

3H-7

Agenda Item #:

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date:	December 16, 2008	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF





Motion and Title: Staff recommends motion to approve: Amendment No. 6 to Use Agreement (R93-75D) with the South Florida Water Management District (SFWMD) for a well site located near the northwest corner of Lake Lytal Park in West Palm Beach.

Summary: The SFWMD has requested an extension to the term of an existing Use Agreement which expires on January 12, 2009. Amendment No. 6 extends the term for five (5) years through January 12, 2014, and provides for cancelation by either party with ninety (90) days written notice. SFWMD is required to close and cap the well and remove any improvements prior to the termination date. In addition, Amendment No. 6 updates the Notice provisions for both parties. This Use Agreement has been in place since 1992 and allows SFWMD continuous operation and maintenance of a District-owned monitoring well adjacent to Lake Lytal Park without payment of rent. **(PREM) District 2 (HJF)**

Background and Justification: On December 15, 1992, the County entered into a Use Agreement with SFWMD to allow continuous operation and maintenance of District-owned tri-zone monitoring wells, located at Lake Lytal Park, for the Florida aquifer. Subsequent Amendments to the Use Agreement reduced the size and number of wells to one. As the SFWMD is a governmental entity and the property is vacant, no rent is being charged.

Attachments:

1. Location Map
2. Amendment No. 6 To Use Agreement

Recommended By:	 Department Director	 Date
Approved By:	 County Administrator	 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<i>* See below</i> -0-	-0-	-0-	-0-	-0-
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
Program _____

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

* No fiscal impact. The SFWMD is responsible for maintenance.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

atwillwhite 12.8.08
OFMB *EN 12/05/08*

Don J. Jacob 12/8/08
Contract Development and Control, *6 Jan 12/8/08*

B. Legal Sufficiency:

[Signature] 12/9/08
Assistant County Attorney

**This amendment complies with
our review requirements.**

C. Other Department Review:

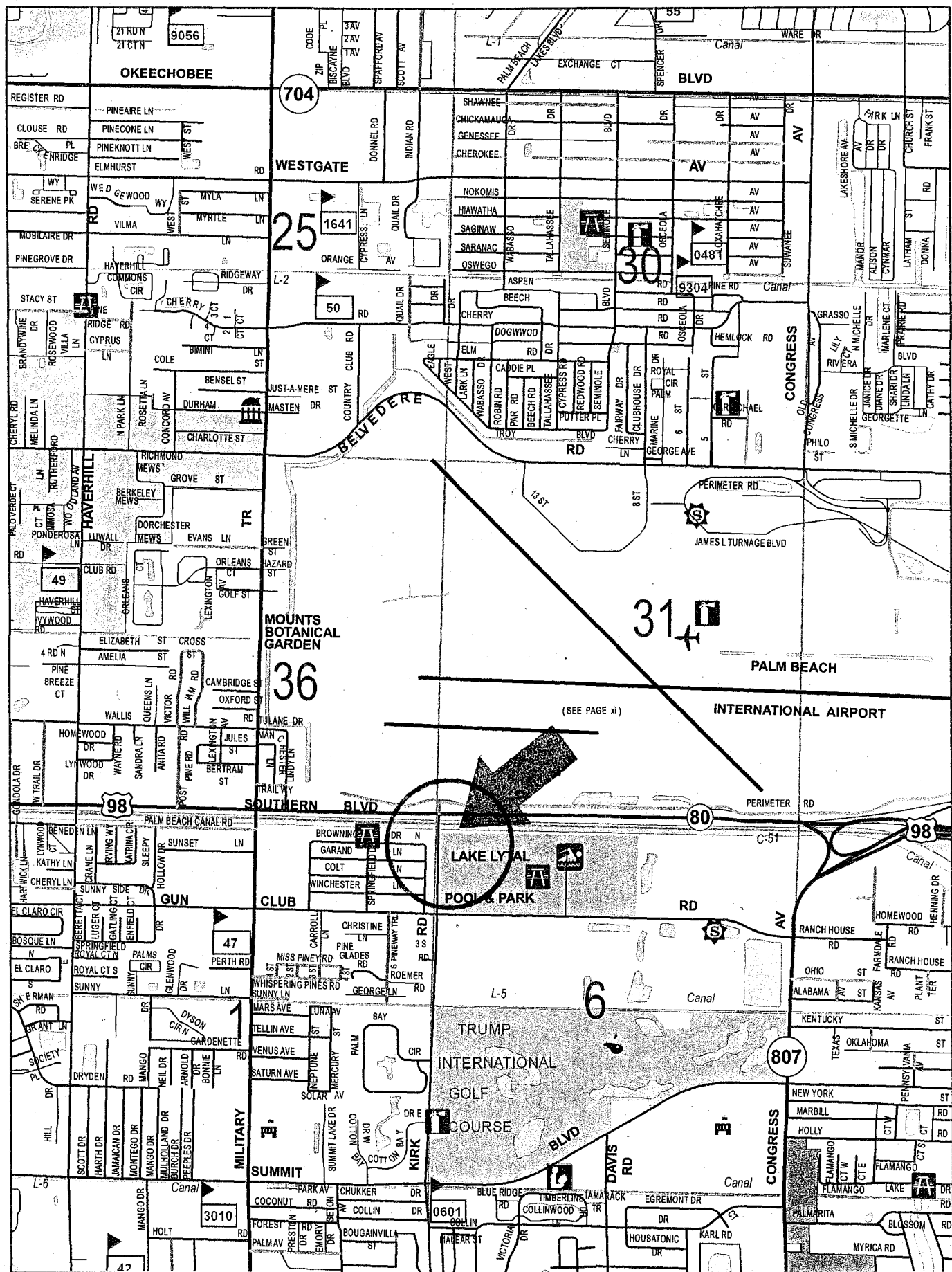
Department Director

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

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LOCATION MAP

ATT.#1

AMENDMENT NO. 6 TO USE AGREEMENT
SOUTH FLORIDA WATER MANAGEMENT DISTRICT C-6968-A06

THIS AMENDMENT NO. 6 TO USE AGREEMENT, made and entered into _____, by and between **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, a public corporation of the State of Florida, hereinafter referred to as "SFWMD" and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY".

WITNESSETH:

WHEREAS, COUNTY and SFWMD entered into a certain Use Agreement dated December 15, 1992 (R93-75D), as amended by Amendment No. 1, dated December 21, 1993 (R93-1657D), Amendment No. 2, dated December 19, 1995 (R95-1769D), Amendment No. 3, dated December 15, 1998 (R98-2088D), Amendment No. 4, dated December 17, 2002 (R2002-2268), and Amendment No. 5, dated January 13, 2004 (R2004-0101) (the Use Agreement and its Amendments shall collectively be referred to as "Use Agreement"); and

WHEREAS, SFWMD and COUNTY desire to extend the Term of the Use Agreement.

NOW THEREFORE, in consideration of the rent, mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are true and correct and incorporated herein by reference.
2. The Term of this Use Agreement is hereby extended for a period of five (5) years, commencing on January 13, 2009, and expiring on January 12, 2014, unless terminated as set forth herein. Either party hereto may advise the other party at any point during the Term of the notifying party's desire or intent to terminate this Use Agreement. The notifying party shall provide the other party with at least ninety (90) days advance written notice of its desire to terminate the Use Agreement upon the date set forth in the termination notice (the "Termination Date"). Regardless of which party terminates this Use Agreement, SFWMD shall close and cap the wells, as well as remove any improvements above the ground surface, prior to the Termination Date.
3. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States

ATT.# 2

Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

3.1 County:

Palm Beach County
Property & Real Estate Management Division
Attention Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Fax 561-233-0210

With a copy to:

County Attorney's Office
Attn: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401-4791
Fax 561-355-4398

3.2 SFWMD:

Fax _____

With a copy to:

Fax _____

Any party may from time to time change the address to which notice under this Use Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

4. Except as set forth herein, the Use Agreement remains unrevised and in full force and effect, and the parties hereby ratify, confirm, and adopt the Use Agreement as amended hereby.

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IN WITNESS WHEREOF, the parties have set their hands and seals on the date set forth above.

**SOUTH FLORIDA WATER
MANAGEMENT DISTRICT**, a
public corporation of the State of Florida

ATTEST:

By: _____
Jacki McGorty, District Clerk

By: _____

Print Name: _____

Title: _____

FORM APPROVED BY:

South Florida Water Management
District, Office of Counsel

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
AND CONDITIONS

By: _____
Assistant County Attorney

By: _____
Audrey Wolf, Director
Facilities Development & Operations