

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: November 18, 2014 Consent [X] Regular []
Public Hearings []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Interlocal Agreement (Agreement) with the Town of Lake Clarke Shores (Town) for the purchase and sale of Bulk Wastewater Service.

Summary: In order to ensure the most efficient delivery of wastewater service, Palm Beach County (County) has encouraged the use of cooperative agreements with other municipalities. This Agreement provides the Town with up to 300,000 gallons per day of bulk wastewater service during the 30 year term at an initial first year cost of our standard bulk rate of \$2.37 per thousand gallons delivered. This new Bulk Wastewater Agreement will benefit existing and future Town and County utility customers by ensuring the most efficient delivery of public utility services. The rate includes costs associated with the transmission and treatment of wastewater. The rate will be adjusted annually beginning on October 1, 2015, by the price index with a minimum three (3) percent increase. District 3 (MJ)

Background and Justification: The County and the Town are currently parties to a 2010 Bulk Potable Water Agreement (R2010-0206) that authorized the County and the Town to purchase up to 400,000 gallons per day.

- Attachments:**
- 1. Location Map
 - 2. Two (2) Original Agreements

Recommended By: Jim Stiles 10-29-14
Department Director Date

Approved By: Sharon [Signature] 11-5-14
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	0	0	0	0	0
External Revenues	(\$259,515)	(\$267,300)	(\$275,319)	(\$283,579)	(\$292,086)
Operating Expenses	0	0	0	0	0
In-Kind Match County	0	0	0	0	0
NET FISCAL IMPACT	(\$259,515)	(\$267,300)	(\$275,319)	(\$283,579)	(\$292,086)
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0

Budget Account No.: Fund 4000 Dept 720 Unit 4200 Rsrc 4365

Is Item Included in Current Budget? Yes No X

Reporting Category N/A

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

Revenue estimates include wastewater full cost recovery fees to be indexed annually. The marginal costs associated with transmitting and treating WUD's next 300,000 gallons of wastewater will be minimal, as the relatively small amount of flows will not cause the utility to hire additional workers or significantly increase treatment costs.

C. Department Fiscal Review: Delta M. West

III. REVIEW COMMENTS

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

10/30/14 OFMB 10/30/14

Contract Development and Control 10-31-14

B. Legal sufficiency:

11/4/14 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**

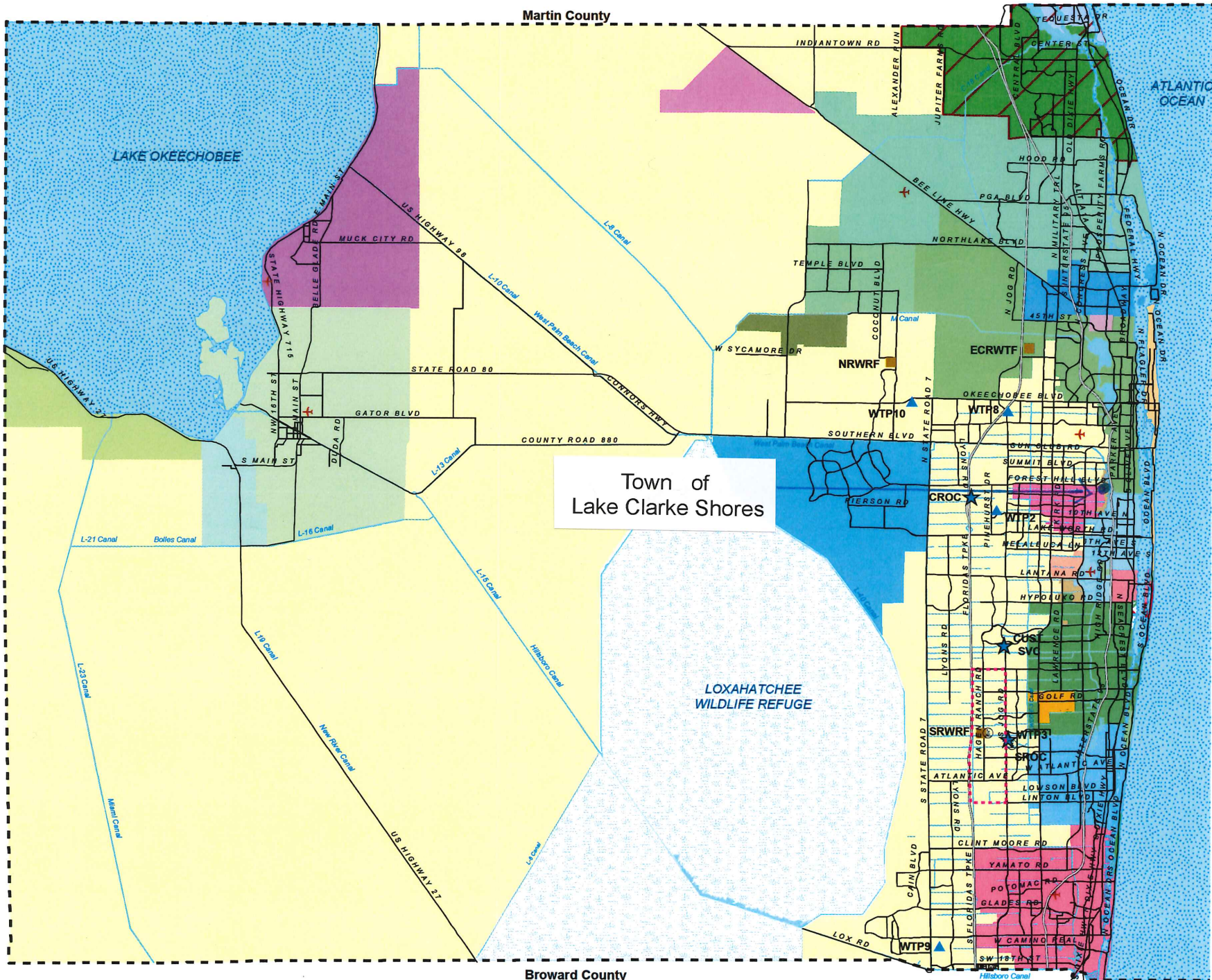
Attachment 1

Hendry County

Martin County

Broward County

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



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

THIS AGREEMENT made and entered into this _____ day of _____, 2014, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), and the **TOWN OF LAKE CLARKE SHORES**, a separate legal public entity created pursuant to the provisions of Chapter 163, Florida Statutes (hereinafter "Town").

W I T N E S S E T H

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 economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the Town wishes to purchase bulk Wastewater Service from the County for the benefit of Town customers; and

WHEREAS, the County wishes to sell to the Town bulk Wastewater service pursuant to the terms and conditions of this Agreement; and

WHEREAS, to prevent duplication of Wastewater service delivery systems, the parties desire to enter into this Agreement.

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

1. Recitals. The foregoing statements are true and correct.
2. Term. Notwithstanding the Effective Date, the Initial Term of the Agreement shall commence on the Service Initiation Date and extend for a period of up to thirty (30) years.
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 ratified by the County.
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) **"Town's Wastewater System"** – the system owned and/or operated by the Town for the collection and pumping of Wastewater within the Town's Wastewater

Service Area, said system being located on the Town's side of the various Wastewater Points of Connection.

- (b) **"Average Daily Flow"** – The average daily flow rate of Wastewater collectively measured through all Wastewater Points of Connection. The Average Daily Flow rate for Wastewater is calculated by dividing the total amount of Wastewater flowing through the Wastewater Points of Connection in any one calendar year by the number of days in that same calendar year.
- (c) **"Commodity Fee"** – a fee to be paid by the Town to the County on a monthly basis during the term of this Agreement. The Sewer Commodity Fee is intended to address the County's cost of receiving, pumping, treating and disposing of Wastewater delivered to County at the various Wastewater Points of Connection, and is charged per one thousand (1,000) gallons of measured Wastewater delivered by the Town to the County to the various Wastewater Points of Connection.
- (d) **"County's Wastewater System"** – the system owned and/or operated by the County for the collection and pumping of Wastewater within the County's Wastewater Service Area, said system being located on the County's side of the various Wastewater Points of Connection.
- (e) **"Points of Connection"** – locations where the County's Wastewater System is connected with the Town's Wastewater System, all as mutually agreed by the parties. The County's Wastewater System shall be defined to include the master Wastewater meters and related appurtenances located at each Point of Connection, with said master meters being utilized for the measurement and payment of Wastewater Service purchased by the Town.
- (f) **"Price Index"** is defined to be one-half of the Gross Domestic Product Implicit Price Deflator as published by the United States Department of Labor, Bureau of Labor Statistics Data, Water and Sewerage Maintenance ("Gross Domestic Product Implicit Price Deflator"), or three percent (3%), whichever is less as measured on an annual basis using the most recently-published data as of the date of application.
- (g) **"Wastewater"** – Liquid and water-carried industrial, domestic, medical, food, superfluous solid, gaseous material, holding tank or other wastes from dwelling units, commercial establishments, and/or manufacturing facilities, whether treated or untreated, as defined in the County's Uniform and Policies Procedures Manual (UPAP).
- (h) **"Service Initiation Date"** –For Wastewater service, the date the County begins providing Wastewater service to Town at the Wastewater Points of Connection.
- (i) **"UPAP"** – the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as may be amended from time to time.

5. Scope of Agreement. The County agrees to accept, and the Town agrees to convey, Wastewater to the Points of Connection in accordance with the terms and conditions of this Agreement.
6. Wastewater Service. The Town may deliver, and the County shall accept varying Wastewater flow rates required by the Town, not to exceed Average Daily Flow rate of three hundred thousand (300,000) gallons per day, during the Term of the Agreement. The initial Wastewater Commodity Fee shall be \$2.37 per thousand gallons delivered to the Points of Connection. Beginning on October 1, 2015, and for each year thereafter, the Wastewater Commodity Fee shall be adjusted by the Price Index.
7. **Intentionally Left Blank.**
8. **Intentionally Left Blank.**
9. Additional Responsibilities of County. The County shall provide for the design, construction, operation and maintenance of the County's Wastewater System, up to and including the Points of Connection, including the design and construction of any Wastewater meters and related appurtenances. The County shall be responsible for the securing of any permits or other approvals necessary to provide Wastewater service to the Town at the various Points of Connection.
10. Additional Responsibilities of the Town. The Town shall comply with all applicable local, State and Federal laws and regulations for the use and sale of collection and pumping of Wastewater. The Town shall be responsible for the securing of any permits or other approvals necessary to provide Wastewater Service to any customers within the Town's service area.
11. Wastewater Pretreatment. The Town shall ensure that all Wastewater delivered to the County shall meet the County's pretreatment standards, as they may be amended from time to time, at the Points of Connection for Wastewater.
12. Payment of Bills. The County will bill the Town Commodity Fees on a monthly basis. The Town agrees to pay for all Wastewater Service received from the County and make payments to the County within thirty (30) days from the date the bill is rendered by County. A past due notice will be mailed by the County to the Town after thirty (30) days. If payment has not been received after sixty (60) days from the date of the original bill, service may be disconnected and a one percent (1%) per month interest charge will be assessed on the outstanding balance.
13. County to Maintain Master Meters. The County agrees to have an annual inspection and report prepared regarding the condition and accuracy of the master Wastewater Service meters. A copy of the annual report on meter inspection shall be furnished to the Town. The Town shall have the right to make its own meter inspection, or to have an independent company inspect the metering equipment at any time; provided, however, no such inspection shall be made unless the Town shall first give the County written notice of the

date and time of its intent to have the inspection made, nor shall any such inspection be made prior to twenty-four (24) hours, excluding Saturdays, Sundays, and holidays, subsequent to the receipt of said notice by the County. All costs and expenses of the Town's interim inspection shall be borne by the Town. If the meter is found not to be in good working order, the County shall reimburse the Town the cost incurred as a result of the interim inspection. Normal maintenance of the Wastewater master meters shall be performed by the County at the County's sole cost and expense.

14. Time Period Limitation In Case of Master Meter Inaccuracy. Both parties agree that, should a master meter be found to be inaccurate beyond American Water Works Association (AWWA) standards, the meter will be assumed to have been inaccurate since the time of the event failure or since the last meter inspection or for a period of three (3) months, whichever time should be less, and that the following month's billing will be adjusted to show a credit or additional charge to the Town for that period, based upon the method established in Article 15 herein.
15. Presumed Consumption and Required Payment in Case of Master Meter Inaccuracy. Both parties agree that if at any time a master meter shall be inaccurate with respect to the quantity of consumption by the Town. The Town will pay to the County a daily amount equal to the average consumption of the ninety (90) day period prior to the date the meter became inaccurate multiplied by the rate in effect.
16. Security. The parties shall be responsible jointly and severally for security of the Points of Connection, including provision of access locking features so that each party can have keyed access to the vault. The Points of Connection will be controlled by valves which can be operated by authorized representatives of either the County or the Town. Only authorized employees of either County or Town will operate the valves controlling the Points of Connection. The County and the Town shall provide prior notice to each other prior to operating the valves at the Points of Connection.
17. Termination.

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

Without Cause: The Town may terminate this Agreement at the discretion of the Town Board without a statement of cause to the County at any time during the term of this Agreement with six (6) months written notice.

18. No Transfer of Powers. Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Agreement is solely an Agreement to provide services as authorized in Florida Statutes, Chapter 163. The governing bodies for the County and the Town shall each maintain all legislative Town 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 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.
19. Indemnification. The County and the Town acknowledge the partial waiver of sovereign immunity for liability in tort contained in Florida Statutes 768.28 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. To the extent permitted by Florida law and subject to the limitations contained in F.S. 768.28, the County and the Town agree to be responsible for their own negligence. 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.
20. Force Majeure. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or water plan failures and water main breaks, neither party shall be liable for such non-performance.
21. 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.
22. Successors and Assigns. The County and the Town 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 Town shall assign, sublet, convey or transfer its interest in this Agreement without prior written consent of the other.

23. 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 to 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.
24. 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.
25. Notice. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to the Town, shall be mailed or delivered to the Town at:

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

And if to County, shall be mailed or delivered to:

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

26. Filing. This Agreement shall be filed with the Clerk of the Circuit Court for Palm Beach County.
27. Amendment and Modification. This Agreement may only be amended, modified, changed, supplemented, or discharged by an instrument in writing signed by the parties hereto.
28. Entirety of Agreement. The County and the Town agree that this Agreement and any Exhibits hereto set forth the entire agreement between the parties, and that there are not 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.
29. Inspector General

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed

County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

30. 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 Town.

31. Non-Discrimination. The parties agree and certify 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, gender identity or expression, or genetic information during their performance of this Agreement.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

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

AS TO COUNTY:

ATTEST:

Sharon R. Bock, Clerk and Comptroller

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Clerk

By: _____
_____, Mayor

(SEAL)

APPROVED AS TO FORM AND TO
SUFFICIENCY

APPROVED AS TO TERMS AND LEGAL
CONDITIONS

By: _____
County Attorney

By: Jim Stiles
Department Director of Water Utilities

AS TO TOWN:

ATTEST:

TOWN OF LAKE CLARKE SHORES

By: Mary Pinkerman
Town Clerk

By: [Signature]
Valentin Rodriguez, Jr., Mayor

APPROVED AS TO FORM AND TO LEGAL
SUFFICIENCY

By: Charles P. Bock
Town Attorney