

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

Meeting Date: August 16, 2016

Consent

Regular

Workshop

Public Hearing

Department

Submitted By: Environmental Resources Management

Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve an Interlocal Agreement with the Town of Palm Beach (Town) for the continued operation of the Lake Worth Inlet Sand Transfer Plant (LWISTP) through September 30, 2035; and

B) authorize the County Administrator, or her designee, to sign all future time extensions, task assignments, certifications, and other forms associated with this Agreement, and necessary minor amendments that do not substantially change the scope of work, terms or conditions of this Agreement.

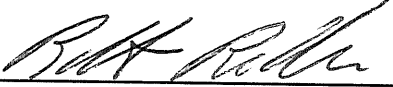
Summary: A new Agreement authorizes funding appropriated by the County for the Palm Beach Midtown Beach Project to be utilized for the daily operation of the Lake Worth Inlet Sand Transfer Plant. The average cost to the County for operation and maintenance of the LWISTP is calculated to be \$260,000 per year. Under the conditions of the Agreement, the Town will continue to perform any repairs or improvements that exceed an annual cost of \$20,000. The Interlocal Agreement supersedes and terminates the existing agreement dated October 3, 2006 (R2006-2118), which will expire on September 30, 2016. District 1 (AH)

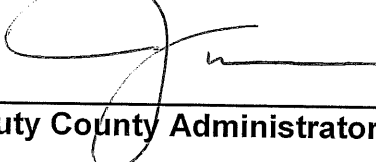
Background and Justification: Lake Worth Inlet channel dredging and jetty maintenance is the responsibility of the federal government, but federal funding is not available for sand transfer plant operation and maintenance. County funding of sand-bypass operations at the Lake Worth and Boca Inlets was curtailed in 1991.

On July 19, 1994, the Board of County Commissioners approved an Interlocal Agreement with the Town of Palm Beach as a solution to rehabilitating, maintaining and operating the existing Lake Worth Inlet Sand Bypassing Plant. The term of the original agreement expired on September 30, 1999. On July 27, 1999, July 9, 2002, and September 27, 2005, the Board approved the first, second, and third amendments to the agreement which extended the term to September 30, 2006. A subsequent Interlocal Agreement entered into on October 3, 2006 (R2006-2118), stipulates the Town of Palm Beach, which owns the plant, to reimburse the County for costs associated with the LWISTP operation. Beginning April 3, 2011, it was board direction to redirect the County's portion of the Midtown Beach Project funding to operation of the sand transfer plant. This Agreement continues that direction and provides for a reduction in the County's Midtown costs in proportion to costs of the Agreement.

Attachments:

- 1. Interlocal Agreement
- 2. Interlocal Agreement (2006-2118)

Recommended by:  2/6/16
Department Director Date

Approved by:  8/9/16
Deputy County Administrator Date

ATTACHMENT 1

Proc. No. 99-2012
[2044-2012]

PREPARED BY/RECORD AND RETURN TO:
JOHN C. RANDOLPH, Esquire
Jones, Foster, Johnston & Stubbs, P.A.
Post Office Box 3475
West Palm Beach, Florida 33402
WILL CALL #85

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH
COUNTY AND THE TOWN OF PALM BEACH
FOR THE OPERATION AND MAINTENANCE OF THE SAND TRANSFER PLANT**

THIS AGREEMENT is made and entered into on the _____ day of _____, 2016, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "COUNTY") and the TOWN OF PALM BEACH, a municipal corporation in the State of Florida, (the "TOWN"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes (hereinafter referred to collectively as "the Parties").

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

WHEREAS, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners is empowered to establish and administer programs of beach erosion control and to enter into agreements with other governmental agencies within or outside the boundaries of the County for joint performance, or performance of one unit on behalf of the other, of any of either governmental entity's authorized functions; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the TOWN is empowered to exercise any governmental, corporate, and proprietary power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the COUNTY and the TOWN entered into Interlocal Agreements on July 19, 1994 (R 94-907D), as subsequently amended, and August 16, 1994 (R 94-1053D), which addressed temporary and long term solutions associated with Lake Worth Inlet Sand Transfer Plant ("Sand Transfer Plant" or "Plant"); and

WHEREAS, the COUNTY and the TOWN entered into an Interlocal Agreement on October 3, 2006 (R2006-2118), which superseded and terminated the prior Interlocal Agreements executed in 1994 (R 94-907D and R 94-2053D) and provided for cooperative management of the Sand Transfer Plant and such Agreement expires on September 30, 2016; and

WHEREAS, the COUNTY and the TOWN intend to make the most efficient use of their powers by continuing to cooperate with each other with regard to the sand bypassing at the Lake Worth Inlet; and

WHEREAS, the COUNTY and the TOWN desire to establish their respective roles with respect to the Lake Worth Inlet Sand Transfer Plant, to make the most efficient use of their respective resources; and

WHEREAS, the COUNTY and the TOWN, through this Agreement, wish to enter into a binding Agreement that supersedes and terminates the prior Interlocal Agreement executed on October 3, 2006 (R2006-2118) and all amendments thereto.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the Parties agree as follows:

1. The PROJECT:
 - A. PURPOSE: The purpose of this Interlocal Agreement is to provide a mechanism for the COUNTY to operate and maintain and the TOWN to repair and manage the Lake Worth Inlet Sand Transfer Plant (the "PROJECT"), and to set forth the terms, conditions and obligations of each of the respective Parties hereto.
 - B. PROJECT: The PROJECT consists of day to day operation and maintenance of the Lake Worth Inlet Sand Transfer Plant and the repair of the plant, as needed. Work shall be scheduled and performed to retain the function of the plant and to satisfy the conditions and standards of any and all required permits.
2. TERM: This Agreement shall commence on October 1, 2016 and shall terminate on September 30, 2035, unless terminated as otherwise provided herein. This Agreement may be extended if agreed to in writing by both Parties.
3. FUNDING: The Parties agree that the COUNTY shall be responsible for all eligible operation costs. The County shall also be responsible for all maintenance costs up to \$20,000 as more particularly described in this Agreement. The TOWN shall be responsible for all repair costs and expenses associated with the PROJECT that exceed the County's \$20,000 budget, as more particularly described in this Agreement.

A. TOWN Obligations.

- (1) The TOWN shall notify the COUNTY's Representative of any plans to perform repairs or improvements to the Sand Transfer Plant or to restore or renovate the Sand Transfer Plant during any part of any fiscal year. The TOWN's Representative shall coordinate such repairs, improvements, restoration or renovation with the COUNTY'S Representative.
- (2) The TOWN shall perform all repairs, improvements, restoration and renovation to the Sand Transfer Plant and shall be solely responsible for funding such work. Repairs shall not include incidental day to day costs necessary for the continuous operation of the plant, which costs are the responsibility of the COUNTY.
- (3) The TOWN shall provide the COUNTY's Representatives with copies of all applicable permits. To the greatest extent possible, the above documents shall be in both digital and hardcopy format.

B. COUNTY Obligations.

- (1) The COUNTY shall operate and maintain the Lake Worth Inlet Sand Transfer Plant as provided herein.
- (2) The COUNTY shall notify the TOWN's Representative of any plans to perform maintenance to the Sand Transfer Plant in the event such maintenance will require the COUNTY to cease operation of the plant for a period of time in excess of forty-eight (48) hours.
- (3) The COUNTY shall be responsible for incidental day to day maintenance costs. Maintenance costs shall not exceed a cumulative total of \$20,000.00 annually. Any expenditure above that amount shall be considered repairs and shall be the responsibility of the TOWN.
- (4) If, at any time, the Sand Transfer Plant is rendered inoperable or in need of repair or improvement for any reason, the COUNTY shall advise the TOWN Representative, as soon as possible.
- (5) Notwithstanding any other provision herein, the COUNTY's obligation to perform under this Agreement is contingent upon an appropriation by its Board of County Commissioners within its annual fiscal year budget. The COUNTY, however, agrees to make a good faith effort to allocate sufficient funding.

- (6) The COUNTY shall provide the TOWN's Representative with quarterly reports of the progress and status of the Lake Worth Inlet Sand Bypassing Plant operations and weekly dredge reports that include estimated cubic yards of sand bypassed, number of pump hours, and other relevant information.

4. PARTY REPRESENTATIVES:

- A. The COUNTY's representative during the term of this Agreement shall be the Director of the Department of Environmental Resources Management, whose telephone number is (561) 233-2400 and the Director of Road and Bridge, whose telephone number is (561) 233-3950.
- B. The TOWN's representative during the term of this Agreement shall be the Town Manager, whose telephone number is (561) 838-5410 and Director of Public Works, whose telephone number is (561) 838-5440.

5. NOTICES: Any notice required or permitted to be given under this Agreement shall be in writing and shall be hand delivered or sent by United States mail, to the respective addresses specified in this paragraph. All notices required by this Agreement shall be considered delivered upon receipt. Should any Party change its address, written notice of such new address shall promptly be sent to the other Parties. All notices required under this Agreement shall be forwarded, in writing, to:

Director
Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743

Town Manager
Town of Palm Beach
Post Office Box 2029
Palm Beach, FL 33480

and

and

Director of Road and Bridge Division
3700 Belvedere Road, Bldg. C
West Palm Beach, FL 33406

Director of Public Works
Town of Palm Beach
951 Okeechobee Road
West Palm Beach, FL: 33401

with a copy to:

with a copy to:

County Attorney's Office
ERM Attorney
Palm Beach County
301 North Olive Avenue, 6th Floor
West Palm Beach, FL 33401

Town Attorney
Town of Palm Beach
Post Office Box 2029
Palm Beach, FL 33480

and

Coastal Program Manager
Town of Palm Beach
951 Okeechobee Road
West Palm Beach, FL 33401

6. DECLARATION: Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.

7. RECORDING: A copy of this Agreement shall be recorded and filed with the Clerk and Comptroller in and for Palm Beach County.

8. LIABILITY: Neither Party to this Agreement nor its respective officers or employees shall be deemed to assume any liability for the acts, omissions, or negligence of the other Party. Furthermore, nothing herein shall be construed as a waiver of sovereign immunity by either Party, pursuant to Section 768.28, Florida Statutes.

9. INDEMNIFICATION: Each Party shall be liable for its own actions and negligence, and subject to the limitations of Section 768.28, Florida Statutes, The COUNTY shall indemnify, defend and hold harmless the TOWN against any actions, claims, or damages arising out of the COUNTY'S negligence in connection with this Agreement, and the TOWN shall indemnify, defend and hold harmless the COUNTY against any actions, claims or damages arising out of the TOWN'S negligence in connection with this Agreement.

The Parties further agree that nothing contained herein shall be construed or interpreted as (1) denying to any Party any remedy or defense available to such Party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

In the event any Party subcontracts any part or all of its obligations as set forth in this Agreement to a third party, the Party shall require the Contractor to indemnify, defend and hold harmless the COUNTY and TOWN as follows and shall require the following language to be inserted into any agreement with the Contractor:

The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the Town of Palm Beach and Palm Beach County, and their commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the

Contractor, its agents, officers, contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Agreement. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the Town of Palm Beach and/or Palm Beach County in the enforcement of this indemnification provision. This includes claims made by the agents or employees of the Contractor against the Town of Palm Beach and/or the County and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

10. INSURANCE: Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, the TOWN and COUNTY acknowledge to be insured or self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statute with monetary waiver limits of \$200,000 Per Person and \$300,000 Per Occurrence, or such limits that may change and be set forth by the legislature. In the event the TOWN or COUNTY maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28, Florida Statutes, the TOWN and COUNTY shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

The TOWN and COUNTY acknowledge to be insured or self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes. When requested, the TOWN and COUNTY agree to provide a Certificate of Insurance evidencing insurance or self-insurance and/or sovereign immunity status, which the TOWN and COUNTY agree to recognize as acceptable for the above mentioned coverages.

11. NON-DISCRIMINATION: The parties agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, age, sexual orientation, familial status, gender identity, gender expression or genetic information be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

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

12. SEVERABILITY: In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

13. WAIVER OF BREACH: It is hereby agreed to by the Parties that no waiver or breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same of any other covenant.

14. DEFAULT, TERMINATION AND OPPORTUNITY TO CURE:

- A. If a Party fails to fulfill its obligations under this Agreement in a timely and proper manner, a Party not in default shall have the right to terminate this Agreement and/or to bring an action for breach as provided herein by giving written notice of any deficiency and its intent to terminate and/or bring an action for breach as provided herein. The Party in default shall then have thirty (30) days from receipt of notice to correct the stated deficiency. If the defaulting Party fails to correct the deficiency within this time and unless otherwise agreed by the Parties, the Party not in default may terminate this Agreement and/or bring an action for breach as provided herein.
- B. Either Party may terminate this Agreement at any time for convenience upon 90 days prior written notice to the other Party.
- C. The TOWN recognizes that the COUNTY has to budget staff for the operation and maintenance of the Sand Transfer Plant prior to the beginning of each fiscal year. Therefore, the TOWN shall notify the COUNTY at the latest by April 1, of each and every fiscal year if it does not wish to continue this Agreement for the following fiscal year beginning on October 1 of that calendar year.

15. DISPUTE RESOLUTION: As a condition precedent to any Party bringing a lawsuit for breach of this Agreement, that Party must first notify the other Party in writing of the nature of the purported breach and must seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party. The disputing Parties shall equally share the costs for dispute resolution services. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

16. ENFORCEMENT COSTS: Any costs or expenses (including attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective Parties provided, however, that this clause pertains only to the Parties to this Agreement.

17. REMEDIES: This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial

exercise by any Party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

18. INDEPENDENT CONTRACTOR: The COUNTY recognizes that it is an independent contractor and not an agent or servant of the TOWN. The TOWN recognizes that it is an independent contractor and not an agent or servant of the COUNTY. No person employed by any Party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other Party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.

19. 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 the any party contracting with the County, 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.

20. AMENDMENT: None of the provisions, terms, or obligations in the Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the Parties hereto.

21. ENTIRETY OF AGREEMENT: This Agreement shall be deemed to be the sole agreement between the parties, and no prior agreements or other prior writings shall supersede that which is contained in this Agreement. The Agreement may be amended only by written document executed by both parties.

22. CAPTIONS: The Captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

23. EFFECTIVE DATE OF AGREEMENT: This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and the Town of Palm Beach Council and shall become effective only when signed by both parties.

24. GOVERNING LAW: This Agreement shall be governed by the laws of the State of Florida. Venue shall be in Palm Beach County, Florida.

25. NON-EXCLUSIVITY OF REMEDIES. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

26. CONSTRUCTION: No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

27. INCORPORATION BY REFERENCE: Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.

28. NO THIRD PARTY BENEFICIARIES: 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 or the TOWN.

29. TERMINATION OF PRIOR INTERLOCAL AGREEMENT. Upon commencement of this Agreement on October 1, 2016, this Agreement shall supersede and terminate the prior Interlocal Agreement executed by the parties on October 3, 2006 (R2006-2118).

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Mayor of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board, and the Town of Palm Beach has caused this Agreement to be signed in its corporate name by its mayor and its corporate seal to be affixed hereto, attested by its Town Clerk, the date and year first above written.

TOWN OF PALM BEACH

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By Gail L. Coniglio
Gail Coniglio, Mayor

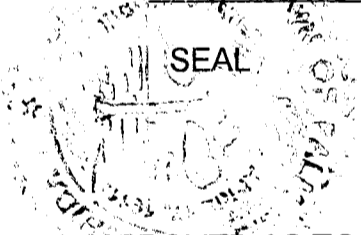
By _____
Mary Lou Berger, Mayor

ATTEST:

ATTEST:

By Jana A. Chaves
Town Clerk
Date: 6/14/16

By _____
Deputy Clerk
Date: _____



SEAL

SEAL

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By [Signature]
Town Attorney

By _____
Assistant County Attorney

APPROVED AS TO TERMS AND
CONDITIONS:

APPROVED AS TO TERMS AND
CONDITIONS:

By [Signature]
Paul Brazil, P.E.
Director of Public Works

By [Signature]
Robert Robbins, Director
Dept. of ERM

ATTACHMENT 2

R2006-2118



INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE TOWN OF PALM BEACH

THIS AGREEMENT is made and entered into on the _____ day of OCT 03 2006, 2006, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "COUNTY") and the TOWN OF PALM BEACH, a municipal corporation in the State of Florida, (the "TOWN"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes (hereinafter referred to collectively as "the Parties").

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

WHEREAS, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners is empowered to establish and administer programs of beach erosion control and to enter into agreements with other governmental agencies within or outside the boundaries of the COUNTY for joint performance, or performance of one unit on behalf of the other, of any of either governmental entity's authorized functions; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the TOWN is empowered to exercise any governmental, corporate, and proprietary power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the COUNTY and the TOWN entered into Interlocal Agreements on July 19, 1994 (R 94-907D), as subsequently amended, and August 16, 1994 (R 94-1053D), which address temporary and long term solutions associated with Lake Worth Inlet Sand Transfer Plant and these agreements will expire on September 30, 2006 and September 30, 2024, respectively; and

WHEREAS, the COUNTY and the TOWN intend to make the most efficient use of their powers by continuing to cooperate with each other with regard to the sand bypassing at the Lake Worth Inlet (the "PROJECT"); and

WHEREAS, the COUNTY and the TOWN desire to establish their respective roles with respect to the Lake Worth Inlet Sand Transfer Plant, to make the most efficient use of their respective resources; and

FILE NUM 20060619437 OR BOOK PAGE 210421987 DATE: 11/03/2006 09:24:50 Pgs 1987 - 1987. (11 pgs)
Sharon R. Bock, CLERK & COMPTROLLER

WHEREAS, the COUNTY and the TOWN, through this Agreement, wish to enter into a binding Agreement that supersedes and terminates the prior Interlocal Agreements made and entered into on July 19, 1994 (R 94-907D) and August 16, 1994 (R 94-1053D) and all amendments thereto.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the Parties agree as follows:

1. The PROJECT
 - A. PURPOSE: The purpose of this Interlocal Agreement is to provide a mechanism for the TOWN to fund and reimburse the COUNTY for operation, maintenance and any required repairs to the Lake Worth Inlet Sand Transfer Plant, both existing and proposed, and to set forth the terms, conditions and obligations of each of the respective Parties hereto.
 - B. PROJECT: The PROJECT consists of day to day operation and maintenance of the Lake Worth Inlet Sand Transfer Plant and any required repairs thereto. Repairs and other work shall be scheduled and performed to retain the function of the plant and to satisfy the conditions and standards of any and all required permits.
 - C. PROJECT COSTS: PROJECT costs eligible for reimbursement include but are not limited to: COUNTY staff time directly related to operation of the sand transfer plant, material expenses associated with maintaining and repairing the sand transfer plant, and costs incurred to retain necessary contractors.
2. Term. The term of this Agreement shall be from October 1, 2006 through September 30, 2016, unless terminated as otherwise provided herein. This Agreement may be extended if agreed to in writing by both Parties.
3. Funding. The Parties agree that the TOWN is solely responsible for all eligible costs and expenses associated with the PROJECT as described below.
 - A. TOWN Obligations.
 - (1) Within forty five (45) days of receiving the COUNTY's proposed annual operations and maintenance budget, the TOWN shall approve, reject, or revise the budget.
 - (2) Each quarter of the year, the TOWN shall remit to the COUNTY an amount equal to one quarter of the mutually agreed upon and approved annual budget for operation and maintenance of the Lake

Worth Inlet Sand Transfer Plant.

- (3) The TOWN shall notify the COUNTY of any plans to restore or renovate the sand transfer plant that may render the existing plant inoperable during any part of any fiscal year.
- (4) The TOWN shall perform all required major repairs and capital improvements to the sand transfer plant and shall be solely responsible for funding such work.
- (5) The TOWN shall provide the COUNTY with copies of all applicable permits. To the greatest extent possible, the above documents shall be in both digital and hardcopy format.
- (6) The TOWN shall advise the COUNTY of how it intends to fulfill any permit conditions associated with the operation of the Sand Transfer Plant.
- (7) Notwithstanding any other provision herein, the TOWN's obligation to pay under this Agreement is contingent upon an appropriation for this purpose by its Town Council within its annual fiscal year budget. The Town, however, agrees to make a good faith effort to allocate sufficient funding.
- (8) The TOWN, shall perform daily sea turtle monitoring from March 1 through September 30 of each year throughout the Sand Transfer Plant (STP) operation areas which are located 200 feet north of the north jetty and 500 feet south of the south jetty to ensure adequate protection, and relocation if necessary, of all sea turtle nests laid in the vicinity of the STP.

B. COUNTY Obligations.

- (1) The COUNTY shall operate and maintain the Lake Worth Inlet Sand Transfer Plant as provided herein, and shall complete necessary repairs as agreed to by the Parties.
- (2) If, at any time, the sand transfer plant is rendered inoperable for any reason, the COUNTY shall advise the TOWN, as soon as possible.
- (3) The COUNTY shall provide by April 1st of each year an annual operations and maintenance budget for review and approval by the TOWN.

- (4) The COUNTY shall advise the TOWN no later than August 15th if operations and maintenance costs in any particular fiscal year are expected to exceed the amount of that year's annual budget as proposed by the COUNTY and approved by the TOWN. The TOWN shall not be liable for any additional costs unless it specifically approves the same in writing.
 - (5) Within 90 days of the end of each fiscal year, the COUNTY shall provide the TOWN with a reconciliation of the actual costs including detailed description of all time and materials as compared to the anticipated costs for operation and maintenance of the Lake Worth Inlet Sand Transfer Plant during the prior fiscal year. Any excess payment on the part of the Town shall be reimbursed to the Town within 30 days of reconciliation.
 - (6) The COUNTY shall provide the TOWN's representative as set forth in Paragraph 4 B herein, with quarterly reports of the progress and status of the Lake Worth Inlet Sand Bypassing Plant operations and maintenance and weekly dredge reports that include estimated cubic yards of sand bypassed, number of pump hours, number of man hours spent each week at the plant, and other relevant information identified on the Weekly Dredge Report form.
 - (7) The COUNTY shall retain all financial and other documents for auditing purposes, if necessary, in accordance with the Florida Statutes.
4. Party Representatives.
- A. The COUNTY's representative during the term of this Agreement shall be the Director of the Department of Environmental Resources Management, whose telephone number is (561) 233-2400 and the Director of Road and Bridge, whose telephone number is (561) 233-3950.
 - B. The TOWN's representative during the term of this Agreement shall be the Town Manager, whose telephone number is (561) 838-5410 and Director of Public Works, whose telephone number is (561) 838-5440.
5. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, to the respective addresses specified in this paragraph. All notices required by this Agreement shall be considered delivered upon receipt. Should any Party change its address, written notice of such new address shall promptly be sent to the other Parties. All notices required under this

Agreement shall be forwarded, in writing, to:

Director
Environmental Resources Management
2300 N. Jog Road, 4th Floor
West Palm Beach, FL 33411-2743

Town Manager
Town of Palm Beach
P.O. Box 2029
Palm Beach, FL 33480

and

and

Director of Road and Bridge Division
3700 Belvedere Road, Building C
West Palm Beach, FL 33406

Director of Public Works
Town of Palm Beach
951 Old Okeechobee Road
West Palm Beach, FL 33401

with a copy to:

with copies to:

County Attorney
Palm Beach County
301 N. Olive Ave., 6th Floor
West Palm Beach, FL 33401

Town Attorney
Town of Palm Beach
P.O. Box 2029
Palm Beach, FL 33480

and

Coastal Projects Administrator
Town of Palm Beach
951 Old Okeechobee Road
West Palm Beach, FL 33401

6. Delegation. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.
7. Recording. A copy of this Agreement shall be recorded and filed with the Clerk and Comptroller in and for Palm Beach County.
8. Liability. Neither Party to this Agreement nor its respective officers or employees shall be deemed to assume any liability for the acts, omissions, or negligence of the other Party. Furthermore, nothing herein shall be construed as a waiver of sovereign immunity by either Party, pursuant to Section 768.28, Florida Statutes.
9. Indemnification. Each Party shall be liable for its own actions and negligence, and subject to the limitations of Section 768.28, Florida Statutes, The COUNTY shall indemnify, defend and hold harmless the TOWN against any actions, claims, or damages arising out of the

COUNTY'S negligence in connection with this Agreement, and the TOWN shall indemnify, defend and hold harmless the COUNTY against any actions, claims or damages arising out of the TOWN'S negligence in connection with this Agreement.

10. Insurance.
 - A. Each Party warrants and represents that it is self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event a Party maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28, Florida Statutes, that Party shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The Parties agree to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.
 - B. The Parties further agree that nothing contained herein shall be construed or interpreted as (1) denying to any Party any remedy or defense available to such Party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
 - C. In the event any Party subcontracts any part or all of the Project work hereunder to a third party, the contracting Party shall require each and every subcontractor to name the other Parties as "additional insured" on all insurance policies as required by the contracting Party. Any contract awarded for work under this Agreement shall include a provision whereby the contracting Party's subcontractor agrees to defend, indemnify, and pay on behalf, save and hold the other Parties harmless from all damages arising in connection with said contract.
 - D. When requested, each Party shall provide any other Party with an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which all Parties agree to recognize as acceptable for the above mentioned coverages.
 - E. Compliance with the foregoing requirements shall not relieve any Party of its liability and obligations under this Agreement.
11. Equal Opportunity. The COUNTY and the TOWN agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion,

age, ancestry, marital status, or sexual orientation be excluded from the benefits of this Agreement or be discriminated against under the terms of this Agreement.

12. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
13. Waiver of Breach. It is hereby agreed to by the Parties that no waiver or breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same of any other covenant.
14. Default, Termination and Opportunity to Cure.
 - A. If a Party fails to fulfill its obligations under this Agreement in a timely and proper manner, a Party not in default shall have the right to terminate this Agreement and/or to bring an action for breach as provided herein by giving written notice of any deficiency and its intent to terminate and/or to bring an action for breach as provided herein. The Party in default shall then have thirty (30) days from receipt of notice to correct the stated deficiency. If the defaulting Party fails to correct the deficiency within this time and unless otherwise agreed by the Parties, the Party not in default may terminate this Agreement and/or bring an action for breach as provided herein.
 - B. Either Party may terminate this Agreement at any time for convenience upon six months or 180 days prior written notice to the other Party.
 - C. The Town recognizes that the County has to budget staff for the operation and maintenance of the Sand Transfer Plant prior to the beginning of each fiscal year. Therefore, the Town shall notify the County at the latest by April 1, of each and every fiscal year if it does not wish to renew this Agreement for the following fiscal year beginning on September 30 of that calendar year.
15. Dispute Resolution. As a condition precedent to any Party bringing a lawsuit for breach of this Agreement, that Party must first notify the other Party in writing of the nature of the purported breach and must seek in good faith to resolve the through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third-party. The

disputing Parties shall equally share the costs for dispute resolution services. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. All negotiations held pursuant to this provision shall be confidential to the extent permitted by law.

16. Enforcement Costs. Any costs or expenses (including attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective Parties provided, however, that this clause pertains only to the Parties to this Agreement
17. Remedies. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any Party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any Party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
18. Independent Contractor. The COUNTY recognizes that it is an independent contractor and not an agent or servant of the TOWN. No person employed by any Party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other Party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.
19. Effect of Prior Agreements. This Agreement supersedes the prior interlocal agreements made and entered into on July 19, 1994 and August 16, 1994 and all amendments thereto.
20. Amendment. None of the provisions, terms, or obligations in the Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the Parties hereto.
21. Entirety of Agreement. The TOWN and COUNTY agree that this Agreement, together with any attached exhibits, sets forth the entire agreement between the Parties, and that there are no promises or understandings other than those stated herein.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Chairperson of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board, and the Town of Palm Beach has caused this Agreement to be signed in its corporate name by its mayor and its corporate seal to be affixed hereto, attested by its Town Clerk, the date and year first above written.

TOWN OF PALM BEACH, FLORIDA

R 2006 2118 OCT 03 2006
PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS.

By: [Signature]
Jack McDonald, Mayor

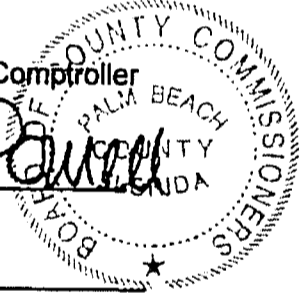
By: [Signature]
Karen T. Marcus
~~for~~ Tony Masilotti, Chairman

ATTEST:

ATTEST:

By: [Signature]
Susan A. Eichhorn, Town Clerk

By: [Signature]
Sharon R. Bock, Clerk & Comptroller
Deputy Clerk



DATE: 9-7-06

DATE: OCT 03 2006

Seal

Seal

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
John Randolph, Town Attorney

By: [Signature]
Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]
H. Paul Brazil, P.E.
Director of Public Works

By: [Signature]
Richard E. Walesky, Director
Dept. of Env. Resources Management



STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk and Comptroller
certify this to be a true and correct copy of the original
filed in my office on October 3, 2006
dated at West Palm Beach, FL on 11/20/06
By: [Signature]
Deputy Clerk