

6E-1

Meeting Date: September 15, 2009 Consent [ ] Regular [X]  
Public Hearing [ ]

Submitted For: Water Utilities Department

**I. EXECUTIVE BRIEF**


**Motion and Title:** Staff recommends motion to: **A) approve:** a Utility Easement Agreement with Lion's Holding Company LLC., providing compensation in the amount of \$5,000; **B) approve:** a Utility Easement and Temporary Construction Easement from Palm Beach Aggregates Holdings, Inc. (PBA); **C) approve:** a Memorandum of Understanding with the South Florida Water Management District (SFWMD) and Florida Power and Light (FPL); **D) approve:** a Right of Way Consent Agreement with FPL; **E) approve:** a Utility Easement and Temporary Construction Easement with FPL; **F) approve:** a License Agreement with the City of West Palm Beach (WPB); and **(G) adopt:** Resolutions declaring the acquisition of property designated as Parcel 100W, 100E, and 101 as permanent utility easements; Parcels 200E, 200W, and 200S as permanent access easements; and Parcels 300W, 300E, and 301 as temporary construction easements, necessary for the construction, installation, and maintenance of a reclaimed water pipeline and related appurtenances, to be a public necessity, and authorizing the employment of appraisers and other experts, and authorizing the filing of Eminent Domain proceedings.

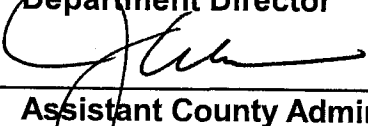
**Summary:** On May 20, 2008, the Board of County Commissioners (BCC) approved a Reclaimed Water Agreement (R2008-0906) with FPL to supply reclaimed water for the West County Energy Center (Center). Construction of the pipeline to deliver reuse water from the East Central Regional Wastewater Reclamation Facility (ECRWRF) to the Center to requires the acquisition of several utility easements and licenses. Lions Holding Company, LLC is granting a utility easement and a temporary construction easement in return for compensation in the amount of \$5,000. PBA Holdings, Inc. is granting a utility easement and temporary construction easement at no cost. The Memorandum of Understanding with the SFWMD and the FPL includes the granting of a utility easement and temporary construction easement from SFWMD at no cost. (continued on page 3)

**Background and Justification:** On May 20, 2008, the Board approved a Reclaimed Water Agreement (R2008-0906) with FPL to supply reclaimed water for the Center. This Agreement requires the County to acquire the easements for construction of the pipeline main for the ECRWRF to the Center.

**Attachments:**

1. Location Map
2. Two (2) Original Utility Easement Agreements with Lion's Holding Company LLC (with attached Utility Easement and Temporary Construction Easement.)
3. One (1) Original Utility Easement granted by PBA Holdings, Inc. to Palm Beach County.
4. One (1) Original Temporary Construction Easement granted by PBA Holdings, Inc. to Palm Beach County.
5. One (1) Original Memorandums of Understanding with South Florida Water Management District and Florida Power and Light Company (with attached Utility Easement and Temporary Construction Easement.)
6. Three (3) Original Right of Way Consent Agreements with Florida Power and Light Company.
7. Three (3) Original Utility Easement granted by Florida Power and Light Company to Palm Beach County.
8. Three (3) Original Temporary Construction Easement granted by Florida Power and Light Company to Palm Beach County.
9. Two (2) Original License Agreements with the City of West Palm Beach.
10. Eminent Domain Resolutions for Parcels 100W, 100E, 101, 200E, 200W, 200S, 300W, 300E, and 301.

Recommended By:  Date \_\_\_\_\_  
 Department Director

Approved By:  Date 9-11-09  
 Assistant County Administrator

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	\$5,000.00	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Operating Expenses	-0-	-0-	-0-	-0-	-0-
In-Kind Match County	-0-	-0-	-0-	-0-	-0-
<b>NET FISCAL IMPACT</b>	\$5,000.00	-0-	-0-	-0-	-0-
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-	-0-	-0-	-0-	-0-

Budget Account No.: Fund 4041 Dept 721 Unit W032 Object 6543

Reporting Category N/A

Is Item Included in Current Budget? Yes  No

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

C. Department Fiscal Review: *Debra M West*

**III. REVIEW COMMENTS**

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

*[Signature]* 9/14/09  
 OFMB 9/14/09

*[Signature]* 9/18/09  
 Contract Development and Control

**B. Legal sufficiency:**

*[Signature]* 9/10/09  
 Assistant County Attorney

This item complies with current County policies.  
 At the time of our review, some of the documents were in Draft form.

**C. Other Department Review:**

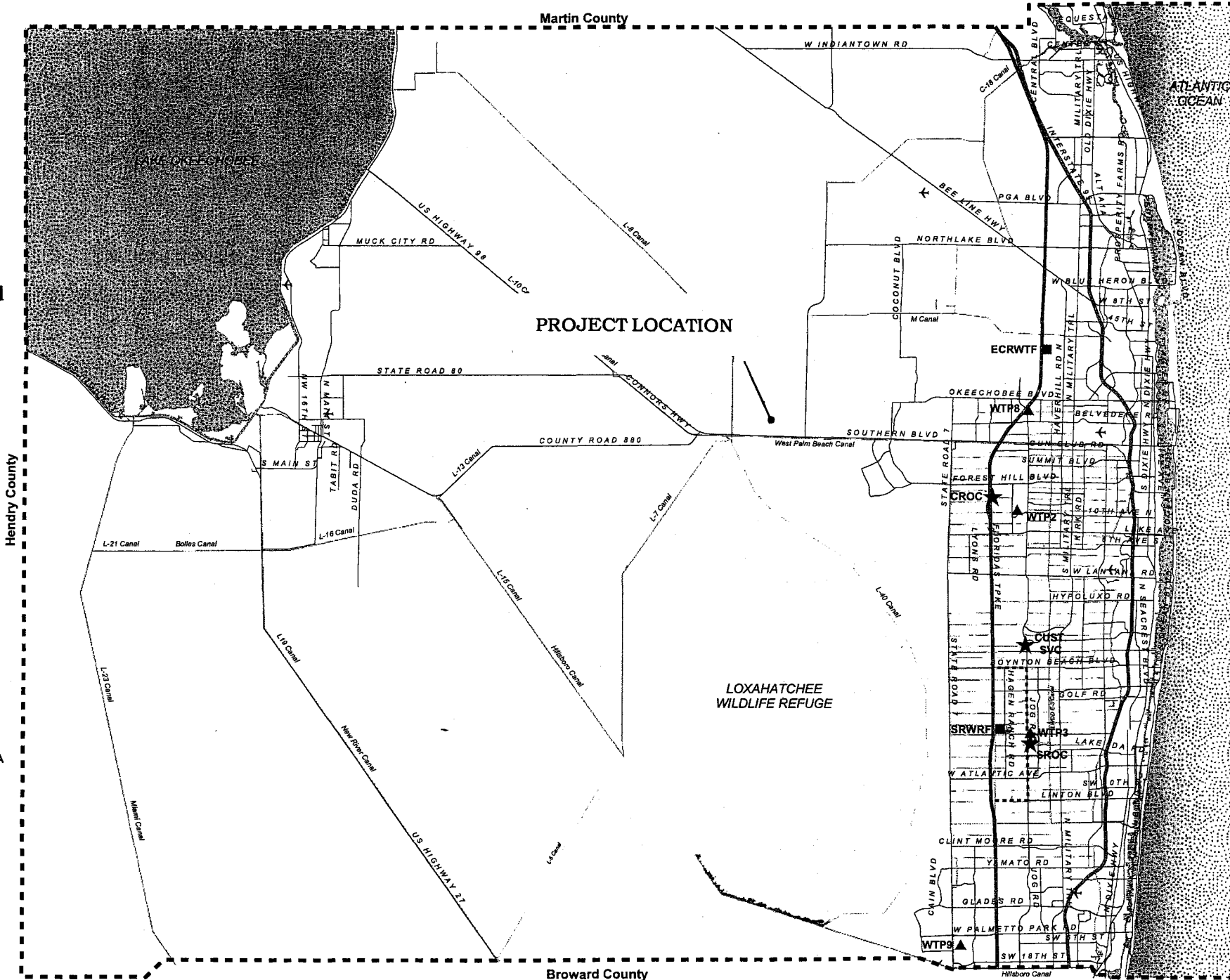
\_\_\_\_\_  
 Department Director

**Summary: (continued from page 1)** FPL is granting the Right of Way Consent Agreement, the Utility Easement and the Temporary Construction Easement at no cost. The form of the License Agreement with WPB was approved by the Board on May 20, 2008 (R-2008-0908). While the Palm Beach County Water Utilities Department (WUD) may accept standard easements in accordance with its Uniform Policies and Procedures Manual, these easements/licenses contain modifications to the Standard Easement Form and/or require separate agreements between the parties, and are therefore being brought to the Board for approval. Approval of the Eminent Domain Resolutions will authorize the filing of Eminent Domain proceedings for Parcels 100W, 100E, 101, 200E, 200W, 200S, 300W, 300E, and 301. The permanent utility easements and access easements (Parcels 100W, 100E, 101, 200E, 200S, 200W) are perpetual, while the temporary construction easements (Parcels 300W, 300E, and 301) will expire two (2) years from the date of execution, or upon the final completion of construction, whichever occurs first. (WUD Project No. 08-031) District 6 (MJ)



**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

**UTILITY EASEMENT AGREEMENT**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between Lion's Holding Company, LLC, a Florida limited liability company (hereinafter referred to as "Property Owner"), and Palm Beach County, a political subdivision of the State of Florida (hereinafter referred to as "County").

**WITNESSETH**

WHEREAS, Property Owner owns certain real property in Palm Beach County, more particularly described in Exhibit "A", which is attached hereto and incorporated herein, hereinafter referred to as the "Property";

WHEREAS, County has determined that a temporary construction easement and a permanent utility easement over a portion of the Property is required for the public purpose of the extension of a County reclaimed water pipeline; and

WHEREAS, Property Owner has agreed to grant the County the necessary easements for the sum of Five Thousand Dollars (\$5,000.00);

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, Property Owner and the County agree as follows:

1. Recitals

The recitals set forth above are true and correct and form a part of this Agreement.

2. Grant of Utility Easements/Payment

A. Property Owner(s) hereby acknowledges, represents and warrants to the County that to the best of its knowledge Property Owner is lawfully seized and in possession of the Property and has good and lawful right to grant the utility easement attached hereto and incorporated herein as Exhibit "B", and the temporary construction easement attached hereto and incorporated herein as Exhibit "C", hereinafter collectively referred to as the "Utility Easements".

B. The County agrees to pay to Property Owners the total amount of \$5,000.00 for the Utility Easements within thirty (30) days of the effective date of this Agreement.

C. The County shall deliver the required payment for the Utility Easements to Property Owner by hand delivery, courier service, or overnight mail, or alternatively by United States Certified Mail, with Return-Receipt Requested to:

Lion's Country Safari, Inc, FL  
2003 LION COUNTRY SAFARI ROAD  
LOXACHATCHEE, FL 33470

4. Applicable Law

Any litigation arising from or relating to this Agreement shall be governed by the laws of the State of Florida and venue in any such proceeding shall be exclusively in Palm Beach County, Florida.

5. Severability

In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held to be invalid by a court of competent jurisdiction, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

6. Enforcement Costs

Any costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms or conditions of this Agreement shall be borne by the respective parties.

7. Entirety of Agreement

This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.

8. Successors in Interest

This Agreement shall be binding upon and shall inure to the benefit of the County and Property Owner and their assigns and successors by merger, consolidation, conveyance or otherwise.

9. Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, all of which together shall constitute one (1) and the same instrument.

10. Modification of Agreement

No additions, alterations, or variations from the terms of this Agreement shall be valid, nor can the provisions of this Agreement be waived by either party, unless such addition, alteration, variation or waiver is expressed in writing and signed by the parties hereto.

11. Captions

The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

12. Survival

The parties' warranties, agreements, covenants and representations set forth herein shall not be merged and shall survive consummation of the transaction contemplated by this Agreement.

13. Incorporation by References

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by Reference.

14. Time of Essence

Time is of the essence with respect to the performance of each and every provision of this Agreement where a time is specified for performance.

15. Default

In the event Property Owner or County fails or refuses to perform any term, covenant or condition of this Agreement for which a specific remedy is not set forth in this Agreement, the County or Property Owner shall, in addition to any other remedies provided at law or equity, have the right to specific performance thereof.

**(Remainder of page intentionally left blank)**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**PROPERTY OWNER:**

Signed in the presence of:

Alan Galicki  
Witness

ADAM GALICKI  
Print Name

By:

Lion's Holding Company, LLC  
Property Owner

[Signature]  
Signature

HAROLD KRAMER  
Printed Name

GENERAL MANAGER, U.P.  
Title

**PALM BEACH COUNTY, FLORIDA:**

**ATTEST:**

**SHARON R. BOCK, CLERK & COMPROLLER**

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

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

By: \_\_\_\_\_  
John F. Koons, Chairman

(SEAL)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND CONDITIONS**

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

By: [Signature]  
Director of Water Utilities