

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

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Meeting Date:	April 1, 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:** Agreement No. 4600001317 with the South Florida Water Management District (SFWMD) for the Regional Aquifer Storage and Recovery (ASR) Pilot Project along the Hillsborough Canal, providing for transfer of ownership of the ASR , potable water wells and raw water piping to Palm Beach County.



Summary: The County has successfully constructed the ASR project and began operation of the project in October of 2004. Agreement No. 4600001317 provides for transfer of ownership of the ASR project from the SFWMD to the County including one 5 million gallon per day aquifer ASR well, a Floridan aquifer monitor well, five raw water wells and a raw water transmission main along the Hillsboro Canal west of State Road 7. The Agreement requires the County to collaborate with the SFWMD on the ASR operation for a five year period which ends on October 14, 2009. (WUD Project No. 98-66) District 5 (MJ)

Background and Justification: As growth in southeast Florida continues, increasing demands will be placed on available fresh water resources. The use of ASR technology offers an alternative for the storage of water during the wet season and retrieval during critical dry periods. This project was initiated to evaluate joint use of ASR technology to meet the water quality requirements for both public water supply and regional water resource augmentation. Recovered water is used either to meet dry season raw water demand at Water Treatment Plant No. 9, or for discharge to the Hillsboro Canal to supplement the regional water resources of southeastern Palm Beach County

The ASR Pilot Project was constructed under SFWMD Agreement No. C-10801 (R99-839D) which provided for the ASR to be jointly funded by the County and the SFWMD. The District reimbursed the County \$1,580,550 for design and construction of the ASR well, a Floridan aquifer monitor well, five raw water wells and a raw water transmission main along the Hillsboro Canal west of State Road 7 with Water Utilities funding the balance of the project. The Agreement No. 4600001317 is required for official transfer of ownership of the ASR facilities.

Attachments:

1. Location Map
2. Two (2) Original Agreement No. 4600001317

Recommended By:	<u></u>	<u>3/21/08</u>
	Department Director	Date
Approved By:	<u></u>	<u>3/28/08</u>
	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>	<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>
NET FISCAL IMPACT	(See Sect. A)* - 0 -				
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund _____ Agency _____ Org. _____ Object _____

Is Item Included in Current Budget? Yes ☒ No ☐

Reporting Category N/A

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

Operating/Maintenance costs ARE included in the budget.

C. Department Fiscal Review: Debra M West

III. REVIEW COMMENTS

* A. OFMB Fiscal and/or Contract Development and Control Comments:
The ASR facility is completed and is currently being operated and maintained by the County.

[Signature] 3-26-08
OFMB *DM* 3/24
NO 3/24
3/25
[Signature] 3/27/08
Contracts Development and Control

B. Legal Sufficiency:

[Signature] 3/28/08
Assistant County Attorney

C. Other Department Review:

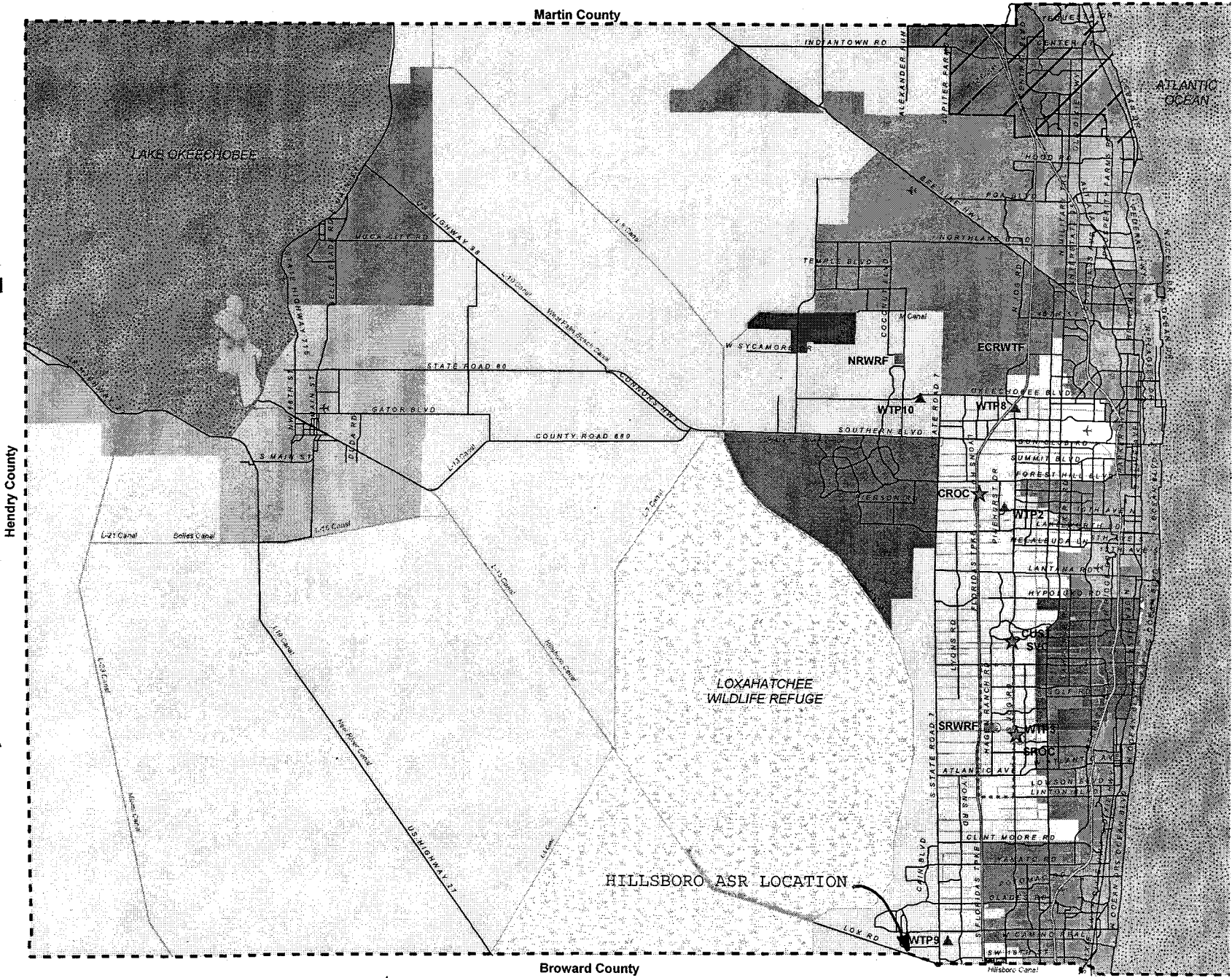
Department Director



**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
 - - - - - Palm Beach County Limits
 - ★ Administration
 - Water Reclamation Facility
 - ▲ Water Treatment Facility
 - ☉ Wetlands





SOUTH FLORIDA WATER MANAGEMENT DISTRICT LOCAL GOVERNMENTAL AGREEMENT

AGREEMENT NO. 4600001317

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

PALM BEACH COUNTY, FLORIDA

THIS AGREEMENT is entered into as of the _____ (Month, Day, Year) by and between the South Florida Water Management District (**DISTRICT**) and Palm Beach County (**COUNTY**).

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** and the **COUNTY** previously entered into an Agreement No. C-10801 and Amendment No. 1 C-10801-A1 whereby the **COUNTY** would be responsible for the permitting, design, construction and operational testing of an Aquifer Storage and Recovery (ASR) Facility; and

WHEREAS, the **COUNTY** has completed the construction of the ASR Facility and has been operating and maintaining the ASR Facility in accordance with **DISTRICT** and Florida Department of Environmental Protection requirements; and

WHEREAS, the **DISTRICT** desires to transfer ownership of the ASR Facility to the **COUNTY** before the completion of the five (5) year operational testing phase of the project; and

WHEREAS, the **DISTRICT** and the **COUNTY** agree this **AGREEMENT** shall supersede all conflicting provisions of Agreements C-10801 and C-10801-A1; and

WHEREAS, the **COUNTY** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **AGREEMENT**;

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 transfer ownership of the ASR Facility, and the **COUNTY** agrees to perform the work set forth in Exhibit "A", Statement of Work, attached hereto and made a part hereof. During the term of this **AGREEMENT**, the **DISTRICT** will have access to the wells. For the purpose of this **AGREEMENT**, ASR Facility refers to the ASR well, Floridan Aquifer monitor well, five (5) Surficial Aquifer wells designated for ASR supply, pumps, discharge facilities to the Hillsboro Canal, and all of the associated appurtenances including valves, flowmeters, and instrumentation and controls to perform the work set forth in Exhibit "A".
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue until October 14, 2009 which will be five (5) years from the start of operational testing.
3. 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 **COUNTY** shall provide the **DISTRICT's** Project Manager with two (2) copies of all reports, updates, or other correspondence produced by the **COUNTY** that are related to the operation and testing of the ASR Pilot Facility. These submittals will be used by the **DISTRICT** to keep abreast of the status of the ASR Facility and results from testing. Periodic verbal communication between the **COUNTY** and **DISTRICT** Project Managers is encouraged. This work specified in Exhibit "A" shall be under the direction of the **COUNTY** 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 of the Agreement, unless authorized through execution of an amendment to cover succeeding periods.
4. The **COUNTY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **COUNTY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **COUNTY** 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 **COUNTY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).
5. Both the **DISTRICT** and the **COUNTY** 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 **COUNTY** under this **AGREEMENT** shall be deemed to be the property of the **COUNTY** upon completion of this **AGREEMENT**. The **COUNTY** shall retain all ownership to tangible property.

6. The **COUNTY**, 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 **COUNTY** and the officers, employees, servants and agents thereof. The **COUNTY** 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 **COUNTY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **COUNTY** subcontracts any part or all of the work hereunder to any third party, the **COUNTY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **COUNTY**. Any contract awarded by the **COUNTY** shall include a provision whereby the **COUNTY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **COUNTY's** subcontract.
7. The **COUNTY** 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.
8. 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 **COUNTY**, 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.
9. 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**.
10. The **COUNTY**, 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 **COUNTY**, upon request, as to any such laws of which it has present knowledge.
11. 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 **COUNTY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.

During the completion of the five (5) year operational period, the **COUNTY** shall continue to use the ASR facility for it's original purpose whenever conditions allow. However, it may be used as a blending well when **DISTRICT** Phase II, or higher water

shortage conditions exist. Any deviation from this requirement will result in termination of this **AGREEMENT** by the **DISTRICT**.

12. The **COUNTY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **COUNTY** 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 **COUNTY**.

13. The **COUNTY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **COUNTY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:

A. Maintenance of Records: The **COUNTY** 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 **COUNTY** 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**.

14. Whenever the **DISTRICT**'s contribution includes state or federal appropriated funds, the **COUNTY** shall, in addition to the inspection and audit rights set forth in paragraph #13 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 **COUNTY** as set forth in Exhibit "C". The **COUNTY** 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

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 **COUNTY's** financial and non-financial records to the extent necessary to monitor the **COUNTY'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.

15. 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: Rick Nevulis, Project Manager
Telephone No. (561) 682-6242

Attn: Betty Thayer, Contract Specialist
Telephone No. (561) 682-6011

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

Palm Beach County

Board of County Commissioners

Attn: Steve McGrew, Project Manager
Telephone No. (561) 641-3429

Address:
P.O. Box 16097
West Palm Beach, FL 33416

Invoices shall be sent to the attention of Accounts Payable at the **DISTRICT's** address above.

16. **COUNTY** 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.
17. 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.
18. 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.
19. Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, **COUNTY** 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.
20. 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.

21. 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.
22. 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**.
23. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
 - (a) Terms and Conditions outlined in preceding paragraphs 1 – 21
 - (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 written below.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: _____
Frank Hayden, Procurement Director

Date: _____

SFWMD Procurement Approved:

By: Betty Shayer *sm* Date: 2/15/08

SFWMD Office of Counsel Approved:

By: Cathy Hunter Date: 3/4/08

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____

Addie L. Greene, Chairperson
Name of Authorized Individual

ATTEST:

Sharon R. Bock, Clerk and
Comptroller

Title: Chairperson

By: _____
Deputy Clerk

Approved as to Terms and
Conditions

Approved as to Form and
Legal Sufficiency:

By: *[Signature]*
Department Director

By: _____
Assistant County Attorney

Exhibit "A"
Statement of Work

Eastern Hillsboro Canal ASR Facility
Palm Beach County Water Utilities Department

A. Introduction/Background

The South Florida Water Management District (District) and Palm Beach County (County) previously entered into a cost-sharing Agreement (C-10801) for the permitting, design, construction, and testing of the Eastern Hillsboro Canal ASR Facility, located along the Hillsboro Canal west of U.S. 441 in southwestern Palm Beach County, Florida. The District agreed to cost share the project with the intent of gaining knowledge about the technology and specifically in ASR's ability to provide a regional water supply for environmental, urban, and agricultural uses. The Agreement included the installation of up to ten water supply wells, an ASR well, a Floridan Aquifer monitor well and all the required appurtenances.

The County began operation (i.e., cycle testing) of the Eastern Hillsboro ASR Facility on October 14, 2004. The County continues to operate the facility.

B. Objectives

The objectives of this Agreement are twofold. The District is transferring ownership of the Hillsboro Canal ASR Facility to the County. The second objective is to define the continued collaboration between the District and the County as the ASR facility continues through its first five (5) years of operation.

C. Scope of Work

Task 1 – ASR Facility Ownership

The ASR facility is currently being operated and maintained by the County. The prior Agreement defined the District as owner of the ASR facility for a period of five (5) years following commencement of operational testing. This Agreement transfers ownership of the ASR facility to the County upon its execution.

Task 2 – Collaboration during ASR Operations

This task outlines the specific requirements regarding the collaboration between the District and the County during the ASR facility's first five (5) years of operation. The District shall monitor the facility's progress and provide input to the County on potential testing that may yield useful information to both the District and the County.

D. Work Breakdown Structure

Task 1 – ASR Facility Ownership

The District will transfer ownership of the Eastern Hillsboro Canal ASR Facility and five (5) Surficial Aquifer wells designated for ASR supply to the County upon execution of this Agreement. The ASR Facility includes the ASR well, Floridan Aquifer monitor well, pumps, discharge facilities to the Hillsboro Canal, and all associated appurtenances including valves, flowmeters, and instrumentation and control. The County shall continue to provide for the operation, maintenance and testing of the ASR facility (including providing power) in accordance with the FDEP-issued Underground Injection Control (UIC) Class V Well Construction and Operation Permits.

Task 2 – Collaboration during ASR Operation

The County shall continue to cooperate with the District regarding sharing of information on the operation and monitoring of the ASR facility for the first five (5) years of operation. As defined in this Agreement, operation of the ASR facility began on October 14, 2004, which was the first day of Cycle No. 1. Continued cooperation beyond the five-year period is anticipated, but is not defined under this Agreement.

The following items are included under this Task:

2a. Permit Compliance

The County shall provide the District with a copy of all correspondence related to permit compliance for the ASR facility. These permits include, but are not limited to, FDEP's Underground Injection Control permits (Construction and Operation) and the NPDES permit for discharge to the Hillsboro Canal. These permits typically require Monthly Operating Reports (for the UIC permits) and Discharge Monitoring Reports (for the NPDES permit). Copies of these reports shall be sent to the District's Project Manager.

2b. Permit Applications

The County shall provide the District a copy of all correspondence related to permit applications for the ASR Facility. These permit applications include, but are not limited to, FDEP's Underground Injection Control Operation Permit and any updates to the NPDES permit for discharge to the Hillsboro Canal. Copies of the correspondence shall be sent to the District's Project Manager.

2c. Cycle Testing & Results

The County shall provide a copy to the District on any cycle testing results or summaries. Copies of the correspondence shall be sent to the District's Project Manager. The summaries shall include any memoranda that are prepared following the conclusion of a testing cycle. The permit-required reports that tabulate water quality and operational data for the ASR facility shall be included.

2d. Meetings

During the operational (cycle) testing period, the County shall organize and conduct meetings with the District to discuss the operational and monitoring status of the ASR facility. The meetings shall be conducted on an as-needed basis preferably following the conclusion of a cycle test. These meetings will be held at the County’s Water Utilities Department Headquarters in West Palm Beach.

E. Summary Schedule of Tasks and Deliverables

A summary deliverable schedule for each task associated with this project is set forth below. The schedule is based on a five-year operational period.

Task No.	Deliverables	Due Date
1	ASR Facility Ownership	Upon Contract Execution
2	Collaboration During ASR Operation	
	2a. Correspondence related to Permit Compliance	Monthly
	2b. Correspondence related to Permit Applications	Ongoing
	2c. Cycle Test Results	Ongoing
	2d. Meetings	As needed