

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

Meeting Date: **January 14, 2014** Consent Regular
Public Hearing

Department: **Water Utilities Department**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Interlocal Agreement (Agreement) with the Village of Palm Springs (Village) for the purchase and sale of bulk wastewater services.

Summary: In order to ensure the most efficient delivery of wastewater service in Palm Beach County, the County has encouraged the use of cooperative agreements with neighboring public utilities. This Agreement provides the Village with short-term emergency wastewater service and long-term bulk wastewater service. The Commodity Fee for short-term emergency wastewater service is set at \$1.70 per 1,000 gallons of wastewater to be indexed annually. The Commodity Fee for long-term bulk wastewater service is set at \$2.04 per 1,000 gallons of wastewater also to be indexed annually. All service will be considered to be emergency service unless the Village elects to exercise the bulk wastewater service option by written notice to the County prior to October 1, 2018. In addition, the Village must also provide the County written consent from the East Central Regional Wastewater Treatment Facilities Operation Board. The Village is responsible for all costs of construction for interconnect facilities. Districts 2 & 3 (MJ)

Background and Justification: The County and the Village are currently parties to a 2011 Bulk Wastewater Agreement (R2011-1102) that authorizes the County to accept wastewater flows from the Village's western portion of their service area. This Agreement authorizes both short-term emergency and long-term bulk wastewater service to the eastern portion of the Village's service area.

Attachments:

1. Location Map
 2. One (1) Copy of Resolution No. 2013-65
 3. Three (3) Original Agreements
-

Recommended By:  1/6/14
Department Director Date

Approved By:  1/7/14
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Expenses	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 4000 Dept 720 Unit 4200 Rsrc 6992

Is Item Included in Current Budget? Yes No

Reporting Category N/A

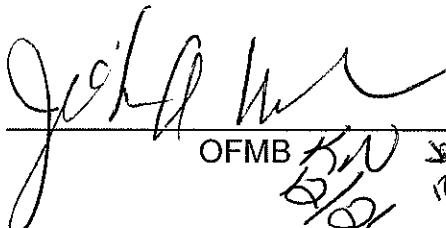
B. Recommended Sources of Funds/Summary of Fiscal Impact:

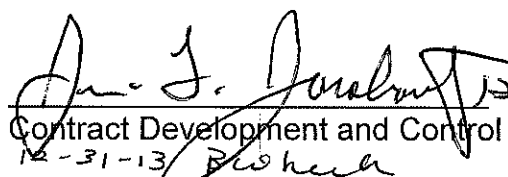
Currently, these services are provided for entirely by the City of Lake Worth. Therefore, revenues realized from the Village as a result of this Agreement are unknown.

C. Department Fiscal Review: Delmar West

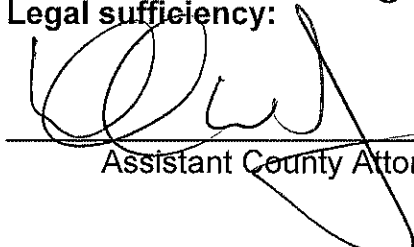
III. REVIEW COMMENTS

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


 OFMB *HW* *5/2/13* *1401*


 Contract Development and Control *12/31/13* *Blush*

B. Legal sufficiency:


 Assistant County Attorney *1/6/14*

C. Other Department Review:

 Department Director



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

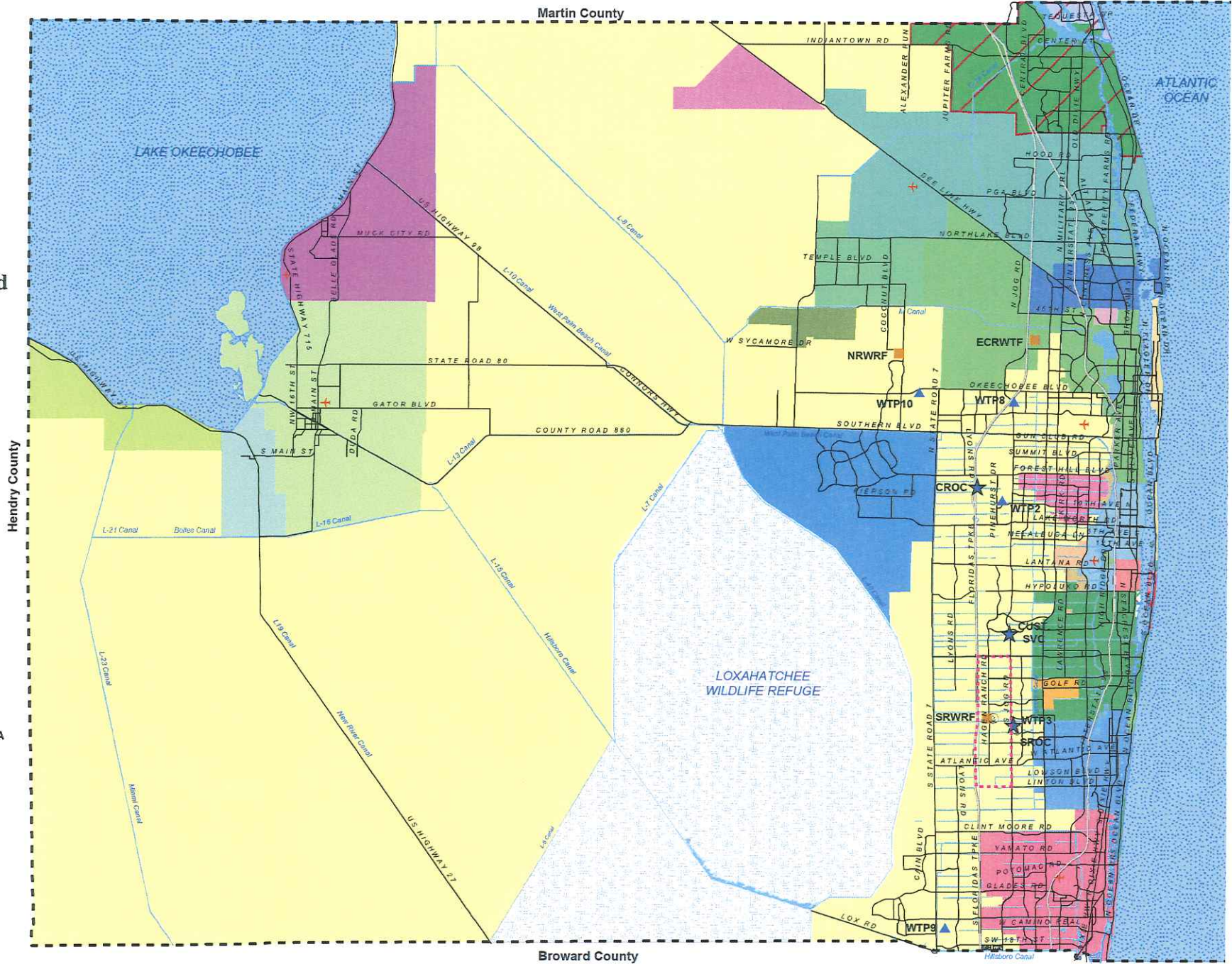
Attachment 1

Legend

- P.B.C.W.U.D. SA
- MANDATORY RECLAIMED SA
- Palm Beach County Limits
- Administration
- Water Reclamation Facility
- Water Treatment Facility
- Wetlands



NOT TO SCALE



RESOLUTION NO. 2013-65

A RESOLUTION OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH PALM BEACH COUNTY FOR THE PURCHASE AND SALE OF EMERGENCY/BULK WASTEWATER TRANSMISSION, TREATMENT AND DISPOSAL SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Palm Springs has a need for wastewater services on a short-term basis; and in the future a possible need on a long-term basis; and

WHEREAS, Palm Beach County and the Village provide wastewater services in contiguous areas of Palm Beach County; and

WHEREAS, Palm Beach County and the Village wish to enter into this Agreement as it serves the best interests of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF PALM SPRINGS, FLORIDA, AS FOLLOWS:

Section 1. The Village of Palm Springs, Florida hereby agrees to the terms and condition of that certain Interlocal Agreement for the Purchase and Sale of Emergency/Bulk Wastewater Transmission, Treatment and Disposal Services, a copy of which is attached hereto as **Exhibit "A"**, and which is incorporated herein by reference, and further authorizes the Mayor and Village Clerk to execute and deliver said Agreement to the Department Manager of Palm Beach County Water Utilities Department, 8100 Forest Hill Boulevard, P.O. Box 16097, West Palm Beach, FL 33416-6097, along with a certified copy of this Resolution.

Section 2. This Resolution shall take effect immediately upon its passage.

Resolution No. 2013-65

Council Member Waller offered the foregoing resolution.

Council Member Brinkman seconded the motion, and upon being put to a vote, the vote was as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
BEV SMITH, MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PATTI WALLER, VICE MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SERGIO ESCALADA, MAYOR PRO TEM	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JONI BRINKMAN, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOUG GUNTHER, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

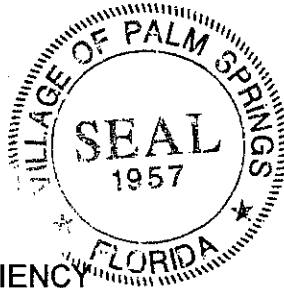
The Mayor thereupon declared the Resolution duly passed and adopted this 12th day of DECEMBER 2013.

VILLAGE OF PALM SPRINGS, FLORIDA

BY: [Signature]
BEV SMITH, MAYOR

ATTEST:

BY: Virginia M. Walton
VIRGINIA M. WALTON, VILLAGE CLERK



REVIEWED FOR FORM AND LEGAL SUFFICIENCY

BY: [Signature]
GLEN J. TORCVIA, VILLAGE ATTORNEY

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE
VILLAGE OF PALM SPRINGS FOR THE PURCHASE AND SALE OF EMERGENCY/
BULK WASTEWATER TRANSMISSION, TREATMENT, AND DISPOSAL SERVICE**

THIS AGREEMENT made and entered into this _____ day of _____, 2013, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), and the **VILLAGE OF PALM SPRINGS, FLORIDA**, a municipality organized under the laws of the State of Florida (hereinafter "Village").

WITNESSETH

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

WHEREAS, the County and the Village provide Wastewater services in contiguous areas of Palm Beach County; and

WHEREAS, the Village has a need for Emergency Wastewater Service on a short-term basis; and

WHEREAS, in the future, Village may have the need for Bulk Wastewater Service on a long-term basis; and

WHEREAS, the County is able to provide the Village with both short-term Emergency Wastewater Service and long-term Bulk Wastewater Service; and

WHEREAS, this Agreement is in the best interests of the public and therefore the parties desire to enter into this Agreement.

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

1. **Recitals.** The foregoing statements are true and correct and are incorporated herein by reference.
2. **Term.** The term of this Agreement shall commence upon execution by both parties and shall continue in full force and effect for a period of thirty (30) years unless otherwise terminated in accordance with this Agreement.
3. **Effective Date.** This Agreement shall become effective upon approval by both parties. The Effective Date of this Agreement shall be the date the Agreement is approved by the Palm Beach

County Board of County Commissioners.

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

(a) "Bulk Interlocal Agreement" means the Interlocal Agreement between the County and the Village for the Purchase and Sale of Bulk Wastewater Transmission, Treatment, and Disposal Service/Emergency Potable Water Interconnects, dated July 19, 2011 (County Resolution No. 2011-1102).

(b) "Bulk Commodity Fee" means the fee for Bulk Wastewater Service to be paid to the County by the Village per 1,000 gallons of Wastewater passing through the Meter. The Bulk Commodity Fee will only apply if the Option to purchase Bulk Wastewater Service is exercised. The Bulk Commodity Fee is currently \$2.04/thousand gallons and shall be indexed and adjusted in the same manner as the Commodity Fee set forth in the Bulk Interlocal Agreement. If the Bulk Interlocal Agreement is terminated or expires during the term of this Agreement, the parties will modify this Agreement to establish a new Bulk Commodity Fee.

(c) "Bulk Wastewater Service" means the regular, long-term, transmission, treatment, and disposal by the County of the Village's Wastewater passing through the Point of Service.

(d) "County's Wastewater System" means the system owned and/or operated by the County for the collection and transmission of Wastewater for treatment and disposal, said system being located on the County's side of the Point of Service.

(e) "Emergency Commodity Fee" means the fee for Emergency Wastewater Service to be paid to the County by the Village per 1,000 gallons of Wastewater passing through the Meter. The Emergency Commodity Fee shall be utilized prior to the exercise of the Option, and, if the Option is not exercised, for the Term of this Agreement. The Emergency Commodity Fee is currently \$1.70/thousand gallons and shall be indexed and adjusted in the same manner as the O&M Rate set forth in the Bulk Interlocal Agreement. If the Bulk Interlocal Agreement is terminated or expires during the term of this Agreement, the parties will modify this Agreement to establish a new Emergency Commodity Fee.

(f) "Emergency Wastewater Service" means the short-term, temporary, transmission, treatment, and disposal by the County of the Village's Wastewater passing through the Point of Service in emergency circumstances, as more fully set forth in Section 7 herein.

(g) "Interconnect Facilities" means the facilities to be constructed by the Village pursuant to this Agreement to connect the County's Wastewater System and the Village's Wastewater System, as shown in the drawings prepared by Eckler Engineering, Project #400-022.01, "Florida Mango Force Main/PBCWUD Interconnect for the Village of Palm Springs, Florida" a copy of which is located at the Palm Beach County Water Utilities Central Region Operations Center, at the address listed below. For purposes of this Agreement, the Interconnect Facilities shall include the Meter and appurtenant facilities located at the Point of Service, as well as the approximately 2800 feet of 24" Wastewater pipeline being constructed by the Village to connect

the Village's Wastewater System to the County's Wastewater System.

(h) "Meter" means the wastewater flow meter used to measure the quantity of Wastewater provided by the Village to the County in accordance with this Agreement.

(i) "Option" has the meaning set forth in Section 8.

(j) "Option Extension" has the meaning set forth in Section 8.

(k) "Point of Service" means that location where the County's Wastewater System and the Village's Wastewater System connect. The County will own, operate, and maintain the Emergency Interconnect Facilities located on the County's side of the Point of Service, including the Meter, and the Village will own, operate, and maintain the Emergency Interconnect Facilities located on the Village's side of the Point of Service. The Point of Service is depicted on **Exhibit "A"**, which is attached hereto and incorporated herein.

(l) "Village's Wastewater System" means the system owned and/or operated by the Village for the collection and transmission of Wastewater, said system being located on the Village's side of the Point of Service.

(m) "Wastewater" means liquid and water-carried industrial, domestic, medical, food, superfluous solid, gaseous material, holding tank or other wastes from dwelling units, commercial establishments and manufacturing units, whether treated or untreated.

5. **Scope of Agreement.** The County agrees to furnish, and the Village agrees to purchase, Emergency Wastewater Service, and, if the Village exercises the Option set forth in Section 8, Bulk Wastewater Service, in accordance with this Agreement.

6. **Interconnect Costs.** The Village shall be responsible for all costs of construction of the Interconnect Facilities. Prior to construction, Village shall provide the County with the design of the Interconnect Facilities for the County's approval, which shall be required prior to commencement of construction. Following completion of construction, the Village shall transfer ownership of the Interconnect Facilities located on the County's side of the Point of Service by bill of sale, and the County shall own, operate, and maintain that portion of the Interconnect Facilities. The Village shall obtain any necessary easements, licenses, or other required approvals in order to construct the Interconnect Facilities.

7. **Emergency Wastewater Service.** Unless and until the Option is exercised, the Interconnect Facilities shall be utilized only for Emergency Wastewater Service, for periods of limited duration, and shall not be a substitute for Bulk Wastewater Service. For purposes of this Agreement, an emergency is defined as any event which causes a shortage in the Village's Wastewater transmission, treatment, and disposal capacity. The Director of Palm Beach County Water Utilities Department, or designee, is authorized to act on behalf of the County and the Village Manager, or designee, is authorized to act on behalf of the Village. In case of an emergency, the Village shall provide written or verbal notice to the County setting forth the emergency and the estimated flowage and time of use. If said communication is made verbally, same shall be immediately

followed by a written communication. Notwithstanding the provisions of Section 7.1.6, termination of Emergency Wastewater Service shall be handled by the same procedure.

7.1 **Conditions of Emergency Wastewater Service.** Emergency Wastewater Service shall only be provided in the case of an emergency and upon the following terms and conditions to be determined by the County:

7.1.1 There must be a sufficient surplus of Wastewater transmission, treatment, and disposal capacity in the County's Wastewater System to meet all the anticipated needs of the Village.

7.1.2 The County may reasonably limit the amount of Emergency Wastewater Service to be supplied.

7.1.3 The County determines that the provision of Emergency Wastewater Service to the Village will not impose a danger to the health, safety or welfare of its citizens.

7.1.4 The County may reasonably limit the hours or days of Emergency Wastewater Service.

7.1.5 The County may require the Village to impose use restrictions on its customers prescribed by the County.

7.1.6 With prior written notice to the Village the County may place a reasonable termination date for the supply of Emergency Wastewater Service.

7.1.7 Village expressly acknowledges the right of the County to refuse to provide Emergency Wastewater Service pursuant to this Agreement, if the County determines that the provision of such service would not be in its best interest or would constitute a danger to the health, safety, or welfare of its citizens. In the event of such a refusal, the Village agrees to waive any and all claims of loss or damage against the County.

7.2 **Flushing of Interconnect Facilities.** Unless and until the Option is exercised, as the Interconnect Facilities will be utilized for emergency usage only, the Interconnect Facilities will be subject to extended periods of nonuse. Therefore, in order to maintain the Interconnect Facilities in good working order, they will need to be flushed on a regular basis. If, at any time during the term of this Agreement, the Interconnect Facilities are not utilized for a three (3) month period, the Village shall be required to flush the Interconnect Facilities at their own expense. Village shall be charged the Emergency Commodity Fee for Wastewater passing through the Meter during a flushing event. The Meter shall be read and documented concurrently by the County and Village prior to each flushing, and immediately following each termination of flushing. At least 48 hours prior to flushing the Interconnect Facilities, Village shall notify the County's Director of O&M, Lines Division, at 561-493-6031. Flushing shall not occur on holidays or weekends, and shall be for a predetermined duration agreed to by the Village and County.

7.3 **Payment of Bills-Emergency Wastewater Service.** When Emergency Wastewater

Service is utilized, the Meter shall be read and documented concurrently by the County and Village prior to each initialization of Emergency Wastewater Service, and immediately following each termination of Emergency Wastewater Service. County shall then invoice the Village based on the prevailing Emergency Commodity Fee, and the Village shall make full payment to the County within thirty (30) days from the date the bill is rendered by the County. A past due notice will be mailed by the County to the Village after thirty (30) days. If payment has not been received after sixty (60) days from the date of the original bill, the County may refuse to provide additional Emergency Wastewater Service to the Village and a one percent (1%) per month interest charge will be assessed on the outstanding balance. If Village is in dispute of an invoice, the Village shall notify the County in writing of its disagreement with such invoice within fifteen (15) calendar days of receipt of said invoice, but Village shall still be required to submit funds for such disputed invoice to the County in accordance with this Section, and will be subject to any applicable penalties for non-payment. Following said notice, the Director of the County's Water Utilities Department, or designee, and the Village Manager, or designee, shall work to resolve any billing dispute. Upon resolution of the invoice dispute, the Village shall be reimbursed (or credited, as directed by the Village) for any funds paid to the County in excess of the final decision in such dispute. Should the parties fail to reach a mutually acceptable resolution, either party may seek any available legal remedy in relation to the disputed invoice.

8. Bulk Wastewater Service – Option. County hereby grants Village an option to elect to convert this Agreement from an Emergency Wastewater Service Agreement to a Bulk Wastewater Service Agreement (the "Option"). In order for the Village to exercise the Option, Village must, prior to October 1, 2018, provide the following to the County: (a) written notice, in accordance with the notice provisions of Section 21 below, of the Village's intent to exercise the Option; (b) written confirmation that the Village has complied with all provisions and prerequisites regarding termination of that Interlocal Wastewater Service and Wastewater Facilities Cost Sharing Agreement between the City of Lake Worth, City of Atlantis, Town of Lantana, Town of Manalapan, Town of Palm Beach, Village of Palm Springs, Town of South Palm Beach, and Palm Beach College dated March 27, 2013; and (c) written consent from the East Central Regional Wastewater Treatment Facilities Operation Board to the Village's exercise of the Option. Village may also request a five year extension for the exercise of the Option (the "Option Extension") by providing written notice to the County no later than ninety (90) days prior to October 1, 2018. County shall be under no obligation to grant the Option Extension. The Village's request for the Option Extension may be made by the Village Manager, or designee, and the County's decision to grant or not grant the Option Extension may be made by the Director of the County's Water Utilities Department, or designee. In addition, the County may terminate the Option Extension at any time during the term of such Option Extension by providing one hundred eighty (180) days written notice to the Village. Upon receipt of such notice, Village may opt to exercise the Option as of the termination date by complying with the prerequisites set forth herein, or to continue to utilize this Agreement for Emergency Wastewater Service only for the remainder of the Term of this Agreement.

8.1 Conditions of Bulk Wastewater Service. The County shall provide the Village with Bulk Wastewater Service at the Point of Service at the varying flow rates required by the Village, up to 3.343 MGD. The County may accept additional Wastewater at the Point of Service beyond this amount but is under no obligation to do so. No fee for the reservation of capacity in the

County's Wastewater System is required. Village shall pay the County the Bulk Commodity Fee in accordance with the procedure described in Section 8.2.

8.2 **Bulk Wastewater Service – Payment.** The County will bill the Village for Bulk Wastewater Service on a monthly basis. The Village agrees to pay for all Wastewater delivered to the County and make payments to the County within thirty (30) days from the date the bill is rendered by the County. A past due notice will be mailed by the County to the Village after thirty (30) days. If payment has not been received after sixty (60) days from the date of the original bill, service may be disconnected and a one percent (1%) per month interest charge will be assessed on the outstanding balance. If Village is in dispute of an invoice, the Village shall notify the County in writing of its disagreement with such invoice within fifteen (15) calendar days of receipt of said invoice, but Village shall still be required to submit funds for such disputed invoice to the County in accordance with this Section, and will be subject to any applicable penalties for non-payment. Following said notice, the Director of the County's Water Utilities Department, or designee, and the Village Manager, or designee, shall work to resolve any billing dispute. Upon resolution of the invoice dispute, the Village shall be reimbursed (or credited, as directed by the Village) for any funds paid to the County in excess of the final decision in such dispute. Should the parties fail to reach a mutually acceptable resolution, either party may seek any available legal remedy in relation to the disputed invoice.

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

10. **Time Period Limitation In Case of Meter Inaccuracy.** Both parties agree that, should the Meter be found to be inaccurate beyond applicable industry standards, the Meter will be assumed to have been inaccurate since the time of the event failure or since the last Meter inspection or for a period of three months, whichever time should be less, and that the following month's billing will be adjusted to show a credit or additional charge to the Village for that period, based upon the method established in Section 11 herein.

11. **Presumed Flowage and Required Payment In Case of Meter Inaccuracy.** Both parties agree, that if at any time the Meter shall be inaccurate with respect to the quantity of Wastewater flowage as provided in Section 10 above, the Village will pay to the County a daily amount equal to the average Wastewater flowage of the one (1) year period prior to the date the Meter became inaccurate multiplied by the Bulk Commodity Fee in effect. The parties agree that the foregoing will not provide an accurate snapshot of usage if only Emergency Wastewater Service is being provided. In such a case, the Parties shall agree upon an appropriate charge to the Village.

12 **Security.** The Interconnect Facilities will be controlled by valves which can be operated by authorized representatives of both the County and the Village. Only authorized employees of either the County or the Village will operate the valves controlling the Interconnect Facilities.

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

14. **No Transfer of Powers.** Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Agreement is solely an Agreement to provide services as authorized in Florida Statutes, Chapter 163. The governing bodies for the County and the Village shall each maintain all legislative authority with regard to their respective political subdivision. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules, and pensions and relief, disability, workers compensation and other benefits which apply to the activity of officers, agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement.

15. **Indemnification.** The County and the Village acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. The County and the Village agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

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

17. **Remedies.** This Agreement shall be governed by the laws of the State of Florida. Any and all

legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.

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

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

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

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

Village of Palm Springs
Attention: Village Manager
226 Cypress Lane
Palm Springs, FL 33461-1699

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

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

with a copy not to constitute notice to:

County Attorney
301 North Olive Ave.
Suite 601
West Palm Beach, FL 33401

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

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

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

25. **Palm Beach County Office of the Inspector General.** Pursuant to Ordinance No. 2009-049, as amended, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All parties doing business with the County shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the Village, its officers, agents, employees, and lobbyists in order to ensure compliance with the agreement specifications and to detect waste, corruption and fraud.

26. **No Third Party Beneficiary.** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the Village.

27. **Non-Discrimination.** County and Village assures and certifies that they shall comply with Title VII of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, or gender identity or expression, during their performance of this Agreement.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

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

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Priscilla A. Taylor, Mayor

(SEAL)

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: _____
Director of Water Utilities

ATTEST:

VILLAGE OF PALM SPRINGS, FLORIDA
BY ITS VILLAGE COUNCIL

By: _____
Clerk

By: _____
Mayor

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

By: _____
Village Attorney

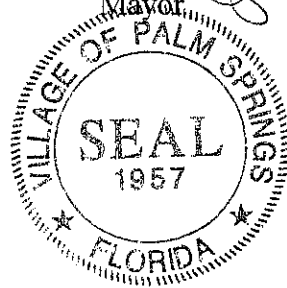


EXHIBIT "A"
POINT OF SERVICE

EXHIBIT "A"



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

- Legend
- P.B.C. W.U.D. SA
 - MANDATORY RECLAIMED SA
 - - - Palm Beach County Limits
 - ★ Administration
 - Water Reclamation Facility
 - ▲ Water Treatment Facility
 - ⊕ Wetlands



SEP 10 2009

