

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

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Meeting Date: September 12, 2006 Consent [X] Regular []
Public Hearing []

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department
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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Interlocal Agreement with the City of South Bay for construction of a Floridan Aquifer production well to supply raw water to the Lake Region Water Treatment Plant (LRWTP).

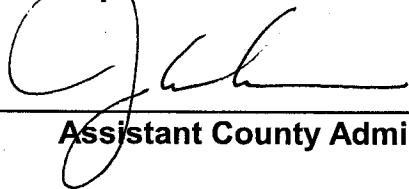
Summary: On February 3, 2004, the Board entered into an Agreement with the City of South Bay (R2004-0245) for the provision of bulk potable water service. Pursuant to the Bulk Agreement, the County will design, permit, and construct the LRWTP and all related infrastructure, including several Floridan Aquifer production wells. The County and the City have been working cooperatively to secure Federal and State funding for this project. This Agreement will transfer \$356,000 of State funds from the South Florida Water Management District (SFWMD) through the City of South Bay to the County for construction of one (1), Florida Aquifer production well. Due to timing concerns of meeting SFWMD deadlines for invoice submittal, the Board of County Commissioners is being asked to sign this agreement prior to execution by the City of South Bay. The Agreement is scheduled to go before the City Commission on September 18, 2006. (WUD Project No. 03-169) Districts 6 (MJ)

Background and Justification: The Lake Region communities are facing many challenges regarding existing and future public water supply. These challenges include operating outmoded water treatment plants, dealing with a rapidly changing regulatory environment, and coping with a lack of funding. The pooling of resources from the affected communities, County, SFWMD, State of Florida, and the federal government to construct the LRWTP is the most efficient way to ensure a safe and reliable drinking water supply. On December 15, 2005, the SFWMD approved a cost sharing agreement (Agreement No. DG061193) with the City of South Bay for construction of one (1) Floridan Aquifer production well to serve the LRWTP. This Interlocal Agreement will transfer State funds through the City of South Bay to Palm Beach County for well construction.

Attachments:

- 1. Three (3) Original Agreements
- 2. Location Map

Recommended By:  8/10/06
Department Director Date

Approved By:  9-17-06
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(\$356,000.00)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>(\$356,000.00)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 4011 Agency 721 Org. 4211 Rev Source 3739

Is Item Included in Current Budget? Yes Y No

Reporting Category N/A

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

The Water Utilities Department will receive \$356,000 in external revenues from the City of South Bay under this Agreement.

C. Department Fiscal Review: Guy Eggen

III. REVIEW COMMENTS

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

<p><u>Jim Dub</u> 8/29/06 OFMB</p>	<p><u>Dr. J. Jacoby</u> 9/1/06 Contract and Development Control 8/31/06</p>
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B. Legal Sufficiency:

Assistant County Attorney 9/15/06

This Contract complies with our contract review requirements.

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF PAHOKEE FOR THE CONSTRUCTION OF A FLORIDIAN AQUIFER PRODUCTION WELL TO SUPPLY RAW WATER TO THE 10 MGD (finished water) LAKE REGION WATER TREATMENT PLANT

THIS AGREEMENT is made and entered into this _____ day of _____, 2006 by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and the City of Pahokee, a municipality organized under the laws of the State of Florida, hereinafter referred to as "PAHOKEE".

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, the COUNTY and PAHOKEE have previously entered into an Agreement for the Provision of Bulk Potable Water Service ("Bulk Water Agreement") wherein the COUNTY will design, construct and operate a new Lake Region Water Treatment Plant ("LRWTP") and PAHOKEE, among other parties, will purchase water treated at the LRWTP from the COUNTY; and

WHEREAS, The South Florida Water Management District (SFWMD) and PAHOKEE have previously entered into a contract for the construction of a Floridan Aquifer Production Well -Contract #DG061192("FAPW Agreement") to supply raw water to the 10 MGD (finished water) LRWTP; and

WHEREAS, Pursuant to the Bulk Water Agreement, PAHOKEE wishes to have the COUNTY perform the research, design, construction and permitting aspects of the Floridan Aquifer Production Well as required under the FAPW Agreement, and to reimburse COUNTY the grant money provided under the FAPW Agreement in exchange for said research, design, construction and permitting.

NOW THEREFORE, in consideration of the mutual promises contained herein, the COUNTY and PAHOKEE agree as follows:

1. Recitals. The foregoing statements are true and correct and are incorporated herein as if fully set forth.
2. Term. This Agreement shall commence on the Effective Date and shall continue until the responsibilities of both parties have been completed.

3. Effective Date. This Agreement shall become effective upon approval by both parties. The Effective Date of this Agreement shall be the date the Agreement is ratified by the Palm Beach County Board of County Commissioners.
4. Responsibilities of COUNTY. Pursuant to the Bulk Water Agreement, COUNTY, or any subcontractor it may in its sole discretion select, will research, design, construct, and permit a Floridan Aquifer Production Well to supply the LRWTP, as specified in the FAPW Agreement-Contract #DG061192, a copy of which is attached hereto and incorporated herein as Exhibit "A". COUNTY will comply with all requirements of the FAPW Agreement for the research, design, construction and permitting of the Floridan Aquifer Production Well. COUNTY will provide PAHOKEE with all permits and certifications required under the FAPW Agreement for PAHOKEE to comply with the FAPW Agreement and to receive reimbursement from SFWMD.
5. Responsibilities of PAHOKEE. PAHOKEE shall comply with all reporting and certification requirements of the FAPW Agreement to ensure that reimbursement is received from SFWMD in a timely manner. PAHOKEE shall provide COUNTY with all payments provided by SFWMD under the FAPW Agreement. PAHOKEE shall make said payments to COUNTY within twenty (20) business days of receipt of payments from SFWMD. Failure of PAHOKEE to fully comply with any of the provisions of this paragraph shall be a material breach of this agreement, and COUNTY shall be permitted to initiate legal proceedings to seek reimbursement of any funds paid from SFWMD under the FAPW Agreement and not remitted to COUNTY by PAHOKEE.
6. Payments to Reduce Initial Capital Cost. All costs of research, design, constructing and permitting of the Floridan Aquifer Production Well will be included in the Initial Capital Cost (ICC) as defined in the Bulk Water Agreement between the COUNTY and PAHOKEE, and all payments received by the COUNTY pursuant to this Agreement shall be utilized to reduce the ICC. A copy of the Bulk Water Agreement is attached hereto and incorporated herein as Exhibit "B".
7. Retention of Obligations under FAPW Agreement. PAHOKEE retains all of its rights and obligations of the FAPW Agreement with SFWMD. This is intended as a separate agreement between the COUNTY and PAHOKEE for the research, design, construction and permitting of a Floridan Aquifer Production Well, and for the reimbursement of those services. No contractual relationship is created between the COUNTY and the SFWMD as a result of the COUNTY entering into this Agreement. COUNTY will provide PAHOKEE with all permits and certifications required under the FAPW Agreement for PAHOKEE to comply with the FAPW Agreement and to receive reimbursement from SFWMD.

8. Indemnification. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, COUNTY shall indemnify, defend, and hold harmless PAHOKEE against any actions, claims, or damages arising out of COUNTY's negligence in connection with this Agreement, and PAHOKEE shall indemnify, defend, and hold harmless COUNTY against any actions, claims, or damages arising out of PAHOKEE's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the 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.
9. No Transfer of Powers. Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Agreement is solely an Agreement to provide services as authorized in Florida Statutes, Chapter 163. The governing bodies for COUNTY and PAHOKEE shall each maintain all legislative authority with regard to their respective political subdivision. All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and pensions and relief, disability, workers compensation and other benefits which apply to the activity of officers, agents or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement.
10. Force Majeure. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, neither party shall be liable for such non-performance.
11. Remedies. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.
12. Successors and Assigns. COUNTY and PAHOKEE each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such

other party, in respect to all covenants of this Agreement. Neither COUNTY nor PAHOKEE shall assign, sublet, convey, or transfer its interest in this Agreement without prior written consent of the other.

13. Waiver. The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.

14. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

15. Notice. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to PAHOKEE, shall be mailed or delivered to PAHOKEE at:

Lillie J. Latimore
171 North Lake Avenue
Pahokee, FL 33476

and if to County, shall be mailed or delivered at:

Water Utilities Director
Palm Beach County Water Utilities Department
8100 Forest Hill Boulevard
West Palm Beach, FL 33413

16. Filing. This Agreement shall be filed with the Clerk of the Circuit Court in Palm Beach County.

17. Amendment and Modification. This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.

18. Entirety of Agreement. COUNTY and PAHOKEE agree that this Agreement and any Exhibits set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superceded or otherwise altered, except by written

instrument executed by the parties.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first above written.

ATTEST:
DOROTHY H. WILKEN

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

By: _____
Deputy Clerk

By _____
Tony Masilotti, Chairman

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
COUNTY Attorney

**APPROVED AS TO TERMS AND
CONDITIONS**

By: 
Director-Water Utilities


CITY OF PAHOKEE

BY: 

ATTEST:

BY: 

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: 

Resolution 2006-44

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR OF PAHOKEE TO EXECUTE AN AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF PAHOKEE FOR THE CONSTRUCTION OF A FLORIDIAN AQUIFER PRODUCTION WELL TO SUPPLY RAW WATER TO THE 10 MGD (FINISHED WATER) LAKE REGION WATER TREATMENT PLANT.

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, PALM BEACH COUNTY ("County") and the CITY OF PAHOKEE ("City" have previously entered into an Agreement for the Provision of Bulk Potable Water Service ("Bulk Water Agreement"), wherein the County will design, construct and operate a new Lake Region Water Treatment Plant ("LRWTP") and the City, among other parties, will purchase water treated at the LRWTP from the County; and

WHEREAS, the South Florida Water Management District, (SFWMD) and the City have previously entered into a contract for the construction of a Floridian Aquifer Production Well Contract #DG061192 ("FAPW Agreement") to supply raw water to the 10 MGD (finished water) LRWTP; and

WHEREAS, Pursuant to the Bulk Water Agreement, the City wishes to have the County perform the research, design, construction and permitting aspects of the Floridian Aquifer Production Well as required under the FAPW Agreement, and to reimburse County the grant money provided under the FAPW Agreement in exchange for said research, design, construction and permitting.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PAHOKEE THAT:

Section 1. The Mayor of the City of Pahokee is hereby authorized and directed to execute an agreement between Palm Beach County and the City of Pahokee for the construction of a Floridian Aquifer Production Well to supply raw water to the 10 MGD (finished water) Lake Region Water /Treatment Plant.

PASSED AND ADOPTED THIS 27th DAY OF June, 2006.

Patricia McLean
ATTEST: Patricia McLean, CITY CLERK

J. P. Sasser
J. P. Sasser, MAYOR

MAYOR SASSER yes
VICE MAYOR MCENTIRE yes
COMMISSIONER BABB yes
COMMISSIONER BIGGS yes
COMMISSIONER CRAWFORD yes

APPROVED AS TO LEGAL SUFFICIENCY
Mimi McAndrews
Mimi McAndrews, CITY ATTORNEY