

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date:	January 15, 2008	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 the Second Amendment to the Palm Beach County/Beeline Community Development District Water and Wastewater Utility Acquisition, Service and Service Area Agreement.

**Summary:** On February 15, 2005, the County entered into a Water and Wastewater Utility Acquisition, Service and Service Area Agreement (R2005-0366)(Agreement) with the Beeline Community Development District (District) to acquire the District's exclusive utility service area, utility system assets (exclusive of the District's potable water and wastewater plants which will be decommissioned) and customer base. The Agreement established a closing date of September 30, 2006, which was extended to September 30, 2007 by the First Amendment to the Agreement dated January 9, 2007 (R2007-0041.) The extension of the closing date was necessitated by a court-ordered stay of a permit necessary to extend County pipelines to the District service area. The extension of the pipelines is now complete. As a result of uncertainty in the bond market, the District has requested an additional extension of the closing date until July 31, 2008. This Second Amendment provides for the County to begin service initiation to District customers prior to full payment of water and wastewater capacity fees and pipeline extension costs by the District. The County shall begin providing service to all District customers no later than January 31, 2008. The District shall pay monthly capacity carrying costs for reservation of sufficient water and wastewater capacity to provide service to District customers until payment of permanent capacity costs at closing. The District also agrees to reimburse the County for pipeline maintenance costs of \$91,184.45 incurred from November 15, 2007 until January 31, 2008. The District shall convey its service area, utility assets, customer base, and all easements required by the County by January 31, 2008. District 1, MJ

**Background and Justification:** The County has sufficient capacity available in both its potable water and wastewater systems to serve the current and future needs of the District. Both the County and District have benefited from this Agreement by avoiding duplication of utility facilities. The County will obtain additional revenue, and the District will avoid future capital costs of repair and replacement of its facilities.

**Attachments:**

1. Location Map
2. Two (2) Original Amendments

Recommended By:  12/26/07  
Department Director Date

Approved By:  01/14/08  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Expenses	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(106,322)</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>	<u>(106,322)</u>				
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 4000 Dept 720 Unit 4200 Object Various

Is Item Included in Current Budget? Yes  No

Reporting Category N/A

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

At closing, the District will reimburse the County \$3,800,000 for the cost of the pipelines and other facilities and \$1,727,290 for system capacity. Monthly fees based on existing usage are expected to be approximately \$222,384 per year (\$166,788 in 2008). Additional revenue may be realized from future connections. The District will also pay \$91,184 for pipeline maintenance. Temporary capacity carrying charges are expected to be approximately \$15,138 through July 31, 2008.

**C. Department Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

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

[Signature] 1-4-08  
 OFMB  
 [Initials]  
 01/03/08 CN  
 12120

[Signature] 1/17/08  
 Contract Development and Control  
 [Signature] 1/17/08

**B. Legal Sufficiency:**

[Signature] 1/17/08  
 Assistant County Attorney

This amendment complies with our review requirements.

At the time of OAC's review, the Amendment was not executed.

**C. Other Department Review:**  
 \_\_\_\_\_



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

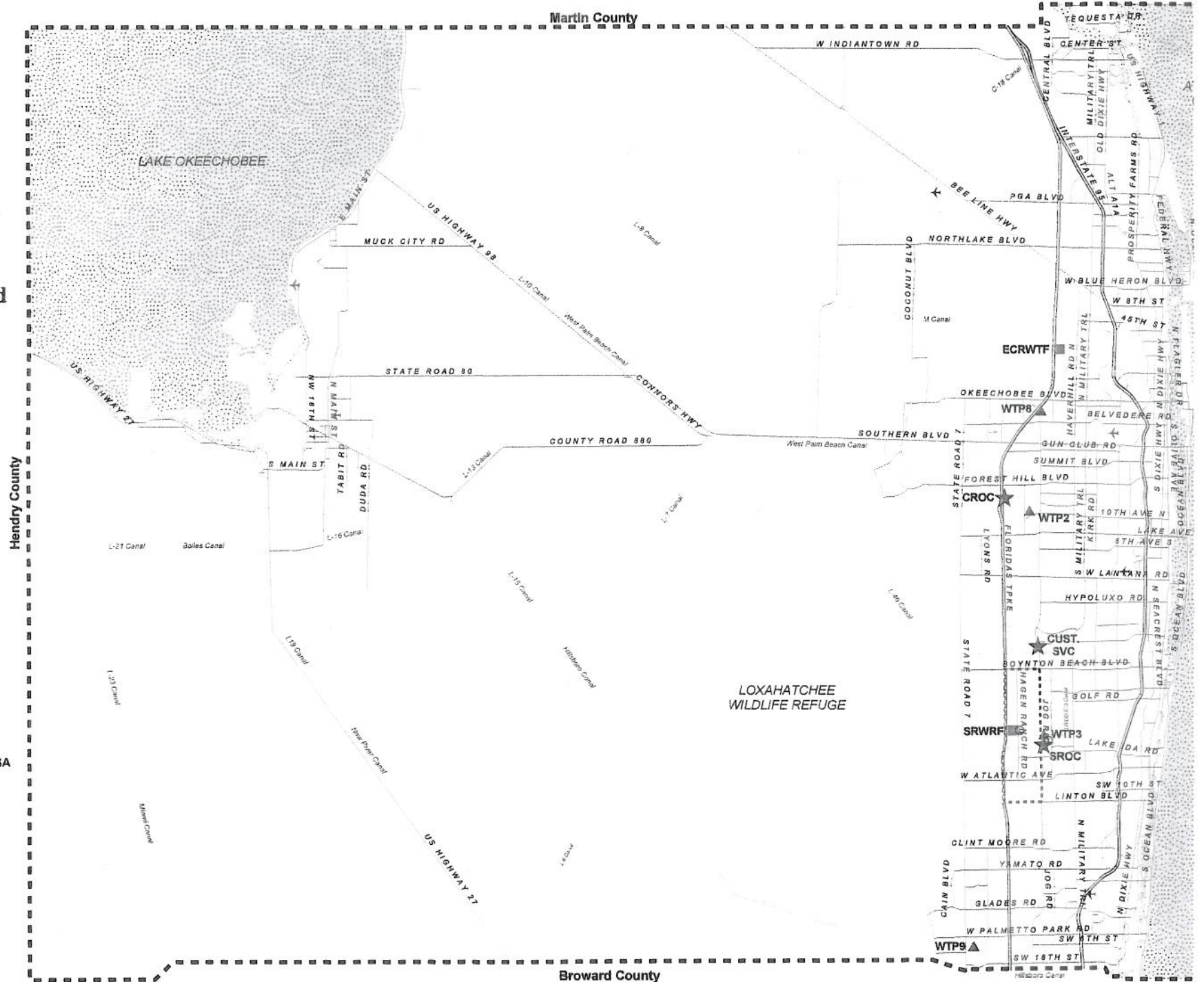
**Attachment 1**

**Legend**

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



NOT TO SCALE



**SECOND AMENDMENT TO THE PALM BEACH COUNTY /  
BEELINE COMMUNITY DEVELOPMENT DISTRICT  
WATER AND WASTEWATER UTILITY ACQUISITION, SERVICE AND  
SERVICE AREA AGREEMENT**

THIS SECOND AMENDMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (hereafter "County") and the BEELINE COMMUNITY DEVELOPMENT DISTRICT, a legal entity created under Chapter 190, Florida Statutes (hereafter "District").

**WITNESSETH:**

WHEREAS, the parties previously entered into a Water and Wastewater Acquisition, Service and Service Area Agreement on February 15, 2005 (the "Initial Agreement") and a First Amendment to the Water and Wastewater Acquisition, Service and Service Area Agreement on January 9, 2007 (the "First Amendment") (hereinafter the Initial Agreement and the First Amendment collectively referred to as the "Agreement"); and

WHEREAS, the District Board of Supervisors approved a proposed Second Amendment to the Agreement on November 12, 2007 (the "Proposed Amendment"), which proposed amendment was not voted upon by the County; and

WHEREAS, the District Board has rescinded its approval of the Proposed Amendment, as the parties now wish this Second Amendment to the Agreement to supersede and replace the Proposed Amendment (the "Second Amendment"); and

WHEREAS, the parties wish to approve this Second Amendment to permit the County to begin providing water and wastewater service to District customers prior to

the full payment of potable water and wastewater capacity fees and pipeline installation costs by District; and

WHEREAS, the parties wish to extend the Closing Date for full payment of said potable water and wastewater capacity fees and pipeline installation costs by District until July 31, 2008; and

WHEREAS, the parties wish to amend the Agreement to provide for the payment of monthly water and wastewater capacity carrying fees by the District following service initiation and prior to the Closing Date; and

WHEREAS, the parties wish to amend the Agreement to provide for the payment by District of the daily pipeline maintenance costs of the County prior to service initiation, as well as to make other changes as shown herein.

NOW THEREFORE, in consideration of the recitals, covenants, agreements and promises herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties, the parties covenant and agree as follows:

- I. The Agreement is hereby modified and amended to change the Closing Date from September 30, 2007 to July 31, 2008. There shall be no further extensions of the Closing Date.
- II. Service initiation to customers within the District Utility Service Area (hereafter "Customers") in accordance with Attachment 1 to the First Amendment shall commence as soon as practical with the goal that all

service initiation be completed no later than January 31, 2008 ("Service Initiation Date.") While the initial intention of the parties was for the Service Initiation Date to coincide with the Closing Date, it is the current intention of the parties that the Service Initiation Date be separate from the Closing Date, such that the potable water and wastewater capacity fees and potable water and wastewater pipeline extension fees due to the County from District (the "Payment Obligations") shall not be payable until the Closing Date, notwithstanding the earlier Service Initiation Date. Except for the Payment Obligations, all other actions required by the Closing Date in the Agreement, including the requirements of Section 5.3 of the Agreement, shall now be required as of the Service Initiation Date.

- III. County shall coordinate installation of meters with Customers in order to minimize the disruption to the business activities of the Customers. As certain individual Customers may begin receiving County potable water and/or wastewater service prior to the Service Initiation Date, as provided above, the County shall begin directly invoicing each Customer for County potable water and/or wastewater service at such time as the County has connected the individual Customer to the County system.
- IV. Following service initiation to individual Customers, and prior to the Closing Date, District agrees to pay the County an amount reflecting the carrying costs of County potable water and wastewater system capacity

(the "Carrying Costs"). The monthly combined Carrying Cost for potable water and wastewater capacity is 2.17 cents per gallon of average daily potable water usage. Monthly Carrying Costs for the wastewater-only meter located near the existing deep injection well at the solid waste landfill shall be billed separately at 1.08 cents per gallon of average daily wastewater provided to the County. The average daily usage shall be determined by dividing the total monthly usage of all Customers by the number of days in that month. The Carrying Costs shall begin to accrue at the time each individual Customer begins to receive potable water and/or wastewater service from the County, regardless of whether said service is provided prior to the Service Initiation Date. The Carrying Costs shall accrue up to the Closing Date. Following the payment of Payment Obligations by District at Closing, the Carrying Costs obligation shall cease. The County shall bill the District the Carrying Costs monthly based on the monthly usage of all Customers. District shall not be responsible for County monthly base facility fees and commodity fees incurred by individual Customers prior to the Closing Date. Payment of all accrued Carrying Costs shall be required at Closing.

- V. As set forth in Attachment #1 to this Second Amendment, which is attached hereto and incorporated herein, District agrees to pay pipeline maintenance costs from November 15, 2007 until January 31, 2008, in the

total amount of \$91,184.45. District shall pay the pipeline maintenance costs in full on or prior to the Service Initiation Date.

- VI. To the extent permitted by law, District agrees to indemnify, defend, reimburse, and hold the County and its officers, agents, and employees harmless, from and against any and all damages, liability, actions, claims, costs or expenses of any nature, arising directly or indirectly, in whole or in part from the County's use of any of the District Utility System Assets on or before the Service Initiation Date, including issues related to the County's access to and use of District Utility System Assets, except to the extent caused by the negligent acts or willful misconduct of the County. This provision shall survive the termination of the Agreement.
  
- VII. Pursuant to the Agreement, and prior to the Service Initiation Date, District shall provide any and all easements required by the County to provide service to Customers. Should additional easements be required to be granted by parties other than the District, District shall endeavor to secure said easements prior to the Service Initiation Date. If District is unable to secure said easements prior to the Service Initiation Date, the provisions of Paragraph VI above shall apply to the District Utility System Assets located within the required easement area until such time that District secures said easements.



VIII. The parties agree that the following lift stations, which are abandoned, non-operational, or non-accessible, will not be transferred to the County at Closing: Lift Stations # 4, 5, 6, 16, 18, 20, 49, 50, 51, 52. The list station numbers are as identified in that blueprint document "PE14923D\_C00 - PBC Lift Station Loc, sheet 5 of 5." District shall be responsible for abandoning said lift stations. The District authorizes the County to record a termination of any portion of any easements previously granted to County to remove easements to and for said lift stations.

IX. All other terms, conditions, and exhibits to the Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the Parties hereto have hereunder executed this Second Amendment on the date and year first above written.

ATTEST:  
  
Peter L. Pimentel, Secretary

**BEELINE COMMUNITY DEVELOPMENT DISTRICT**

BY:   
John K. Sillan, Chairman


Date: 12-19-07

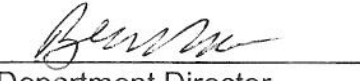
ATTEST:  
SHARON R. BOCK  
By: \_\_\_\_\_  
Clerk and Comptroller

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

BY: \_\_\_\_\_  
Addie L. Greene, Chairperson

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY :  
By:   
County Attorney

APPROVED AS TO TERMS AND CONDITIONS  
By:   
Department Director

Attachment 1

Pipeline Maintenance Costs

Monthly pipeline fee = 24.3 million gallons x 1.45/1000 gallons	=	<b>\$35,235.00</b>
Monthly labor and equipment charges	=	<b>\$1238.78</b>
Monthly Pipeline Maintenance Costs	=	<b>\$36,473.78</b>
<b>Total Pipeline Maintenance Costs (Monthly Pipeline Maintenance Costs x 2.5 months)</b>	=	<b>91,184.45</b>