

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 15, 2008 Consent [X] 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 Contract for Sale and Purchase of Mitigation Credits with Tetra Tech EC, Inc. to purchase 2.19 freshwater herbaceous credits and 0.98 freshwater forested credits from the Loxahatchee Mitigation Bank in the amount of \$263,400.

**Summary:** On February 28, 2006, (R2006-0410), the Board approved the purchase of the Village of Royal Palm Beach's utility system prior to the purchase, The Village was in ongoing discussions with the South Florida Water Management District (SFWMD) regarding renewal of its Water Use Permit, which was assigned to the Water Utilities Department after closing of the transaction, such documents were received and filed by the Board on December 5, 2006 (R-2006-2660). SFWMD staff subsequently determined that a portion of certain historic wetland impacts adjacent to the former Village wellfield were attributable to the pumpage of this wellfield. Water Use Permit Application No. 040114-4 is anticipated to be issued by the SFWMD with a condition of wetland mitigation. This contract must be in place prior to issuance of SFWMD permit. Department efforts have determined that offsite mitigation is the most appropriate means in order for the Department to obtain water use permit from the SFWMD. The Loxahatchee Mitigation Bank is the closest mitigation bank to the former Village wellfield. Tetra Tech EC, Inc. has entered into a contract with SFWMD to market and sell freshwater herbaceous and forested wetland mitigation credits from the Loxahatchee Mitigation Bank. Purchase of these credits will enable the Department to obtain necessary permits and continue operation of the former Village wellfield. Tetra Tech EC, Inc. has agreed to a purchase price of \$80,000 per freshwater herbaceous credit and \$90,000 per freshwater forested credit; which is equivalent to \$263,400 for the required credits. WUD Project No. 07-157 District 6 (MJ)

**Background and Justification:** The Department purchased the assets of the former Royal Palm Beach utility system. The existing wellfield assets are essential to the operation of Water Treatment Plant Number 10. To ensure proper raw water supply to the water treatment plant, it is necessary to renew the SFWMD water use permit. These facilities was purchased in accordance with the agreement executed by the Board on February 28, 2006 (R2006-0410). Permitting renewal efforts discovered the historic impact to adjacent jurisdictional wetlands surrounding the wellfield site. The wetlands must be mitigated to renew the permit. Tetra Tech EC, Inc. has agreed to sell the Department the required 2.19 freshwater herbaceous credits and 0.98 freshwater forested credits from the Loxahatchee Mitigation Bank for the amount of \$263,400. Upon purchase of these credits, the Department can secure water use permit renewal and continue with operation of the wellfield.

**Attachments:**

1. Location Map
2. Three (3) Original Contract for Sale and Purchase of Mitigation Credits

Recommended By: Benny Ben 12/18/07  
Department Director Date

Approved By: Shannon G. By 12/27/2007  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

<b>Fiscal Years</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Operating Costs	<u>\$263,400.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</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>
<b>NET FISCAL IMPACT</b>	<b><u>\$263,400.00</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b>0</b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>

**Budget Account No.:** Fund 4001 Dept 720 Unit 2322 Object 3120

**Is Item Included in Current Budget?** Yes X No     

Reporting Category N/A

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

**C. Department Fiscal Review:** Ray Egerton

**III. REVIEW COMMENTS**

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

John D. [Signature] 12-20-07  
 OFMB  
 (NO) 12/19/07 CW 12/18/07  
Don J. [Signature] 12-12-07  
 Contract Development and Control

**B. Legal Sufficiency:**

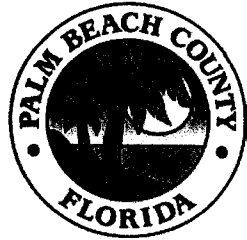
This Contract complies with our contract review requirements.

James [Signature] for Mike [Signature]  
 Assistant County Attorney 12/26/07

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

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



**Palm Beach County  
Water Utilities  
Department  
Service Area (SA) and  
Major Facilities**

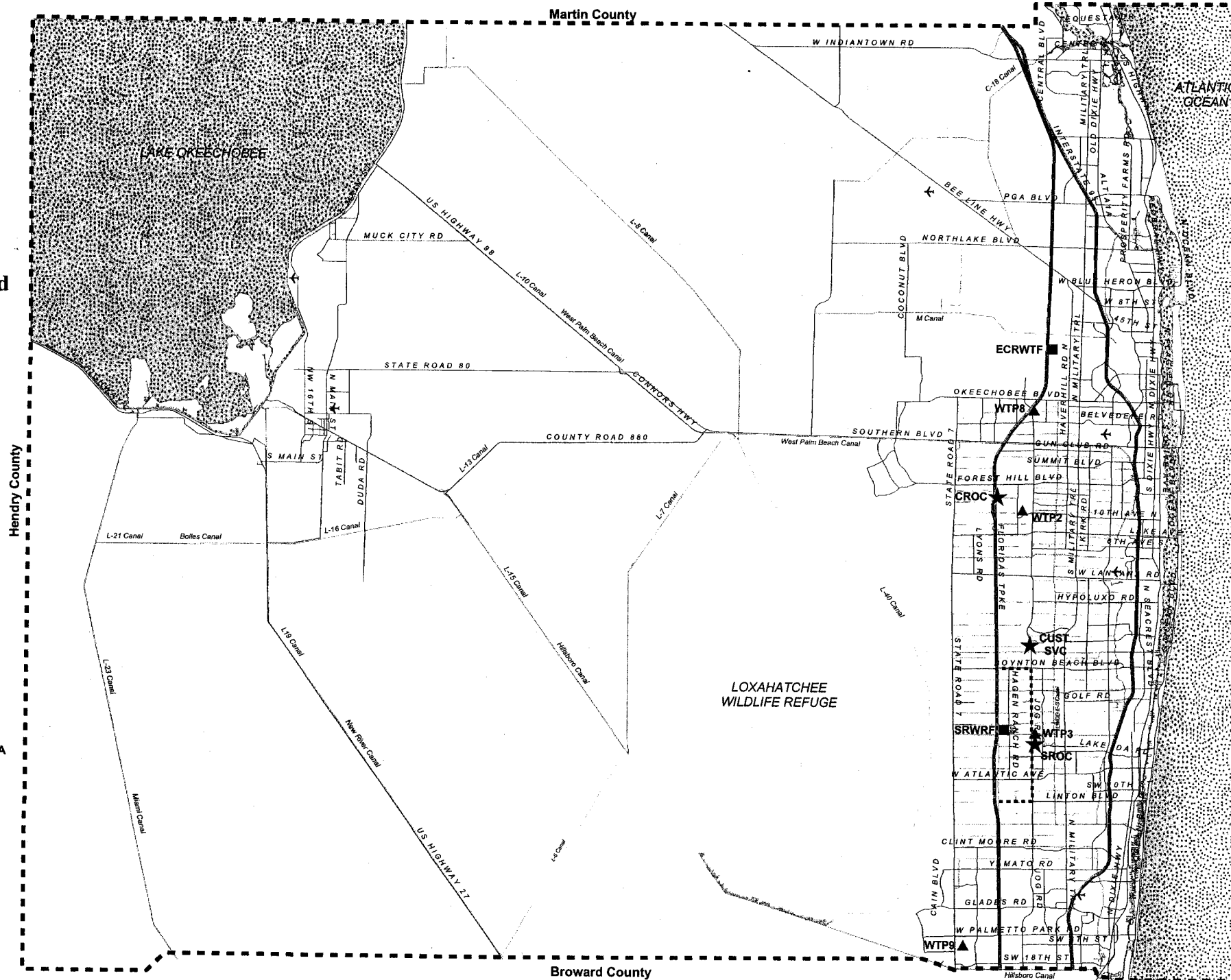
**Attachment 1**

**Legend**

- P.B.C.W.U.D. SA
- MANDATORY RECLAIMED SA
- - - COUNTY LIMITS
- ★ Administration
- Water Reclamation Plant
- ▲ Water Treatment Plant
- ⊙ Wetlands



NOT TO SCALE



**CONTRACT FOR SALE AND PURCHASE OF MITIGATION CREDITS**

CONTRACT NO. 1169

THIS AGREEMENT (hereinafter "Agreement") is made as of this \_\_\_ day of \_\_\_\_\_ 2007, between Tetra Tech EC, Inc., (hereinafter referred to as "Seller"), having an address of 759 S. Federal Highway, Suite 100, City of Stuart, County of Martin, State of Florida, 34994, and Palm Beach County (hereinafter referred to as "Purchaser"), having an address of 8100 Forest Hill Blvd., P.O. Box 16097, West Palm Beach, FL 33416 (collectively hereinafter referred to as the "Parties").

**WITNESSETH:**

WHEREAS, Seller has obtained Environmental Resource Permit ("ERP") No. 014-0969-001 from the Florida Department of Environmental Protection ("FDEP"), pursuant to Chapter 62-342 of the Florida Administrative Code, and a Mitigation Banking Instrument ("MBI") and Department of the Army Permit ("DA Permit") No. 199707816 (IP-TA) from the U.S. Army Corps of Engineers ("ACOE") (collectively hereinafter referred to as "Seller's Permits"), to construct, operate, manage and maintain the Loxahatchee Mitigation Bank ("Bank") for a period of time before transferring it to the South Florida Water Management District ("SFWMD"); and,

WHEREAS, Seller and the SFWMD have entered into a contract whereby Seller has the obligation and rights to market and sell freshwater herbaceous and freshwater forested wetland mitigation credits from the Bank; and,

WHEREAS, Purchaser wishes to purchase and use 2.19 freshwater herbaceous and 0.98 freshwater forested credits ("Credits") from Seller to satisfy Purchaser's mitigation obligation to the SFWMD for the Purchaser's project known as Palm Beach County Water Treatment Plant No. 10, located in Section 24, Township 43 South, Range 41 East, Palm Beach County, Florida; and;

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. **DEFINITIONS**

“Credit Ledger” shall mean the transaction record pursuant to Seller’s Permit, regulated by the FDEP, of credits that have been released by this agency to the Bank for sale, and of credits that can be withdrawn from the Bank for transfer to a purchaser.

2. **AGREEMENT TO PURCHASE AND SELL**

Seller agrees to sell and deliver and Purchaser agrees to buy, receive, and pay for 2.19 freshwater herbaceous and 0.98 freshwater forested credits from the Bank. The purchase price for the Credits is \$263,400.00. Upon execution of this Agreement, twenty (20%) percent (\$52,680.00) of the purchase price is due and payable as an initial deposit to Seller. Seller and Purchaser agree to adjust the purchase price with no further liquidated damages, at the rate of \$80,000.00 and \$90,000.00 per credit, for freshwater herbaceous and freshwater forested credits, respectively, for any decrease in the maximum amount of credits required by Purchaser at the time of Purchaser’s request to Seller for credit withdrawal and transfer. Any increase in credits required over 2.19 freshwater herbaceous and 0.98 freshwater forested credits are subject to availability of the additional credits from Seller and credit price in effect at the time Purchaser requests additional credits from Seller.

Payments, including deposits, shall be made by wire transfer or bank, certified or regular check of Purchaser payable to Seller, subject to collection. Purchaser agrees that all funds deposited may be used by Seller in Seller’s sole discretion, for any business purpose, including but not limited to the offset of any and all costs associated with the reservation, transfer or production of Credits in accordance with this Agreement.

Except as hereinafter set forth, upon execution of this Agreement and receipt of the Purchaser’s required initial deposit (\$52,680.00), Seller shall reserve the Credits for ledger

withdrawal and transfer to Purchaser. Upon confirmation of the credit withdrawal and transfer from FDEP, absolutely no refunds shall be provided.

Seller is aware that Purchaser will be utilizing said Credits specifically for the purposes described in Water Use Permit Application No. 040113-4 applied for and is expected to be issued by the SFWMD (hereinafter referred to as "Purchaser's Permit") for the Palm Beach County Water Treatment Plant No. 10 Project located in Palm Beach County, Florida.

Seller represents that, as of the date of execution of this Agreement, Seller does not have sufficient release of the State forested credits necessary for State ledger withdrawal and transfer to fulfill Purchaser's needs for the SFWMD permit. Seller shall promptly provide written notice to Purchaser of Seller's receipt of the aforesaid release of State forested credits. Purchaser shall remit final payment within thirty (30) days of such notice.

If, by March 31, 2008, Seller has not obtained sufficient State forested credits for the credit withdrawal and transfer for this purchase, then Purchaser shall have the right to terminate this Agreement by giving written notice thereof to Seller provided that Seller has not obtained sufficient release of credits by the date of written notice. In the event of such termination, Seller's sole obligation and Purchaser's sole right shall be for the return and receipt, respectively, of Purchaser's deposits, without interest thereon.

Upon approval by SFWMD of Purchaser's Permit, Purchaser shall promptly deliver a copy thereof to Seller. This delivery shall be accompanied by a written request that Seller apply to the FDEP for the contemplated ledger withdrawal and transfer. Seller will not submit the request for withdrawal of the credits until the balance (\$210,720.00) of the purchase price is received as provided for in Section 2, paragraph 5, above. If Seller has sufficient Credits at the time of Purchaser's written request, and provided that Purchaser has paid the aforesaid balance of the purchase price, then Seller shall proceed to request Credit withdrawal and transfer of the Credits. Upon Seller's receipt of confirmation that the credit withdrawal and transfer of the Credits has been approved by the FDEP, and is reflected in the Credit Ledger, Seller shall provide Purchaser with a copy of the Credit Ledger reflecting such transfer.

If, by March 31, 2008, Purchaser has not provided Seller with a copy of Purchaser's issued SFWMD permit and has not by then requested Seller to apply to FDEP for ledger

withdrawal and transfer, then Seller shall have the right to terminate this Agreement by giving written notice thereof to Purchaser. In the event of such termination, Purchaser shall be relieved of any further payments and shall be released from any further obligations.

However, if Purchaser has not obtained such permit by March 31, 2008, Purchaser may prevent Seller's termination of this Agreement by paying Seller, within ten (10) days of Seller's written notice to terminate, the balance due on this contract for all available Credits as an additional deposit, to be utilized at such time as Purchaser obtains its SFWMD permit. The balance due on any remaining credits that become available after March 31, 2008, shall be due within ten (10) days written notice to Purchaser that said credits are available for ledger transfer.

If Purchaser has failed to meet the obligations of this Agreement, Seller shall retain the full amount of the initial deposit paid by Purchaser, including interest on all deposits thereon, as and for liquidated damages, and this Agreement shall be deemed terminated and of no further force and effect.

### **3. SELLER'S OBLIGATION**

Upon Seller's receipt of confirmation that the credit withdrawal and transfer has been approved, and is reflected in the Credit Ledger, Seller shall assume the responsibility for fulfilling the mitigation requirements of Purchaser's Permit that is associated with the use of Credits from the Bank. This obligation will be met by Seller in compliance with the terms and conditions of Seller's Permit. Seller warrants that all Credits will be considered valid for use in connection with Purchaser's Permit regarding wetland impact mitigation.

Seller shall use its best efforts to coordinate with, inform, and obtain, from ACOE and the South Florida Water Management District, the release of the credits identified in this Agreement. Buyer acknowledges that a possibility always exists that the credits described herein may not be available as a result of changes in South Florida Water Management District or ACOE regulatory interpretations, credit calculation methodologies, or ledger tracking requirements. Should any of the credits herein become unavailable for such reasons, Seller shall promptly provide Buyer with a proportional refund of the proceeds.

4. **CREDITS**

In the performance of their respective obligations, Seller will deliver and Purchaser will receive Credits that must be used to offset construction impacts authorized by Purchaser's Permit.

5. **USE OF CREDITS**

The use of these Credits is limited as specified in the Seller's ERP executed by the FDEP on February 18, 2000, and the Seller's MBI executed by the ACOE effective September 10, 2000, and as specified in Purchaser's Permit.

Purchaser covenants and warrants that it has or will obtain all necessary or required licenses, certificates, approvals or the like in order for Purchaser to legally and properly conduct and perform the obligations pursuant to this Agreement and in connection with the use of the Credits.

6. **LIABILITY**

Neither party assumes any liability or responsibility for the actions or activities of the other, or their respective employees, agents, representatives or the like in connection with this Agreement.

The warranties and remedies set forth in this Agreement above are exclusive. Seller makes no other warranties express or implied, with respect to its performance under this Agreement. Seller shall have no liability to Purchaser for any special, incidental or consequential damages arising out of its performance or non-performance of obligations hereunder, whether such liability is based in contract, tort or otherwise, including but not limited to negligence, warranty, indemnity or strict liability.

7. **COMPLIANCE**

Purchaser and Seller shall fully comply with all federal, state and local laws, ordinances, statutes, rules, regulations, orders, judgments and license and permit conditions or requirements



(hereinafter "Laws"), including but not limited to all Laws pertaining to the environment and/or natural resources as same relate to Purchaser obtaining permits authorizing its use of said Credits and/or to Purchaser's use of said Credits in fulfilling its permit requirements. Either Party shall, if requested, furnish proof of any license or permit required in connection with the performance of the Agreement. All fees and charges in connection with either Party's compliance with applicable Laws shall be borne by such party.

Purchaser accepts the responsibility to obtain all necessary regulatory approvals, permits or the like relating to Purchaser's project or use of the Credits.

**8. NO PROMISES OR INDUCEMENTS**

Purchaser, including its agents, representatives, employees or the like, hereby acknowledges and agrees that this Agreement is entered into with full reliance on its own independent investigation and due diligence and not on any statements, representations or agreements made by Seller. Further, Seller has not made any promises or inducements other than what is contained in this Agreement to Purchaser, its agents, representatives, employees or the like.

**9. APPROVAL**

This Agreement shall not be binding on either Party unless signed by such Parties' representative as set forth on the signature page attached hereto; likewise no modification to this Agreement shall be binding on either Party unless in writing and similarly signed. Commencement of performance prior to compliance with the preceding sentence shall not be construed as a waiver hereof.

**10. NOTICE**

All notices, requests, consents and other communications required or permitted to be given under this Agreement shall be in writing and shall be sent by certified mail, postage prepaid, return receipt requested; or shall be hand delivered; or shall be delivered by a

recognizable national overnight courier service; or shall be sent by facsimile transmission addressed as follows:

As to Purchaser:                      Attention: Brian A. Shields, P.E.  
Palm Beach County  
Water Utilities Department  
8100 Forest Hill Blvd.  
P.O. Box 16097  
West Palm Beach, FL 33416  
Phone: 561-493-6081  
Facsimile: 561-493-6085

As to Seller:                              Attention: Jonathan S. Weiss  
Tetra Tech EC, Inc.  
759 S. Federal Highway, Suite 100  
Stuart, FL 34994  
Phone: 772-781-3406  
Facsimile: 772-781-3480

or to any other address or addresses as any party may designate from time to time by notice given in accordance with this Section. Any such notice will be deemed delivered: (a) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authority as not deliverable, as the case may be if mailed; (b) on the date delivered by personal delivery; (c) on the date of delivery by a recognized national overnight courier service; or (d) on the date of facsimile transmission. Facsimile signatures to this Agreement or any notices sent pursuant to this Agreement shall be deemed hereby for all purposes to be originals. Sender shall retain report(s) of facsimile transmission confirmation(s) for record purposes.

**11. TERM**

This Agreement shall become effective as of the date first set forth above and shall remain in effect as provided herein.

**12. SEVERABILITY**

If any one or more of the provisions contained in this Agreement (other than provisions constituting a material consideration to a party's entering into this Agreement) shall be found void, illegal or unenforceable in any respect under any applicable law, then the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired; provided, however, that in such case the Parties shall use their best efforts to achieve the purpose of the invalid provision.

**13. RELATIONSHIP OF PARTIES**

The relationship between the Parties is that of independent entities and nothing herein shall be construed to place them in the relationship of a partnership, agency, joint venture or employer/employee. Neither Seller nor Purchaser shall be authorized, either expressly or impliedly, to act on behalf of the other party or to assume any obligation of any kind on behalf of the other party.

**14. AMENDMENTS**

This Agreement shall not be orally modified and no amendment hereto shall be effective except by a writing signed by all Parties. None of the terms and conditions contained herein may be added to, deleted, modified or altered except by written instrument signed by all Parties.

**15. TRANSFER OF OBLIGATION**

Neither of the Parties shall transfer or assign this Agreement, or any right or obligation hereunder (except the right to receive money) without the prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their successors and permitted assigns. In no event shall Purchaser be allowed to transfer Credits or this Agreement for any use other than that identified in Purchaser's Permits.

16. **GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Florida. Should either of the Parties be involved in legal action related to this Agreement, the prevailing party will be reimbursed all reasonable attorney fees and court costs from the non-prevailing party. The venue for any litigation will be Palm Beach County, Florida. Both Parties hereby agree to waive a jury trial, and will proceed to a trial by judge if necessary.

17. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties and replaces or supersedes any and all prior agreements, representations or understandings between the Parties relating to the subject matter hereof.

Signed, Sealed and delivered  
in the presence of:

As to Seller:

Date of Execution by Seller:

November 27 2007

Kristin K Bennett  
(Witness Signature)

KRISTIN K Bennett  
(Print Witness Name)

Tetra Tech EC, Inc.

"SELLER"

By: [Signature]  
(Signature)

Marriose Inogna  
(Witness Signature)

Marriose Inogna  
(Print Witness Name)

Jonathan S. Weiss  
(Print Signatory's Name)

Its: Executive Vice President

(SEAL)

Date of Execution by County:

\_\_\_\_\_, 2007

ATTEST:

SHARON R. BOCK, Clerk and  
Comptroller

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

PALM BEACH COUNTY, Florida a  
political subdivision of the State of Florida  
by its Board of County Commissioners

By: \_\_\_\_\_  
Addie L. Greene, Chairperson  
BAS 12/17/07

APPROVED AS TO TERMS AND  
CONDITIONS

By: [Signature]  
Department Director