

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

Meeting Date:	May 7, 2019	(X) Consent	() Regular
		() Workshop	() Public Hearing
Department:	<u>Environmental Resources Management</u>		
Submitted By:	<u>Environmental Resources Management</u>		
Submitted For:	<u>Environmental Resources Management</u>		

I. EXECUTIVE BRIEF

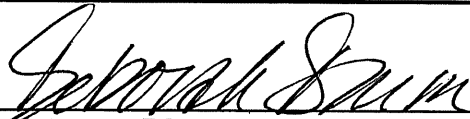

Motion and Title: Staff recommends motion to approve: Amendment No. 1 to Interlocal Agreement (R2016-0999) (Agreement) with the Town of Palm Beach (Town) which clarifies each party’s funding responsibilities and obligations in the operation, repair, and maintenance of the Lake Worth Inlet Sand Transfer Plant (LWISTP) and adds language to deduct the County’s expenses associated with the Agreement from County’s share of the Midtown Beach Nourishment Project (Midtown Project).

Summary: On May 3, 2011, the Board of County Commissioners (BCC) approved an annual reallocation of \$300,000 from the Midtown Project to fund LWISTP operations and maintenance in response to a funding request made by the Town. On August 16, 2016, the BCC approved the Agreement to formalize the partnership which stipulates the County would operate and maintain the LWISTP and intended for costs incurred by the County to be deducted from the County share of the Midtown Project. However, the original contract language made coordination between the County and the Town difficult as it relates to maintenance and repairs of the LWISTP and did not recognize the proportional reduction of County costs from the Midtown Project. Amendment No. 1 clarifies the maintenance and repair responsibilities and adds necessary language which stipulates the County shall deduct all its expenses associated with the operation, administration, repair, and maintenance of the LWISTP from the County’s funding share of the Midtown Project. Specifically, Amendment No. 1 requires the County to perform any maintenance or unanticipated repairs up to an annual cost of \$20,000. All maintenance and unanticipated repair costs in excess of the County’s \$20,000 annual cap are the responsibility of the Town. District 1 (AH)

Background and Justification: Lake Worth Inlet channel dredging and jetty maintenance are the responsibilities 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 Raton inlets was curtailed in 1991. Between 1994 and 2016, the County conducted daily operations and maintenance of the LWISTP for the Town, which owns the plant, through multiple interlocal agreements that stipulated the Town reimburse the County for expenses. Beginning on May 3, 2011, it was BCC direction to redirect the County’s portion of the Midtown Project funding to the operation of the LWISTP. Amendment No. 1 of the Agreement adds the necessary language to continue that direction and provides for a reduction in the County’s Midtown Project costs in proportion to costs of the Agreement.

Attachments:

1. Amendment No. 1 to Interlocal Agreement
2. Interlocal Agreement (R2016-0999)

Recommended by:		<u>4-8-19</u>
	Department Director	Date
Approved by:		<u>4/22/19</u>
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____

Does this item include the use of federal funds? Yes _____ No X

Budget Account No.:

Fund 3652 Department _____ Unit _____ M034 Object _____ Program _____

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

No fiscal impact as this is just clarifying each parties funding responsibilities and obligations with regards to LWISTP. Funds shall be deducted from appropriations for the Midtown Beach Nourishment Project. These funds are budgeted through the Engineering and Public Works Department by a transfer from the Beach Improvement Fund.

C. Department Fiscal Review:

S. Neary

III. REVIEW COMMENTS

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

Laura R. ...
OFMB 4/16/19
 4/16 4/15

J. J. Jacobus 4/18/19
Contract Development & Control
4/18/19

B. Legal Sufficiency:

Anne ... 4-22-19
Assistant County Attorney

C. Other Department Review:

Department Director

**FIRST AMENDMENT TO
INTERLOCAL AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND THE
TOWN OF PALM BEACH**

THIS AMENDMENT is made and entered into on this _____ day of _____, 2019, 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, on August 16, 2016, the parties entered into an Interlocal Agreement (R2016-0999) recorded at ORB 30109, Page 1968, ("Interlocal Agreement") concerning the operation and maintenance of the Lake Worth Inlet Sand Transfer Plant; and

WHEREAS, the parties find and declare that it is in the public's best interest to amend the Interlocal Agreement as set forth herein.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties do agree to amend the Interlocal Agreement as follows:

1. Section 3, FUNDING, shall be replaced with the following:

FUNDING: The Parties agree that the COUNTY shall be responsible for all operation costs, including administrative costs. Administrative costs include, but are not limited to, salaries and wages, FICA, retirement contributions, life and health insurance, workers' compensation, uniform rental, casualty self-insurance premiums, non-motor pool vehicle rental, and motor pool vehicle repair and maintenance. The COUNTY shall also be responsible for all maintenance and unanticipated repair costs up to \$20,000 annually, as more particularly described in this Agreement. The TOWN shall be responsible for all repair and maintenance costs associated with the PROJECT that exceed the COUNTY'S annual \$20,000 cap, as more particularly described in this Agreement. The COUNTY shall deduct all expenses associated with the operation, administration, repair, and maintenance of the sand transfer plant from the COUNTY'S funding share of the Midtown Beach Nourishment Project.

2. Section 3.A, entitled TOWN Obligations, of the Interlocal Agreement is replaced with the following:

A. COUNTY Obligations.

(1) The COUNTY shall operate the Lake Worth Inlet Sand Transfer Plant as provided herein.

(2) The COUNTY shall provide the TOWN'S Representative with quarterly reports of the progress and status of the Lake Worth Inlet Sand Transfer Plant operations and weekly dredge reports which include pumping hours, estimated cubic yards of sand bypassed, and other relevant information.

(3) 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.

(4) The COUNTY shall notify the TOWN's Representative of any plans to perform repairs and maintenance to the Sand Transfer Plant in the event such repairs and maintenance will require the COUNTY to cease operation of the plant for a period of time in excess of forty-eight (48) hours.

(5) By March 1 of each year, the COUNTY shall notify the TOWN'S Representative of any anticipated repairs for the next budget cycle.

(6) The COUNTY shall be responsible for maintenance and unanticipated repair costs up to a cumulative total of \$20,000.00 annually. Any expenditure above that amount shall be the responsibility of the TOWN.

(7) The COUNTY may perform necessary repairs and maintenance to the Sand Transfer Plant in excess of the cumulative total of \$20,000 annually upon prior written approval by the TOWN. The TOWN shall reimburse the COUNTY for all expenses associated with those repairs and maintenance costs.

(8) Notwithstanding any 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.

3. Section 3.B, entitled COUNTY Obligations, of the Interlocal Agreement is replaced with the following:

B. TOWN Obligations.

(1) The TOWN shall be responsible for all anticipated repairs identified by the COUNTY and shall make a good faith effort to allocate sufficient funding to facilitate the anticipated repairs identified by the COUNTY into the following year's budget.

(2) The TOWN shall perform all repairs and maintenance to the Sand Transfer Plant in excess of the COUNTY'S cumulative annual \$20,000 cap and shall be solely responsible for funding such work.

(3) Should the TOWN request the COUNTY perform necessary repairs and maintenance to the Sand Transfer Plant in excess of the cumulative annual total of \$20,000, the TOWN shall provide prior written approval to the COUNTY and shall reimburse the COUNTY for those repair or maintenance costs.

(4) The TOWN shall provide the COUNTY's Representative with copies of all applicable permits. To the greatest extent possible, the above documents shall be in both digital and hardcopy format.

4. Section 5, entitled NOTICES, of the Interlocal Agreement is amended as follows, deleting:

with a copy to:

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

with a copy to:

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

5. Paragraph 10, entitled INSURANCE, is hereby deleted in its entirety and replaced with the following:

Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, (Statute), the Town represents that it is self-insured with coverage subject to the limitations of the Statute, as may be amended.

If the TOWN is not self-insured, the TOWN shall, at its sole expense, purchase and maintain in full force and effect at all times during the life of this contract, insurance coverage at limits not less than those contained in the Statute.

Should the TOWN purchase excess liability coverage, the TOWN agrees to include the COUNTY as an Additional Insured.

The TOWN agrees, at its sole expense, to purchase and maintain in full force and effect at all times during the life of this agreement, property insurance with replacement cost limits adequate for all property and assets associated with this agreement.

The TOWN agrees to maintain or to be self-insured for Workers' Compensation insurance in accordance with Chapter 440, Florida Statutes.

Should the TOWN contract with a third-party (Contractor) to perform any service related to the Agreement, the TOWN shall require the Contractor to provide the following minimum insurance:

- Commercial General Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Such policy shall be endorsed to include the TOWN and the COUNTY as Additional Insureds. The TOWN shall also require that the Contractor include a Waiver of Subrogation against the COUNTY.
- Business Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits for property damage and bodily injury per occurrence.
- Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability with minimum limits of \$1,000,000 each accident.

When requested, the TOWN shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance.

Compliance with the foregoing requirement shall not relieve the TOWN of its liability and obligations under this Agreement.

6. Except as amended herein, all other terms and conditions of the Interlocal Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Amendment 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 Amendment 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 written above.

TOWN OF PALM BEACH, FLORIDA

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: Gail L. Coniglio
Gail L. Coniglio, Mayor

By: _____
Mack Bernard, Mayor

ATTEST:

ATTEST:
Sharon R. Bock, Clerk and Comptroller

By: Kathleen Dominguez
Town Clerk

By: _____
Deputy Clerk

DATE: 4/9/19

DATE: _____

(SEAL)

(SEAL)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: John C. [Signature]
Town Attorney

By: Anne [Signature]
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: Deborah Drum
Deborah Drum, Director
Environmental Resources Management



CFN 20180346747

PC 1-0
Doc 9-1 2010

PREPARED BY/RECORD AND RETURN TO:

J
J Tracy Logue .A.
P PBC Environmental Resources Mgmt.
V 2300 N. Jog Road, 4th Floor
V West Palm Beach, FL 33411-2743

DR BK 30109 PG 1968
RECORDED 09/07/2018 14:11:11
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1968 - 1977 (10pgs)

R2016 0999

**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 AUG 16 2016, 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 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 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).

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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.

R 2016 10999 AUG 16 2016

TOWN OF PALM BEACH

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By Gail L. Coniglio
Gail Coniglio, Mayor

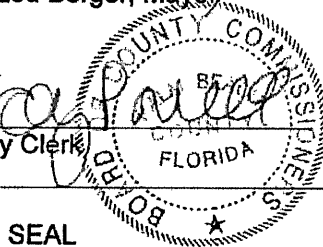
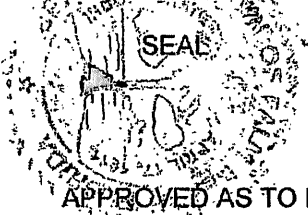
By Mary Lou Berger
Mary Lou Berger, Mayor

ATTEST:

ATTEST:

By Jana A. Owens
Town Clerk
Date: 8/16/16

By Sharon R. Buck
Deputy Clerk
Date: _____



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By [Signature]
Town Attorney

By Anne Delmont
Assistant County Attorney

APPROVED AS TO TERMS AND
CONDITIONS:

APPROVED AS TO TERMS AND
CONDITIONS:

By Paul Brazil
Paul Brazil, P.E.
Director of Public Works

By Robert Robbins
Robert Robbins, Director
Dept. of ERM

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STATE OF FLORIDA - PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record on my file with corrections, if any, as required by law.
DATE: 7 September 16
SHARON R. BUCK
CLERK & COMPTROLLER
By [Signature]
DEPUTY CLERK