

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 11, 2007 [X] Consent [] Regular
[] Public Hearing

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Reclaimed Water Development Agreement with KRG/Atlantic Delray Beach, LLC.

Summary: KRG/Atlantic Delray Beach, LLC ("KRG") is developing property within the County's Mandatory Reclaimed Water Service Area, and therefore is required to enter into a Reclaimed Water Development Agreement ("Agreement".) On January 31, 2007, KRG entered into Alternative Water Supply Funding Program Grant Agreement #4600000617 ("Grant") with the South Florida Water Management District for the construction of various reclaimed water pipelines, including approximately 4,000 linear feet of twenty (20) inch reclaimed water main on Atlantic Avenue from west of the Florida Turnpike to east of Lyons Road in Delray Beach ("Reclaimed Water Main"). KRG anticipates receiving \$500,000 from this Grant. The County has already constructed the Reclaimed Water Main to serve properties in the area, including those owned by KRG. KRG agrees to forward \$313,103 of the Grant to reimburse the County for the County's cost of constructing the Main. The special condition to this Agreement clarifies the terms associated with that reimbursement.

District 5

(MJ)

Background and Justification: While the Department Director has been delegated the authority to enter into Standard Reclaimed Water Development Agreements, Board approval is being sought in this case due to the Agreement's non-standard terms and conditions related to the \$313,103 reimbursement. Staff reviewed existing long-term reclaimed water infrastructure plans and determined that extending and oversizing the reclaimed water main beyond that required for KRG's project is in the County's interest.

Attachments:

- 1. Three (3) original Reclaimed Water Development Agreements
- 2. Location Map

Recommended By: *Benjamin* 8/22/07
Department Director Date

Approved By: *Sharon Boyer* 8/30/07
Assistant County Administrator Date

RECLAIMED WATER

CHARGE #1023 RETURN VIA WILL CALL #133
ATTN: MARK FALLON, CONTRACT MANAGEMENT,
PBC WATER UTILITIES DEPT,
8100 FOREST HILL BLVD, WPB, FL 33413

RECLAIMED WATER DEVELOPMENT AGREEMENT (DA)

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between PALM BEACH COUNTY, a subdivision of the State of Florida, hereinafter referred to as "Utility", and KRG/ATLANTIC DELRAY BEACH, LLC, hereinafter referred to as "Property Owner."

WITNESSETH

WHEREAS, Property Owner owns property located in Palm Beach County, Florida, and as more fully described in Exhibit "A", attached hereto and made a part hereof and hereinafter referred to as "Property", whereupon Property Owner has or is about to develop the Property by erecting thereon residential or non-residential improvements; and

WHEREAS, Property Owner desires to construct reclaimed water facilities hereinafter referred to as "facilities"; and

WHEREAS, upon the conditions set forth herein, Utility will own the Facilities up to the Point of Service for operation and maintenance purposes; and

WHEREAS, Property Owner understands that this Agreement for service in no way entitles Property Owner to densities which are greater than those allowed under the density provisions of the Comprehensive Plan of Palm Beach County, or to densities or development rights as may otherwise be limited by the Board of County Commissioners; and

WHEREAS, Property Owner shall use only reclaimed water for irrigation purposes; and

WHEREAS, to encourage and facilitate conservation of water resources, the parties desires to enter into this Agreement.

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

1. The foregoing statements are true and correct.
2. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:
 - (a) "UPAP" - the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as may be amended from time to time, which is incorporated herein by reference;
 - (b) "Service" - the readiness and ability on the part of Utility to furnish reclaimed water to the property;
 - (c) "Point of Service" - generally, the point where the pipes of Utility are connected with the pipes to be owned and operated by Property Owner as further defined in Chapter 1 of the UPAP;
 - (d) "Service Initiation" - the date a reclaimed water meter is requested;
 - (e) "Reclaimed Water" - water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a wastewater treatment facility;

DA # 03-90007-000

RECLAIMED WATER

- (f) "Equivalent Residential Irrigation Connection (ERIC)" - a system capacity equivalency unit which corresponds to the peak reclaimed water demand of the $\frac{5}{8}$ " x $\frac{3}{4}$ " meter subcategory of the single family residential category of Customer usage. This system capacity equivalency unit is utilized to establish the reclaimed water system demand for various sized connections for the purpose of assessing fees and reserving capacity. For the purpose of this Agreement, one ERIC = 500 gallons/day;
 - (g) "Mandatory Agreement Payment (MAP)" - twelve months of Guaranteed Revenue Fees plus applicable Franchise Fees payable to Utility upon submission of a DA or renewal agreement for each ERC (or ERIC) represented in the Agreement;
 - (h) "Guaranteed Revenue Fee" - the fee designated to recover the carrying costs of system capacity which has been or is being constructed in anticipation of future service requests. Carrying costs include fixed operating and renewal and replacement expenses necessary to maintain excess system capacity for future use. Guaranteed Revenue does not recover variable operating expenses;
 - (i) "Total Accrued Amount (TAA)" - At the time of Service Initiation for each ERIC, a TAA equal to sixty months Guaranteed Revenue Fees plus applicable Franchise Fees at the then current rate minus the MAP paid per each ERIC shall be due and payable for such ERIC. The TAA for each ERIC will be determined at the time of Service Initiation;
 - (j) "Standard Development Renewal Agreement (SDRA)" - an agreement between Utility and Property Owner extending the capacity reservation for unused ERCs/ERICs in a Standard Development Agreement for an additional five (5) years; and
 - (k) "Franchise Fee" - A percentage surcharge applied to all of Utility's fees for Customers within portions of Utility's Service Area with said fees collected by Utility and distributed to another governmental entity.
3. Property Owner hereby grants and gives to Utility the exclusive right and privilege to construct, own, maintain, operate and expand the reclaimed water facilities in, under, upon, over and across the present and future streets, roads, easements, reserved utility sites and public places as provided and dedicated to public use in the record plats, or as provided for in agreement, dedications or grants made otherwise and independent of said record plats. Utility covenants that it will use due diligence in ascertaining all easement locations; however, should Utility install any of its facilities outside a dedicated easement area, Property Owner covenants and agrees that Utility will not be required to move or relocate any facilities lying outside a dedicated easement area as long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. Property Owner shall obtain written approval from Utility prior to installing any structure or object, including, but not limited to, fences, gates, signs, trees or poles, within an easement area. In consideration of Utility's consent to an encroachment, Property Owner shall agree to indemnify and hold Utility harmless from and against all liabilities, damages, penalties, claims costs and expenses, including attorney's fees at all levels, which may be imposed upon or asserted against Utility as a result of or in any way connected to an encroachment approved by Utility. In the event Utility determines that it is necessary to construct, maintain, repair, remove, or replace any of its facilities located under, over or upon an easement, Property Owner shall immediately remove the encroachment from the easement upon the request of Utility at Property Owner's sole cost and expense. If Property Owner fails to remove the encroachment, Utility shall have the right to remove the encroachment from the easement. Property Owner shall pay all costs related to removing the encroachment from the easement incurred by Utility.

Property Owner hereby further agrees that the foregoing grants include the necessary rights of ingress and egress to any part of the Property which Utility requests for the maintenance, operation or expansion of the reclaimed water facilities; that in the event Utility is required or desires to install any of its reclaimed water facilities in lands within the Property lying outside the streets and easement areas described above, then Property Owner shall grant to Utility, without cost or expense to Utility, the necessary easement or easements for such installations; provided, all such installations by Utility shall be made in such a manner as not to interfere with the then primary use of such Property.

Property Owner, as further consideration of this Agreement, and in order to effectuate the foregoing grants to Utility, hereby places the following covenant, as a covenant running with the

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land, upon the Property and thereby subjecting it to a reservation, condition, limitation or restriction in favor of Utility, as follows:

Utility, or its successors, has the sole and exclusive right to provide all reclaimed water facilities and services to the Property described in **Exhibit "A"** and in addition to any property to which reclaimed water service is actually rendered by Utility. All occupants of any residential or non-residential improvement erected or located on the Property, and all subsequent or future owners or purchasers of the Property, or any portion thereof, shall exclusively receive their reclaimed water service from the aforesaid Utility, and shall pay for same and shall abide by the terms and intent of this Agreement and the UPAP for as long as the aforesaid Utility provides such services to the Property. Further, all occupants of any residential or non-residential improvement erected or located on the Property, and all subsequent or future owners or purchasers of the Property, or any portion thereof, agree by occupying any premises on the Property or by recording any deed of conveyance with respect to the Property, that they will not construct or otherwise make available or use reclaimed water service from any source other than that provided by Utility.

Further, in order to give an additional and supplementary notice to all the future Property Owners of any of the Property of the rights of Utility to provide the Property with reclaimed water facilities and services, Property Owner hereby covenants and agrees to have the above restrictive covenant or its equivalent included in the general subdivision restrictions and to place the same of record in the Public Records of Palm Beach County, Florida.

4. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by Property Owner, Utility covenants and agrees that it will allow the connection of the reclaimed water facilities installed by Property Owner to the reclaimed water facilities of Utility in accordance with the terms and intent of this Agreement. Such connection and reclaimed water usage shall be in accordance with rules and regulations of the Health Department, the Department of Environmental Protection and the UPAP.
5. Property Owner is required to pay Guaranteed Revenue Fees plus applicable Franchise Fees in order to support investment in plant facilities, as well as the fixed costs of maintaining such facilities and the unused capacity it represents. Therefore, Property Owner agrees to pay in accordance with the UPAP:
 - (a) a MAP per each ERIC for the requested capacity upon submission of this Agreement; and
 - (b) a TAA per each ERIC for the requested capacity upon Service Initiation.

Utility has advised Property Owner that construction of additional reclaimed water facilities will be completed in phases designed to coincide with the need for service to Property Owner and other Property Owners in the service area. Utility will not provide service to connections in excess of those reserved as evidenced by proper payment of Guaranteed Revenue.

The MAP required upon submission of this Reclaimed Water Agreement is:

Reclaimed Water:	\$0.00 per ERIC x	94.00 ERICs =	\$0.00
		Franchise Fee	\$0.00
		TOTAL	\$0.00

Upon receipt of the MAP, Utility agrees to reserve **94.00** ERICs of Reclaimed Water system capacity for Property Owner until **SEPTEMBER 30, 2012**, which term may be extended in accordance with the UPAP, as may be amended from time to time, and upon payment of applicable fees. Property Owner acknowledges and agrees Utility shall not refund or reimburse the MAP upon expiration.

At the time of Service Initiation, the applicable ERICs will be deducted from said reservation. Upon approval of Utility, the total number of ERICs may be increased up to 10% of the original reservation or by ten (10) ERICs, whichever is greater, by an amendment to this Agreement. The MAP required for the amendment shall be paid at the rate applicable to the original Agreement. Any amendments to the DA shall be binding upon both Utility and Property Owner and subject to all applicable rules and regulations of Utility. Any adjustment which is greater

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than that specified herein requires a new Agreement to be signed. Upon written notice to Utility, said ERICs may be adjusted downward however, no refund or credit will be given by Utility to Property Owner for said downward adjustment.

6. Property Owner shall cause to be prepared engineering plans and specifications prepared by and sealed by a professional engineer registered in the State of Florida showing the on-site and off-site reclaimed water systems for the Property. Utility will advise Property Owner's engineer of any sizing requirements as mandated by the UPAP. Such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase shall conform to a master plan for the development of the Property and such master plan shall be submitted to Utility concurrent with or prior to submission of plans for the first phase. All such plans and specifications, including hard copy and electronic media, submitted to Utility's engineer shall be subject to the approval of Utility and shall conform to Utility's standards as set forth in the UPAP, and no construction shall commence until Utility has approved such plans and specifications in writing. After approval, Property Owner shall cause to be constructed, at Property Owner's expense, the reclaimed water system as shown on the plans and specifications. Fees, as set forth in the UPAP, shall be levied to cover the cost of the plan review and inspection. Property Owner shall be required to pay connection fees and installation fees as set forth in the UPAP for each connection.

During the construction of the reclaimed water system by Property Owner, Utility may from time to time inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, infiltration, line and grade, and all other normal engineering tests to determine that the system has been installed in accordance with the approved plans and specifications and the UPAP. Inspection by Utility shall in no way relieve Property Owner of his responsibility to install the facilities in accordance with the approved plans and specifications and the UPAP. Complete as-built plans, including hard copy and electronic media when utilized, shall be submitted to Utility upon completion of construction.

Upon completion of said facilities, Utility hereby agrees to accept ownership of the reclaimed water facilities for operation and maintenance purposes. Property Owner also hereby covenants and agrees to design and/or modify his internal irrigation system, at his sole cost, to accept reclaimed water from Utility, and to design and operate said system within the guidelines for reclaimed water as outlined in the then current UPAP, the Palm Beach County Reclaimed Water Ordinance and State and Federal law.

Property Owner hereby agrees to transfer to Utility title to all reclaimed water distribution systems installed by Property Owner's contractor up to the point of service, pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by Utility of said installation. As further evidence of said transfer of title, upon the completion of the installation and prior to the rendering of service by Utility, Property Owner shall convey to Utility in a form supplied by Utility the complete on-site and off-site reclaimed water distribution system as constructed by Property Owner and approved by Utility, along with the required Cost Documentation and Property Owner's No Lien Affidavit. Subsequent to construction of the facilities and prior to receiving a meter(s) from Utility, Property Owner shall convey to Utility all easements and/or rights-of-way covering areas in which reclaimed water lines are installed by a recordable document in a form supplied by Utility. All conveyance of easements or rights-of-way shall be accompanied by a paid title policy for the benefit of Utility in a minimum amount of \$50.00 per linear foot of any granted utility easement (based on the centerline of the easement). Said title policy shall confirm the Grantor's right to convey such easements or rights-of-way, and further, evidencing Utility's right to the continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement. The use of easements granted by Property Owner may be used by other utilities as long as such use is approved by Utility. Utility's acceptance of the reclaimed water system installed by Property Owner shall be in accordance with the provisions as set forth in the UPAP. All installations by Property Owner or its contractor shall be warranted for one year from date of Final DEP Certification. Mortgagees holding liens on such properties shall be required to release such liens, subordinate their position, or join in the granting of the easement or rights-of-way. All reclaimed water facilities shall be located within an easement if not located within platted or dedicated rights-of-way.

Property Owner hereby agrees to pay to Utility Guaranteed Revenue Fees, Connection Fees, Service Installation Fees, Franchise Fees, and other fees as set forth in the UPAP at the then current rate.

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The timely payment by Property Owner of all fees in accordance with the terms set forth herein, shall be considered essential to the continued performance by Utility of the terms and conditions of this Agreement. The construction and transfer of ownership of the reclaimed water facilities does not and will not result in Utility waiving or offsetting any of its fees, rules or regulations. Property Owner shall not have any present or future right, title, claim, or interest in and to the reclaimed water facilities transferred to or owned by Utility.

7. Upon submission of this Agreement, Property Owner, at his expense, agrees to furnish Utility with a copy of the recorded Warranty Deed for the purpose of establishing ownership of the Property. Any mortgagee or lien holder having an interest in the Property shall be required to execute a Consent and Joinder of Mortgagee/Lienholder as supplied by Utility. Property Owner must submit either a title policy or a letter from an attorney licensed to do business in Florida confirming that there is no mortgage or lien on the Property. The title policy or letter must be issued within thirty (30) days of submittal of the DA.
8. Property Owner agrees with Utility that all reclaimed water facilities conveyed to Utility to use in connection with providing reclaimed water service to the Property, shall at all times remain in the complete and exclusive ownership of Utility, and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose. In addition, Utility shall have the exclusive right and privilege to provide reclaimed water service to the Property and to the occupants of each residence or building constructed thereon.
9. Notwithstanding any provision in this Agreement, Utility may establish, revise, modify, and enforce rules, regulations, and fees covering the provision of reclaimed water service to the Property. Such rules, regulations, and fees are subject to the approval of the Palm Beach County Board of County Commissioners. Such rules, regulations, and fees shall be reasonable and subject to regulation as may be provided by law or contract. Fees charged to Property Owner or Customers located upon the Property shall be identical to fees charged for the same classification of service in the particular service area. All rules, regulations and fees as set forth in the UPAP, shall be binding upon Property Owner, upon any other entity holding by, through or under Property Owner, and upon any Customer of the reclaimed water service provided to the Property by Utility. Said rules and regulations include, but are not limited to, Service Initiation, oversizing of facilities, use of previously oversized facilities or extension of facilities. Any fee or rate delinquent more than 120 days will automatically void this Standard Development Agreement.
10. Property Owner or his assignee shall not have the right to and shall not connect to the reclaimed water facilities of Utility until approval for such connection has been granted by Utility. The parties hereto further agree that the expense of construction, operation, and maintenance of all improvements beyond the Point of Service shall be the sole cost and expense of Property Owner or other than Utility. In addition, Property Owner or his Assignee agrees to comply with all rules and regulations of the UPAP, HRS, and DEP pertaining to the Reclaimed Water Irrigation Systems.
11. Property Owner acknowledges and agrees that the transfer or assignment of this Assignment upon the sale, conveyance, transfer or assignment of the Property, or any portion thereof, as described in Exhibit "A" of this Agreement by Property Owner shall only be performed in accordance with the provisions of UPAP. Property Owner further acknowledges and agrees that documenting the transfer or assignment of this Agreement in a form acceptable to Utility is the sole responsibility of Property Owner. Failure to provide documentation to Utility of an assignment or transfer within thirty (30) days after the sale, conveyance, transfer, or assignment of the Property, or any portion thereof, may result in the cancellation of the capacity reserved and/or loss of the Mandatory Agreement Payment identified herein.
12. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to Property Owner shall be mailed or delivered to Property Owner at:

**30 S MERIDIAN, SUITE 1100
INDIANAPOLIS, IN 46204-3565;**

and if to Utility, shall be mailed to Palm Beach County Water Utilities Department Contract Management Section, P.O. Box 16097, West Palm Beach, Florida 33416-6097.

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13. The rights, privileges, obligations, and covenants of Property Owner and Utility shall survive the completion of the work of Property Owner with respect to completing the reclaimed water facilities and services to any phased area and/or to the Property as a whole.
14. Unless Property Owner is requesting additional capacity for the property described in Exhibit "A", this Agreement shall supersede, null and void all previous agreements or representations either verbal or written heretofore in effect between Property Owner and Utility made with respect to the matter contained herein, and when duly executed, constitutes the entire agreement between Property Owner and Utility. No additions, alterations, or variations of terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waiver are expressed in writing and duly signed by the parties hereto. This Agreement shall be governed by the laws of the State of Florida and shall become effective upon execution by the parties hereto. The venue for actions arising out of this Agreement is in Palm Beach County, Florida.
15. Special Conditions:

Property Owner has entered into an Alternative Water Supply Funding Program Agreement with the South Florida Water Management District (Agreement #4600000617) (hereinafter "District Agreement"), for the construction of the Montage Pointe PUD and Delray Market Place Reclaimed Water Pipeline. A copy of the District Agreement is attached hereto and incorporated herein as Exhibit "B". The District Agreement contemplates a total payment to Property Owner of \$500,000 for two separate reclaimed water main line construction projects. One of said projects, which is identified as Task 4 in Exhibit "B" to the District Agreement, is for the following deliverable:

Construction of approximately 3,956 linear feet of twenty (20) inch reclaimed water main line westward from west of the Florida Turnpike along the north side of Atlantic Avenue within the road right-of-way to Lyons Road (hereinafter "Task 4 Pipeline.")

Utility has constructed, with its own funds, the Task 4 Pipeline, and Utility is therefore entitled to the payment from the District for the Task 4 Pipeline. Property Owner shall remit to Utility the full amount of funds received from the District for the Task 4 Pipeline within seven (7) days following receipt of said funds from the District.

Failure to adhere to this provision shall be grounds for termination of this Development Agreement.

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RECLAIMED WATER

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

ATTEST:

Clerk & Comptroller (or Deputy Clerk)

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

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Bevin A. Beaudet,
Department Director or Designee

WITNESSES:

Janece Stevanovic
Janece Stevanovic
Typed or Printed Name

Meg Yates
Typed or Printed Name

Meg Yates
Typed or Printed Name

PROPERTY OWNER:

KRG/Atlantic Delray Beach, LLC, a FL LLC
By: _____

Signature
Daniel R. Sink
Typed or Printed Name
Chief Financial Officer
Title and Treasurer

[Corporate Seal]

NOTARY CERTIFICATE

STATE OF INDIANA
COUNTY OF ARRION

The foregoing instrument was acknowledged before me this 25th day of July, 2007,
by Daniel R. Sink, Chief Financial Officer. He/she is personally known to me or has produced
as identification. Land Treasurer of KRG/Atlantic Delray Beach, LLC



Adiati Ratman
Signature of Notary

Adiati Ratman
Typed, Printed, or Stamped Name
of Notary

Notary Public
Serial Number 550917
Expiration July 20, 2014

RECLAIMED WATER

**EXHIBIT "A"
LEGAL DESCRIPTION**

LEGAL DESCRIPTION:(DEVELOPMENT AREA)

TRACT 97, LESS THE EAST 195.0 FEET THEREOF, TRACTS 98, 99 AND THAT PORTION OF TRACT 100 LYING WITHIN 365.00 FEET OF THE EAST LINE OF SAID TRACT 99, TRACTS 124, 125, 126 LESS THE SOUTH 40.0 FEET THEREOF; TRACT 127 LESS THE SOUTH 81.0 FEET THEREOF; AND TRACT 128 LESS THE SOUTH 40.00 FEET, THE EAST 195.00 FEET AND THE SOUTH 240.0 FEET OF THE WEST 210.0 FEET THEREOF ALL BEING IN BLOCK 18, PALM BEACH FARMS COMPANY PLAT NO. 1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGES 26, 27 AND 28, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA,

AND LESS THAT PORTION OF TRACTS 124, 125, 126 AND 127 DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT 124; THENCE NORTH 01°06'19" WEST, ALONG THE WEST LINE OF SAID TRACT 124, A DISTANCE OF 40.0 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 01°06'19" WEST, ALONG SAID WEST LINE, A DISTANCE OF 70.00 FEET TO A POINT ON A LINE 110.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACTS 124 AND 125; THENCE ALONG SAID PARALLEL LINE NORTH 89°32'49" EAST, A DISTANCE OF 615.66 FEET; THENCE NORTH 01°04'09" WEST, A DISTANCE OF 12.50 FEET TO A POINT ON A LINE 1320.0 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF TRACTS 98, 99 AND 100, BLOCK 18, OF SAID PLAT OF PALM BEACH FARMS COMPANY PLAT NO. 1; THENCE NORTH 89°00'55" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 691.41 FEET TO A POINT ON THE EAST LINE OF SAID TRACT 127; THENCE SOUTH 01°02'51" EAST, ALONG SAID EAST LINE, A DISTANCE OF 47.92 FEET TO A POINT ON A LINE 81.0 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACT 127; THENCE SOUTH 89°32'49" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 326.41 FEET TO A POINT ON THE WEST LINE OF SAID TRACT 127; THENCE SOUTH 01°04'09" EAST, ALONG SAID WEST LINE, A DISTANCE OF 41.00 FEET TO A POINT ON A LINE 40.0 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACTS 124, 125 AND 126; THENCE SOUTH 89°32'49" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 980.64 FEET TO THE POINT OF BEGINNING.

AND LESS THAT PORTION OF TRACT 124 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF TRACT 124, BLOCK 18, PALM BEACH FARMS COMPANY PLAT NO. 1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGES 26, 27 AND 28, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE NORTH 89°08'50" EAST, ALONG THE NORTH LINE OF SAID TRACT 124, A DISTANCE OF 133.94; THENCE SOUTH 01°03'00" EAST, A DISTANCE OF 669.45 FEET TO A POINT ON A LINE 110.0 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACT 124; THENCE SOUTH 89°32'49" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 133.30 FEET TO A POINT ON THE WEST LINE OF SAID TRACT 124; THENCE NORTH 01°06'19" WEST, ALONG SAID WEST LINE, A DISTANCE OF 668.52 FEET TO THE POINT OF BEGINNING.

CONTAINING 32.45 ACRES, MORE OR LESS.

TOGETHER WITH THAT PORTION OF TRACT 128 DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LYING IN SECTIONS 17 AND 18, TOWNSHIP 46 SOUTH, RANGE 42 EAST, BEING A PORTION OF TRACT 128, BLOCK 18 OF THE PALM BEACH FARMS COMPANY PLAT NO. 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 26 THROUGH 28 OF THE PUBLIC

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RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 18, TOWNSHIP 46 SOUTH, RANGE 42 EAST; THENCE SOUTH 89°32'49" WEST, ALONG THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 100.35 FEET TO THE SOUTHWEST CORNER OF SAID TRACT 128, BLOCK 18; THENCE ALONG THE WEST LINE OF SAID TRACT 128, BLOCK 18 NORTH 01°02'51" WEST, A DISTANCE OF 40.00 FEET; THENCE CONTINUE ALONG SAID WEST LINE NORTH 01°02'51" WEST, A DISTANCE OF 88.92 FEET TO A POINT ON A LINE 1320.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF TRACT 97, BLOCK 18 OF SAID PALM BEACH FARMS COMPANY PLAT NO. 1, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WEST LINE NORTH 01°02'51" WEST, A DISTANCE OF 111.09 FEET TO THE NORTH LINE OF THE SOUTH 240.00 FEET OF THE AFOREMENTIONED TRACT 128, BLOCK 18; THENCE ALONG SAID NORTH LINE NORTH 89°32'49" EAST, A DISTANCE OF 103.83 FEET; THENCE CONTINUE ALONG SAID NORTH LINE SOUTH 89°58'59" EAST, A DISTANCE OF 42.44 FEET TO THE WEST LINE OF THE EAST 195.00 FEET OF SAID TRACT 128; THENCE ALONG SAID WEST LINE SOUTH 01°03'00" EAST, A DISTANCE OF 109.38 FEET TO A LINE 1320.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE AFOREMENTIONED TRACT 97, BLOCK 18; THENCE ALONG SAID PARALLEL LINE SOUTH 89°00'55" WEST, A DISTANCE OF 146.26 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.37 ACRES, MORE OR LESS.

TOTAL DEVELOPMENT AREA CONTAINING 32.82 ACRES, MORE OR LESS.

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OK
HMY
7/27/07



SOUTH FLORIDA WATER MANAGEMENT DISTRICT
2006 - 2007 ALTERNATIVE WATER SUPPLY
FUNDING PROGRAM

Recipient: KRG/Atlantic Delray Beach, LLC

Recipient's Project Manager: Eric Strickland

Address: 30 South Meridian Street, Ste. 1100
Indianapolis, IN 46204

Telephone No: (317) 809-6960

Fax No: (317) 577-5605

Agreement Number: 4600000617 9500000908

Governing Board Approval Date: October 12, 2006

District Funding Amount: \$500,000.00

Contract Term: October 1, 2006 - September 30, 2007

SFWMD Project Manager: Moysey Ostrovsky

Telephone No.: (561) 682-6525

Fax No.: (561) 681-6264

Contract Specialist: Bernadette Harrison

Telephone No.: (561) 682-6378

Fax No.: (561) 682-5587

Address:

P.O. Box 24680
3301 Gun Club Road
West Palm Beach, FL 33416-4680

Insurance: Not Applicable

Federal Employer Identification Number: 20-3616896

Project Title: FY2007 AWS - Project # LEC-25

Description: Montage Pointe PUD and Delray Market Place Reclaimed Water Pipeline

This **Agreement** is entered into between "the Parties," the South Florida Water Management District, the "**District**", and the undersigned party, hereinafter referred to as the "**Recipient**." The **Recipient** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **Agreement**, and shall abide by all legal, financial and reporting requirements, such as matching funds and final reports for all funding received by the **Recipient** from the **District**.

ARTICLE 1 -- PROJECT

- 1.1 The **Recipient** shall, to the satisfaction of the **District**, fully and timely construct and perform all work items described in the "Statement of Work," attached hereto as Exhibit "A", hereinafter referred to as the "Project", and made a part of this **Agreement**.
- 1.2 As part of the deliverables to be provided by the **Recipient** under this **Agreement**, the **Recipient** shall substantiate, in whatever form reasonably requested by the **District**, any supporting documentation utilized as a basis for payment by the **District**. This paragraph shall survive the expiration or termination of this **Agreement**.
- 1.3 Attached to this **Agreement** are the following exhibits which are incorporated herein:

Exhibit A	Statement of Work
Exhibit B	Payment and Deliverable Schedule
Exhibit C	Reporting Form
Exhibit D	Federal/State Funding Resources

ARTICLE 2 - TERM OF THE AGREEMENT

- 2.1 The period of performance of this **Agreement** shall be the dates noted on the first page of this **Agreement**.
- 2.2 The Parties agree that time is of the essence in the performance of each and every obligation under this **Agreement**.

ARTICLE 3 - COMPENSATION / CONSIDERATION

- 3.1 As consideration for the Project required by this **Agreement**, the **District** shall pay the **Recipient** the funding amount as specified on page one of this **Agreement**. Such amount is not to exceed the specified amount and therefore, no additional consideration shall be authorized. The **Recipient** shall provide at least sixty percent (60%) of the Project's construction cost, unless a different amount is authorized pursuant to s. 373.1961(3)(e), Florida Statutes.

- 3.2 The **Recipient** assumes sole responsibility for all work which is performed pursuant to Exhibit "A". By providing funding hereunder, the **District** does not make any warranty, guaranty or any representation whatsoever regarding any of the work performed hereunder, including but not limited to, the adequacy or sufficiency of all or any part of work described in Exhibit "A".
- 3.3 The **Recipient** hereby agrees not to use **District** funding for any work associated with the research, design and permitting aspects of the Project. **District** funds shall only be used for the construction activities described in Exhibit "A".
- 3.4 The **Recipient** agrees to reimburse the **District** funds provided through this **Agreement** for facilities (i.e. test/production wells, etc.) that do not become an operational component of the overall alternative water supply facility within the timeframe established in the proposal. Notwithstanding anything in this **Agreement** to the contrary, this paragraph shall remain in full force and effect for ten (10) years from the date of contract execution.

ARTICLE 4 – FUNDING PAYMENTS AND REPORTING

- 4.1 The **District** shall make payment to the **Recipient** upon completion and acceptance of the final deliverable(s) as described in the "Payment and Deliverable Schedule", attached hereto as Exhibit "B". On or before August 1, 2007, the **Recipient** shall provide a completed Project Summary Final Report, attached hereto as Exhibit "C". Concurrent with delivery of the final deliverable(s), the **Recipient** shall provide certification that all construction has been completed in accordance with Exhibit "A" of this **Agreement**.
- 4.2 The **Recipient's** invoice(s) shall reference the District's Agreement Number and shall be sent to the following address:

South Florida Water Management District
ATTN: Accounts Payable
3301 Gun Club Road
West Palm Beach, FL 33406

The **Recipient** shall not submit an invoice to any other address at the **District**.

- 4.3. Upon completion of the Project, any data that was generated during the performance of the Project shall be submitted to the **District** upon request.

New Well Construction Projects: For projects involving construction of new wells, the **Recipient** shall:

1. Submit design of well construction and testing programs to the **District** for review and comment prior to implementation. The **Recipient** shall integrate the **District's** comments into the final testing plan where feasible.
2. Submit all pertinent well information collected during well construction and testing (i.e., depths, cuttings descriptions, geophysical logs, aquifer test data, etc.), as available. Submissions shall be provided electronically as specified by the **District**.

The data shall be archived in the **District's** permanent database and available to the public. Please contact Anthony Larenas at (561) 682-2643, alarenas@sfwmd.gov or Emily Richardson (561) 682-6824, for instructions on submitting data.

- 4.4 The **Recipient** shall provide to the **District** regular project update/status reports by February 1, 2007; April 1, 2007; and June 1, 2007. Reports shall provide detail on the progress of the Project and outline any potential issues affecting Project completion or overall schedule. Status reports may be submitted in any form agreed to by **District** project manager and the **Recipient**, and may include emails, memos, and letters.
- 4.5 In accordance with Section 373.0361 (7) (b) of the Florida Statutes, the **Recipient** shall provide an annual status update to the **District** detailing the progress of the Project.

ARTICLE 5 – CONTRACT MANAGEMENT

- 5.1 The Parties shall direct all matters arising in connection with the performance of this **Agreement** to the attention of the Project Manager for attempted resolution or action. The Project Manager shall be responsible for overall coordination and oversight relating to the performance of this **Agreement**.
- 5.2 All notices, demands or other communications regarding this **Agreement**, other than those set forth in paragraph 4.2 above, shall be in writing and forwarded to the attention of both the Project Manager and the Contract Specialist noted on the first page of this **Agreement** by certified mail, return receipt requested.
- 5.3 Should either Party change its address, written notice of such new address shall promptly be sent to the other Party.
- 5.4 All correspondence to the **District** under this **Agreement** shall reference the **District's** Agreement Number.

ARTICLE 6 – TERMINATION / REMEDIES

- 6.1 It is the policy of the **District** to encourage good business practices by requiring recipients to materially perform in accordance with the terms and conditions of the **Agreement**. In accordance with Chapter 40E-7, Part II of the Florida Administrative Code, "Material

Breach” is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the **Agreement**.

If the **Recipient** materially fails to fulfill its obligations under this **Agreement**, the **District** will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The **Recipient** shall have thirty (30) days to cure the breach. If the **Recipient** fails to cure the breach within the thirty (30) day period, the **District** shall issue a Termination for Default Notice. Once the **District** has notified the **Recipient** that it has materially breached its contract with the **District**, by sending a Termination for Default Notice, the District’s Governing Board shall determine whether the **Recipient** should be suspended from doing future work with the **District**, and if so, for what period of time. The District’s Governing Board will consider the factors detailed in Chapter 40E-7, Part II of the Florida Administrative Code in making a determination as to whether a **Recipient** should be suspended, and if so, for what period of time. Should the **District** terminate for default in accordance with this provision, the **District** shall be entitled to recover procurement costs in addition to all other remedies under law and/or equity.

- 6.2 The **District** may terminate this **Agreement** at any time for convenience upon thirty (30) calendar days prior written notice to the **Recipient**. The performance of work under this **Agreement** may be terminated by the **District** in accordance with this clause in whole, or from time to time in part, whenever the **District** shall determine that such termination is in the best interest of the **District**. Any such termination shall be effected by delivery of a Notice of Termination to the **Recipient**, specifying the extent to which performance of work under the **Agreement** is terminated, and the date upon which such termination becomes effective. In the event of termination, the **District** shall compensate the **Recipient** for all authorized and accepted work performed through the termination date. The **District** shall be relieved of any and all future obligations hereunder, including but not limited to, lost profits and consequential damages under this **Agreement**. The **District** may withhold all payments to the **Recipient** for such work until such time as the **District** determines the exact amount due to the **Recipient**.
- 6.3 In the event a dispute arises, which the Project Managers cannot resolve between themselves, the Parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law.
- 6.4 Notwithstanding anything in this **Agreement** to the contrary, the **District** reserves the right to terminate this **Agreement** immediately without notice in the event any of the representations contained in the **Recipient’s** project proposal are found to be false or if the **Recipient** fails to complete the construction and performance of all work items described in Exhibit A, Statement of Work.

ARTICLE 7 – RECORDS RETENTION

7.1 The **Recipient** shall maintain records and the **District** shall have inspection and audit rights as follows:

- A. Maintenance of Records. The **Recipient** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **Agreement**, including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from completing performance and receiving final payment under this **Agreement**.
- B. Examination of Records. The **District** or designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **Agreement**. Such examination may be made only within five (5) years from the expiration date of this **Agreement**.
- C. Extended Availability of Records for Legal Disputes. In the event the **District** should become involved in a legal dispute with a third party arising from performance under this **Agreement**, the **Recipient** shall extend the period of maintenance for all records relating to this **Agreement** until the final disposition of the legal dispute. All such records shall be made readily available to the **District**.
- D. Periodic Audits. The **District** shall perform audits periodically to ensure funding objectives are being met.

7.2 Whenever the **District's** contribution includes state or federal appropriated funds, the **Recipient** shall, in addition to the inspection and audit rights set forth in Article 7.1 above, maintain records and similarly require each subcontractor to maintain and allow access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act, as follows:

- A. Maintenance of Records: The **District** shall provide the necessary information to the **Recipient** as set forth in Exhibit "D."
- B. The **Recipient** shall maintain all financial/non-financial records through:
 - (1) Identification of the state or federal awarding agency, as applicable
 - (2) Project identification information included in the Catalog of State Financial Assistance (CSFA) or the Catalog of Federal Financial Assistance (CFDA), as applicable
 - (3) Audit and accountability requirements for state projects as stated in the Single Audit Act and applicable rules of the Executive Office of Governor, rules of the Chief Financial Officer and rules of the Auditor General and the State Projects Compliance Supplement

- (4) Audit/accountability requirements for federal projects as imposed by federal laws and regulations
- (5) Submission of the applicable single audit report to the **DISTRICT**, as completed per fiscal year

C. Examination of Records: The **District** or designated agent, the state awarding agency, the state's Chief Financial Officer and the state's Auditor General and/or federal awarding agency shall have the right to examine the **Recipient's** financial and non-financial records to the extent necessary to monitor the **Recipient's** use of state or federal financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations which may include onsite visits and limited scope audits.

ARTICLE 8 – STANDARDS OF COMPLIANCE

- 8.1 The **Recipient**, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws and regulations relating to the performance of this **Agreement**. The **District** undertakes no duty to ensure such compliance, but will attempt to advise the **Recipient**, upon request, as to any such laws of which it has present knowledge.
- 8.2 The laws of the State of Florida shall govern all aspects of this **Agreement**. In the event it is necessary for either party to initiate legal action regarding this **Agreement**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims, which are justifiable in federal court.
- 8.3 The **Recipient** shall allow public access to all Project documents and materials in accordance with the provisions of Chapter 119 of the Florida Statutes. Should the **Recipient** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **Recipient**.
- 8.4 Pursuant to Section 216.347 of the Florida Statutes, the **Recipient** is prohibited from the expenditure of any funds under this **Agreement** to lobby the Legislature, the judicial branch or another state agency.
- 8.5 The **Recipient** has obtained, at its sole expense, all necessary licenses, authorizations and permits from the appropriate private party or federal, state, municipal or local agency, and other governmental approvals, prior to commencing performance of this **Agreement**. The **Recipient** agrees to comply with the terms and conditions of all permits.
- 8.6 The **Recipient** hereby assures that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or is otherwise subjected to discrimination in any activity under this **Agreement**. The **Recipient** shall take all measures necessary to effectuate these assurances.

- 8.7 Pursuant to Section 287.133 of the Florida Statutes, a person or affiliate who has been placed on the convicted vendor list may not submit a bid, proposal, or reply to a request to provide any goods or services related to the construction of the Project contemplated herein. **Recipient** also assures that it is not on the District's Suspension of Contractors List. **Recipient** agrees to include a provision to this effect in all requests for proposals and subcontracts related to construction of this Project.
- 8.8 A **Recipient** who operates a public water supply utility shall, by June 1, 2007 adopt a rate structure that will promote the conservation of water and promote the use of water from alternative water supplies and shall provide the **District** with a copy of such adopted rate structure on or before August 1, 2007.
- 8.9 **Recipient** of funds for a reuse project shall provide a status report by August 1, 2007 addressing the following issues: (1) accounting of reclaimed water usage and method used (meters, etc.); (2) all rates and charges for reclaimed water; (3) the status of implementing public education programs to inform the public about water issues, water conservation and the importance and proper use of reclaimed water; and (4) providing the **District** with the location of each reuse facility owned by the **Recipient**.
- 8.10 This paragraph shall remain in full force and effect for twenty (20) years from the date of contract execution. After construction is completed on the Project, the **Recipient** shall continuously operate the Project as described in the Project proposal and consistent with the applicable water use permit(s). In the event the Project is not operated in accordance with these requirements, the **District** may cease funding for this Project and any future Projects proposed by the **Recipient**. All other provisions of this contract shall terminate on September 30, 2007.
- 8.11 **Recipient** shall implement a public education program to inform the public about the environmental and other public benefits of the Alternative Water Supply project and shall provide the **District** with a copy of such public education program on or before August 1, 2007.

ARTICLE 9 – INDEMNIFICATION AND INSURANCE

- 9.1 For value received, which is hereby acknowledged, the **Recipient** shall defend, indemnify, save, and hold the **District**, its officers, directors, board members, agents, assigns, and employees harmless from liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the **Recipient** and other persons employed or utilized by the **Recipient** in the performance of the Agreement. The **District** shall have the right to approve counsel selected by the **Recipient** to defend the **District** in the event the **District** is named in any legal action.

The **Recipient** further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees

and employees with the terms of this **Agreement**. This paragraph shall survive the expiration or termination of this **Agreement**.

ARTICLE 10 – RELATIONSHIP BETWEEN THE PARTIES

- 10.1 The **Recipient** shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this **Agreement** shall be interpreted to establish any relationship other than that of an independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance of this **Agreement**. Both parties are free to enter into contracts with other parties for similar services.
- 10.2 The **Recipient** shall not assign, delegate or otherwise transfer its rights and obligations as set forth in this **Agreement** without the prior written consent of the **District**. Any attempted assignment in violation of this provision shall be null and void.
- 10.3 It is the intent and understanding of the Parties that this **Agreement** is solely for the benefit of the **Recipient** and the **District**. No person or entity other than the **Recipient** or the **District** shall have any rights or privileges under this **Agreement** in any capacity whatsoever, either as third party beneficiary or otherwise.

ARTICLE 11 – GENERAL PROVISIONS

- 11.1 Notwithstanding any provisions of this **Agreement** to the contrary, the Parties shall not be held liable for any failure or delay in the performance of this **Agreement** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God or for any other cause of the same character, which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but this **Agreement** shall otherwise remain in effect. This provision shall not apply if the Statement of Work, Exhibit “A” of this **Agreement** specifies that performance by the **Recipient** is specifically required during the occurrence of any of the events herein mentioned.
- 11.2 Any inconsistency in this **Agreement** shall be resolved by giving precedence in the following order:
 - (a) Terms and Conditions outlined in Articles 1-11
 - (b) Exhibit “A” Statement of Work
 - (c) All other exhibits, attachments and documents specifically incorporated herein by reference
- 11.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **Agreement** by the Parties, their successors and assigns shall not be deemed a waiver

of any of its rights or remedies, nor shall it relieve the other Party from performing any subsequent obligations strictly in accordance with the terms of this **Agreement**. No waiver shall be effective unless in writing and signed by the Party against whom enforcement is sought. Such waiver shall be limited to provisions of this **Agreement** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

- 11.4 Should any term or provision of this **Agreement** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **Agreement**, to the extent the **Agreement** shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 11.5 This **Agreement** may be amended only with the written approval of the Parties.
- 11.6 This **Agreement** states that all publicity/public awareness media shall be jointly planned by the **Recipient** and the **District** and any and all materials, events, or endorsements arising out of this award shall require prior **District** approval.
- 11.7 This **Agreement** states the entire understanding and **Agreement** between the Parties and supersedes any and all written or oral representations, statements, negotiations or **Agreements** previously existing between the Parties with respect to the subject matter of this **Agreement**. The **Recipient** recognizes that any representations, statements or negotiations made by **District** staff do not suffice to legally bind the **District** in a contractual relationship unless they have been reduced to writing and signed by an authorized **District** representative. This **Agreement** shall insure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
- 11.8 This **Agreement** is subject to and governed by the provisions applicable to it contained in sections 373.0831 and 373.1961, Florida Statutes (2004), as amended by Chapter No. 2005-291 (SB 444, Laws of Florida).

IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this Agreement on the date written below.

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT,
BY ITS GOVERNING BOARD**

By: *Scott Bradshaw, Deputy Director for*
Frank Hayden, Procurement Director

Date: 1-31-07

SM

SFWMD Procurement Approved:

By: *Bernardo Harrison* Date: 12/12/06
SM

SFWMD Office of Counsel Approved:

By: *Ans Butee* Date: 1/23/07

Entity's Legal Name: KRG/ATLANTIC Delray Beach, LLC

By Authorized Official: *[Signature]*

ES

Printed Name: THOMAS K. MCGAWAN

Title: Chief Operating Officer

Date: 1-10-2007

Exhibit "A"
Statement of Work

KRG/Atlantic Delray Beach, LLC
Montage Pointe PUD and Delray Market Place Reclaimed Water Pipeline

A. Introduction/Background

The Palm Beach County Water Utilities Department (PBCWUD) has implemented a program to make reclaimed water available. The use of reclaimed water reduces the dependency on ground water and surface water withdrawals. In addition, reclaimed water constitutes an important source of recharge to the surficial aquifer system. The Montage Point PUD and Delray Market Place developments are proposed at the Atlantic Avenue and Lyons Road intersection in Palm Beach County. The projects are located within the proposed mandatory reclaimed water service area expansion. As a result, construction of a reclaimed feeder line to serve both developments is necessary.

The proposed pipeline is anticipated to be completed prior to the construction of the Atlantic Avenue widening project to avoid conflicts between the projects and/or the demolition and reconstruction of roadway and sidewalk infrastructure which would significantly increase the project costs. The Atlantic Avenue widening and L-34 Canal relocation project are being reviewed by the South Florida Water Management District (SFWMD) under Environmental Resource Permit applications 050810-11 and application 050414-9 respectively. Based on the size of the proposed project, the existing commitments and the activities already occurring, it is not anticipated that the proposed project will be delayed from its completion date of July 2007.

B. Objectives

This project provides the opportunity to achieve the following goals and objectives:

- a. Promotes and increases the conservation of fresh water.
- b. Increases the available quantity and promotes the use of reclaimed water.
- c. Reduces the dependence on deep well injection for wastewater effluent disposal.
- d. Reduces dependence on the surficial aquifer.
- e. Decreases withdrawals from the regional surface water system.
- f. Increases freshwater recharge to the surficial aquifer.
- g. Results in additional freshwater available for Everglades Restoration, Loxahatchee River Enhancement, Lower East Coast Water Supply Plan and other uses.

C. Scope of Work

The proposed activities consist of the construction of 3,956 linear feet of twenty (20) inch reclaimed water main line westward from west of the Florida Turnpike along the north-side of Atlantic Avenue within the road right of way to Lyons Road, and a total of 2,991 linear feet of eighteen (18) inch reclaimed water main line north along Lyons Road and west of Lyons Road along Atlantic Avenue. The proposed project will provide reclaimed water to the following entities at this time in the indicated amounts: Montage Point PUD (73.6 MGY) and Delray Market Place (9.01 MGY). The additional capacity of the proposed pipeline is to serve all future projects within the corridor and system expansions.

D. Work Breakdown Structure

The work breakdown structure associated with this project is described below:

Task 1 - Status Report: The **Recipient** shall submit to the SFWMD Project Manager a status report summarizing progress made to date, issues of concern potentially affecting project performance, and any other information pertinent to the project.

Due Date: February 1, 2007

Task 2 - Status Report: The **Recipient** shall submit to the SFWMD Project Manager a status report summarizing progress made to date, issues of concern potentially affecting project performance, and any other information pertinent to the project.

Due Date: April 1, 2007

Task 3 - Status Report: The **Recipient** shall submit to the SFWMD Project Manager a status report summarizing progress made to date, issues of concern potentially affecting project performance, and any other information pertinent to the project.

Due Date: June 1, 2007

Task 4 - The **Recipient** shall construct approximately 3,956 linear feet of twenty (20) inch reclaimed water main line westward from West of the Florida Turnpike along the north-side of Atlantic Avenue within the road right of way to Lyons Road.

Due Date: August 1, 2007

Task 5 - The **Recipient** shall construct approximately 2,991 linear feet of eighteen (18) inch reclaimed water line north along Lyons Road and west of Lyons Road along Atlantic Avenue.

Due Date: August 1, 2007

Task 6 - Final Report: The **Recipient** shall submit to the project manager a Final Project Report summarizing all work performed during the course of the project.

Due Date: August 1, 2007

EXHIBIT "B"
PAYMENT AND DELIVERABLE SCHEDULE

Total payment by the District to KRG/Atlantic Delray Beach, LLC shall not exceed the amount of \$500,000.00. Payment shall be made following receipt and acceptance by the District of project deliverables in accordance with the schedule set forth below. The Recipient hereby agrees to provide the District all deliverables, data and information described in the Statement of Work.

Invoices for completed deliverables shall be submitted to the District for payment by April 1 and/or August 1, 2007. However, the Recipient is encouraged to arrange for deliverable inspection and invoice as soon as a deliverable has been completed.

Reporting requirements are also part of this exhibit. The Recipient shall provide regular project update/status reports by February 1, 2007; April 1, 2007 and June 1, 2007. Reports will provide detail on the progress of the project and outline any potential issues affecting project completion or overall schedule. Status reports may be submitted in any form agreed to by the SFWMD Project Manager and the Recipient, and could include emails, memos, and letters.

If the total consideration for this Agreement is subject to multi-year funding allocations, funding for each applicable fiscal year of this Agreement will be subject to Governing Board budgetary appropriation. In the event the District does not approve funding for any subsequent fiscal year, this Agreement shall terminate upon expenditure of the current funding, notwithstanding other provisions in this Agreement to the contrary.

Task No.	Deliverable(s)	Invoice Due Date	Report Due Date	District Not To Exceed Payment
1	Status Report	N/A	February 1, 2007	N/A
2	Status Report	N/A	April 1, 2007	N/A
3	Status Report	N/A	June 1, 2007	N/A
4	Construction of approximately 3,956 linear feet of twenty (20) inch reclaimed water main line westward from west of the Florida Turnpike along the north-side of Atlantic Avenue within the road right of way to Lyons Road	August 1, 2007	N/A	\$315,000.00
5	Construction of approximately 2,991 linear feet of eighteen (18) inch reclaimed water line north along Lyons Road and west of Lyons Road along Atlantic Avenue	August 1, 2007	N/A	\$185,000.00
6	Final Project Report	N/A	August 1, 2007	N/A
TOTAL DISTRICT PAYMENT				\$500,000.00

¹The deadline for the final invoice submittal is August 1, 2007. However, this invoice may be submitted prior to August 1, 2007 if the deliverables are completed prior to the due date.

²If the project is completed prior to the due date of a Status Report (Tasks 1-3), then the Status Report shall be replaced by the Final Report and subsequent Status Reports shall not be required.

**EXHIBIT "C"
REPORTING FORM**

Project Summary Final Report – FY 2007

Project Name _____ Project Manager _____

SFWMD Contract Number _____ Project Owner _____

Describe Project constructed: _____

Type of Alternative Water Supply	Quantity of Water Made Available (MGD) Upon Completion of This Phase		Construction Duration	
	Proposed	Actual	Start	Finish

Cost for this Phase		
Total Construction Cost – This Phase	Proposed	Actual
	\$	\$
Funding for this Phase		
District funding this phase	\$	\$
Local funds	\$	\$
Other funding source		
From:	\$	\$
TOTAL		

Attach map and photo(s) of project on CD, if available

To the best of my knowledge, the above information is correct

Project Manager _____

EXHIBIT D

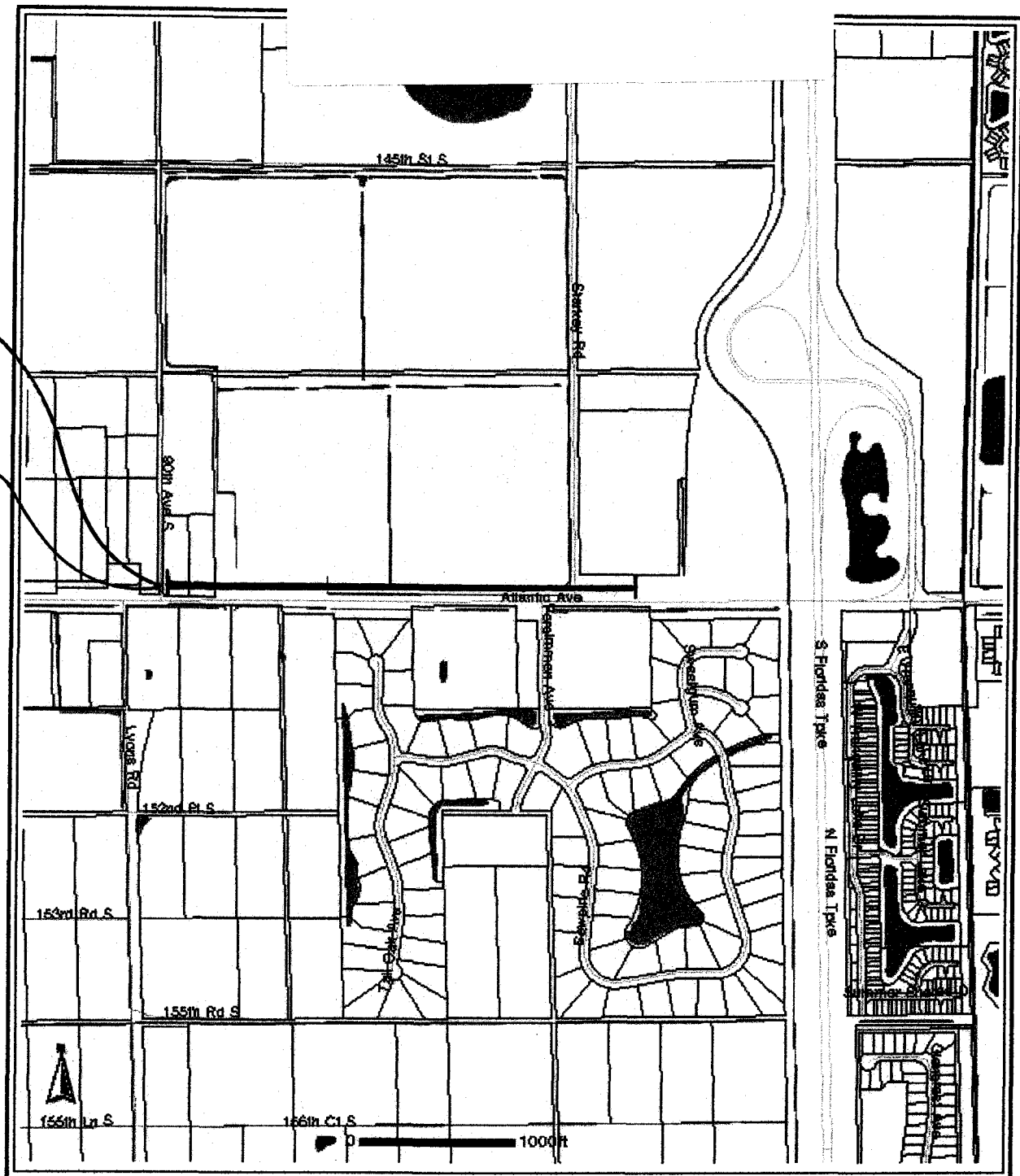
FUNDS AWARDED TO THE ENTITY PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
Federal Program Number	Federal Agency	State Fiscal Year	Number	CSFA Title Or Funding Source Description	Funding Amount	State Appropriation Category
37350000	DEP	2007	37.039	Statewide Surface Water Restoration & Wastewater Project	\$250,000.00	140047
Total Award					\$250,000.00	

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<http://12.46.245.173/cfda/cfda.html>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<http://state.fl.us/fsaa/catalog>]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.



Atlantic Avenue Reclaimed Water Pipeline

Map Scale 1:12003

Map produced on 7/10/2007