

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

**Meeting Date:** July 16, 2013

**Consent [X]  
Public Hearing [ ]**

**Regular [ ]**

**Department:** Water Utilities Department

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: Amendment No. 3 to the Interlocal Agreement for Biosolids Processing and Recycling with the Solid Waste Authority of Palm Beach County (SWA).

**Summary:** On May 3, 2005, the Palm Beach County Board of County Commissioners approved an Interlocal Agreement for Biosolids Processing and Recycling with SWA (R2005-0897). Under the Interlocal Agreement, the SWA is responsible for the design, construction, operation and maintenance of the regional Biosolids Processing and Recycling Facility (BPF), and, in addition, will market the biosolids pellets to various fertilizer manufacturers. Water Utilities, along with the other participating utilities, are responsible for delivering wastewater biosolids to the new facility, and paying for the pro-rata share of capital and net operating costs. The First (R2006-1283) and Second (R2012-0903) Amendments resolved Contractor claims for delays and increases in construction costs for the BPF. This Amendment No. 3 reflects the sale of excess capacity in the BPF to the East Central Regional Wastewater Treatment Operation Board (ECR), adjusts pro-rated shares of capacity by the original participants, addresses clarification to the Operations & Maintenance costs per ton and landfill gas delivery system, and adds provisions for continued operation at the conclusion of the term of the Agreement. The sale of excess capacity to ECR results in a return of \$2,817,749 in capital costs to the County. Countywide (MJ)

**Background and Justification:** As part of the Southern Region Water Reclamation Facility wastewater treatment process, biosolids are removed from the water, thereby purifying it. These biosolids can be either land filled or beneficially recycled as a fertilizer or soil amendment. Water Utilities currently processes its wastewater biosolids to Class "B" standards, and these biosolids are sent to SWA BPF for processing to Class "AA" standards, to comply with the U.S. Environmental Protection Agency and the Florida Department of Environmental Protection regulations. Biosolids pelletization provides an attractive alternative that allows for the continued recycling of this product while at the same time meeting existing and future regulations. The resulting pellets can be blended with other fertilizer components and then be beneficially reused by the public, completing Water Utilities Department's strategic goal of recycling all liquids.

**Attachments:**

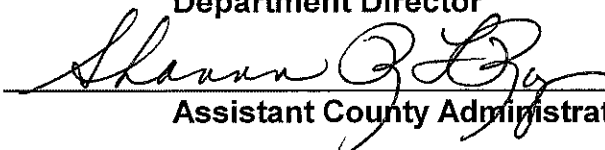
- 1. Location Map
- 2. Two (2) Original Amendment No. 3

Recommended By:

  
Department Director

7/9/13  
Date

Approved By:

  
Assistant County Administrator

7/15/13  
Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	<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>
External Revenues	<u>(2,817,749)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (Cty)	<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 4011 Agency 720 Org 4200 Object

Is Item Included in Current Budget? Yes  No

Reporting Category N/A

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

Return of capacity investment share due to sale of capacity by SWA to ECR.

**C. Department Fiscal Review:** Debra Morist

**III. REVIEW COMMENTS**

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

[Signature]  
OFMB

[Signature] 7/12/13  
Contract Development and Control  
This amended Agreement was not executed at the time of our review.

**B. Legal Sufficiency:**  
[Signature] 7/15/13  
Assistant County Attorney

**C. Other Department Review:**  
\_\_\_\_\_  
Department Director

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



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

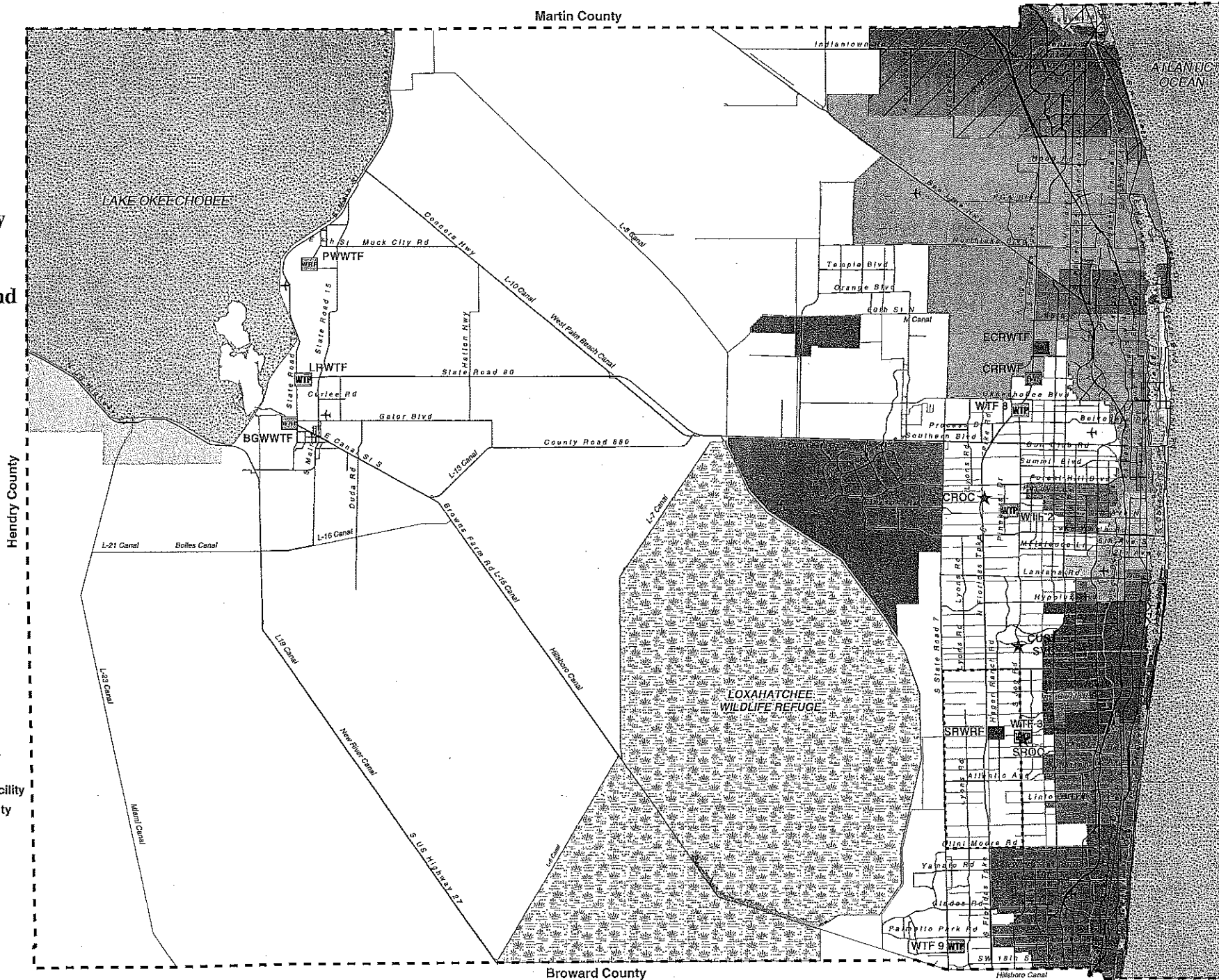
Attachment 1

**Legend**

- ★ Administration
- Water Treatment Facility
- Reclamation Facility
- Wastewater Reclamation Facility
- Wastewater Treatment Facility
- - - Mandatory Reclaimed SA
- ▬ Palm Beach County Limits
- ▬ P.B.C.W.U.D. Service Area



NOT TO SCALE



**INTERLOCAL GOVERNMENT AGREEMENT**

**FOR**

**BIOSOLIDS PROCESSING AND RECYCLING**

**BETWEEN**

**THE SOLID WASTE AUTHORITY  
OF PALM BEACH COUNTY, FLORIDA**

**AND**

**PALM BEACH COUNTY, FLORIDA**

**DATED AS OF \_\_\_\_\_, 2013**

## TABLE OF CONTENTS

<i>Article I</i>	<i>Definitions and Entire Agreement</i>	<i>Page</i>
1.1	Definitions	4
1.2	Entire Agreement	8
<i>Article II</i>	<i>Construction and Payment for Construction</i>	
2.1	Commitment to Construct and Operate	9
2.2	Payment of Capital Costs; Utility Capacity	9
2.3	BPF Capacity	10
<i>Article III</i>	<i>Operations and Management</i>	
3.1	Commitment to Supply Biosolids	10
3.2	Commitment to Accept and Process Biosolids	11
	3.3 Biosolids Processing Facility Operations	11
	(a) Receiving Hours	11
	(b) O & M Plan	11
	(c) Laws, Rules, and Regulations	11
	(d) Biosolids Quality	11
	(e) Rejection of Deliveries of Unacceptable Biosolids	11
	(f) Weighing and Record Keeping	12
<i>Article IV</i>	<i>Payment</i>	
4.1	Monthly Payment	12
4.2	O & M Costs/Ton and Reconciliation	12
	(a) O & M Costs/Ton	12
	(b) Annual Reconciliation to the Monthly Payment	12
4.3	Uncontrollable Circumstance and Performance	13
4.4	Changes in Laws	14
	(a) Changes in General Laws	14
	(b) Change in Environmental Law	14
<i>Article V</i>	<i>Term</i>	
5.1	Term	14
<i>Article VI</i>	<i>Dispute Resolution</i>	
6.1	Dispute Resolution	15
6.2	Payments Upon Resolution	15
<i>Article VII</i>	<i>Indemnification</i>	
7.1	Indemnification	15
7.2	Survival	16

**Article VIII Miscellaneous**

8.1 Representations, Warrantees, Approvals	16
8.2 Amendment and Modification	16
8.3 Notices	16
8.4 Assignment	17
8.5 Severability	17
8.6 Termination of Prior Interlocal Agreement	17
Exhibit I – Summary of Capital Costs and List of Original Participants and Shares	19
Exhibit II -Biosolids Quality Specifications	21
Exhibit III-O & M Costs/Ton and Adjustments	22
Exhibit IV-D & C Agreement	23
Exhibit V -O & M Agreement	24
Exhibit VI -Gas Blender Purchase Price	25

**THIRD AMENDED  
INTERLOCAL GOVERNMENT AGREEMENT  
FOR  
BIOSOLIDS PROCESSING AND RECYCLING**

**THIS THIRD AMENDED AGREEMENT**, hereinafter called the “**Agreement**”, is made and entered into this \_\_\_ day of \_\_\_\_\_, 2013 by and between **PALM BEACH COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter called the “**Utility**”, and the **SOLID WASTE AUTHORITY OF PALM BEACH COUNTY**, a special district created pursuant to Chapter 75-473, Laws of Florida, as amended, hereinafter called the “**Authority**”.

***WITNESSETH***

**WHEREAS**, the Utility owns, operates, and manages Wastewater Treatment Facilities (as defined herein); and

**WHEREAS**, such Wastewater Treatment Facilities generate domestic wastewater residuals referred to as Biosolids (as defined herein) as a residual of the treatment process; and

**WHEREAS**, the Utility desires to secure an efficient, long-term, and environmentally sound method to recycle and beneficially reuse the Biosolids produced; and

**WHEREAS**, the Federal Government and the State of Florida encourage the recycling and beneficial reuse of residuals including Biosolids; and

**WHEREAS**, the Authority can provide for the beneficial reuse of Biosolids by means of recycling through the process of drying and pelletization; and

**WHEREAS**, such processing facility will produce, among other things, Biosolids Beneficial Reuse Products for use in the commercial fertilizer industry; and

**WHEREAS**, the Utility and the Authority previously entered into an Interlocal Agreement for Biosolids Processing dated August 20, 2003, and now desire to terminate that agreement and replace it with this new Agreement; and

**WHEREAS**, Utility has agreed to sell excess Utility Capacity Shares in accordance with provisions of the Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Utility and the Authority agree as follows:

**ARTICLE I – DEFINITIONS AND ENTIRE AGREEMENT**

**1.1 Definitions**

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

**“Acceptable Deliveries”** means the delivery by the Utility or its agent of Biosolids that meet the requirements set out in Exhibit II.

**“Accept, Accepted or Acceptance”** means the receipt by the BPF of Biosolids from the Utility.

**“AL Gate Fee”** means the prevailing disposal rate for delivery of Biosolids to the Alternate Location.

**“Alternate Location”** or **“AL”** means the Authority Landfill located at 45<sup>th</sup> Street and North Jog Road in West Palm Beach, Florida, or other locations as mutually agreed upon.

**“As Received Weight or Wet Tons”** means the weight of Biosolids as delivered by the Utility to the BPF or Alternate Location, with no adjustment made for moisture content.

**“Base Processing Fee”** has the meaning as shown in Exhibit III.

**“Beneficial Reuse Products”** or **“BRUP”** means the end product of the sludge drying process that meets or exceeds the requirements of Chapter 62-640.850, F.A.C., or its successor regulations, for Class AA Residuals that is produced by the BPF from Biosolids.

**“Beneficial Re-Use”** means the sale or distribution of BRUP to others to be used for recycling purposes.

**“Billing Period”** means each calendar month in each Fiscal Year, except that the initial Billing Period shall begin on the Operations Commencement Date and end with the last day of the month in which the Operations Commencement Date occurs.

**“Biosolids”** means material as specified in Exhibit II.

**“Biosolids Processing Facility or BPF”** means the regional facility constructed (or to be constructed) by the Authority, for itself and on behalf of the Utilities, for the purpose of accepting Biosolids from the Utility and others for processing into BRUP.

**“Capital Costs”** means the Utility’s share of the capital costs of the design, development, permitting, construction, and acceptance testing of the BPF as provided for in Exhibit I.

**“Change in General Law”** means any change in the Federal, State, or Local laws, rules, regulations, or requirements after June 15, 2004 which has, or may reasonably be expected to have, a direct or indirect, material, and adverse effect upon the cost to the Authority of constructing, operating, maintaining, or modifying the BPF or the performance of the BPF, excluding a Change in Environmental Law, or an effect upon the cost to the Utility of producing or delivering to the BPF acceptable Biosolids as referred to and specified in Exhibit II. General Change in Law shall not include:



- a) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in prices, or currency or exchange rate fluctuations;
- b) union work rules that increase the operating cost of the BPF;
- c) any change in prevailing wage laws that impact the cost of operating and constructing the BPF;
- d) any change in Federal, State, or local tax laws, or any other tax law.

The parties agree that the costs, if any, associated with the types of changes in law described in a) through d) above shall be recovered in the annual adjustment to the Base Processing Fee described in Exhibit III to this Agreement.

**“Change in Environmental Law”** shall only mean a change in the Federal, State, or Local laws, rules, regulations, permits, or requirements after June 15, 2004 which has, or may reasonably be expected to have, a direct, material, and adverse effect upon the cost to the Authority of constructing, operating, maintaining, or modifying the BPF or the performance of the BPF related solely to changes in the chemical or physical properties of the BRUP produced to allow for Beneficial Re-Use, or changes in the quality of the air discharged from the BPF, or to changes to the quality of the effluent discharged or stormwater discharged from the BPF.

**“Contractor”** means New England Fertilizer Company that has contracted with the Authority to design, build, acceptance test, operate and maintain the BPF and market the BRUP.

**“D & C Agreement”** means the Design and Construction Agreement entered into by the Authority with New England Fertilizer Company for the design, construction, check out, and acceptance testing of the BPF and attached hereto as Exhibit IV.

**“Effective Date”** means the date of this Agreement first written above.

**“Fiscal Year”** means the Authority’s fiscal year which currently is October 1 through September 30, or as may be adjusted from time to time.

**“Monthly Payment”** shall have the meaning as set out in Section 4.1 hereafter.

**“O & M Agreement”** means the Operations and Maintenance Agreement entered into by the Authority with New England Fertilizer Company for the operation and maintenance of the BPF and the marketing of BRUP and attached hereto as Exhibit V.

**“O & M Costs/Ton”** means the total of the actual costs of the applicable Base Processing Fee /Ton, Pass Through Costs/Ton, and Solid Waste Authority (SWA) Administration Costs/Ton as are shown in Exhibit III.

**“O & M Plan”** means a written description of the operations, hours of operation, hours during which the BPF shall Accept Biosolids, vehicle procedures at the receiving area at the BPF and the Alternate Location, handling of unacceptable Biosolids, vehicle procedures at the delivery area, traffic routing, weighing and billing procedures, backup plan if the Authority’s scale facilities become inoperable, and emergency notification

procedures, which will be, or has been, prepared in accordance with the O & M Agreement.

**“Operations Commencement Date”** means August 9, 2009, the date of the written notice from the Authority to the Utility stating that the BPF has been placed into commercial operation and is able to Accept Biosolids.

**“Original Participants”** mean the parties listed in Exhibit I-B.

**“Party”** means either the Authority or the Utility, or both, as the context of the usage of such term may require.

**“Participants”** mean the Original Participants, and their successors and assigns, and other utilities entering into similar agreements with the Authority for delivery and processing of Biosolids at the BPF.

**“Person”** means the Original Participants, and their successors and assigns, and any legal entity including, but not limited to, any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

**“Receiving Hours”** means the hours set forth in the O & M Plan during which the Utility may deliver, and the Authority shall Accept, Biosolids, and which shall include each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday, excluding Thanksgiving Day and Christmas Day.

**“Receiving Day”** means the days during which the Utility may deliver, and the Authority shall Accept, Biosolids, and which shall include each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday, excluding Thanksgiving Day and Christmas Day.

**“State”** means the State of Florida.

**“Term”** shall have the meaning set forth in Section 5.1 herein.

**“Ton”** shall mean 2,000 pounds avoirdupois.

**“Uncontrollable Circumstance”** means an act, event, or condition that has a direct, material, and adverse effect on the rights or obligations of a Party under this Agreement, if such act, event, or condition could not have been avoided by the exercise or use of reasonable care or precautions and is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or not complying with a condition required of such Party under this Agreement. Such acts, events, or conditions shall include, but shall not necessarily be limited to, the following:

- (a) an act of God, hurricanes, tornadoes, epidemic, landslide, lightning, earthquake, fire or explosion, flood or similar occurrence, an act of public enemy, war, blockade, insurrection, riot or civil disturbance, sabotage, or similar occurrence;
- (b) the order, or injunction or judgment of any Federal, State, or local court, administrative agency or governmental body or officer with jurisdiction in the Utility, including any exercise of the power of eminent domain, police power, condemnation, or other taking by or on behalf of any public, quasi-

public, or private entity, provided, however, that such order or judgment shall not arise in connection with or be related to the negligent or willful act, error, omission, or inaction of the Party relying thereon and that neither the contesting in good faith of any such order or judgment nor the reasonable failure to so contest shall constitute or be construed as a willful or negligent action or inaction of such Party;

- (c) the failure to issue, or the suspension, termination, interruption, denial of renewal of any permit, license, consent, authorization or approval essential to a Party to carry out its obligations pursuant to this Agreement, if such act or event shall not arise in connection with or be related to the negligent or willful act, error, omission, or inaction of the Party relying thereon and that neither the contesting in good faith of any such order or judgment nor the reasonable failure to so contest shall constitute or be construed as a willful or negligent action or inaction of such Party;
- (d) the failure of any appropriate Federal, State, or local agency or public or private utility having operation jurisdiction with respect to the BPF to provide, and maintain and assure the provision of, all utilities necessary for the operation of the BPF;
- (e) any subsurface condition which shall prevent, or require a redesign or change in the construction, or directly adversely affect the Scheduled Acceptance Date; provided however, that the condition was unknown to the Contractor taking into account the information made available to the Contractor by the Authority prior to the contract Date and the generally recognized geology of Florida in which the BPF site is located, provided however, that groundwater in any quantity, as opposed to quality, shall not be considered an Uncontrollable Circumstance;
- (f) the provisions of this paragraph and, in particular, of subparagraphs (a) through (e), above, shall never be interpreted as describing an Uncontrollable Circumstance if the situation or condition at issue is the direct or indirect result of a party's violation of, or failure to comply with, any existing Federal, State, or local statute, law, rule, ordinance, regulation, or requirement or any Federal, State, or local statute, law, rule, ordinance, regulation, or requirement enacted after the Effective Date of this Agreement or any change in any existing Federal, State, or local statute, law, rule, ordinance, regulation, or requirement which change occurs on or after the Effective Date of this Agreement.

**“Utility Capacity”** means the Utility's share of the BPF total annual throughput capacity as set out in Section 2.2 hereafter.

**“Wastewater Treatment Facilities”** means the wastewater treatment plants that the Utility owns, operates, and manages, or causes to be operated and managed. **“WTD”** means wet Tons per day.

**“WTY”** means wet Tons per year.

## **1.2 Entire Agreement**

The following Exhibits are attached hereto, are incorporated by reference, and are made part of this Agreement.

- Exhibit I – Summary of Capital Costs and List of Original Participants and Shares
- Exhibit II- Biosolids Quality Specification
- Exhibit III- O & M Costs/Ton and Adjustments
- Exhibit IV- D & C Agreement
- Exhibit V –O & M Agreement
- Exhibit VI – Gas Blender Purchase Terms

This Agreement, together with the foregoing Exhibits, constitutes the entire Agreement between the Authority and the Utility and supercedes all other negotiations, representations, or agreements, either oral or written, with respect to the matters contained herein. The Article and Section headings in this Agreement are for convenience and reference only and shall not be considered in construing this Agreement.

## **ARTICLE II – CONSTRUCTION AND PAYMENT FOR CONSTRUCTION**

### **2.1 Commitment to Construct and Operate**

The Authority has caused the BPF to be designed, constructed, permitted, and acceptance tested on or before the date as determined in accordance with the D & C Agreement, on lands which it owns at 45<sup>th</sup> Street and North Jog Road in West Palm Beach, Florida, in accordance with all applicable local, state, and federal rules and regulations in place at the time of the Operations Commencement Date.

### **2.2 Payment of Capital Costs; Utility Capacity**

Utility has paid its proportionate share of the Capital Costs of the BPF. The Capital Costs include all the costs to develop, design, construct, permit, and acceptance test the BPF, including without limitation, all labor, material, supplies, contractors, and subcontractors costs, land costs, easement costs, costs of providing utilities, taxes, consulting fees, legal fees, interest charges, insurance premiums, and the like. This payment of the Capital Cost is the consideration for the Utility's 27.5% share of the BPF's original capacity, 9.68% of which is being sold to East Central Regional Wastewater Treatment Facilities Operation Board (ECR). On or before the Effective Date the Authority shall distribute to the Utility the amount shown on Exhibit I-A and thereupon Utility's capacity share shall be equal to 33,822 Wet Tons of Acceptable Deliveries annually (the "Maximum Annual Delivery") or 17.82% of the total BPF capacity (the 'Utility Capacity Share') with delivery not to exceed a maximum of 107 Wet Tons of Acceptable Deliveries per Receiving Day (the "Maximum Daily Delivery"). The Utility shall own this share of the BPF's capacity in perpetuity for the life of the BPF.

If Utility delivers Biosolids in excess of Utility's Maximum Daily Delivery, the excess Tons may be accepted at the BPF, sent to the AL or delivered to a third party for disposal. If sent to the BPF or to the AL, Utility will be charged the AL Gate Fee in the monthly invoice for the excess Tons subject to the annual reconciliation provided in Section 4.2(b).

If Utility delivers Biosolids in excess of Utility's Maximum Annual Delivery, the excess Tons may be accepted at the BPF, sent to the AL or delivered to a third party for disposal. If sent to the BPF or to the AL, Utility will be charged the AL Gate Fee in the monthly invoice for the excess Tons, subject to the annual reconciliation provided in Section 4.2(b).

If Utility delivers Biosolids in excess of the BPF Daily Maximum of 600 WTD, but less than Utility's Maximum Daily Delivery, they may be sent to the AL. Utility will be charged the AL Gate Fee in the monthly invoice for the excess Tons, subject to the annual reconciliation provided in Section 4.2(b).

During the annual reconciliation provided in Section 4.2(b), Authority will determine if the Utility's excess Tons were Accepted at the BPF or at the AL and will also determine if Utility's excess Tons caused another Participants Acceptable Delivery (less than their Maximum Daily Delivery) to be delivered to the AL and whether an adjustment is required.

### **2.3 BPF Capacity**

The selected operator has guaranteed to process a minimum of 189,800 WTY based on an average of 520 WTD (at a minimum average 15% solids content) on a 365-day annual basis, and a maximum daily processing rate of approximately 600 WTD per each Receiving Day (the "BPF Daily Maximum"). In the event the capacity of the BPF is ever increased above the 189,800 WTY as stated above, the Utility shall have the right to participate pro-rata in any such increase.

## **ARTICLE III – OPERATIONS AND MANAGEMENT**

### **3.1 Commitment to Supply Biosolids**

On and after the Operations Commencement Date, the Utility shall deliver all of the Biosolids generated by the Wastewater Treatment Facilities on a regular basis to the BPF. The delivery schedule will be determined as part of the development of the O & M Plan and will be agreed upon by both parties. Beginning with the Operations Commencement Date, the Utility shall deliver a minimum of 16,261 Wet Tons of Acceptable Deliveries (the "Minimum Commitment") during each Fiscal Year, except that the Minimum Commitment shall be prorated for the Fiscal Year during which the Operations Commencement Date occurs. The delivery of Biosolids other than to the BPF or the Alternate Location shall be considered a material breach of this Agreement unless such deliveries are in excess of the Utility's Maximum Daily Delivery or Maximum Annual Delivery, or otherwise agreed upon by both parties. Notwithstanding the above, Utility may, without approval by Authority, deliver amounts of Biosolids that exceed the Utility's Maximum Daily Delivery or Maximum Annual Delivery to another site, and may deliver Biosolids to another site on non-Receiving Days at the BPF.

The failure of the Utility to deliver the Minimum Commitment shall result in a charge to the Utility equal to the product of the difference between the actual Acceptable Deliveries delivered by the Utility and the Minimum Commitment, times the first level Operator Contract Fee, as adjusted, set out in Exhibit III, and shall be billed to the Utility as provided in Section 4.2 (b) below. However, if all deliveries of Biosolids to the BPF by

all Participants and users of the BPF, meet the total minimum Biosolids delivery commitment as required by the O & M Agreement (the "Put/Pay Level"), then Utility shall not be required to pay the charge described in the previous sentence for that amount of shortage in making the Minimum Commitment after the Put/Pay Level is reached.

### **3.2 Commitment to Accept and Process Biosolids**

On and after the Operations Commencement Date, the BPF shall accept and process Biosolids from the Wastewater Treatment Facilities delivered to the BPF or the Alternate Location as designated by the Authority. On and after the Operations Commencement Date, the Authority's obligation to Accept and process Biosolids at the BPF meeting the specifications contained in Exhibit II shall only be relieved by, and only to the extent of, an Uncontrollable Circumstance that prevents or partially prevents such Acceptance and processing. Should an Uncontrollable Circumstance occur, the Authority shall continue to accept Biosolids at the BPF or Alternate Location until such time that the Uncontrollable Circumstance is corrected or resolved.

### **3.3 Biosolids Processing Facility Operations**

#### **(a) Receiving Hours**

The Authority shall cause the BPF to be operated, and shall Accept Biosolids delivered by or on behalf of the Utility during the Receiving Hours in accordance with the O & M Plan. At a minimum, the BPF shall accept Biosolids six (6) days per week.

#### **(b) O & M Plan**

The Authority shall develop, maintain, and update from time to time an O & M Plan as defined above, mutually acceptable to the Authority and the Utility.

#### **(c) Laws, Rules, and Regulations**

The Authority shall cause the BPF to be operated in compliance with all applicable Federal, State, and local laws, rules, regulations, ordinances, and permits, as amended from time to time.

#### **(d) Biosolids Quality**

Biosolids to be delivered by the Utility to the Authority for processing shall meet the Biosolids Quality Specifications as specified in Exhibit II. All utilities that are producing digested Biosolids at the time of signing this Agreement shall deliver only digested Biosolids to the BPF. All utilities that are producing undigested Biosolids at the time of signing this Agreement may deliver undigested Biosolids to the BPF until such time as Utility chooses to produce digested Biosolids. Utility agrees to use its best efforts to have all Biosolids delivered to the BPF in vehicles dedicated for Biosolids transportation only.

#### **(e) Rejection of Deliveries of Unacceptable Biosolids**

The Authority or the Contractor shall have the right to reject the delivery and prohibit the unloading of Biosolids not meeting the Quality Specifications as indicated in Exhibit II. The Authority or Contractor shall immediately notify the Utility of such rejection and the Utility shall either: (i) take possession of, and remove from the BPF or the Authority's premises, such unacceptable Biosolids;

or (ii) request that the Authority or Contractor dispose of such unacceptable Biosolids. If the Authority or Contractor does not agree to dispose of such unacceptable Biosolids, the Utility shall promptly remove such unacceptable Biosolids.

If the Utility requests that the Authority or Contractor dispose of such unacceptable Biosolids and the Authority agrees, the Authority or Contractor will dispose of said material by alternative methods consistent with current laws and regulations. The Utility will pay a disposal fee equal to the then applicable Base Processing Fee in addition to the O & M Costs/Ton for all such materials disposed of by the Authority or Contractor other than at the BPF.

**(f) Weighing and Record Keeping**

All Biosolids and unacceptable Biosolids delivered by or on behalf of the Utility, and all unacceptable Biosolids returned by or on behalf of the Utility, shall be weighed on an As Received Weight basis at the Authority's designated scale facilities which shall be certified at least annually by the State. The Authority shall maintain all weight records for a period of at least three (3) years and will make such records available to the Utility at the Utility's request.

**ARTICLE IV – PAYMENT**

**4.1 Monthly Payment**

After the Operations Commencement Date, and on or before the fifteenth (15<sup>th</sup>) day of each Billing Period thereafter during the term of this Agreement, the Authority shall submit to the Utility an itemized invoice for services rendered to the Utility during the previous Billing Period which shall include: (a) the daily and total quantities of As Received Weight of Biosolids delivered to the BPF during the Billing Period by the Utility and by all users combined; and (b) the Monthly Payment due the Authority by such Utility calculated as the product of the Total O & M Costs/Ton as set out in Exhibit III times the total As Received Weight of Biosolids delivered by the Utility during the Billing Period, plus any additional charges for excess deliveries above the Utility's Maximum Daily Delivery calculated as the product of the As Received Weight of Biosolids times the AL Gate Fee, plus any additional charges associated with disposal of such Utilities unacceptable Biosolids as provided for in section 3.3(e). The Monthly Payment shall be payable by the Utility to the Authority within thirty (30) days from receipt of the invoice by the Utility.

**4.2 O & M Costs/Ton and Reconciliation**

- (a) **O & M Costs/Ton.** The O & M Costs/Ton is designed to cover all costs of the BPF not included in the Capital Cost, including, but not limited to, the complete cost of administering, (including all Authority costs of administration of the BPF and related contracts, supervision, consulting fees and legal fees), operating and maintaining the BPF and the landfill gas delivery system. On and after the Operations Commencement Date, and during the full term of this Agreement, the O&M Costs/Ton shall be budgeted annually as set out in Exhibit III, subject to the adjustments detailed therein and other applicable provisions of this Agreement.

(b) **Annual Reconciliation to the Monthly Payment.** Within 120 days of the end of each Fiscal Year, the Authority shall make an annual reconciliation to the Utility for the prior Fiscal Year which shall account for debits or credits for the items listed below and shall be reflected in the next Monthly Payment invoice submitted to the Utility after such reconciliation is issued:

- 1) Any changes in the actual O & M Costs/Ton resulting from the application of the Base Processing Fee due to increased levels of Acceptable Deliveries delivered to the BPF during the past Fiscal Year;
- 2) Any deviation in the actual costs of Pass Through Costs per Ton from the budgeted Pass Through Costs per Ton as set out in Exhibit III;
- 3) Any charges for Utility's failure to meet the Minimum Commitment as set out in Section 3.1 above; and
- 4) If Utility delivered Biosolids in excess of the Utility's Maximum Annual Delivery or Maximum Daily Delivery that were Accepted at the BPF and did not cause other Biosolids to be disposed at the AL, Utility shall be credited the difference between the actual reconciled O&M Cost/Ton and the AL Gate Fee charged during the monthly invoice.
- 5) If Utility delivered Biosolids in an amount less than Utility's Maximum Daily Delivery but the AL Gate Fee was imposed due to exceeding the BPF Daily Maximum of 600 WTD, Utility shall be credited the difference between the actual reconciled O&M Cost/Ton and the AL Gate Fee charged during the monthly invoice.

#### **4.3 Uncontrollable Circumstance and Performance**

- (a) If either Party fails to perform any of its obligations pursuant to this Agreement, and if such failure to perform was caused by an Uncontrollable Circumstance, then the Parties shall cooperate to remove, reduce, or eliminate the adverse effect of such Uncontrollable Circumstance. During the period of time impacted by the Uncontrollable Circumstance:(i) the Utility shall continue to deliver, or cause to be delivered, all of the Biosolids from its Waste Water Treatment Facilities to the extent it is able to do so; and (ii) the Authority shall Accept and process Biosolids and produce BRUP at the BPF to the extent it is able to do so; and (iii) the Authority shall Accept the Utility's Biosolids at the Alternate Location to the extent that it is not able to do so at the BPF.
- (b) Neither Party shall be responsible for paying any additional costs incurred by the other, including, but not limited to additional capital, operating, maintenance, or repair costs, O & M Costs/Ton or any other costs or fees due to, or caused by, an Uncontrollable Circumstance that occurs during the term of this Agreement. Provided however, in the event of an Uncontrollable Circumstance that results in damage or a condition of the BPF that requires repair or modification of the BPF, and there is no liability or obligation on the part of the Contractor for the cost of such



repair or modification, and there are insufficient or no insurance benefits to cover such costs, then each Utility shall be responsible and liable for its prorate share of such costs based on each Utility Capacity share. Such costs shall be billed to each Utility on a monthly basis as such costs are incurred.

#### **4.4 Changes in Laws**

- (a) **Changes in General Laws.** Neither the Authority nor the Utility shall be responsible for paying any additional costs incurred by the other, including, but not limited to additional capital, operating, maintenance, or repair costs, O & M Costs/Ton or any other costs or fees due to or caused by a Change in General Law, unless otherwise specifically provided in this Agreement.
- (b) **Change in Environmental Law.** In the event of a Change in Environmental Law (as defined herein) that has a direct, material, and adverse effect upon the cost to the Authority of operating, maintaining, or modifying the BPF, the Authority and Utility shall mutually negotiate any necessary capital cost contribution or any necessary increase in the O & M Costs/Ton commensurate with the necessary cost. In the event the Parties are unable to mutually agree, then the increase shall be determined in accordance with Article VI herein.

### **ARTICLE V – TERM**

#### **5.1 Term**

The Term of this Agreement shall extend until August 9, 2029, unless terminated sooner or extended in accordance with the terms of this Agreement. Upon the conclusion of the term of this Agreement, the BPF shall remain the property of the Authority. Notwithstanding any other provision of this agreement to the contrary, the Utility shall own its Utility Capacity Share of the capacity of the BPF, in perpetuity, for the life of the BPF. At least five (5) years prior to the termination of the O & M Agreement the Participants shall jointly determine if the BPF shall continue in operation or if the operation thereof shall cease. The determination shall be made upon a written vote of all Participants as called by the Authority at least 5 years prior to the termination of the O & M Agreement. Each Participant shall be entitled to one vote. A unanimous vote of the Participants shall be required to terminate the operation of the BPF.

If there is a unanimous vote to continue the operation of the BPF then the Authority, with consultation of the Participants, shall initiate procurement of a contract operator and a determination of any rehabilitation, upgrade or improvements that should be made to the BPF. All costs incurred in the solicitation and contracting for an operator as well as any and all necessary costs to rehabilitate, upgrade or improve the BPF shall be shared pro rata by all Participants based on their Utility Capacity Shares.

If all of the Participants, other than the Authority, vote to continue the operation of the BPF, and the Authority chooses not to continue the operation of the BPF, or if all of the Participants, other than the Authority, vote to discontinue

the operation of the BPF, but the Authority chooses to keep the BPF, the Authority shall compensate all the other Participants, pro rata based on their Utility Capacity Shares, for the then fair market value of the BPF. The fair market value shall be determined by the average of two appraisals, one selected by the Authority and one selected by the remaining Participants. The fair market value appraisals shall not include the value of the land or any other Authority property not included in the capital cost basis of the BPF shared by the Participants. The compensation shall be paid to the Participants within 90 days of the determination of fair market value.

If all of the Participants, including the Authority, vote to discontinue the BPF then all Participants shall, pro rata based on their Utility Capacity Shares, contribute to all costs of removing the BPF and all connections, utilities, etc. and restoring the land to grade level. All costs to be shared as provided in this Section shall be paid within 90 days of an invoice for same sent by the Authority, unless other agreement for payment is made.

In the event there are not unanimous votes cast (except as set out above where the Authority is the only dissenting vote) to either continue or terminate the operation of the BPF, the Participants will then enter into negotiations to determine the future of the BPF and its operation. If such negotiations have not been concluded and a unanimous determination made by the Participants within 6 months of the original vote, then, the Participants shall be deemed to have voted unanimously to discontinue operation of the BPF. The dispute resolution process set forth in Article VI shall not apply to negotiations initiated due to the failure to reach a unanimous vote regarding whether to continue or terminate the operation of the BPF.

Nothing in this Agreement shall prohibit a Participant from seeking to find a replacement utility to buy or accept such Participants rights and ownership of their Utility Capacity shares in the BPF, provided such utility is approved in writing as acceptable to the Authority, such approval not to be unreasonably withheld.

## **ARTICLE VI – DISPUTE RESOLUTION**

### **6.1 Dispute Resolution**

All disputes between the County and the Authority shall be resolved first by resort to negotiation, then by mediation with a mutually agreed upon mediator with each Party sharing the costs, and finally, after these options have been exhausted, by the Board of County Commissioners of Palm Beach County. All decisions by the Board of County Commissioners shall be final and binding upon the parties and neither party shall have any right to appeal either to the courts or to any other administrative agency.

### **6.2 Payments Upon Resolution**

If either the Authority or the County has withheld payment of any amount in dispute, Upon resolution of such dispute, the non-prevailing Party shall pay to the prevailing Party the disputed amount (or as much thereof as shall be determined to be due) plus interest at the legal prejudgment rate from the date on which such amount was due to the date of payment.

## **ARTICLE VII- INDEMNIFICATION**

### **7.1 Indemnification**

Each Party shall be liable for its own actions and negligence or wrongful acts and, to the extent permitted by law, the Utility shall indemnify, defend, and hold harmless the Authority against any actions, claims, or damages arising out of the Utility's negligence or wrongful acts in connection with this Agreement, and the Authority shall indemnify, defend, and hold harmless the Utility against any actions, claims, or damages arising out of the Authority's negligence, or wrongful acts, in connection with this Agreement, provided that if one party may not legally indemnify the other, then neither party shall indemnify the other. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall 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.

### **7.2 Survival**

This Article VII shall survive the termination of this Agreement.

## **ARTICLE VIII - MISCELLANEOUS**

### **8.1 Representation, Warrantees, Approvals**

The Parties represent and warrant to each other that upon execution of this Agreement: (a) the Parties have the power and authority to enter into this Agreement and to carry out their respective obligations hereunder; (b) the Parties have taken all legal actions necessary to authorize them to enter into and perform their respective obligations hereunder; (c) entering into and performing this Agreement does not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency, or governmental body or violate any agreement by which a Party is bound; (d) this Agreement has been duly entered into by the Party and constitutes a legal, valid, and binding obligation of the Party; (e) there is no litigation or proceeding pending or threatened against a Party which could materially or adversely affect the performance of this Agreement; and (f) the Parties have obtained all approvals as may be required to permit their respective performance of the obligations of this Agreement. Except as expressly provided herein, the Parties make no representations or warranties and waive no rights or remedies.

### **8.2 Amendment and Modification**

This Agreement shall only be modified or amended by a written agreement duly signed by the persons authorized to sign agreements on behalf of the Authority and the Utility. Any such amendments or modifications shall be numbered in ordinal sequence and titled accordingly.

### **8.3 Notices**

Any notices required in this Agreement shall be sent in writing, certified mail return receipt requested, to the Parties at the addresses listed below, unless either Party shall inform the other Party in writing of any change in that address.

If to the Authority:

Solid Waste Authority of Palm Beach County  
7501 North Jog Road  
West Palm Beach, Florida 33412  
Attention: Director of Engineering

If to the Utility:

Palm Beach County Water Utilities Department  
P.O. Box 16097  
West Palm Beach, FL 33416-6097  
Attention: Utilities Director

### **8.4 Assignment**

It is expressly understood and agreed that this Agreement is between the Authority and the Utility and that the Authority and the Utility shall have no right to assign this Agreement or any portion thereof without the prior approval of the other party.

### **8.5 Severability**

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of, or to, this Agreement or such other appropriate changes as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise effected by such action, remain in full force and effect.

### **8.6 Superseding of Prior Interlocal Agreement**

All prior versions of Interlocal Government Agreement for Biosolids Pelletization and Recycling entered into by and between the Parties are hereby superseded by this Agreement.

THE REMAINDER OF THIS PAGE IS BLANK

*IN WITNESS WHEREOF*, the SOLID WASTE AUTHORITY OF PALM BEACH COUNTY, at a regular meeting thereof, by action of the Authority Board authorizing and directing the foregoing to be adopted, has caused these presents to be signed by its Executive Director, and its seal to be hereto affixed, and the BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA has authorized and caused the execution of this Agreement, all as of the day, month, and year first above written.

**SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:**

By: \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Clerk of the Board

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
Counsel to the Authority

**BOARD OF COUNTY COMMISSIONERS  
OF PALM BEACH COUNTY FLORIDA:**

**CLERK OF CIRCUIT COURT**

By: \_\_\_\_\_  
Steven L. Abrams, Mayor

Attest: \_\_\_\_\_  
Palm Beach County Clerk

Approved as to Form and  
Legal Sufficiency:

Approved as to Terms and Conditions:

By:   
County Attorney

By:   
Department Director

Approved by Authority Board on \_\_\_\_\_, 2013, Item \_\_\_\_\_

Approved by the Utility on \_\_\_\_\_, 2013, Item \_\_\_\_\_

## EXHIBIT I

### A) SUMMARY OF CAPITAL COSTS B) LIST OF ORIGINAL PARTICIPANTS AND SHARES

#### A) Summary of Capital Costs

**Project Development:**

Right-of-Way Abandonment	25,305	
Preliminary Design & Permitting	934,239	
RFQ/RFP	498,000	
Grant Funding	290,867	
Infrastructure Design & Construction	3,059,073	
<b>Sub Total:</b>		<b>4,807,484</b>

**Project Capital Cost:**

Facility Construction	29,199,968	
Technical Services During Construction	3,054,778	
<b>Sub Total:</b>		<b><u>32,254,746</u></b>

**Total Development & Capital:** **37,062,230**

**Less Grant Funding:**

Original Grant	(3,225,000)	
Less Federal Admin Chrg.	51,500	
<b>Net Grant:</b>		<b><u>(3,173,500)</u></b>

**SubTotal:** **33,888,730**

Contingency ---0---

**Total Net Capital Cost** **33,888,730**

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<b>UTILITY original share = 27.5%</b>	<b>\$9,319,401</b>
Less Prepaid	<u>(155,000)</u>
<b>Net Total Due for UTILITY</b>	<b>\$9,164,401</b>
Less 9.68% Capacity Sale to ECR	<u>(2,817,749)</u>
<b>Net Final Capital Cost</b>	<b><u><u>\$6,346,652</u></u></b>

## EXHIBIT I

### B) List of Original Participants and Shares

Palm Beach County	Capacity Share	17.82%	
Water Utilities Department	Minimum Annual Commitment	16,261	WTY
P.O. Box 16097	Maximum Daily Delivery	107	WTD
West Palm Beach, Fl 33416-6097	Maximum Annual Delivery	33,822	WTY
South Central Regional Wastewater Treatment and Disposal Board	Capacity Share	14.75%	
1801 North Congress Ave	Minimum Annual Commitment	13,459	WTY
Delray Beach, FL 33445	Maximum Daily Delivery	89	WTD
	Maximum Annual Delivery	27,996	WTY
City of Boca Raton	Capacity Share	10.27%	
Utilities Department	Minimum Annual Commitment	9,371	WTY
201 West Palmetto Park Road	Maximum Daily Delivery	62	WTD
Boca Raton, Fl 33432-3795	Maximum Annual Delivery	19,492	WTY
Loxahatchee River	Capacity Share	8.96%	
Environmental Control District	Minimum Annual Commitment	8,176	WTY
2500 Jupiter Park Dr	Maximum Daily Delivery	54	WTD
Jupiter, Fl 33458-8964	Maximum Annual Delivery	17,006	WTY
Solid Waste Authority/Seacoast	Capacity Share	12.37%	
7501 North Jog Road	Minimum Annual Commitment	11,288	WTY
West Palm Beach, Fl 33412	Maximum Daily Delivery	73	WTD
	Maximum Annual Delivery	23,478	WTY
East Central Regional Wastewater Treatment Facilities Operation Board	Capacity Share	35.83%	
4325 N. Haverhill Road	Minimum Annual Commitment	32,695	WTY
West Palm Beach, Fl 33409	Maximum Daily Delivery	215	WTD
	Maximum Annual Delivery	68,005	WTY
<b>BPF O&amp;M Agreement Sections 2.01 (A) and 2.03 (A)</b>			
Capacity		100.00%	
Minimum annual delivery commitment		91,250	WTY
Fiscal Year average maximum daily Processing capacity		520	WTD
Maximum daily Processing capacity		600	WTD
Maximum annual Processing capacity		189,800	WTY

## EXHIBIT II

### BIOSOLIDS QUALITY SPECIFICATIONS

The successful operation of the Biosolids Processing Facility (BPF) requires that the Biosolids to be received meet the minimum requirements outlined below.

Biosolids shall have minimum solids content of 13 percent solids by weight, with a weekly average of not less than 15 percent solids. The facility shall have the right to reject any shipment that is below the 13 percent solids or that fails to meet the 15 percent average. No add mixtures or foreign material (i.e. Sawdust, etc.) will be accepted as a means to increase solids content.

No lime-stabilized Biosolids shall be Accepted by the BPF.

Digested sludge must meet class B standards for vector attraction and pathogen reduction as provided for in Chapter 62-640 F.A.C.

All Sludge shall be delivered to the BPF in covered watertight Semi-truck dumping trailers or dump trucks capable of dumping into a hopper from the rear of the truck.

Contributors to the BPF shall provide copies of their Biosolids monitoring and testing data that is required by their FDEP wastewater permit within 30 days of the date due to the FDEP.

Any facility may be restricted from the BPF if their sludge exceeds the ceiling that FL Chapter 62-640 defines as the Class AA biosolids metal limits (which match 40 CFR Part 503, Table 3) as listed below:

a. Arsenic	41 mg/kg dry weight basis
b. Cadmium	39 mg/kg dry weight basis
c. Copper	1500 mg/kg dry weight basis
d. Lead	300 mg/kg dry weight basis
e. Mercury	17 mg/kg dry weight basis
f. Molybdenum	75 mg/kg dry weight basis
g. Nickel	420 mg/kg dry weight basis
h. Selenium	100 mg/kg dry weight basis
i. Zinc	2800 mg/kg dry weight basis

The BPF shall only accept Biosolids as defined as "Residuals" or "Domestic Wastewater Residuals" in Chapter 62-640.200 (31) F.A.C., or as amended from time to time.

The BPF shall not accept any materials that are hazardous waste under Chapter 62-730, F.A.C., or as amended from time to time.



### EXHIBIT III

#### O & M COSTS PER TON AND ADJUSTMENTS

##### Base Processing Fee

Operator Contract Fee: 0 to 91,250 WTY	\$24.25
> 91, 250 to 104,000 WTY	12.50
> 104,000 WTY	11.00

##### Pass Through Costs Ton

Electric	\$6.42
Potable water	1.61
ISW	0.97
WW	1.39
Na Hypochlorite	0.62
Caustic	0.16
Natural Gas	8.85

**Sub Total** **\$20.02**

##### Solid Waste Authority Administration Costs/Ton

SWA Landfill Gas Delivery System O&M Cost/Ton	\$1.90
SWA Contract Management Cost/Ton	<u>2.50</u>
<b>Sub Total</b>	<b>4.40</b>

**Total O&M Cost/Ton** **\$48.67**

##### ADJUSTMENTS

1. The Base Processing Fee schedule, as set out above, shall be adjusted annually as set out in Section 3.01 of the O & M Agreement. The Authority shall submit a notice of the adjustment not later than September 1st of each year by letter to the Utility at the address set forth in Section 8.3 of this Agreement.
2. The Pass Through Costs/Ton, as set out above, shall be adjusted annually based on the Maximum Utility Utilization Guarantee as set out in Section 3.01 of the O&M Agreement and the estimated unit price per item.
3. SWA Landfill Gas Delivery System O&M Costs/Ton, as set out above, shall be adjusted annually based on the minimum delivery as set out in Section 2.01 of the O&M Agreement and approved Authority operating budget for the landfill gas delivery system.
4. SWA Contract Management Costs/Ton, as set out above, shall be adjusted annually based on the minimum delivery as set out in Section 2.01 of the O&M Agreement and approved Authority operating budget for the BPF

**EXHIBIT IV**  
**DESIGN AND CONSTRUCTION AGREEMENT FOR BIOSOLIDS**  
**PROCESSING FACILITY**

**ON FILE AT THE AUTHORITY'S ENGINEERING OFFICE**

**EXHIBIT V**

**OPERATIONS AND MAINTENANCE AGREEMENT FOR  
BIOSOLIDS PROCESSING FACILITY**

**ON FILE AT THE AUTHORITY'S ENGINEERING OFFICE**

**EXHIBIT VI  
GAS BLENDER PURCHASE TERMS**

The Authority has preliminarily approved a Gas Blender capital project to allow Authority Landfill Gas to be used in the second train of the BPF. Based on the 60% design, estimated total cost is not to exceed (NTE) \$750,000. The Utility's share of the total project cost of the Gas Blender is set out in the COST SHARE TABLE below. The NTE project cost will not increase without additional approval from Utility. The Utility agrees to promptly pay its share of the capital cost of the Gas Blender which will be billed to Utility monthly, together with the other Participants, as the Authority incurs project expenses.

**COST SHARE TABLE:**

<u>Partner</u>	<u>%</u>	<u>\$Amount</u>
Palm Bch. Co.	17.82	133,650
So. Central	14.75	110,625
Boca Raton	10.27	77,025
LRECD	8.96	67,200
ECR	35.83	268,725
SWA	12.37	92,775
<b>Total</b>	<b>100%</b>	<b>\$750,000</b>