

**INTERLOCAL GOVERNMENT AGREEMENT**

**FOR**

**BIOSOLIDS PROCESSING AND RECYCLING  
ON AN EMERGENCY BASIS**

**BETWEEN**

**THE SOLID WASTE AUTHORITY  
OF PALM BEACH COUNTY, FLORIDA**

**AND**

**THE VILLAGE OF WELLINGTON**

# **INTERLOCAL GOVERNMENT AGREEMENT**

**FOR**

## **BIOSOLIDS PROCESSING AND RECYCLING on an EMERGENCY BASIS**

**THIS INTERLOCAL GOVERNMENT AGREEMENT (hereinafter the “AGREEMENT”),** is made and entered into as of the last date executed below, by and between **THE VILLAGE OF WELLINGTON**, a municipal corporation of the State of Florida, hereinafter called the “**Utility**”, and the **SOLID WASTE AUTHORITY OF PALM BEACH COUNTY**, a dependent special district created pursuant to Chapter 75-473, Laws of Florida, as amended, hereinafter called the “**Authority**”.

### ***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 which such agencies share in common and white each might exercise separately; and

**WHEREAS**, the Utility owns, operates, and manages Wastewater Treatment Facilities (as defined herein); and

**WHEREAS**, such Wastewater Treatment Facilities generate domestic wastewater residuals referred to as Biosolids as a residual of the treatment process; and

**WHEREAS**, the Utility processes the Biosolids by drying to produce an environmentally sound, Beneficial Reuse Product; and

**WHEREAS**, in the event that it cannot process its Biosolids due to unforeseen circumstances, the Utility desires to secure an alternate, short-term, method to recycle and beneficially reuse, on an emergency basis (as defined herein), the Biosolids produced; and

**WHEREAS**, the Authority typically has sufficient capacity and can provide for the emergency, short-term beneficial reuse of the Biosolids produced while continuing to operate in compliance with the requirements of its Conditions of Certification; and

**WHEREAS**, the Utility and the Authority mutually find it in the public interest for the Authority to provide an alternate method of recycling the Utility’s Biosolids on an emergency basis.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Utility and the Authority agree as follows:

## **ARTICLE I – DEFINITIONS AND ENTIRE AGREEMENT**

### **1.1 Definitions**

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

**“Acceptable Deliveries”** means the delivery by the Utility or its agent, of Biosolids that meet the requirements set out in Exhibit II.

**“Accept, Accepted or Acceptance”** means the receipt by the BPF, as defined below, of Biosolids from the Utility.

**“AL Gate Fee”** means the prevailing disposal rate for delivery of Biosolids to the Alternate Location.

**“Alternate Location”** or **“AL”** means the location designated by the Contractor, New England Fertilizer Company.

**“As Received Weight or Wet Tons”** means the weight of Biosolids as delivered by the Utility to the BPF or to the Alternate Location after being weighed at BPF or AL, with no adjustment made for moisture content.

**“Base Processing Fee”** has the meaning as shown in Exhibit III.

**“Beneficial Reuse Products”** or **“BRUP”** means the end product of the sludge drying process that meets or exceeds the requirements of Chapter 62-640.850, F.A.C., or its successor regulations, for Class AA Residuals that is produced by the BPF from Biosolids.

**“Beneficial Re-Use”** means the sale or distribution of BRUP to others to be used for recycling purposes.

**“Billing Period”** means each calendar month in each Fiscal Year, except that the initial Billing Period shall begin on October 1, 2019.

**“Biosolids”** means material as specified in Exhibit II.

**“Biosolids Processing Facility or BPF”** means the regional facility constructed by the Authority, for itself and on behalf of the Partner Utilities, for the purpose of accepting Biosolids from the Partner Utilities and others, for processing into BRUP.

**“Change in General Law”** means any change in the Federal, State, or Local laws, rules, regulations, or requirements after the Effective Date of this Agreement which has, or may reasonably be expected to have, a direct or indirect, material, and adverse effect upon the cost to the Authority of constructing, operating, maintaining, or modifying the BPF or the performance of the BPF, excluding a Change in Environmental Law, or the effect upon the cost to the Utility of producing or delivering to the BPF acceptable Biosolids as referred to and specified in Exhibit II. Change in General Law shall not include:

- a) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in prices, or currency or exchange rate fluctuations;
- b) union work rules that increase the operating cost of the BPF;
- c) any change in prevailing wage laws that impact the cost of operating and constructing the BPF;
- d) any change in Federal, State, or local tax laws, or any other tax law.

The parties agree that the costs, if any, associated with the types of changes in law described in a) through d) above, shall be recovered in the annual adjustment to the Base Processing Fee described in Exhibit III to this agreement.

**“Change in Environmental Law”** shall only mean a change in the Federal, State, or Local laws, rules, regulations, permits, or requirements after the Effective Date of this Agreement which has, or may reasonably be expected to have, a direct, material, and adverse effect upon the cost to the Authority of constructing, operating, maintaining, or modifying the BPF or the performance of the BPF related solely to changes in the chemical or physical properties of the BRUP produced to allow for Beneficial Re-Use, or changes in the quality of the air discharged from the BPF, or to changes to the quality of the effluent discharged or stormwater discharged from the BPF.

**“Contractor”** means New England Fertilizer Company or its successors that contracted with the Authority to design, build, acceptance test, operate and maintain the BPF and market the BRUP.

**“Effective Date”** means the date the last Party to this Agreement has executed this Agreement.

**“Emergency Basis”** means an unplanned interruption in the Utility’s ability to process Biosolids not to exceed 90 days per event, or 180 days per fiscal year.

**“Fiscal Year”** means the Authority’s fiscal year which currently is October 1 through September 30 of the following year, or as may be adjusted from time to time.

**“Monthly Payment”** shall have the meaning as set out in Section 3.1 hereafter.

**“O & M Agreement”** means the Operations and Maintenance Agreement entered into by the Authority with New England Fertilizer Company or its successor, for the operation and maintenance of the BPF and the marketing of BRUP.

**“O & M Costs/Ton”** means the total of the actual costs of the applicable Base Processing Fee/Ton, Pass Through Costs/Ton, and Solid Waste Authority (SWA) Administration Costs/Ton as are shown in Exhibit III.

**“O & M Plan”** means a written description of the operations, hours of operation, hours during which the BPF shall Accept Biosolids, vehicle procedures at the receiving area at the BPF and the Alternate Location, handling of unacceptable Biosolids, vehicle procedures at the delivery area, traffic routing, weighing and billing procedures, backup plan if the Authority’s scale facilities become inoperable, and emergency notification procedures, which has been prepared by the Contractor in accordance with the O & M Agreement.

**“Partner Utilities”** means the municipal wastewater treatment agencies listed in EXHIBIT I, who have collectively purchased and have exclusive rights to one hundred percent of the processing capacity of the Biosolids Processing Facility.

**“Party”** means either the Authority or the Utility, or both, as the context of the usage of such term may require.

**“Person”** means any legal entity including, but not limited to, any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

**“Receiving Hours”** means the hours set forth in the O & M Plan during which the Utility may deliver, and the Authority shall Accept Biosolids, and which shall include each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday, excluding Thanksgiving Day and Christmas Day.

**“Receiving Day”** means the days during which the Utility may deliver, and the Authority shall Accept Biosolids, and which shall include each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday, excluding Thanksgiving Day and Christmas Day.

**“State”** means the State of Florida.

**“Term”** shall have the meaning set forth in Section 4.1 herein.

**“Ton”** shall mean 2,000 pounds avoirdupois.

**“Uncontrollable Circumstance”** means an act, event, or condition that has a direct, material, and adverse effect on the rights or obligations of a Party under this Agreement, if such act, event, or condition could not have been avoided by the exercise or use of reasonable care or precautions and is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or not complying with a condition required of such Party under this Agreement. Such acts, events, or conditions shall include, but shall not necessarily be limited to, the following:

- a. an act of God, hurricanes, tornadoes, epidemic, landslide, lightning, earthquake, fire or explosion, flood or similar occurrence, an act of public enemy, war, blockade, insurrection, riot or civil disturbance, sabotage, or similar occurrence;
- b. the order, or injunction or judgment of any Federal, State, or local court, administrative agency or governmental body or officer with jurisdiction in the Utility, including any exercise of the power of eminent domain, police power, condemnation, or other taking by or on behalf of any public, quasi-public, or private entity; provided, however, that

such order or judgment shall not arise in connection with or be related to the negligent or willful act, error, omission, or inaction of the Party relying thereon and that neither the contesting in good faith of any such order or judgment, nor the reasonable failure to so contest, shall constitute or be construed as a willful or negligent action or inaction of such Party;

- c. the failure to issue, or the suspension, termination, interruption, denial of renewal of any permit, license, consent, authorization or approval essential to a Party to carry out its obligations pursuant to this Agreement, if such act or event shall not arise in connection with or be related to the negligent or willful act, error, omission, or inaction of the Party relying thereon, and that neither the contesting in good faith of any such order or judgment, nor the reasonable failure to so contest, shall constitute or be construed as a willful or negligent action or inaction of such Party;
- d. the failure of any appropriate Federal, State, or local agency or public or private utility having operation jurisdiction with respect to the BPF to provide, and maintain and assure the provision of, all utilities necessary for the operation of the BPF;
- e. the provisions of this paragraph and, in particular, of subparagraphs (a) through (d), above, shall never be interpreted as describing an Uncontrollable Circumstance if the situation or condition at issue is the direct or indirect result of a party's violation of, or failure to comply with, any existing Federal, State, or local statute, law, rule, ordinance, regulation, or requirement or any Federal, State, or local statute, law, rule, ordinance, regulation, or requirement enacted after the Effective Date of this agreement, or any change in any existing Federal, State, or local statute, law, rule, ordinance, regulation, or requirement, which change occurs on or after the Effective Date of this agreement.

**“Wastewater Treatment Facilities”** means the wastewater treatment facility that the Utility owns, operates, and manages, or causes to be operated and managed. Specifically the Village of Wellington Water Reclamation Facility (Wellington WRF) located at 11860 Pierson Road, Wellington, FL. The Wellington WRF is permitted to operate with a capacity of 6.5 million gallon per day (MGD) three month average daily flow (TMADF). The Wellington WRF is an oxidation ditch aeration type activated sludge wastewater treatment plant producing approximately 22-26 Tons per day of sludge at approximately 15%-16% solids. The facility has five aerobic digesters for stabilization of sludge, two belt filter press units for dewatering of sludge, and a thermal sludge dryer facility for production of dry class AA fertilizer product.

**“WTD”** means wet tons per day.

**“WTY”** means wet tons per year.

## **1.2 Entire Agreement**

The following Exhibits are attached hereto, are incorporated by reference, and are made part of this Agreement.

Exhibit I – Partner Utilities

Exhibit II- Biosolids Quality Specification

Exhibit III- O & M and Diversion Costs/Ton and Adjustments

This Agreement, together with the foregoing Exhibits, constitutes the entire Agreement between the Authority and the Utility and supersedes all other negotiations, representations, or agreements, either oral or written, with respect to the matters contained herein. The Article and Section headings in this Agreement are for convenience and reference only and shall not be considered determinative in construing this Agreement.

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## ARTICLE II – OPERATIONS AND MANAGEMENT

### 2.1 Commitment to Notify of Emergency

Within seven (7) days, unless required sooner, of the Effective Date the Utility will advise the Contractor and the Authority as to the Utility personnel authorized to request and coordinate the delivery of Biosolids On and after the Effective Date, as soon as the Utility is aware of a circumstance in which they cannot process their Biosolids, the Utility will notify the Contractor that they will need to ship Biosolids to the BPF, confirming estimated quantities and the estimated duration of the emergency. Such notification shall be given by phone as follows:

Primary - BPF Manager, Robert Flynn Cell# (561) 225-3405  
Secondary – BPF Control Room, (561) 961-1487

Utility shall confirm the notification via email to:  
BPF Manager, Robert Flynn at [rflynn@necobiosolids.com](mailto:rflynn@necobiosolids.com), with cc to:  
SWA BPF Manager, Scott Trainor at [strainor@swa.org](mailto:strainor@swa.org)

The Contractor will advise the Utility within one hour (during normal operating hours) if the Biosolids can be accepted at the BPF or will need to be diverted to the Alternate Location. If processing capacity is not available the Biosolids will need to be diverted, the Contractor will then make arrangements for the receipt of the diverted Biosolids at the Alternate Location and advise the Utility accordingly. The Utility is responsible for the transportation and delivery of the Biosolids to a designated Authority scale house to be weighed and then transported to the BPF or the Alternate Location as applicable.

### 2.2 Commitment to Accept and Process Biosolids

On and after the Effective Date, the BPF shall accept and process, on an Emergency Basis, Biosolids from the Wastewater Treatment Facilities delivered to the BPF or the Alternate Location as designated by the Contractor. The Utility understands and acknowledges that acceptance of Biosolids by the Contractor for processing at the BPF is subject to the availability of processing capacity that is not being utilized at that time by the Partner Utilities. The Authority shall not be obligated to accept such Biosolids for longer than 30 calendar days per occurrence nor 90 calendar days per fiscal year. Unless the Partner Utilities have utilized all the available capacity the Authority's obligation to Accept Biosolids at the BPF shall only be relieved by, and only to the extent of, an Uncontrollable Circumstance per Section 2.5.

### 2.4 Biosolids Processing Facility Operations

- a. **Receiving Hours.** The Authority shall cause the BPF to be operated, and shall Accept Biosolids delivered by or on behalf of the Utility during the Receiving Hours in accordance with the O & M Plan. At a minimum, the BPF shall accept Biosolids six (6) days per week as set forth herein.

- b. **O & M Plan.** The Authority shall maintain and update from time to time, the O&M Plan. A current copy of the O&M Plan shall be provided to the Utility on or about October 1st of each year or earlier if modified.
- c. **Laws, Rules, and Regulations.** The Authority shall cause the BPF to be operated in compliance with all applicable Federal, State, and local laws, rules, regulations, ordinances, and permits, as amended from time to time.
- d. **Biosolids Quality.** Biosolids to be delivered by the Utility to the Authority for processing shall meet the Biosolids Quality Specifications as specified in Exhibit II. The Utility produces digested Biosolids at the time of signing this Agreement and shall deliver only digested Biosolids to the BPF. Utility agrees to use its best efforts to have all Biosolids delivered to the BPF in vehicles dedicated for Biosolids transportation only.
- e. **Rejection of Deliveries of Unacceptable Biosolids.** The Authority or the Contractor shall have the right to reject the delivery and prohibit the unloading of Biosolids not meeting the Quality Specifications as indicated in Exhibit II. The Authority or Contractor shall immediately notify the Utility of such rejection and the Utility shall either: (i) take possession of, and remove from the BPF or the Authority's premises, such unacceptable Biosolids; or (ii) request that the Authority or Contractor dispose of such unacceptable Biosolids. If the Authority or Contractor does not agree to dispose of such unacceptable Biosolids, the Utility shall promptly remove such unacceptable Biosolids at its sole cost and expense.  
If the Utility requests that the Authority or Contractor dispose of such unacceptable Biosolids and the Authority agrees, the Authority or Contractor will dispose of said material by alternative methods consistent with current laws and regulations. The Utility shall pay a disposal fee equal to the then applicable Base Processing Fee/Ton, plus the Solid Waste Authority (SWA) Administration Costs/Ton as are shown in Exhibit III plus all fees associated with the loading, transportation and disposal incurred for all such materials disposed of by the Authority or Contractor other than at the BPF.
- f. **Weighing and Record Keeping.** All Biosolids and unacceptable Biosolids delivered by or on behalf of the Utility, and all unacceptable Biosolids returned by or on behalf of the Utility, shall be weighed on an As Received Weight basis at the Authority's designated scale facilities which shall be certified at least annually by the State. The Authority shall maintain all weight records for a period of at least three (3) years and will make such records available to the Utility at the Utility's request.

## 2.5 Uncontrollable Circumstance and Performance

- a. If either Party fails to perform any of its obligations pursuant to this Agreement, and if such failure to perform was caused by an Uncontrollable Circumstance, then the Parties shall cooperate, in good faith, to remove, reduce, or eliminate the adverse effect of such Uncontrollable Circumstance. During the period of time impacted by the Uncontrollable Circumstance: (i) the Authority shall Accept and process Biosolids and

produce BRUP at the BPF to the extent it is able to do so; and (ii) the Authority shall Accept the Utility's Biosolids at the Alternate Location to the extent that it is not able to do so at the BPF.

- b. Neither Party shall be responsible for paying any additional costs incurred by the other, including, but not limited to additional capital, operating, maintenance, or repair costs, O & M Costs/Ton or any other costs or fees due to, or caused by, an Uncontrollable Circumstance that occurs during the term of this Agreement.

## **2.6 Changes in Laws**

- a. **Changes in General Laws.** Neither the Authority, nor the Utility, shall be responsible for paying any additional costs incurred by the other, including, but not limited to additional capital, operating, maintenance, or repair costs, O & M Costs/Ton or any other costs or fees due to or caused by a Change in General Law, unless otherwise specifically provided in this Agreement.
- b. **Change in Environmental Law.** In the event of a Change in Environmental Law that has a direct, material, and adverse effect upon the cost to the Authority of operating, maintaining, or modifying the BPF, the Authority and Utility shall mutually negotiate any necessary increase in the O & M Costs/Ton commensurate with the necessary cost. In the event the Parties are unable to mutually agree, then the increase shall be determined in accordance with Article VI herein.

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## ARTICLE III – PAYMENT

### 3.1 Monthly Payment

After the Effective Date, and on or before the fifteenth (15<sup>th</sup>) day of each Billing Period thereafter during the term of this Agreement, the Authority shall submit to the Utility an itemized invoice for services rendered to the Utility during the previous Billing Period which shall include: (a) the daily and total quantities of As Received Weight of Biosolids delivered to the BPF during the Billing Period by the Utility; and (b) the Monthly Payment due the Authority by such Utility calculated as the product of the Total O & M Costs/Ton as set out in Exhibit III times the total As Received Weight of Biosolids delivered by the Utility during the Billing Period, plus (b) the product of the Total Diversion Fee Costs/Ton as set out in Exhibit III times the total As Received Weight of Biosolids delivered by the Utility during the Billing Period which had to be diverted to an Alternate Location plus (c) the fees and costs incurred by the Authority and/or Contractor in handling any **Unacceptable Biosolids** delivered by the Utility, that the Utility requests and the Authority/ Contractor agree to handle, as detailed in 2.4.e. above. The Monthly Payment shall be payable by the Utility to the Authority within sixty (60) days from receipt of the invoice by the Utility.

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## **ARTICLE IV – TERM**

### **4.1 Term**

The Term of this Agreement shall extend until August 9, 2029, unless terminated in accordance with Section 4.2 below.

### **4.2 Termination for Convenience**

This Agreement may be terminated without cause for convenience by either party on twelve (12) months written notice to the other.

## **ARTICLE V – DISPUTE RESOLUTION**

### **5.1 Dispute Resolution**

All disputes between the Utility and the Authority shall be resolved first by resort to good faith negotiation, then by mediation.

The party raising the disputed issue(s) shall first give notice of the disputed issue(s) to the other by written notice that: a) identifies, with specificity each disputed issue; and b) proposes a good faith resolution to those issue(s). The Parties shall then attempt to privately reconcile those issues through good faith negotiation.

If the Parties are unable to reconcile all such disputed issues, the Parties shall attempt to select a mutually agreed upon mediator. If unable to do so, the Parties shall then each select a mediator at their own expense who shall then jointly select a neutral mediator whose selection shall be binding on the Parties in the dispute resolution process. The Parties shall provide a timely mediation summary to the selected mediator. Mediation shall be scheduled with either the agreed upon mediator or the selected mediator within five (5) business days of agreement or selection. If the mediator declares an impasse, the Parties may pursue any legal or equitable remedies each may have against the other at their respective discretion. The Parties shall share equally the cost of the mediator, however each shall be separately responsible for the costs of its own presentation to the mediator through experts, trial graphics or other costs used to make its presentation to the mediator.

The Parties also specifically agree, consistent with Florida Statute 164.1041 (2019), which the provisions the Florida Governmental Conflict Resolution Act shall not apply to any dispute(s) arising under or related to this Agreement.

### **5.2 Payments upon Resolution**

If either the Authority or the Utility has withheld payment of any amount in dispute, upon resolution of such dispute, the non-prevailing Party shall pay to the prevailing Party the disputed amount (or as much thereof as shall be determined to be due) plus interest at the legal prejudgment rate from the date on which such amount was due to the date the payment.

## **ARTICLE VI – INDEMNIFICATION**

### **6.1 Indemnification**

Each Party shall be liable for its own actions and negligence or wrongful acts and, to the extent permitted by law, the Utility shall indemnify, defend, and hold harmless the Authority against any actions, claims, or damages arising out of the Utility's negligence or wrongful acts in connection with this Agreement, and the Authority shall indemnify, defend, and hold harmless the Utility against any actions, claims, or damages arising out of the Authority's negligence in connection with this Agreement, provided that if one party may not legally indemnify the other, then neither party shall indemnify the other. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall same be construed to constitute agreement by either Party to indemnify the other Party for such other Party's negligent, willful, or intentional acts or omissions, nor be construed as a waiver of any defense the Parties may have under Section 768.28, Florida Statutes, nor be construed as consent to be sued by third parties.

### **6.2 Survival**

This Article VI shall survive the termination of this Agreement.

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## **ARTICLE VII – MISCELLANEOUS**

### **7.1 Public Records**

- a. It is the intent of this Article to maintain compliance with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended.
- b. The Parties hereto are public entities, each subject to Chapter 119, Florida Statutes, commonly known as Florida's Public Record Law. Each Party will comply with its obligations under Florida's Public Record Law.

### **7.2 Commercial Non-Discrimination Policy**

As a condition of entering into this agreement, the Utility represents and warrants that it will comply with the Authority's Commercial Nondiscrimination Policy as described under Section 6.3 of the Authority's Purchasing Manual. As part of such compliance, the Utility shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The Utility shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the Authority's relevant marketplace in Palm Beach County. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification or debarment of the company from participating in Authority contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

### **7.3 Inspector General**

Palm Beach County has established the Office of the Inspector General (OIG), Ordinance No. 2009-049 which is authorized and empowered to review past, present and proposed county contracts, transactions, accounts and records. The AUTHORITY has entered into an Interlocal Agreement (ILA) for Inspector General Services. This agreement provides for the Inspector General to provide services to the AUTHORITY in accordance with the authority, functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the AUTHORITY and receiving AUTHORITY funds shall fully cooperate with the Inspector General including providing access to records relating to this agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

#### **7.4 Representation, Warrantees, Approvals**

The Parties represent and warrant to each other that upon execution of this Agreement: (a) the Parties have the power and authority to enter into this Agreement and to carry out their respective obligations hereunder; (b) the Parties have taken all actions legally necessary to authorize them to enter into and perform their respective obligations hereunder; (c) entering into and performing this Agreement does not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency, or governmental body or violate any agreement by which a Party is bound as of the Effective Date of this Agreement; (d) this Agreement has been duly entered into by the Party and constitutes a legal, valid, and binding obligation of the Party; (e) there is no litigation or proceeding pending or threatened against a Party which could materially or adversely affect the performance of this Agreement; and (f) the Parties have obtained all approvals as may be required to permit their respective performance of the obligations of this Agreement. Except as expressly provided herein, the Parties make no representations or warranties and waive no rights or remedies.

#### **7.5 Amendment and Modification**

This Agreement shall only be modified or amended by a written agreement duly signed by the persons authorized to sign agreements on behalf of the Authority and the Utility. Any such amendments or modifications shall be numbered in ordinal sequence and titled accordingly.

#### **7.6 Notices**

Any notices required in this Agreement shall be sent in writing, certified mail return receipt requested, to the Parties at the addresses listed below, unless either Party shall inform the other Party in writing of any change in that address.

If to the Authority:

Solid Waste Authority of Palm Beach County  
7501 North Jog Road  
West Palm Beach, Florida 33412  
Attention: Executive Director

If to the Utility:

Village of Wellington  
12300 Forest Hill Blvd.  
Wellington, FL 33414  
Attention: Utility Director, Shannon R. LaRocque, P.E.

With copy to;

Village of Wellington  
12300 Forest Hill Blvd.  
Wellington, FL 33414

Attention: Village Attorney

**7.7 Assignment**

It is expressly understood and agreed that this Agreement is between the Authority and the Utility and that the Authority and the Utility shall have no right to assign this Agreement or any portion thereof without the prior written approval of the Authority.

**7.8 Severability**

In the event that any provision of this Agreement shall, for any reason, be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the remainder of this Agreement shall not be affected and every other term and provision of the Agreement shall be deemed valid and enforceable to the extent permitted by law.

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**IN WITNESS WHEREOF**, the Solid Waste Authority of Palm Beach County, at a regular meeting thereof, by action of the Authority Board authorizing and directing the foregoing to be adopted, has caused these presents to be signed by its Executive Director, and its seal to be hereto affixed, and the Village of Wellington has authorized and caused the execution of this Agreement, all as of the day, month, and year first above written.

**ATTEST:**

**SOLID WASTE AUTHORITY OF  
PALM BEACH COUNTY**

By: \_\_\_\_\_  
Sandra Vassalotti, Clerk to the Board

By: \_\_\_\_\_  
Daniel Pellowitz, Executive Director

Date: \_\_\_\_\_, 2019

(SEAL)

**APPROVE AS TO LEGAL SUFFICIENCY**

**APPROVE AS TO TERMS AND  
CONDITIONS**

By: \_\_\_\_\_  
Howard J. Falcon, III, SWA General Counsel

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_, 2019

Raymond H. Schauer  
Print Name

Director, Facility Contract Operations  
Title

**ATTEST:**

**VILLAGE OF WELLINGTON**

By: \_\_\_\_\_  
Chevelle Nubin, Village Clerk

By: \_\_\_\_\_  
Anne Gerwig, Mayor

Date: \_\_\_\_\_, 2019

(SEAL)

**VILLAGE ATTORNEY'S OFFICE  
Approve as to Form and Legal Sufficiency**

By: \_\_\_\_\_  
Laurie Cohen, Village Attorney

Date: \_\_\_\_\_, 2019

# EXHIBIT I

## PARTNER UTILITIES

Palm Beach County	Capacity Share	17.82%	
Water Utilities Department	Minimum Annual Commitment	16,261	WTY
P.O. Box 16097	Maximum Daily Delivery	107	WTD
West Palm Beach, FL 33416-6097	Maximum Annual Delivery	33,822	WTY
South Central Regional Wastewater	Capacity Share	14.75%	
Treatment and Disposal Board	Minimum Annual Commitment	13,459	WTY
1801 North Congress Ave	Maximum Daily Delivery	89	WTD
Delray Beach, FL 33445	Maximum Annual Delivery	27,996	WTY
City of Boca Raton	Capacity Share	10.27%	
Utilities Department	Minimum Annual Commitment	9,371	WTY
201 West Palmetto Park Road	Maximum Daily Delivery	62	WTD
Boca Raton, FL 33432-3795	Maximum Annual Delivery	19,492	WTY
Loxahatchee River	Capacity Share	8.96%	
Environmental Control District	Minimum Annual Commitment	8,176	WTY
2500 Jupiter Park Dr	Maximum Daily Delivery	54	WTD
Jupiter, FL 33458-8964	Maximum Annual Delivery	17,006	WTY
Solid Waste Authority/Seacoast	Capacity Share	12.37%	
7501 North Jog Road	Minimum Annual Commitment	11,288	WTY
West Palm Beach, FL 33412	Maximum Daily Delivery	73	WTD
	Maximum Annual Delivery	23,478	WTY
East Central Regional Wastewater	Capacity Share	35.83%	
Treatment Facilities Operation Board	Minimum Annual Commitment	32,695	WTY
4325 N. Haverhill Road	Maximum Daily Delivery	215	WTD
West Palm Beach, FL 33409	Maximum Annual Delivery	68,005	WTY

### **BPF O&M Agreement Sections 2.01 (A) and 2.03 (A)**

	Capacity	100.00%	
	Minimum annual delivery commitment	91,250	WTY
Fiscal Year average maximum daily Processing capacity		520	WTD
	Maximum daily Processing capacity	600	WTD
	Maximum annual Processing capacity	189,800	WTY

## EXHIBIT II

### BIOSOLIDS QUALITY SPECIFICATIONS

The successful operation of the Biosolids Processing Facility (BPF) requires that the Biosolids to be received meet the minimum requirements outlined below.

Biosolids shall have minimum solids content of 13 percent solids by weight, with a weekly average of not less than 15 percent solids. BPF shall have the right to reject any shipment that is below 13 percent solids or that fails to meet the 15 percent average. No admixtures or foreign material (i.e. Sawdust, etc.) will be accepted as a means to increase solids content.

No lime-stabilized Biosolids shall be accepted by the BPF.

Utility is producing digested Biosolids and may deliver digested Biosolids to the BPF.

All Sludge shall be delivered to the BPF in covered water tight Semi-truck dumping trailers or dump trucks capable of dumping into a hopper from the rear of the truck.

Contributors to the BPF shall provide copies of their Biosolids monitoring and testing data that is required by their FDEP wastewater permit within 30 days of the date due to the FDEP.

Any facility may be restricted from the BPF if their sludge exceeds the ceiling that FL Chapter 62-640 defines as the Class AA Biosolids metal limits (which match 40 CFR Part 503, Table 3) as listed below:

a.	Arsenic	41	mg/kg dry weight basis
b.	Cadmium	39	mg/kg dry weight basis
c.	Copper	1500	mg/kg dry weight basis
d.	Lead	300	mg/kg dry weight basis
e.	Mercury	17	mg/kg dry weight basis
f.	Molybdenum	75	mg/kg dry weight basis
g.	Nickel	420	mg/kg dry weight basis
h.	Selenium	100	mg/kg dry weight basis
i.	Zinc	2800	mg/kg dry weight basis

The BPF shall only accept Biosolids as defined as “Biosolids” in Chapter 62-640.200 (6) F.A.C., or as amended from time to time.

The BPF shall not accept any materials that are hazardous waste under Chapter 62-730, F.A.C., or as amended from time to time.

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## E X H I B I T III

### O & M AND DIVERSION COSTS PER TON AND ADJUSTMENTS (FY 2020)

A) The Total O&M Cost/Ton shall include the following:	
1) Base Processing Fee Cost/Ton	\$33.91
2) Capacity Utilization Fee Cost/Ton	<u>\$10.21</u>
<b>Sub Total:</b>	<b>\$44.12</b>
3) Pass Through Costs/Ton	
Electric	\$5.14
Natural Gas	\$10.89
Potable water	\$0.29
ISW	\$1.63
WW	\$1.12
Na Hypochlorite	\$0.30
Caustic	<u>\$0.08</u>
<b>Sub Total:</b>	<b>\$19.45</b>
4) Solid Waste Authority Administration Costs/Ton	
SWA Landfill Gas Delivery System O&M Cost/Ton	\$2.47
SWA Contract Management Cost/Ton	<u>\$2.83</u>
<b>Sub Total:</b>	<b>\$5.30</b>
<b>Total O&amp;M Cost/Ton:</b>	<b>\$68.87</b>
B) The Total Diversion Fee Cost/Ton shall include the following:	
1) Base Diversion Fee Cost/Ton	\$50.00
2) SWA Contract Management Cost/Ton	<u>\$2.83</u>
<b>Total Diversion Fee Cost/Ton:</b>	<b>\$52.83</b>

### ADJUSTMENTS

1. The Base Processing Fee, Base Diversion Fee, and Capacity Utilization Fee, as set out above, shall be adjusted annually as set out in Section 3.01(B) of the O & M Agreement. The Authority shall submit a notice of the adjustment not later than September 1st of each year by letter to the Utility at the address set forth in Section 8.3 of this Agreement.
2. The Pass through Costs/Ton, as set out above, shall be adjusted annually based on the Maximum Utility Utilization Guarantee as set out in Section 3.01(D) of the O&M Agreement and the estimated unit price per item.
3. SWA Landfill Gas Delivery System O&M Costs/Ton, as set out above, shall be adjusted annually based on the minimum delivery as set out in Section 2.01 of the O&M Agreement and the approved Authority operating budget for the landfill gas delivery system.
4. SWA Contract Management Costs/Ton, as set out above, shall be adjusted annually based on the minimum delivery as set out in Section 2.01 of the O&M Agreement and the approved Authority operating budget for the BPF.