

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: December 15, 2015

Consent [X]
Public Hearing []

Regular []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: **A)** First Amendment to Interlocal Agreement Between Palm Beach County and the Town of Lake Clarke Shores Related to Potable Water, Wastewater, and Reclaimed Water Service Areas and; **B)** First Amendment to the Interlocal Agreement Between Palm Beach County and the Town of Lake Clarke Shores for the Purchase and Sale of Bulk Potable Water.

Summary: On July 7, 2009, the County and the Town of Lake Clarke Shores (Town) entered into an Interlocal Agreement related to Potable Water, Wastewater, and Reclaimed Water Service Areas (Service Area Agreement) (R2009-1123). Pursuant to the Service Area Agreement, potable water service to the Maralago Cay Service Area (MCSA) is to be provided by the County if the private utility currently providing said service ever discontinues said service. The First Amendment to the Service Area Agreement will substitute the Town as the successor potable water provider. WUD and the Town believe that it is in the best interest of both the Town's and County's customers for the Town to provide potable water to the MCSA. Per the Service Area Agreement, the Town is already designated as the wastewater and reclaimed water provider within the MCSA. As a result of the proposed amendment, the Town will be the single service provider within the MCSA should the current private utility discontinue potable water service within the MCSA. In addition, on February 2, 2010, the County and the Town entered into an Interlocal Agreement for the Purchase and Sale of Bulk Potable Water (Bulk Agreement) (R2010-0206). In order for the Town to provide potable water service to the MCSA, it is necessary to amend the Bulk Agreement to increase the bulk amount sold by the County to the Town from 400,000 to 800,000 gallons per day. In addition, the First Amendment to the Bulk Agreement will remove the "take or pay" provision of the Bulk Agreement, as the Town has consistently met WUD's cost of service consideration, and will likely continue to do in the future, rendering the provision unnecessary. District 3 (MJ)

Background and Justification: In order to ensure that a single service provider will serve the MCSA in the event that the current private utility discontinues potable water service, the County and the Town seek to amend the existing Service Area Agreement to designate the Town as the successor potable water provider for the MCSA. As a result, it is also necessary for the County and the Town to amend the existing Interlocal Agreement for the Purchase and Sale of Bulk Potable Water to provide an increase in the amount available for sale and purchase by the County to the Town. Lastly, the First Amendment to the Bulk Agreement will remove the "take or pay" provision from the Agreement as it has been determined to be superfluous.

Attachments:

1. Three (3) Original First Amendment to the Interlocal Agreement Between Palm Beach County and the Town of Lake Clarke Shores Related to Potable Water, Wastewater and Reclaimed Water Service Areas.
2. Three (3) Original First Amendment to the Interlocal Agreement Between Palm Beach County and the Town of Lake Clarke Shores for the Purchase and Sale of Bulk Potable Water.

Recommended By: Jim Stiles 11-16-15
Department Director Date

Approved By: Sharon B. By 11-18-15
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
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>
Program Income (County)	<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 Dept Unit Object

Is Item Included in Current Budget? Yes X No

Reporting Category N/A


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

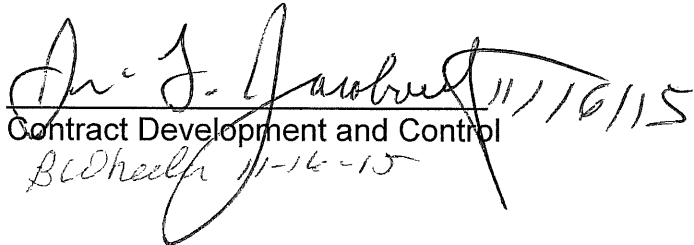
* No Fiscal Impact.

C. Department Fiscal Review: Delmar m met

III. REVIEW COMMENTS

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


OFMB
11/19/15


Contract Development and Control
11/16/15
BC Wheelan 11-16-15

B. Legal Sufficiency:


Assistant County Attorney
11/17/15

C. Other Department Review:

Department Director

FIRST AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE TOWN OF LAKE CLARKE SHORES RELATED TO POTABLE WATER, WASTEWATER, AND RECLAIMED WATER SERVICE AREAS

THIS FIRST AMENDMENT made and entered into this _____ day of _____, 2015, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), and the **TOWN OF LAKE CLARKE SHORES, FLORIDA**, a municipality organized under the laws of the State of Florida (hereinafter "Town").

WITNESSETH

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

WHEREAS, on July 7, 2009, County and Town entered into an Interlocal Agreement related to Potable Water, Wastewater, and Reclaimed Water Service Areas (the "Agreement")(County Resolution No. R2009-1123); and

WHEREAS, pursuant to the Agreement, Potable Water Service to the Maralago Cay Service Area is to be provided by the County if the private utility currently providing said service ever discontinues said service; and

WHEREAS, Wastewater Service and Reclaimed Water Service to the Maralago Cay Service Area is already the responsibility of the Town; and

WHEREAS, County and Town agree that, should the private utility currently providing Potable Water Service to the Maralago Cay Service Area cease to provide said service, it is in the best interests of the customers of both the Town and County for the Town to provide said service; and

WHEREAS, the County and Town wish to amend the Agreement accordingly.

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

1. The foregoing statements are true and correct.
2. Capitalized terms herein shall have the same meaning ascribed to them in the Agreement.
3. Section 7 of the Agreement, "Provision of Service within Maralago Cay Service Area" is hereby replaced in its entirety with the following:

Provision of Service within Maralago Cay Service Area. Potable Water Service within the Maralago Cay Service Area is currently provided by a private third party. Should said third party discontinue the provision of Potable Water Service within the Maralago Cay

Service Area, the parties agree that the Town shall become the provider of Potable Water Service to the Maralago Cay Service Area. Wastewater and Reclaimed Water Service within the Maralago Cay Service Area will be provided by Town. County shall not provide Potable Water, Wastewater or Reclaimed Water Service within the Maralago Cay Service Area without the express written consent of Town.

4. Section 19 is hereby added to the Agreement, as follows:

19. **Palm Beach County Office of the 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.

5. Section 20 is hereby added to the Agreement, as follows:

20. **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.

6. Section 21 is hereby added to the Agreement, as follows:

21. **Non-Discrimination.** The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

Town has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if Town does not have a written non-discrimination policy or one that conforms to County's policy, it has acknowledged through a signed statement provided to County that it will conform to County's non-discrimination policy as provided in R-2014-1421, as amended.

7. All other provisions of the Agreement, dated July 7, 2009, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

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

ATTEST:

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

By: _____
Deputy Clerk

By: _____
Mayor

(SEAL)

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

By: _____
County Attorney

**APPROVED AS TO TERMS AND
CONDITIONS**

By: Jim Stiles
Director of Water Utilities

ATTEST:

**TOWN OF LAKE CLARKE
SHORES, FLORIDA**

By: Mary Pinkerman
Clerk

By: Robert M.W. Shalhoub
Robert M.W. Shalhoub, Mayor

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

By: [Signature]
Town Attorney

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

THIS FIRST AMENDMENT made and entered into this _____ day of _____, 2015, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), and the **TOWN OF LAKE CLARKE SHORES, FLORIDA**, a municipality organized under the laws of the State of Florida (hereinafter "Town").

WITNESSETH

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

WHEREAS, on February 2, 2010, County and Town entered into an Interlocal Agreement for the Purchase and Sale of Bulk Potable Water (the "Agreement")(County Resolution No. R2010-0206); and

WHEREAS, County and Town wish to amend the Agreement in order to increase the Town's capacity reservation of Potable Water from 400,000 gallons per day to 800,000 gallons per day; and

WHEREAS, County and Town wish to amend the Agreement in order to remove the "take or pay" provision.

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

1. The foregoing statements are true and correct.
2. Capitalized terms herein shall have the same meaning ascribed to them in the Agreement.
3. The following definition is added to Section 3, "Definitions":

"Bulk Potable Water Service" means the provision of Potable Water from the County to the Town for the resale by the Town to an end user.

4. Section 6 of the Agreement, "Capacity Reservation" is hereby amended to increase the Town's Potable Water capacity reservation to 800,000 gallons per day. All references to "400,000 gallons per day" are hereby replaced with "800,000 gallons per day".
5. Section 9 of the Agreement, "Take or Pay" is hereby replaced in its entirety by the following:
 9. **Exclusive Bulk Potable Water Service Provider.** It is the intention of the parties

that the County shall be the exclusive provider of Bulk Potable Water Service to the Town throughout the term of this Agreement. Unless the County is in breach of its obligations under this Agreement, the Town shall not purchase Bulk Potable Water Service from any other entity. Notwithstanding the prior sentence, if the Town requests additional capacity over the capacity reserved in accordance with Section 6, and the County is unable to provide such additional capacity, then the exclusivity provisions of this paragraph shall not apply to the purchase of any such additional capacity.

6. Section 32 is hereby added, as follows:

32. **Palm Beach County Office of the 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.

7. Section 33 is hereby added to the Agreement, as follows:

33. **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.

8. Section 34 is hereby added to the Agreement, as follows:

34. **Non-Discrimination.** The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

Town has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if Town does not have a written non-discrimination policy or one that conforms to County's policy, it has acknowledged through a signed statement provided to County that it will conform to County's non-discrimination policy as provided in R-2014-1421, as amended.

9. All other provisions of the Agreement, dated February 2, 2010, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

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

ATTEST:

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

By: _____
Deputy Clerk

By: _____
Mayor

(SEAL)

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

By: _____
County Attorney

**APPROVED AS TO TERMS AND
CONDITIONS**

By: Jim Steele
Director of Water Utilities

ATTEST:

**TOWN OF LAKE CLARKE
SHORES, FLORIDA**

By: Mary Pinkerman
Clerk

By: Robert M.W. Skalhoub, Mayor

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

By: Charles Hall
Town Attorney