing Recitals are true and correct and are hereby incorporated herein by reference as if fully set forth herein.
2. Purpose of the Agreement. The purpose of this Agreement is to set forth the terms, conditions, and obligations of each of the respective parties hereto to cost share in the COUNTY's implementation of the Program in accordance the Palm Beach County's ULDC Article 14.B, Wellfield Protection, as amended from time to time.
3. The Term. The term of this Agreement shall commence upon execution by both parties and shall expire five (5) years from the date of execution, unless earlier terminated as provided herein.
4. Obligations of the COUNTY.
  - a. The COUNTY agrees to maintain and manage staff to implement the Program in accordance with the Palm Beach County Unified Land Development Code, Article 14.B, as amended from time to time.
  - b. The County agrees to provide modeling for all wells for location and pump rates to create Wellfield Zones of Influence 1, 2, and 3, establish the regional 1 foot drawdown contours (Zone 4), and create map representations of all zones.
  - c. The COUNTY agrees to provide permitting and conduct compliance inspections of facilities subject to Article 14.B.
  - d. The COUNTY agrees to maintain the Groundwater and Natural Resources Protection Board for code enforcement of the Wellfield Protection Program.
  - e. The COUNTY agrees to conduct complaint and spill investigations within wellfield zones and to maintain a web site and brochure.
  - f. The COUNTY agrees to waive all wellfield permit application, annual renewal and modification fees otherwise applicable to the CITY.
  - g. By June 1 of each calendar year, the COUNTY will notify the CITY in writing of the CITY's Cost Sharing Responsibility for the upcoming fiscal year running from October 1 to September 30.
5. Obligations of the CITY. By November 30<sup>th</sup> of each fiscal year (i.e. October 1 – September 30), the CITY shall pay the COUNTY the full amount of the CITY's Cost Sharing Responsibility for that fiscal year, as computed in paragraph 6.

6. Calculation of Cost Sharing Responsibility.
  - a. The CITY's Cost Share Responsibility for the 2011/2012 fiscal year is \$37,137.
  - b. The CITY's Cost Share Responsibility is based on a July 2011 review of the consumptive use permits for each utility in the county, including the CITY, a summary of which is attached hereto as Exhibit "A". During the term of this Agreement, modifications to the CITY's or another utility's consumptive use permit will not affect CITY's Cost Share Responsibility.
  - c. The County will adjust the CITY's Cost Sharing Responsibility annually to reflect any increase in the actual cost to implement the Program. However, any such increase shall not be greater than the annual adjustment of the Consumer Price Index (CPI-U All Urban Consumers).
  
7. Independent Contractor. The parties shall be considered independent contractors. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.
  
8. Party Representatives. The COUNTY's representative during the term of this Agreement shall be Director of the Department of Environmental Resources Management, whose telephone is (561) 233-2400. The CITY's representative during the term of this Agreement shall be Director of the Environmental Services Department whose telephone number is (561) (561)-243-7336.
  
9. Notices. All notices required or permitted to be given or delivered by or to any party hereunder, shall be in writing and shall be hand delivered by messenger, courier service or prepaid overnight delivery service, by electronic transmission producing a written confirmation of delivery, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the Notice if by personal delivery, courier services or prepaid overnight delivery service; if mailed, upon the date which the return receipt is signed, delivery is refused or the notice is designated by the

postal authorities as non-deliverable, as the case may be; or if by electronic transmission, upon the date of the written delivery confirmation unless such date is a weekend, legal holiday or transmission occurs after 5:00 pm, in which case the effective date shall be the next business day. The parties hereby designate the following addresses as the address to which notices may be delivered, and delivery to such address shall constitute binding notice given to such party:

Board of County Commissioners  
of Palm Beach County  
County Administrator  
Governmental Center  
301 N. Olive Avenue  
West Palm Beach, FL 33401  
Fax:

City Manager  
City of Delray Beach  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Fax:

and

with a copy to:

Palm Beach County Department of  
Environmental Resources Management  
Director  
2300 N. Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, FL 33411-2743  
Fax:

City Attorney  
City of Delray Beach  
200 NW 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Fax:

with a copy to:

Palm Beach County Attorney's Office  
Attention: Attorney for ERM  
301 North Olive Avenue, Sixth Floor  
West Palm Beach, FL 33401  
Fax:

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

11. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
12. Waiver of Breach. It is hereby agreed to by the parties that no waiver of a breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant.
13. Default, Termination, Opportunity to Cure.
  - a. In the event that the CITY breaches this Agreement, the COUNTY shall provide the CITY with written notice specifying the nature of the breach ("Default Notice"). Following receipt of the Default Notice, the CITY shall cure such breach within thirty (30) days. If the CITY fails to cure the breach within said period, the COUNTY may terminate this Agreement upon written notice of termination to the CITY, which will be effective immediately. In such event, the COUNTY shall not refund the CITY any portion of the funds provided to the COUNTY for the CITY's Cost Sharing Responsibility for that fiscal year.
  - b. In the event that the COUNTY breaches this Agreement, the CITY shall provide the COUNTY with written notice specifying the nature of the breach ("Default Notice"). Following receipt of the Default Notice, the COUNTY shall cure such breach within one hundred and twenty (120) days. If the COUNTY fails to cure the breach within said period, the CITY may terminate this Agreement upon written notice of termination to the COUNTY, which will be effective immediately. In such event, the COUNTY shall refund the CITY a prorata share of the funds provided to the COUNTY for the CITY's Cost Sharing Responsibility for that fiscal year.
  - c. Either party may terminate this Agreement for convenience for the upcoming fiscal year (i.e. October 1) by giving written notice of termination to the other party on or before July 1 of the current fiscal year. If the CITY seeks to terminate this Agreement for convenience for the upcoming fiscal year after July 1, such termination shall not be effective until the following fiscal year, and the COUNTY shall not refund the CITY any of the funds provided to the COUNTY for the CITY's Cost Sharing Responsibility for that fiscal year. If the COUNTY terminates this Agreement for convenience after the commencement of the fiscal year, it shall refund the CITY a prorata share of the funds provided to the COUNTY for the CITY's Cost Sharing Responsibility for that fiscal year.



- d. Upon termination of this Agreement, the COUNTY shall no longer be required to implement the Wellfield Protection Program described herein within the wellfield protection area located within CITY boundaries and/ or associated with the existence of the CITY utility wells and the CITY shall be solely responsible to protect its well from potential contamination.
14. Enforcement Costs. Except as otherwise provided herein, any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties. This provision pertains only to the parties to the Agreement.
15. Remedies. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
16. Amendment. None of the provisions, terms, or obligations in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.
17. Public Records. The parties shall comply with Florida's Public Records Law with regard to any documents or other records relating to this Agreement.
18. Discrimination. The parties agree that no person shall on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status or sexual orientation or gender identity or expression be excluded from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.
19. Delegation. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.
20. Beneficiaries of Agreement. It is the intent and understanding of the parties that this Agreement is solely for the benefit of the parties. No person or entity other than the parties shall have any rights or privileges under this Agreement in any capacity whatsoever, either as third-party beneficiary or otherwise.

21. Construction of Agreement.

- a. The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement or any provision hereto.
- b. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
- c. In the event any provision of this Agreement conflicts, or appears to conflict with any other provision of this Agreement, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any such conflict or inconsistency.

22. Entirety of Agreement. The COUNTY and the CITY concur that this Agreement, together with any exhibits attached hereto, sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed through their duly authorized signatories on the day and year last written below.

ATTEST:  
SHARON R. BOCK,  
CLERK & COMPTROLLER

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


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

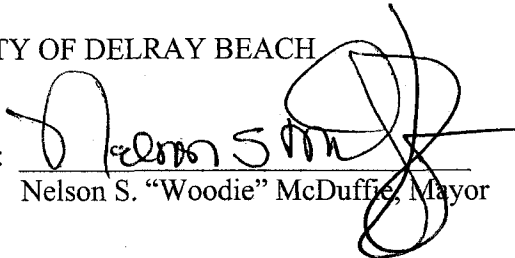
By: \_\_\_\_\_  
Karen Marcus, Chair

(SEAL)

ATTEST:


CITY OF DELRAY BEACH


By:   
City Clerk

By:   
Nelson S. "Woodie" McDuffie, Mayor

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By:   
Assistant County Attorney

By:   
City Attorney

APPROVED AS TO TERMS AND CONDITIONS:

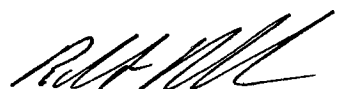
By:   
Richard E. Walesky, Director  
Environmental Resources Management

EXHIBIT "A"

7/8/2011

Wellfield Protection Utility Cost Share

MGY of Permitted Use Method

	MGY Permitted Surficial usage	Utility Cost Share Amount.
PBC	32846.00	\$175,839
Boca Raton	18811.00	\$100,704
Jupiter	6862.00	\$36,735
Seacoast Utility	8584.00	\$45,850
Delray Beach	6937.00	\$37,137
Boynton Beach	5305.00	\$28,400
Riviera Beach	4260.00	\$22,806
Acme	2559.00	\$13,699
Lake Worth	2765.00	\$14,802
Palm Springs	1733.00	\$9,278
West Palm Beach	1160.00	\$6,210
Lantana	907.00	\$4,856
Tequesta	518.92	\$2,778
Mangonia Park	212.00	\$1,132
totals	93459.92	\$500,225

Cost per MGY: \$5.35

Values for MGY Permitted Surficial Usage were developed from a July, 2011 review of SFWMD consumptive use permits for surficial aquifer allocations.

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**INTERLOCAL AGREEMENT BETWEEN  
PALM BEACH COUNTY  
AND THE  
CITY OF LAKE WORTH**

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**WITNESSETH:**

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

**WHEREAS**, Part I of Chapter, 163 Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

**WHEREAS**, pursuant to Section 3.3, Charter of Palm Beach County, the Board of County Commissioners is empowered to enact countywide ordinances to protect present and future wells and wellfields; and

**WHEREAS**, the COUNTY operates a Wellfield Protection Program (the “Program”) as authorized by Palm Beach County, Unified Land Development Code (ULDC), Article 14.B, Wellfield Protection; and

**WHEREAS**, the CITY and its utility customers benefit from the COUNTY’S ability to operate the Program across jurisdictional boundaries in order to protect the raw water supply from potential contamination; and

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**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and representations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which the parties expressly acknowledge, the parties hereto agree as follows:

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- g. By June 1 of each calendar year, the COUNTY will notify the CITY in writing of the CITY's Cost Sharing Responsibility for the upcoming fiscal year running from October 1 to September 30.
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  - a. The CITY's Cost Share Responsibility for the 2011/2012 fiscal year is \$14,802.
  - b. The CITY's Cost Share Responsibility is based on a July 2011 review of the consumptive use permits for each utility in the county, including the CITY's, a summary of which is attached hereto as Exhibit "A". During the term of this Agreement, modifications to the CITY's or another utility's consumptive use permit will not affect CITY's Cost Share Responsibility.
  - c. The County will adjust the CITY's Cost Sharing Responsibility annually to reflect any increase or decrease in the actual cost to implement the Program. However, any such increase shall not be greater than the annual adjustment of the Consumer Price Index (CPI-U All Urban Consumers).
- 7. Independent Contractor. The parties shall be considered independent contractors. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.
- 8. Party Representatives. The COUNTY's representative during the term of this Agreement shall be Director of the Department of Environmental Resources Management, whose telephone is (561) 233-2400. The CITY's representative during the term of this Agreement shall be the Director of Public Utilities whose telephone number is (561) 586-1665.
- 9. Notices. All notices required or permitted to be given or delivered by or to any party hereunder, shall be in writing and shall be hand delivered by messenger, courier service or prepaid overnight delivery service, by electronic transmission producing a written confirmation of delivery, or

140 alternatively shall be sent by United States Certified Mail, with Return  
141 Receipt Requested. The effective date of any notice shall be the date of  
142 delivery of the Notice if by personal delivery, courier services or prepaid  
143 overnight delivery service; if mailed, upon the date which the return  
144 receipt is signed, delivery is refused or the notice is designated by the  
145 postal authorities as non-deliverable, as the case may be; or if by  
146 electronic transmission, upon the date of the written delivery confirmation  
147 unless such date is a weekend, legal holiday or transmission occurs after  
148 5:00 pm, in which case the effective date shall be the next business day.  
149 The parties hereby designate the following addresses as the address to  
150 which notices may be delivered, and delivery to such address shall  
151 constitute binding notice given to such party:  
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153 Board of County Commissioners	City Manager
154 of Palm Beach County	City of Lake Worth
155 County Administrator	7 North Dixie Highway
156 Governmental Center	Lake Worth, FL 33460
157 301 N. Olive Avenue	
158 West Palm Beach, FL 33401	

159  
160 and with a copy to:

162 Palm Beach County Department of	Utilities Director
163 Environmental Resources Management	City of Lake Worth
164 Director	1900 2 <sup>nd</sup> Avenue North
165 2300 N. Jog Road, 4 <sup>th</sup> Floor	Lake Worth, FL 33461
166 West Palm Beach, FL 33411-2743	

167  
168 with a copy to:

170 Palm Beach County Attorney's Office	City Attorney
171 Attention: Attorney for ERM	City of Lake Worth
172 301 North Olive Avenue, Sixth Floor	7 North Dixie Highway
173 West Palm Beach, FL 33401	Lake Worth, FL 33460

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175 10. Indemnification. Each party shall be liable for its own actions and  
176 negligence and, to the extent permitted by law, the COUNTY shall  
177 indemnify, defend and hold harmless the CITY against any actions, claims  
178 or damages arising out of the COUNTY'S negligence in connection with  
179 this Agreement, and the CITY shall indemnify, defend and hold harmless  
180 the COUNTY against any actions, claims, or damages arising out of the  
181 CITY's negligence in connection with this Agreement. The foregoing  
182 indemnification shall not constitute a waiver of sovereign immunity  
183 beyond the limits set forth in Section 768.28, Florida Statutes, nor shall  
184 the same be construed to constitute agreement by either party to indemnify  
185 the other party for such other party's negligent, willful or intentional acts  
186 or omissions.



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11. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
  
12. Waiver of Breach. It is hereby agreed to by the parties that no waiver of a breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant.
  
13. Default, Termination, Opportunity to Cure.
  - a. In the event that the CITY breaches this Agreement, the COUNTY shall provide the CITY with written notice specifying the nature of the breach ("Default Notice"). Following receipt of the Default Notice, the CITY shall cure such breach within thirty (30) days. If the CITY fails to cure the breach within said period, the COUNTY may terminate this Agreement upon written notice of termination to the CITY, which will be effective immediately. In such event, the COUNTY shall not refund the CITY any portion of the funds provided to the COUNTY for the CITY's Cost Sharing Responsibility for that fiscal year.
  
  - b. In the event that the COUNTY breaches this Agreement, the CITY shall provide the COUNTY with written notice specifying the nature of the breach ("Default Notice"). Following receipt of the Default Notice, the COUNTY shall cure such breach within one hundred and twenty (120) days. If the COUNTY fails to cure the breach within said period, the CITY may terminate this Agreement upon written notice of termination to the COUNTY, which will be effective immediately. In such event, the COUNTY shall refund the CITY a pro rata share of the funds provided to the COUNTY for the CITY's Cost Sharing Responsibility for that fiscal year.
  
  - c. Either party may terminate this Agreement for convenience for the upcoming fiscal year (i.e. October 1) by giving written notice of termination to the other party on or before July 1 of the current fiscal year. If the CITY seeks to terminate this Agreement for convenience for the upcoming fiscal year after July 1, such termination shall not be effective until the following fiscal year, and the COUNTY shall not refund the CITY any of the funds provided to the COUNTY for the CITY's Cost Sharing Responsibility for that fiscal year. If the COUNTY terminates this Agreement for convenience after the commencement of the fiscal year, it shall refund the CITY a pro rata share of the funds

- 233 provided to the COUNTY for the CITY's Cost Sharing  
234 Responsibility for that fiscal year.  
235
- 236 d. Upon termination of this Agreement, the COUNTY shall no longer  
237 be required to implement the Wellfield Protection Program  
238 described herein within the wellfield protection area located within  
239 CITY boundaries and/ or associated with the existence of the CITY  
240 utility wells and the CITY shall be solely responsible to protect its  
241 well from potential contamination.  
242
- 243 14. Enforcement Costs. Except as otherwise provided herein, any costs or  
244 expenses (including reasonable attorney's fees) associated with the  
245 enforcement of the terms and/or conditions of this Agreement shall be  
246 borne by the respective parties. This provision pertains only to the parties  
247 to the Agreement.  
248
- 249 15. Remedies. This Agreement shall be construed by and governed by the  
250 laws of the State of Florida. Any and all legal action necessary to enforce  
251 the Agreement will be held in Palm Beach County. No remedy herein  
252 conferred upon any party is intended to be exclusive of any other remedy,  
253 and each and every such remedy shall be cumulative and shall be in  
254 addition to every other remedy given hereunder or now or hereafter  
255 existing at law or in equity or by statute or otherwise. No single or partial  
256 exercise by any party of any right, power, or remedy hereunder shall  
257 preclude any other or further exercise thereof.  
258
- 259 16. Amendment. None of the provisions, terms, or obligations in this  
260 Agreement may be added to, modified, superseded, or otherwise altered,  
261 except by written instrument executed by the parties hereto.  
262
- 263 17. Public Records. The parties shall comply with Florida's Public Records  
264 Law with regard to any documents or other records relating to this  
265 Agreement.  
266
- 267 18. Discrimination. The parties agree that no person shall on the grounds of  
268 race, color, sex, national origin, disability, religion, ancestry, marital status  
269 or sexual orientation or gender identity or expression be excluded from the  
270 benefits of or be subjected to any form of discrimination under any  
271 activity carried out by the performance of this Agreement.  
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- 274 19. Delegation. Nothing contained herein shall be deemed to authorize the  
275 delegation of the constitutional or statutory duties of state, county, or  
276 municipal officers.  
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- 278 20. Beneficiaries of Agreement. It is the intent and understanding of the  
279 parties that this Agreement is solely for the benefit of the parties. No

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person or entity other than the parties shall have any rights or privileges under this Agreement in any capacity whatsoever, either as third-party beneficiary or otherwise.

21. Construction of Agreement.

- a. The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement or any provision hereto.
- b. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
- c. In the event any provision of this Agreement conflicts, or appears to conflict with any other provision of this Agreement, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any such conflict or inconsistency.

22. Entirety of Agreement. The COUNTY and the CITY concur that this Agreement, together with any exhibits attached hereto, sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed through their duly authorized signatories on the day and year last written below.

ATTEST:  
SHARON R. BOCK,  
CLERK & COMPTROLLER

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

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

By: \_\_\_\_\_  
Karen Marcus, Chair

(SEAL)

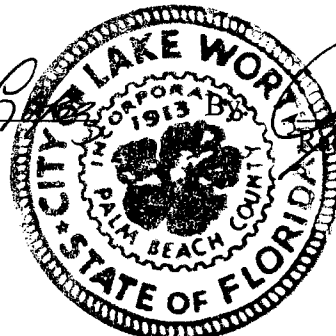
ATTEST:

CITY OF LAKE WORTH

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By:

*Patricia B. [Signature]*  
City Clerk



*[Signature]* 10/4/11  
Rachel B. Waterman, Mayor

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By:

*[Signature]*  
Assistant County Attorney

By:

*[Signature]*  
City Attorney

APPROVED AS TO TERMS AND CONDITIONS:

By:

*[Signature]*  
Richard E. Walesky, Director  
Environmental Resources  
Management

REVIEWED AND APPROVED FOR EXECUTION:

By:

*[Signature]*  
Susan A. Stanton, City Manager

## EXHIBIT "A"

7/8/2011

### Wellfield Protection Utility Cost Share

#### MGY of Permitted Use Method

	MGY Permitted Surficial usage	Utility Cost Share Amount
PBC	32846.00	\$175,839
Boca Raton	18811.00	\$100,704
Jupiter	6862.00	\$36,735
Seacoast Utility	8584.00	\$45,850
Delray Beach	6937.00	\$37,137
Boynton Beach	5305.00	\$28,400
Riviera Beach	4260.00	\$22,806
Acme	2559.00	\$13,699
Lake Worth	2765.00	\$14,802
Palm Springs	1733.00	\$9,278
West Palm Beach	1160.00	\$6,210
Lantana	907.00	\$4,856
Tequesta	518.92	\$2,778
Mangonia Park	212.00	\$1,132
totals	93459.92	\$500,225

Cost per MGY: \$5.35

Values for MGY Permitted Surficial Usage were developed from a July, 2011 review of SFWMD consumptive use permits for surficial aquifer allocations.

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7\_08\_2011rev.xls

