

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>\$ 500,000.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(\$ 500,000.00)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 4011 Agency 721 Org. 4211 Rev Source 3139

Is Item Included in Current Budget? Yes No

Reporting Category N/A


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

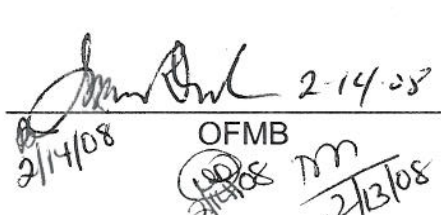
The Water Utilities Department will receive \$500,000 in grant revenue from the SFWMD under Agreement 4600001315 to the cost-share agreement for Fiscal Year 2008.

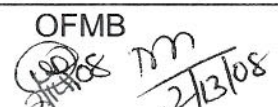
C. Department Fiscal Review: Selma M West

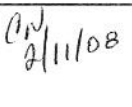
III. REVIEW COMMENTS

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


John H. Weber
 Contract and Development Control
 2/15/08


OFMB
 2/14/08


MM
 2/13/08


AW
 2/11/08

B. Legal Sufficiency:


Assistant County Attorney
 2/21/08

This item complies with current County policies.

C. Other Department Review:

Department Director

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



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

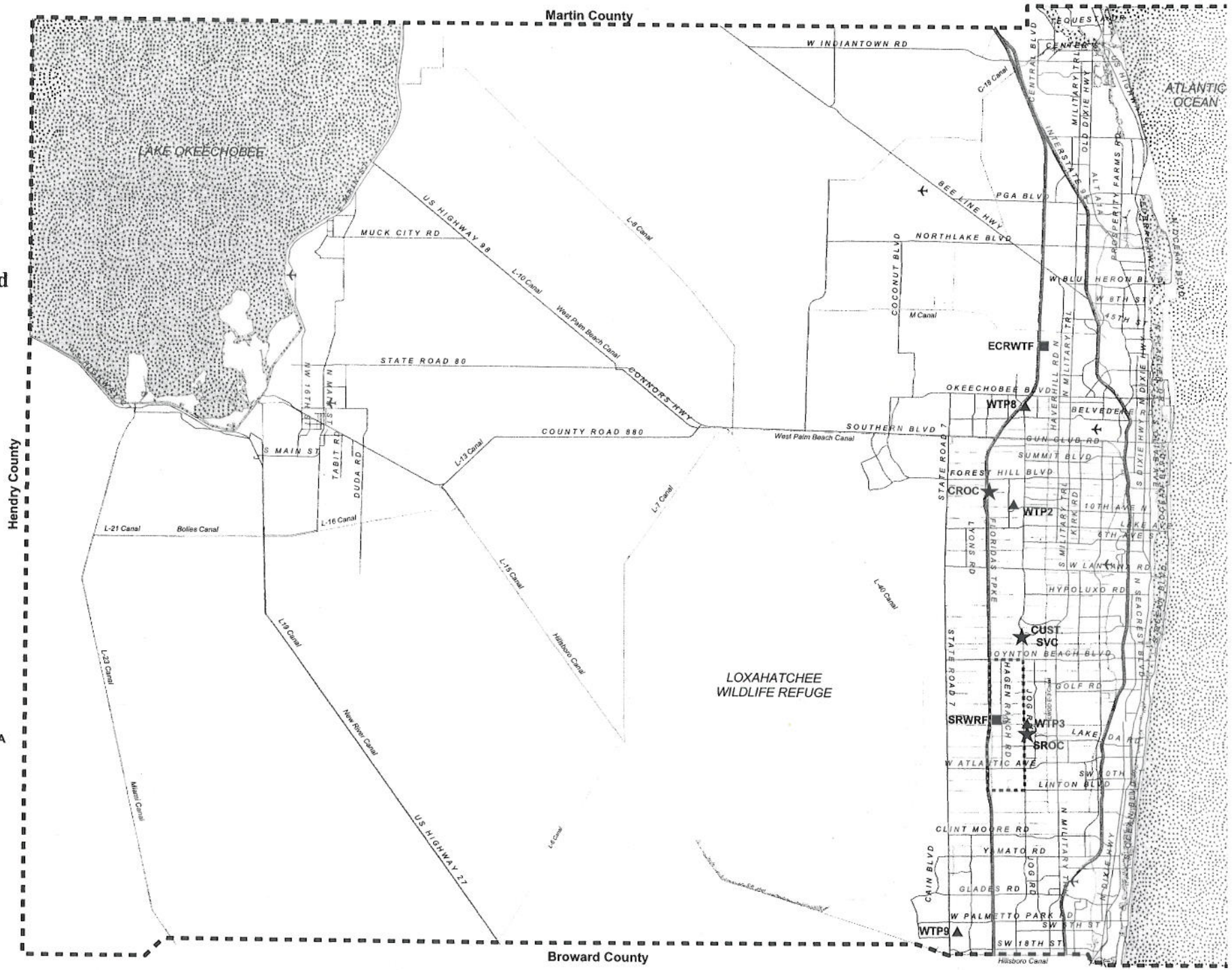
Attachment 1

Legend

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



NOT TO SCALE





**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
LOCAL GOVERNMENTAL AGREEMENT**

AGREEMENT NO. 4600001315

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

PALM BEACH COUNTY WATER UTILITIES

THIS AGREEMENT is entered into as of _____ by and between the South Florida Water Management District (**DISTRICT**) and Palm Beach County Water Utilities (**ENTITY**).

WHEREAS, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes, to include entering into contracts with public agencies, private corporations or other persons; and

WHEREAS, the **DISTRICT** desires to provide financial assistance to the **ENTITY** for the acceleration of construction of the Lake Region Water Treatment Plant; and

WHEREAS, the **ENTITY** 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

WHEREAS, the Governing Board of the **DISTRICT**, at its January 8, 2008 meeting, approved entering into this **AGREEMENT** with the **ENTITY**; and

NOW, THEREFORE, in consideration of the covenants and representations set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The **DISTRICT** agrees to contribute funds and the **ENTITY** agrees to perform the work set forth in Exhibit "A" attached hereto and made a part hereof, subject to availability of funds and in accordance with their respective authorities for the acceleration of construction of the Lake Region Water Treatment Plant.
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period of two (2) months.
3. The total **DISTRICT** contribution shall not exceed the amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00). The **DISTRICT** will provide the full amount based on the Payment and Deliverable Schedule set forth in Exhibit "B", which is attached hereto and made a part of this **AGREEMENT**. The **DISTRICT's** contribution is subject to adequate documentation to support actual expenditures within the not-to-exceed **AGREEMENT** funding limitation of \$500,000.00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. 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. The **DISTRICT** will notify the **ENTITY** in writing after the adoption of the final **DISTRICT** budget for each subsequent fiscal year if funding is not approved for this **AGREEMENT**.

4. The **ENTITY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **ENTITY** shall report and document the amount of funds expended per month during the quarterly reporting period and the **AGREEMENT** expenditures to date within the maximum not-to-exceed **AGREEMENT** funding limitation.
5. The **ENTITY** shall cost share in the total amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00) in conformity with the laws and regulations governing the **ENTITY**.
6. All work to be performed under this **AGREEMENT** is set forth in Exhibit "A", Statement of Work, which is attached hereto and made a part of this **AGREEMENT**. The **ENTITY** shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit "A" shall be under the direction of the **ENTITY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit "A" shall be performed beyond the expiration date unless authorized through execution of an amendment to cover succeeding periods.
7. The **ENTITY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **ENTITY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **ENTITY** agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the **ENTITY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).
8. Both the **DISTRICT** and the **ENTITY** shall have joint ownership rights to all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "A", Statement of Work. Both parties' rights to deliverables received under this **AGREEMENT** shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party. Notwithstanding the foregoing, ownership of all equipment and hardware purchased by the **ENTITY** under this **AGREEMENT** shall be deemed to be the property of the **ENTITY** upon completion of this **AGREEMENT**. The **ENTITY** shall retain all ownership to tangible property.
9. The **ENTITY**, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the **ENTITY** and the officers, employees, servants and agents thereof. The **ENTITY** represents that it is self-funded for Worker's Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the **ENTITY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **ENTITY** subcontracts any part or all of the work hereunder to any third party, the **ENTITY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **ENTITY**. Any contract awarded by the **ENTITY** shall include a provision whereby the **ENTITY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **ENTITY's** subcontract.
10. The **ENTITY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
11. The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **ENTITY**, their employees, agents, subcontractors or assigns, during or after the term of this **AGREEMENT**. The parties to this **AGREEMENT** shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this **AGREEMENT**

without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.

12. The parties to this **AGREEMENT** assure 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 be otherwise subjected to discrimination in any activity under this **AGREEMENT**.
13. The **ENTITY**, 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 **ENTITY**, upon request, as to any such laws of which it has present knowledge.
14. Either party may terminate this **AGREEMENT** at any time for convenience upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **ENTITY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
15. The **ENTITY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **ENTITY** 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 **ENTITY**.
16. The **ENTITY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **ENTITY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:
 - A. Maintenance of Records: The **ENTITY** 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 the expiration date of 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 that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **AGREEMENT**, the **ENTITY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute. All such records shall be made readily available to the **DISTRICT**.
17. Whenever the **DISTRICT**'s contribution includes state or federal appropriated funds, the **ENTITY** shall, in addition to the inspection and audit rights set forth in paragraph #16 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 **ENTITY** as set forth in Exhibit "C". The **ENTITY** 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
 - B. 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 ENTITY's financial and non-financial records to the extent necessary to monitor the ENTITY'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.

18. All notices or other communication regarding this AGREEMENT shall be in writing and forwarded to the attention of the following individuals:

South Florida Water Management District

Attn: Ashie Akpoji, Project Manager
Telephone No.: (561) 682-2571
Attn: Betty Thayer, Contract Specialist
Telephone No.: (561) 682-6011

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


Palm Beach County Water Utilities

Attn: Sylvia Jackson-Hamilton, Project Manager
Telephone No.: (561) 493-6135
Address:
8100 Forest Hill Blvd.
West Palm Beach, FL 33416


19. ENTITY recognizes that any representations, statements or negotiations made by DISTRICT staff do not suffice to legally bind DISTRICT in a contractual relationship unless they have been reduced to writing and signed by an authorized DISTRICT representative. This AGREEMENT shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
20. This AGREEMENT may be amended, extended or renewed only with the written approval of the parties. The DISTRICT shall be responsible for initiating any amendments to this AGREEMENT, if required.
21. This AGREEMENT, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this AGREEMENT will bind any of the parties to perform beyond their respective authority, nor does this AGREEMENT alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.
22. 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 that the AGREEMENT shall remain operable, enforceable and in full force and effect to the extent permitted by law.
23. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this AGREEMENT by the parties 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.
24. Any dispute arising under this AGREEMENT which cannot be readily resolved shall be submitted jointly to the signatories of this AGREEMENT with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.
25. 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.
26. Any inconsistency in this AGREEMENT shall be resolved by giving precedence in the following order:
(a) Terms and Conditions outlined in preceding paragraphs 1 – 24
(b) Exhibit "A" Statement of Work
(c) all other exhibits, attachments and documents specifically incorporated herein by reference

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this AGREEMENT on the date first written above.

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

By: 
Frank Hayden, Director of Procurement *ghm*

SFWMD PROCUREMENT APPROVED

By: 
Date: 1/25/08 *ghm*

PALM BEACH COUNTY BOCC

By: _____
Addie L. Greene

Title: Chairperson

Approved as to Terms
And conditions:

By: 
Department Director

Approved as to form and
Legal Sufficiency:

By: _____
County Attorney

CAT 2/8/08

EXHIBIT "A"

STATEMENT OF WORK

Accelerated Construction of the Lake Region Water Treatment Plant

Introduction

The Palm Beach County Water Utilities Department (PBCWUD) has designed and is currently constructing a new water treatment plant to provide potable water on a wholesale basis to communities located on the south and southeastern shore areas of Lake Okeechobee, hereafter referenced as the Lake Region area. The proposed Lake Region Water Treatment Plant (LRWTP) will utilize low pressure reverse osmosis technology to treat source water pumped from the Upper Floridan aquifer (UFA).

The total cost of the project is approximately \$58 million. The project is being managed and funded by Palm Beach County and is scheduled to be completed by August 2008. To accelerate the completion of the project before the height of the dry season and lower lake issues, Palm Beach County requested funding assistance from the South Florida Water Management District (SFWMD). At their January 8, 2008 meeting, the District's Governing Board approved funding assistance not to exceed \$500,000.00 to accelerate completion and start-up of the LRWTP. Palm Beach County will provide a 60-percent funding match of \$750,000.00.

Background

Palm Beach County is undertaking, and South Florida Water Management District is fully supporting, the construction of a new LRWTP to replace the aging plants currently serving the cities of Belle Glade, Pahokee and South Bay. The three water treatment plants currently pump raw water from Lake Okeechobee. In order to meet existing and future water quality standards the new Lake Region Plant will draw water from the brackish Upper Floridan Aquifer, a deep (900-ft to 1200-ft) groundwater source, and treat the water using reverse-osmosis technology. The new facility, managed by Palm Beach County, will wholesale water to each of the three cities. Each city will, therefore, retain its own distribution and retail responsibilities. The new plant will be centrally located on a 21-acre property near the City of Belle Glade. Centralization of the plant will provide economies of scale, resulting in reduced cost to the residents of the tri-city community of 25,000 people. The design of the plant was completed in autumn of 2005 and the startup of the plant is anticipated in spring of 2008 under the accelerated schedule.

The cities of Belle Glade, Pahokee, South Bay and the unincorporated areas of the Lake Region are facing many challenges regarding current and future public water supply. The challenges include outmoded plants, poor water quality, low water levels in Lake Okeechobee during drought periods, competition with Everglades restoration and other water management goals, a rapidly changing regulatory environment (i.e., future water quality standards will be more stringent) and funding problems. The Tri-Cities have all periodically been under consent order by the Palm Beach County Health Department for various types of violations, but primarily related to drinking water quality. All three cities

face problems related to color, odor and taste. Future changes in drinking-water regulations will likely make all three treatment plants obsolete. Furthermore, the use of Lake Okeechobee water for Everglades' restoration and other water management purposes (e.g. flood control, minimal flows and levels) are in conflict with its use for urban drinking water supply.

The LRWTP will help the communities of Belle Glade, Pahokee and South Bay switch away from dependence on Lake Okeechobee as the source of public water supply. The Floridan Aquifer will offer a drought-proof source of public water supply. The use of groundwater from the Floridan Aquifer will improve water quality. This project supports the District's efforts to maintain minimum flows and levels in Lake Okeechobee by reducing demands on Lake Okeechobee during drought periods. The project results in more water for restoration of the Everglades by reducing withdrawals from the Lake during normal rainfall years. Finally, the project will contribute to the socio-economic development of the Lake Region.

Scope of Work

This statement of work represents an acceleration of the construction of the LRWTP project that was started with the design in FY-2004. This agreement defines the scope of work for the acceleration of the construction of the LRWTP for FY-2008, and produce potable drinking water, available for the cities of Belle Glade, Pahokee and South Bay by March 31, 2008.

The scope of services for work funded in FY-2008 is described in the following work breakdown structure.

Work Breakdown Structure

Palm Beach County awarded the LRWTP and well field improvement construction contracts to the Poole and Kent Company. The construction activities covered under this agreement will consist of the following tasks:

Task 1: Poole & Kent WTP Construction Contract #R-2005-1928, project #03-169 – equipment, piping, materials and labor critical to the acceleration of the start-up of the LRWTP by March 31, 2008. It is expressly understood that technical issues and difficulties may arise that would impact the March 31, 2008 date. SFWMD expressly acknowledges that PBCWUD will incur additional expenses to accelerate the construction of the plant to meet the March 31, 2008 date. As stated in this agreement, and depicted in Exhibit "B", County will endeavor to complete the deliverables on or before March 31, 2008.

Task 2: Installation of treatment plant appurtenances pursuant to Poole and Kent.

Task 3: Weekly status report to the SFWMD project manager.

Task 4: Recipient shall submit to the project manager a Final Report summarizing all equipment, materials and labor in detail.

Summary Schedule of Tasks and Deliverables:

The Lake Region Water Treatment Plant construction contract was awarded to Poole & Kent Company on September 27, 2005. Deliverables will consist of, but not be limited to construction labor costs, materials, and equipment directly related to the start-up operation of the LRWTP, related appurtenances and weekly status reports to the SFWMD project manager.

In order to ensure that Palm Beach County provides a 60-percent matching funding, under no circumstances shall payment by the District, for either total or partial completion of the deliverables identified in this Exhibit "B" be made without a demonstrated equal or greater County matching expenditure.

The County shall submit to the District deliverables in accordance with Exhibit "B" and attached hereto as a part of the Statement of Work.

EXHIBIT "B"
SUMMARY SCHEDULE OF TASKS AND DELIVERABLES

- A summary deliverable and payment schedule associated with this project is set forth below, including specific deliverables associated with each task and due dates for all deliverables.
- All deliverables submitted hereunder are subject to review and acceptance by the **District**. Acceptability of all work will be based on the judgment of the **District** that the work is technically complete and accurate.
- Payment shall be made following receipt and acceptance by the **District** of project invoices in accordance with the schedule set forth below. All invoices shall be accompanied by adequate documentation to demonstrate completion of each task in accordance with Statement of Work, Exhibit "A", requirements.
- Total payment by the **District** for all work completed herein shall not exceed the amount of \$500,000.00. 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.
- Cost of deliverables may vary and adjustment of the table will be allowed to match actual expenditures while retaining the funding objectives of \$1,250,000.00 total expenditures with \$500,000.00 to be reimbursed by the District.

Task No.	Deliverables	Due Date	Payment By District FY 2008	Payment By County FY 2008
1	Poole & Kent WTP Construction Contract #R-2005-1928, project #03-169 – equipment, piping, materials and labor critical to the accelerated schedule and the start-up of the LRWTP by March 31, 2008.	3/31/08	\$500,000	\$0.00
2	Poole and Kent WTP Construction Contract – Treatment Plant Appurtenances – EPA Federal Funds	3/31/08	\$0.00	\$750,000
3	Weekly status reports to the SFWMD Project Manager	Weekly – 3/31/08	0.00	\$0.00
4	Final Report			
	Totals County Contribution			\$750,000
	Total District Payment		\$500,000	

County will use its best efforts to complete all deliverables detailed in this agreement and depicted in "Exhibit A" on or before March 31, 2008.