

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

6D-1

Meeting Date: September 22, 2009 Consent [] Regular [X]
Public Hearing []Submitted By: Water Utilities Department
Submitted For: Water Utilities DepartmentI. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A) a License Agreement with the City of West Palm Beach (WPB); and B) Purchase Orders with vendors for the Florida Power and Light (FPL) Reclaimed Water Project (Project) in the amount of \$ 4,013,649.50.

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). On September 15, 2009, the Board deferred the West Palm Beach (WPB) License Agreement and Purchase Order to the October 6, 2009 meeting. However, in order to maintain the project schedule and prevent delay claims by the contractors these two (2) items need to move forward. The Army Corps of Engineers issued a wetland permit for the construction of the reuse pipeline in the areas covered by the WPB license. The permit only allows construction in the wetland area between June and December because of the nesting of the endangered Snail Kite. Delay claims in the amount of \$ 8,000 per day may be applicable should the contractor not be able to begin construction on this portion of the project immediately. The construction of the pipeline to deliver reuse water from the East Central Regional Wastewater Reclamation Facility (ECRWRWF) to the Center requires the acquisition of a license from WPB. 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. (continued on page 3)

Background and Justification: On May 20, 2008, the Board of County Commissioners approved the following: A) a Reclaimed Water Agreement (R2008-0906) with FPL to supply reclaimed water for the Center; B) an Interlocal Agreement with the ECRWRWF Board and the City of West Palm Beach (WPB) related to the construction, operation and maintenance of reclaimed facilities and; C) an Interlocal Agreement with WPB related to reclaimed water and various consultant services. Upon completion of the Project, ownership of the ECRWRWF will be turned over to the ECRWRWF Board and ownership of the distribution system will be turned over to Palm Beach County Water Utilities Department.

Attachments:

1. Location Map
2. Two (2) Original License Agreements with the City of West Palm Beach.
3. Summary of Purchase Orders
4. Two (2) Original Purchase Orders for Materials and Equipment

Recommended By:


Department Director9/17/09
Date

Approved By:


Assistant County Administrator9/17/09
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>\$4,013,649.50</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(\$4,013,649.50)</u>	<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>
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 4041 Dept 721 Unit W032 Object 6543

Reporting Category N/A

Is Item Included in Current Budget? Yes X No

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

Series 2009 Water and Sewer Revenue Bonds

C. Department Fiscal Review: Delra M West

III. REVIEW COMMENTS

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

[Signature]
 9/17/09 OFMB 9/17/09

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

B. Legal sufficiency:

[Signature] 9/18/09
 Assistant County Attorney

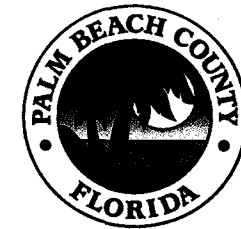
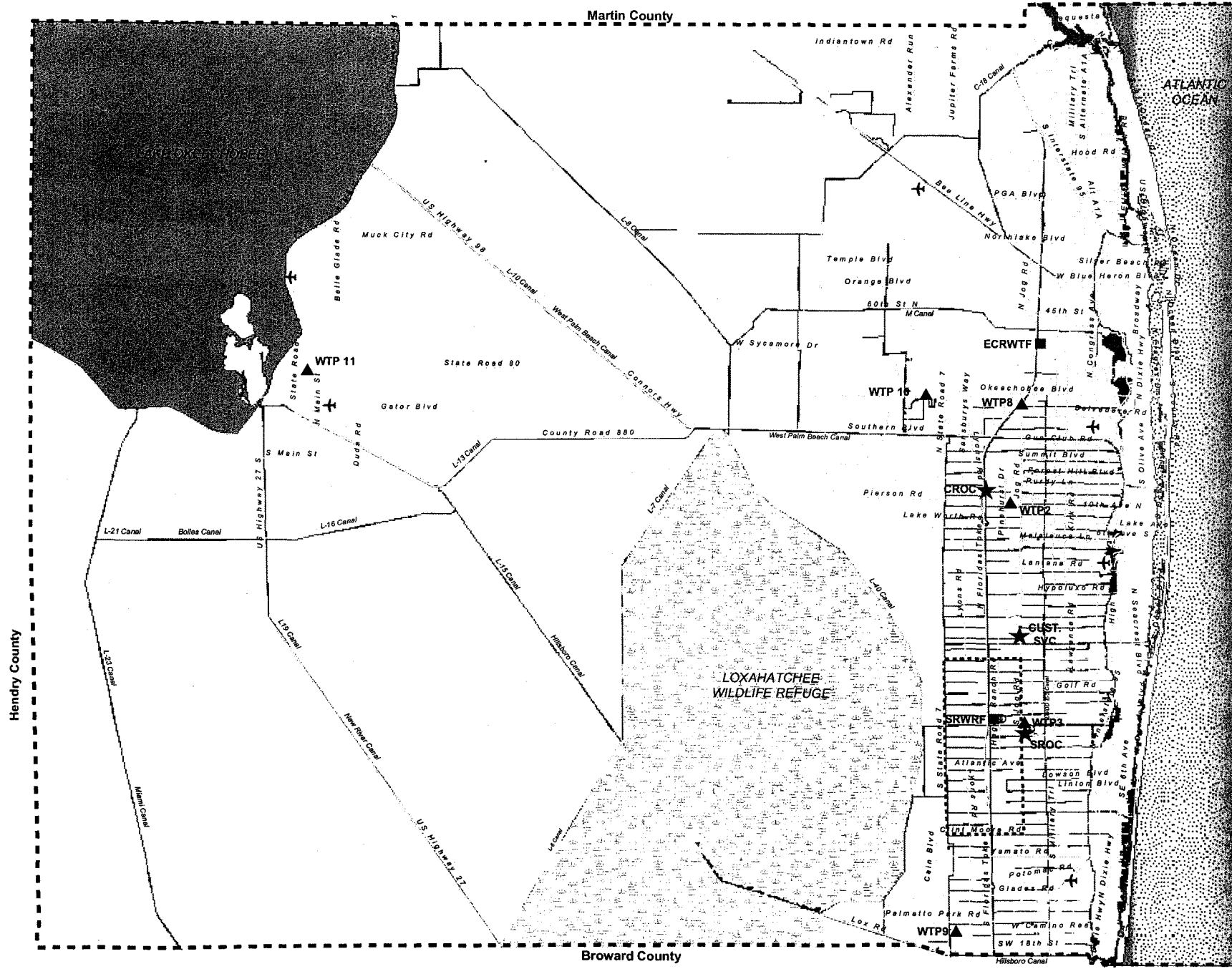
C. Other Department Review:

 Department Director

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

Summary: (continued from page 1) FPL competitively bid the Project components. FPL entered into a construction contract with Felix Associates, LLC, for construction of the reclaimed water pipeline from the ECR through WPB property to the M-1 Canal on Okeechobee Blvd. The Contractor selected the vendors for the materials and equipment during the bidding process. The Reclaimed Water Agreement (R2008-0906) with FPL requires the County to procure materials for the construction of the Project. Florida Statute Section 212.08(6) and Florida Administrative Code Rule 12A-1.094 provides for an exemption of sales tax if the purchaser is a governmental entity. By purchasing materials and equipment directly from the vendors listed in the Purchase Orders, total sales tax savings of \$240,868.97 can be achieved. FPL will reimburse the County the total cost of the Purchase Orders. The County Attorney's Office has submitted a Technical Assistance Advisement request to the Florida Department of Revenue to confirm eligibility for sales tax exemption. If the State of Florida determines the project is not eligible for sales tax exemption, then FPL will pay the cost of the sales tax. (WUD Project No. 08-031) District 6 (MJ)

PALM BEACH COUNTY, FLORIDA
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

PREPARED BY AND RETURN TO:

Palm Beach County Water Utilities Department
P.O. Box 16097 Attn: Engineering Div.
West Palm Beach, Florida 33416-6097

LICENSE

THIS IS A LICENSE made Sept 17, 2009,
granted by **THE CITY OF WEST PALM BEACH** (hereinafter referred to as "Grantor"), whose
address is, 200 2nd Street, West Palm Beach, FL 33401 in favor of **PALM BEACH COUNTY**
("Grantee"), whose address is 301 N. Olive Ave., West Palm Beach, FL 33401.

RECITALS

WHEREAS, Grantee has requested and Grantor has agreed to grant to Grantee a non-exclusive license over and upon that portion of Grantor's Property legally described on **Attachment "1"** attached hereto (the "License Area").

NOW THEREFORE, in consideration of the grants, agreements and covenants contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein.
2. Grantor hereby grants to Grantee, a non-exclusive license over and upon the License Area for installation of a reclaimed water pipeline and appurtenant facilities ("Facilities.") This grant shall permit Grantee the authority to enter upon the License Area at any time to install, operate, maintain, service, construct, reconstruct, remove, relocate, repair, replace, improve and inspect the Facilities in, on, over, under and across the License Area.
3. Grantee acknowledges and agrees that Grantee's use and enjoyment of its interest in the License Area is and shall be strictly limited to that specifically granted herein. Grantee further agrees to exercise the rights granted hereunder in a manner which minimizes the impact upon Grantor's use and enjoyment of Grantor's Property.
4. Grantee shall be solely responsible for and shall, at its sole cost and expense, promptly repair any damage, pay any liabilities, damages, and fines, and perform any required environmental clean-up and remediation arising out of Grantee's exercise of the rights granted hereby and restore the License Area, any improvements now existing or constructed hereinafter therein, to the condition it was in prior to such damage, using materials of like kind and quality.
5. This License shall inure to the benefit of and shall burden Grantee, and its successors and assigns.

6. Neither Grantor's nor Grantee's interest in the License Area shall be subject to liens arising from Grantee's use of the License Area, or exercise of the rights granted hereunder. Grantee shall promptly cause any lien imposed against the License Area to be discharged or transferred to bond.

7. Grantor hereby retains all rights relating to the License Area not specifically conveyed by this License including the right to use the License Area and any improvements now existing or constructed hereinafter therein, and the right to grant to third parties additional licenses in the License Area or the right to use the improvements therein, provided such uses or grants do not interfere with the rights provided to Grantee by this license.

8. To the extent permitted by law and subject to and conditional upon the limitations set forth in Section 768.28, Florida Statutes, the Grantee, its successors and assigns, shall indemnify and hold the Grantor harmless from and against any and all loss, suit, action, legal or administrative proceeding, claim, demand, damage, liability, interest, costs and/or expense of whatsoever kind or nature due to personal injury, property damage and/or environmental damage arising in any manner directly or indirectly related to Grantee's use of the License Area.

9. It is mutually agreed that the license contained here is for the use and benefit of Grantee, its successors, and assigns and is not intended and shall not be construed as a dedication to the public of any portion of the License Area for public use.

10. Licensee's use of the License Area shall not be inconsistent with or violate Special Laws of the Florida Legislature, Ch. 67-2169, as amended ("the Special Act"), or any applicable laws or regulations governing Class I potable water supplies or the Water Catchment Area.

11. Upon completion of installation of the Facilities, Grantee shall provide to the Grantor's Public Utilities Director, as-built surveys or drawings of the Facilities located in the License Area.

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

13. This License shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue shall be in Palm Beach County, Florida. This License shall not be construed more strongly against any party regardless of who was responsible for its preparation or drafting.

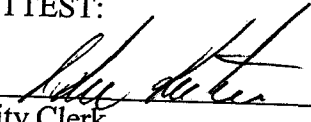

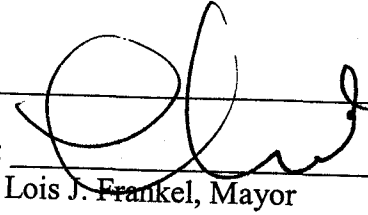
14. This License contains the entire understanding and agreement of the parties with respect to the subject matter hereof. No amendment will be effective except in writing signed by all parties.

15. This License shall not be revoked unless the Grantee defaults in its obligations under this License or Grantee's use of the License Area is inconsistent with or violates the Special Act, or any applicable laws or regulations governing Class I potable water supplies or the Water Catchment Area, presently in effect or as may be amended; or interferes with the Grantor's use or maintenance of its property or facilities located therein. The Grantor shall provide the Grantee with written notice of any inconsistent use or interference and allow thirty (30) days time for the Grantee to cure any such inconsistency or interference. However, in the

event of an emergency affecting water quality in the Water Catchment Area, upon notice from the Grantor, the Grantee shall be required to take immediate action to cure any such emergency. Grantor acknowledges that this License is granted for the particular purpose of locating reclaimed water pipelines, that the Grantee will expend substantial amounts of money carrying out that particular purpose, and that said expenditures will be specifically made in reliance on the granting of this License.

16. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this License by reference.

IN WITNESS WHEREOF, the parties have executed this License on the date set forth hereinabove.

ATTEST:  City Clerk	THE CITY OF WEST PALM BEACH
CITY ATTORNEY'S OFFICE Approved as to form And legal sufficiency By:  Date: 9.14.09	By:  Lois J. Frankel, Mayor Dated: Sept. 14, 2009

ATTEST:
SHARON R. BOCK

By: _____
Clerk and Comptroller Deputy Clerk

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

BY: _____
John F. Koons, Chairman

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

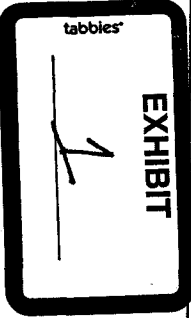
By: 
County Attorney

Date: _____

APPROVED AS TO TERMS AND
CONDITIONS:

By: 
Department Director

**PALM BEACH COUNTY
CENTRAL REGIONAL RECLAIMED WATER PIPELINE
LICENSE AGREEMENT EXHIBIT**



LEGAL DESCRIPTION:

A 20 FOOT WIDE STRIP OF LAND LYING WITHIN SECTIONS 16, 17, 18 AND 19, TOWNSHIP 43 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, THE SIDES OF WHICH LIE 10 FEET TO THE RIGHT AND 10 FEET TO THE LEFT OF THE FOLLOWING DESCRIBED CENTERLINE OF LICENSE AGREEMENT (THE SIDES OF SAID LICENSE AGREEMENT SHOULD BE LENGTHENED AND/OR SHORTENED SO AS TO FORM A CONTINUOUS STRIP):

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 16, TOWNSHIP 43 SOUTH, RANGE 42 EAST, THENCE N01°43'56"E ALONG THE EAST LINE OF SAID SECTION 16 FOR A DISTANCE OF 16.28 FEET; THENCE N89°39'45"W DEPARTING FROM THE EAST LINE OF SAID SECTION 16 FOR A DISTANCE OF 60.02 FEET TO THE WEST RIGHT OF WAY LINE OF JOG ROAD AND THE POINT OF BEGINNING; THENCE CONTINUE N89°39'45"W FOR 8.42 FEET; THENCE S61°14'55"W FOR 12.13 FEET; THENCE N89°23'01"W FOR 137.05 FEET; THENCE N45°00'16"W FOR 6.46 FEET; THENCE N88°48'34"W FOR 20.00 FEET; THENCE S44°16'38"W FOR 6.52 FEET; THENCE N89°23'01"W FOR 2004.66 FEET; THENCE N55°05'48"W FOR 23.08 FEET; THENCE N89°23'01"W FOR 1528.00 FEET; THENCE S87°45'14"W FOR 100.12 FEET; THENCE N88°48'38"W FOR 449.59 FEET; THENCE S89°53'33"W FOR 921.60 FEET; THENCE N37°40'49"W FOR 37.62 FEET; THENCE N88°03'41"W FOR 4631.90 FEET; THENCE S57°43'03"W FOR 48.95 FEET; THENCE N88°02'10"W FOR 53.08 FEET; THENCE N47°47'13"W FOR 44.83 FEET; THENCE N88°02'24"W FOR 5871.10 FEET; THENCE S57°56'40"W FOR 69.71 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF STATE ROAD NO. 7 AS RECORDED IN DEED BOOK 842, AT PAGE 548 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND THE POINT OF TERMINATION OF THIS CENTERLINE OF LICENSE AGREEMENT.

SAID LANDS SITUATE WITHIN THE CITY OF WEST

LEGEND:

- FPL FLORIDA POWER AND LIGHT CO.
- D.B. DEED BOOK
- O.R.B. OFFICIAL RECORD BOOK
- PG. PAGE
- PCN PROPERTY CONTROL NUMBER
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

HELLER WEAVER AND SHEREMETA, INC
FLORIDA STATE L.B. NO. 3449

BY: DANIEL C. LAAK
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA REG. NO. 5118

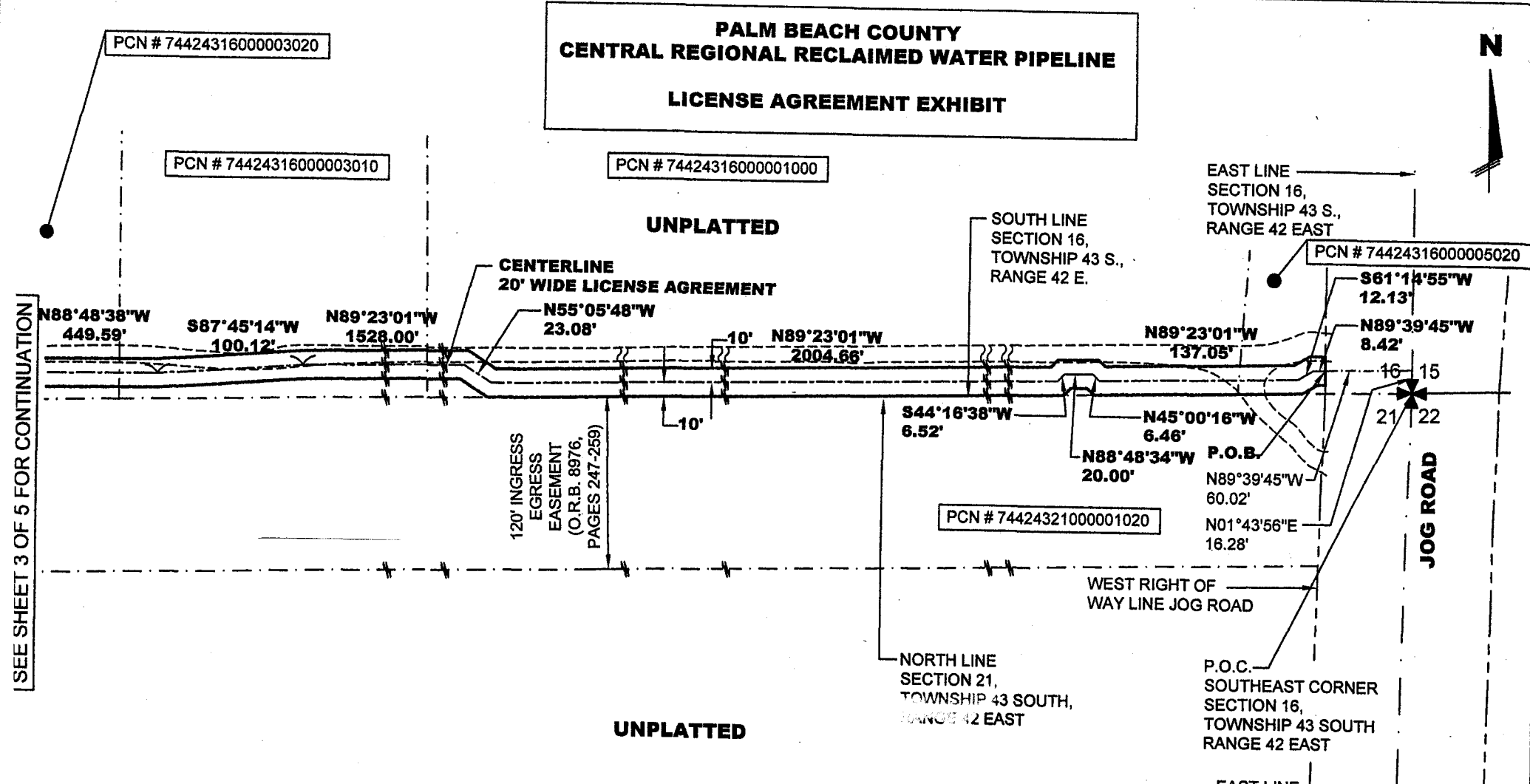
REVISIONS
(8-24-2009) REVISED PER COUNTY COMMENTS
(09-09-2009) REVISED PER COUNTY COMMENTS



Heller - Weaver and Sheremeta, inc.
Engineers ... Surveyors and Mappers
310 S.E. 1st Street, Suite 5 Delray Beach, Florida 33483

DATE:	11/4/2008
SCALE:	NOT TO SCALE
DRAWN BY:	WJR
CHECKED BY:	D.C.L.
SHEET:	1 OF 5

**PALM BEACH COUNTY
CENTRAL REGIONAL RECLAIMED WATER PIPELINE
LICENSE AGREEMENT EXHIBIT**



SEE SHEET 3 OF 5 FOR CONTINUATION

LEGEND:

- FPL FLORIDA POWER AND LIGHT CO.
- D.B. DEED BOOK
- O.R.B. OFFICIAL RECORD BOOK
- PG. PAGE
- PCN PROPERTY CONTROL NUMBER
- P.O.B.** POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

REVISIONS
(8-6-2009) REVISED WATER MAIN LOCATION PER COUNTY COMMENTS
(8-24-2009) REVISED PER COUNTY COMMENTS



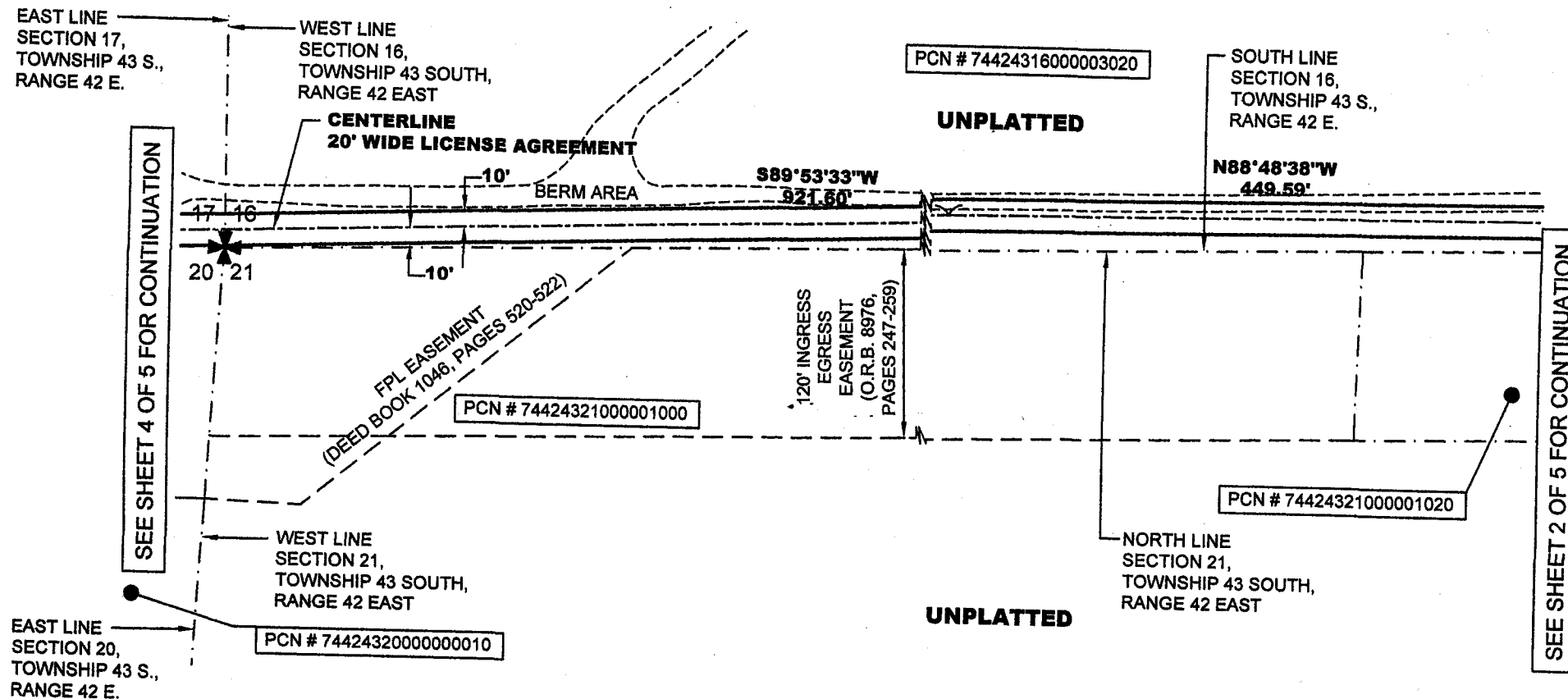
Heller - Weaver and Sheremeta, inc.
Engineers ... Surveyors and Mappers
310 S.E. 1st Street, Suite 5 Delray Beach, Florida 33483

DATE:	11/4/2008
SCALE:	1" = 100'
DRAWN BY:	WJR
CHECKED BY:	D.C.L.
SHEET:	2 OF 5

**PUBLIC WATER
SUPPLY AREA
WEST PALM BEACH
WATER COMPANY**

(PLAT BOOK 23,
PAGES 149-150)

**PALM BEACH COUNTY
CENTRAL REGIONAL RECLAIMED WATER PIPELINE
LICENSE AGREEMENT EXHIBIT**



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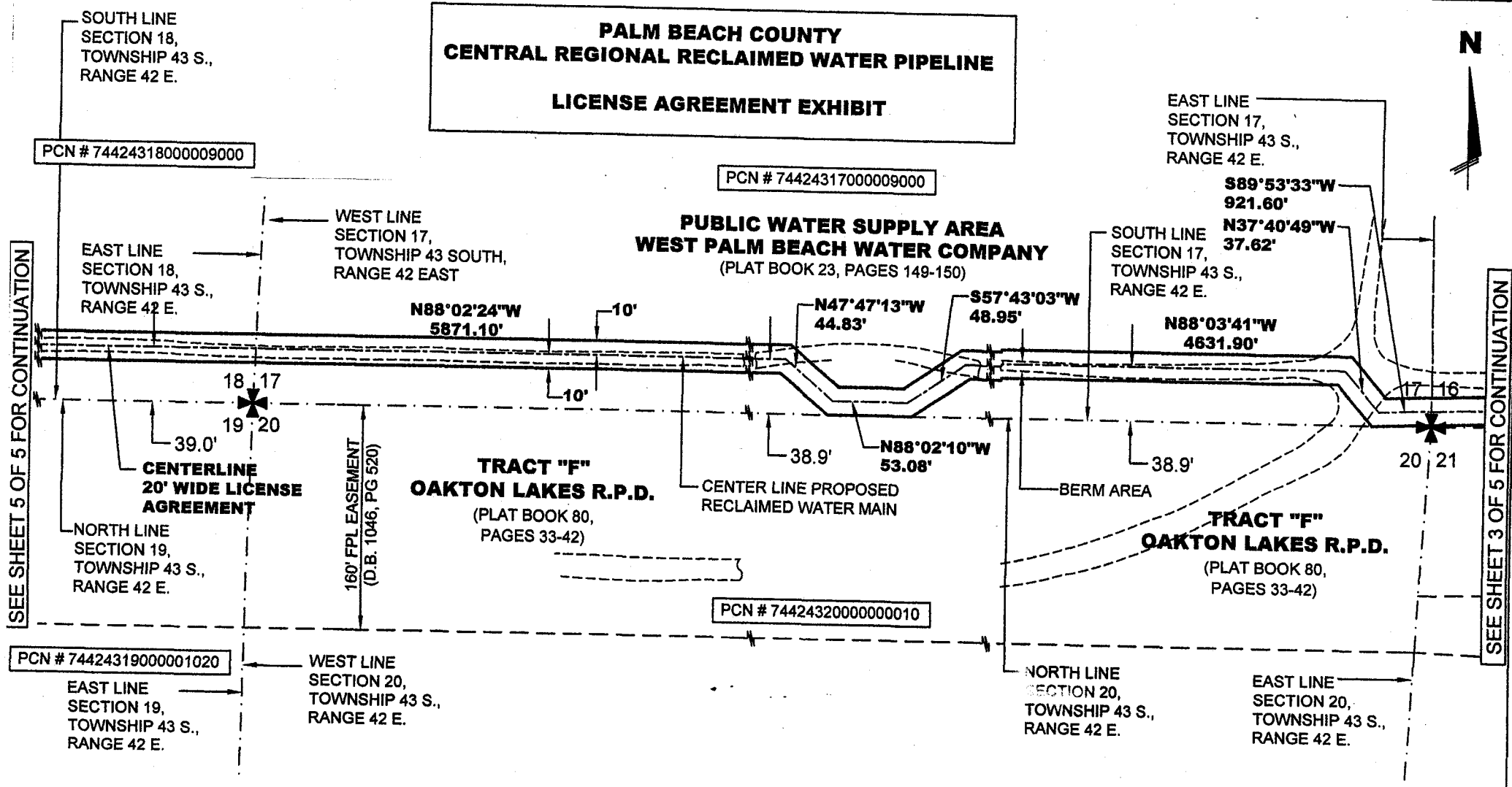


Heller - Weaver and Sheremeta, inc.
Engineers ... Surveyors and Mappers
310 S.E. 1st Street, Suite 5 Delray Beach, Florida 33483

DATE:	11/4/2008
SCALE:	1" = 100'
DRAWN BY:	WJR
CHECKED BY:	D.C.L.
SHEET:	3 OF 5

**PALM BEACH COUNTY
CENTRAL REGIONAL RECLAIMED WATER PIPELINE**

LICENSE AGREEMENT EXHIBIT



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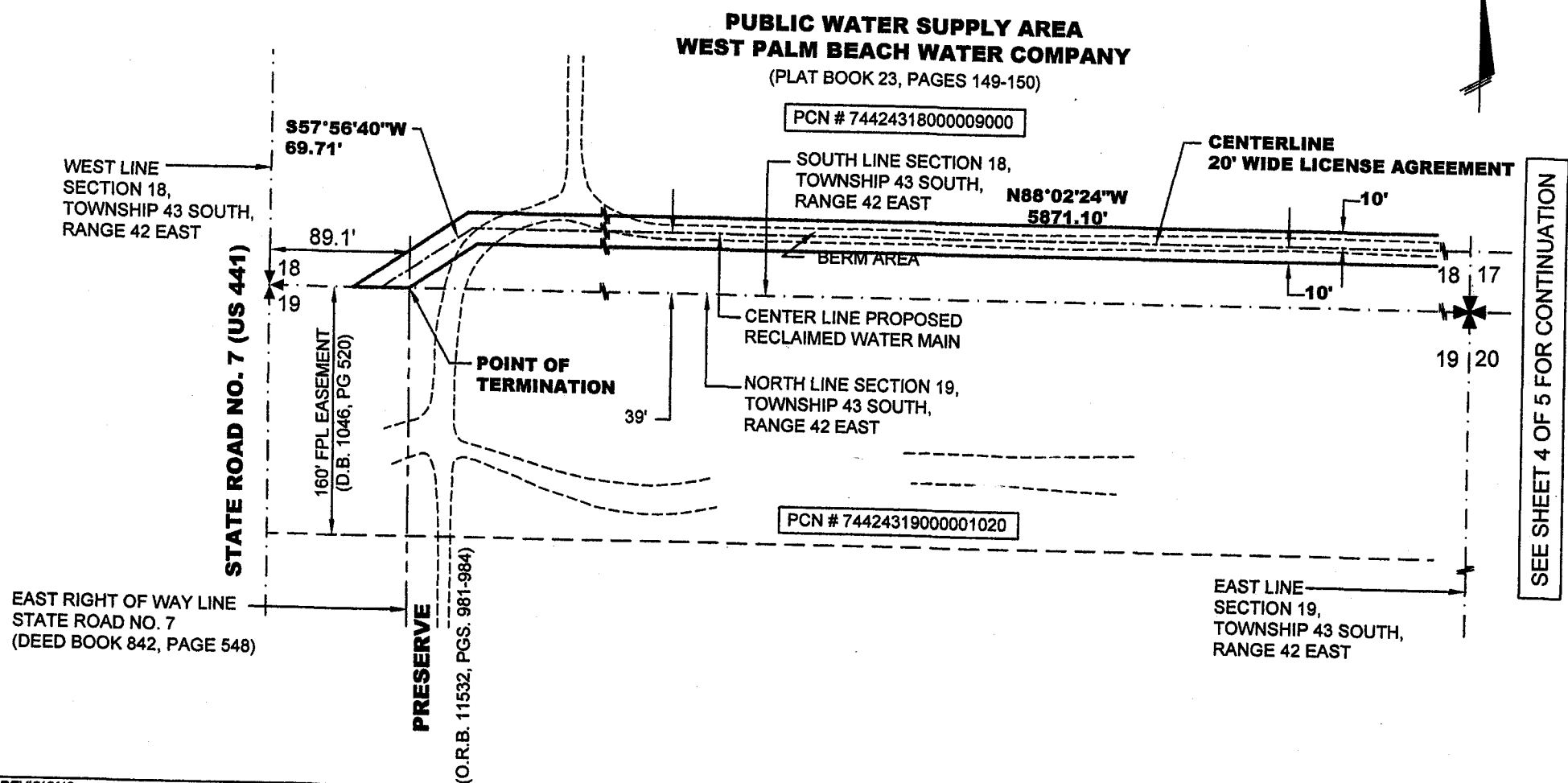


Heller - Weaver and Sheremeta, inc.
 Engineers ... Surveyors and Mappers
 310 S.E. 1st Street, Suite 5 Delray Beach, Florida 33483

DATE:	11/4/2008
SCALE:	1" = 100'
DRAWN BY:	WJR
CHECKED BY:	D.C.L.
SHEET:	4 OF 5

**PALM BEACH COUNTY
CENTRAL REGIONAL RECLAIMED WATER PIPELINE
LICENSE AGREEMENT EXHIBIT**

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Heller - Weaver and Sheremeta, inc.
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 310 S.E. 1st Street, Suite 5 Delray Beach, Florida 33483

DATE:	11/4/2008
SCALE:	1" = 100'
DRAWN BY:	WJR
CHECKED BY:	D.C.L.
QUEST.	5 OF 5

Palm Beach County Sales Tax Recovery Program
 Project No. WUD 08-031
 FP&L - Reclaimed Water Pipeline
 Contractor - Felix Associates, LLC
 Purchase Order Summary

Purchase Order No.	Vendor	Contractor	Description of Material	Purchase Order Price	Sales Tax Savings
08-031-10	HD Waterworks	Felix Associates, LLC	Pipe, Valves and Fittings	\$1,247,569.10	\$74,879.15
08-031-11	US Pipe and Foundary Company, LLC	Felix Associates, LLC	Ductile Iron Pipe	\$2,766,080.40	\$165,989.82
Totals				\$4,013,649.50	\$240,868.97

Palm Beach County Sales Tax Recovery Program
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Totals				\$4,013,649.50	\$240,868.97



**WATER UTILITIES DEPARTMENT
INTEROFFICE MEMORANDUM**

DATE: August 14, 2009
TO: Jim Mize, Chief Assistant County Attorney
FROM: Stephen McGrew, P.E. through
Maurice Tobon, P.E., Director of Engineering
Water Utilities Department
RE: Florida Power and Light
Reclaimed Water Pipeline Project / WUD 08-031
Sales Tax Recovery on Owner Furnished Material
Attorney Approval Form - Purchase Order No. WUD 08-031 - 10

MEMO:

The attached submittal includes the necessary paperwork to process a purchase order for tangible personal property to be provided to the contractor as "government furnished equipment" under the Tax Recovery Program.

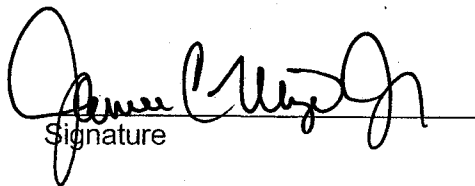
Please review the package including the terms and conditions and verify that the purchase complies with the rules governing this program. Your signature below will serve as the Assistant County Attorney's Approval as required by the Purchasing Department.

Should you have any questions, please call Steve McGrew at 493-6110.

Please Check One:

Approved, and package:
forwarded to WUD Procurement (Attn: Conrad Ailstock, 493-6240 - Fax)
Copy to Water Utilities (Attn: Steve McGrew, 493-6113 - Fax)

Returned to Water Utilities with comments (WUD - Attn: Steve McGrew, 493-6110)


Signature


Date

c: Brian Shields, P.E.
Maurice Tobon, P.E.
File 08-031-10

ATTACHMENT B
PER PALM BEACH COUNTY PO # 08-031-10

PBC Central Regional Reclaimed Water Pipeline Eastern Section
Project Nos. WUD 08-031-B
Palm Beach County, Florida

Invoicing address:
Palm Beach County Water Utilities
8100 Forest Hill Blvd.
West Palm Beach, FL 33413

Per Palm Beach County

Issued To:	HD WATERWORKS 7374 Commercial circle Fort Pierce, Florida 34951 Attn: Joe Antico	Delivery Address:	TBD		
		Call for delivery instruction: (772) 528-9025			
Date	Project No.	Deliverery Date	Ship via	F.O.B.	Terms
8/18/2009	WUD 08-031-B	As released by Felix Associates, LLC	VENDOR	Project Site	Net 30

In the event of a conflict between the elements of this Purchase Order, the descending order of enforcement precedence shall be: 1. the Purchase Order, 2. Attachment A and 3. this Attachment B. Invalidation of terms of any portion of this agreement by a terms of higher precedence will be done without invalidating the remaining terms and conditions.

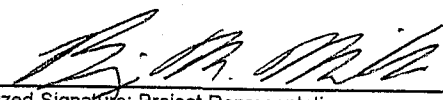
Attachments:

1. Palm Beach County Purchase Order # 08-031-10.
2. Attachment A is included by reference and provides Palm Beach County Terms and Conditions applicable to this Purchase Order.
3. Attachment B, this Purchase Requisition Request Form with attachments, is included by reference and provides a description of materials and equipment as required and provides applicable terms and conditions.

Notes:

1. Contract Schedule: Schedule Shipment as coordinated by Felix Associates, LLC. Submit a minimum of six (6) copies of shop drawings for approval.
2. Vendor shall sign a duplicate copy of the Purchase Order to acknowledge the receipt of this order, acceptance of of all Terms and Conditions and return to the Water Utilities Department, Attn: Procurement Manager, 8100 Forest Hill Blvd., WPB, FL 33413
3. This Purchase Order confirms acceptance of WUD 08-031-B.
4. Materials for FOB jobsite.
5. All shipments must be labeled "County Furnished material for Project No.WUD 08-031-B"
6. Materials shall be complete and in strict accordance with Plans and Specifications "PBC Central Regional Reclaimed Water Pipeline prepared by PBCWUD, WUD 08-031-B"
7. All deliveries must be scheduled 24 hours in advance.

Quantity	Description	Unit Cost	Total
See Attachment	See Attachment	See Attachment	\$1,247,569.10
		S&H	
		SubTotal	\$1,247,569.10
		Sales Tax Rate	Exempt
		Sales Tax	Exempt
		Total Due	\$1,247,569.10


Authorized Signature: Project Representative
Benjamin M. Miller



Bid Proposal

Branch Information:

OAKLAND PARK
4310 NW 10TH AVE

OAKLAND PARK FL 33359
Mobile:(954) 410-0079

Representative: VAUGHN E. LAHR

Job Information:

Job Name: FP&L/PBC RW EAST (APP2 L/DI)
Customer: FELIX ASSOCIATES, LLC
Address:
Address2: 851 SW DARWIN BLVD
City/St/Zip: PORT SAINT LUCIE FL 34953-3350
Contact: Chris L
Phone: (772) 879-6510 Fax: (772) 879-7485
Email:
Location: PALM BEACH COUNTY
Engineer:
Bid date: 6/30/09

Delivery Information:

Delivery Location:
Delivery Location 2:
Date Required:
Method of Shipment:

Notes:



PS Bid #: VEL1573804

Mincron #: 0

Job Name: FP&L/PBC RW EAST (APP2 L/DI)

Salesman: VAUGHN E. LAHR

Location: PALM BEACH COUNTY

Branch: OAKLAND PARK

Customer: FELIX ASSOCIATES, LLC

Phone: (954) 772-7343

Engineer:

Fax: (954) 772-0443

Bid date: 6/30/09

Mobile: (954) 410-0079

Seq#	Qty	Description	Units	Price	Ext. Price
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 HD SUPPLY WATERWORKS
 RIVIERA BEACH, FL. 33404
 PHONE: 848-4396 800-771-4396
 REPRESENTATIVE:

BID DUE DATE: 5/29/09
 ENGINEER: PBC
 SPECIFYING AUTH. PBC/FPL
 HDPE MUST ORDER BY: 6/15/09
 HDPE MUST SHIP BY: 7/06/09

THIS IS OUR INTERPRETATION OF
 THE PLANS AND SPECIFICATIONS.
 SPECIAL ORDER ITEMS MAY BE
 NON-RETURNABLE OR SUBJECT
 TO A RESTOCKING CHARGE!!!!

THIS QUOTE IS VALID FOR 30
 DAYS FROM DATE OF QUOTE

Seq#	Qty	Description	Units	Price	Ext. Price
EASTERN					
ITEM 40.A					
260	61	1 GAL INDURON AQUANAUT 1275 PANTONE 522C PURPLE GLSS ENMEL	EA	40.00	2,440.00
270	31	6X1000' DETECT RCLMD WTR PRPLE	EA	60.00	1,860.00
END PACKAGE					4,300.00
Average price per				FT	0.14
ITEM 40.B					
300	7	1 GAL INDURON AQUANAUT 1275 PANTONE 522C PURPLE GLSS ENMEL	EA	40.00	280.00
310	4	6X1000' DETECT RCLMD WTR PRPLE	EA	60.00	240.00
END PACKAGE					520.00
Average price per				FT	0.15
UTILITY RELOCATES					
STILL NO BID ITEM					
350	20	4 TJ PR350 DI PIPE C/L	FT	10.50	210.00
360	4	UFR1450-D-4-I RESTRAINER	EA	38.00	152.00
370	4	4 MJ 45 BEND C/L CP DI C153	EA	48.00	192.00
380	8	4 MEGALUG MJ REST. BLACK 1104	EA	25.00	200.00
390	8	4 MJ ACC GSKT & BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
END PACKAGE					754.00
BID ITEM #40M					
420	40	6 TJ PR350 CL50 DI PIPE C/L	FT	12.10	484.00
430	4	6 BELL RESTRAINT EBAA 160600S4 F/C900 W/304SS RODS, XYLON NUT	EA	75.00	300.00
440	4	6 MJ 45 BEND(I) CP DI C153	EA	45.00	180.00
450	8	6 MEGALUG MJ REST. BLACK 1106	EA	32.00	256.00
460	8	6 MJ ACC GSKT & BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
END PACKAGE					1,220.00
Average price per				FT	40.67
BID ITEM #40N					
490	40	6 TJ PR350 CL50 DI PIPE E/L (EPOXY)	FT	22.85	914.00
500	4	6 BELL RESTRAINT EBAA 160600S4 F/C900 W/304SS RODS, XYLON NUT	EA	75.00	300.00
510	4	6 MJ 45 BEND EPOXY CP DI C153	EA	95.00	380.00
520	8	6 MEGALUG MJ REST. BLACK 1106	EA	32.00	256.00
530	8	6 MJ ACC GSKT & BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C

Job Name: FP&L/PBC RW EAST (APP2 L/DI)

OAKLAND PARK

Seq#	Qty	Description	Units	Price	Ext. Price
END PACKAGE					1,850.00
Average price per				FT	61.67
BID ITEM #40 O					
560	36	8 TJ CL350 DI PIPE C/L	FT	13.75	495.00
570	4	UFR1450-D-8-I RESTRAINER	EA	75.00	300.00
580	4	8 MJ 45 BEND(I) CP DI C153	EA	60.00	240.00
590	8	8 MEGALUG MJ RESTR. BLK 1108	EA	44.00	352.00
600	8	8 MJ ACC GSKT & BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
END PACKAGE					1,387.00
BID ITEM #40 P					
630	36	8 TJ PR350 DI PIPE E/L (EPOXY	FT	29.10	1,047.60
640	4	UFR1450-D-8-I RESTRAINER	EA	75.00	300.00
650	4	8 MJ 45 BEND EPOXY CP DI C153	EA	135.00	540.00
660	8	8 MEGALUG MJ RESTR. BLK 1108	EA	44.00	352.00
670	8	8 MJ ACC GSKT & BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
END PACKAGE					2,239.60
BID ITEM #40 Q					
700	36	10 TJ PR350 DI PIPE C/L	FT	17.80	640.80
710	4	UFR1450-D-10-I RESTRAINER OD 11.10	EA	125.00	500.00
720	4	10 MJ 45 BEND(I) CP DI C153	EA	88.00	352.00
730	8	10 MEGALUG MJ RESTR. BLK 1110	EA	63.00	504.00
740	8	10 MJ ACC GSKT&BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
END PACKAGE					1,996.80
BID ITEM #40 R					
770	36	10 TJ PR350 DI PIPE E/L (EPOXY)	FT	37.20	1,339.20
780	4	UFR1450-D-10-I RESTRAINER OD 11.10	EA	125.00	500.00
790	4	10 MJ 45 BEND EPOXY CP DI C153	EA	195.00	780.00
800	8	10 MEGALUG MJ RESTR. BLK 1110	EA	63.00	504.00
810	8	10 MJ ACC GSKT&BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
END PACKAGE					3,123.20
BID ITEM #40S					
840	36	12 TJ PR350 DI PIPE C/L	FT	24.50	882.00
850	4	12 BELL REST. EBAA 161200S4 F/C900 W/304SS RODS, XYLON NUT	EA	175.00	700.00

Seq#	Qty	Description	Units	Price	Ext. Price
860	4	12 MJ 45 BEND(I) CP DI C153	EA	145.00	580.00
870	8	12 MEGALUG MJ RESTR. BLK 1112	EA	79.00	632.00
880	8	12 MJ ACC GSKT&BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
END PACKAGE					2,794.00
BID ITEM #40T					
910	36	12 TJ PR350 DI PIPE E/L (EPOXY)	FT	41.50	1,494.00
920	4	12 BELL REST. EBAA 161200S4 F/C900 W/304SS RODS, XYLON NUT	EA	175.00	700.00
930	4	12 MJ 45 BEND(I) CP DI C153	EA	145.00	580.00
940	8	12 MEGALUG MJ RESTR. BLK 1112	EA	79.00	632.00
950	8	12 MJ ACC GSKT&BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
END PACKAGE					3,406.00
ITEM 41					
APPROX DI FITTINGS 28 TONS					
990	3	36 MJ 90 BEND(I) CP DI C153	EA	2,225.00	6,675.00
1000	18	36 MJ 45 BEND(I) CP DI C153	EA	1,725.00	31,050.00
1010	2	36 MJ 11-1/4 (I) CP DI C153 IMPORT	EA	1,295.00	2,590.00
1020	7	36 MJ 22-1/2 (I) CP DI C153	EA	1,495.00	10,465.00
1030	3	36 MJ L/P SLEEVE(I) CP DI C153	EA	1,335.00	4,005.00
1040	3	36X12 MJ TEE (I) CP DI C153	EA	1,785.00	5,355.00
1060	74	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	46,620.00
1070	74	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
1080	1	16 MEGALUG MJ RESTR. BLK 1116	EA	140.00	140.00
1090	1	16 MJ ACC GSKT&BOLTS SET L/GL LESS GLAND	EA	N/C	N/C
1100	3	12 MEGALUG MJ RESTR. BLK 1112	EA	79.00	237.00
1110	3	12 MJ ACC GSKT&BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
END PACKAGE					107,137.00
Average price per LB					2.79
I FOUND 38,385 LBS					
ITEM 53.A					
1150	4,600	36" HDPE DR11 DIPS PURP STRIPE	LF	99.50	457,700.00
1170	5	36 MJ L/P SLEEVE(I) CP DI C153	EA	1,335.00	6,675.00
1180	10	36 MJ 11-1/4 (I) CP DI C153 IMPORT	EA	1,295.00	12,950.00
1190	20	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	12,600.00

Job Name: FP&L/PBC RW EAST (APP2 L/DI)

OAKLAND PARK

Seq#	Qty	Description	Units	Price	Ext. Price
1200	20	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
			END PACKAGE		489,925.00
			Average price per	FT	106.51
ITEM 62.A					
1230	10	36" HDPE MJ ADAPT DR11 DIPS W/ STIFFNER & KIT	EA	3,505.00	35,050.00
			END PACKAGE		35,050.00
			Average price per	EA	8,762.50
ITEM 107.A					
1270	12	36 B3211-23 MJ BFV OR 2"ON L/ACC	EA	7,850.00	94,200.00
1280	24	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	15,120.00
1290	24	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
1300	12	3' VLV EXT STEM F/2"NUT	EA	55.00	660.00
1310	12	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	660.00
1320	12	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	300.00
			END PACKAGE		110,940.00
			Average price per	EA	9,245.00
ITEM 135					
1350	12	36X2 IP SB366 W/SS STRAPS	EA	370.00	4,440.00
1360	24	2X6 BRASS NIPPLE	EA	15.00	360.00
1370	12	BA11-777W 2" ANGLE BV FIPT	EA	148.00	1,776.00
1380	24	C84-77 2 CPLG MIPXPJCTS	EA	40.00	960.00
1390	12	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	660.00
1400	12	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	300.00
1410	252	4 STD BLK PE IMPORT PIPE	FT	3.25	819.00
1420	720	2X20' PVC SCH40 PIPE SWB BE SOLVENT WELD BELL	FT	0.50	360.00
1430	12	B77-777W 2 BALL CURB PJ(PVC)	EA	198.00	2,376.00
1440	12	2 PVC S80 UNION HXH 857-020	EA	12.00	144.00
1450	12	2 BRASS TEE	EA	30.00	360.00
1460	12	FB500-7 2 BALLCORP MIPXMIP	EA	125.00	1,500.00
1470	12	2" VM38.2 ARV	EA	188.00	2,256.00
1480	12	2 BRASS CAP	EA	20.00	240.00
			END PACKAGE		16,551.00
			Average price per	EA	1,379.25
ITEM 135.B					
1510	6	4" WELDED OUTLET	EA	1,089.00	6,534.00
1530	6	4 MJ L/P SLEEVE(I) CP DI C153	EA	30.00	180.00

Seq#	Qty	Description	Units	Price	Ext. Price
1540	12	4 MEGALUG MJ REST. BLACK 1104	EA	25.00	300.00
1550	12	4 MJ ACC GSKT & BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
1570	6	4 F6100 MJ RW GV OL ON L/ACC CLOW GATE VALVE	EA	285.00	1,710.00
1580	12	4 MEGALUG MJ REST. BLACK 1104	EA	25.00	300.00
1590	12	4 MJ ACC GSKT & BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
1600	6	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	330.00
1610	6	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	150.00
1630	6	4 FLGXPE DI PIPE 6'0" C/L	EA	165.00	990.00
1640	6	4 F6102 FLG RW GV OL HW CLOW CLOW GATE VALVE	EA	285.00	1,710.00
1650	12	4 FLGXFLG DI PIPE 1'0"	EA	92.00	1,104.00
1660	6	4 BLIND FLANGE DI C110	EA	35.00	210.00
1670	6	4X4 FLG TEE C/L DI C110	EA	140.00	840.00
1680	12	4 FLG 90 BEND C/L DI C110	EA	105.00	1,260.00
1690	6	4" VM #154SF ARV	EA	2,385.00	14,310.00
1700	48	4X1/8 FLG ACC RR FF 304SS B&N	EA	25.00	1,200.00
END PACKAGE					31,128.00
Average price per				EA	5,188.00
BID ITEM #238					
1730	670	36"X100'ROLL SILT FENCE W/POST (WOODEN POST)	RL	15.00	10,050.00
ITEM 242(M-1 CANAL CROSSING)					
STA 439+65 - 442+30					
1770	1	1 GAL INDURON AQUANAUT 1275 PANTONE 522C PURPLE GLSS ENMEL	EA	40.00	40.00
1780	1	6X1000' DETECT RCLMD WTR PRPLE	EA	60.00	60.00
1800	2	36 MJ 90 BEND(I) CP DI C153	EA	2,225.00	4,450.00
1810	2	36 MJ 45 BEND(I) CP DI C153	EA	1,725.00	3,450.00
1820	10	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	6,300.00
1830	10	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
FLANGE PIPE IS CEMENT LINED					
5 PART EPOXY COATED PER PBC					
1870	1	36" FLGXPE DIP 8'0"	EA	3,157.00	3,157.00
1880	1	36" FLGXPE 12'0"	EA	4,453.00	4,453.00
1890	2	36 FLG 45 BEND C/L DI C110	EA	4,295.00	8,590.00
1900	1	36" FLGXFLG DIP 18'0"	EA	7,840.00	7,840.00

Job Name: FP&L/PBC RW EAST (APP2 L/DI)

OAKLAND PARK

Seq#	Qty	Description	Units	Price	Ext. Price
1910	5	36" FLGXFLG DIP 20'0"	EA	8,404.00	42,020.00
1920	1	36" FLGXFLG DIP 12'8"	EA	5,316.00	5,316.00
1940	1	36X2 IP SB366 W/ SS STRAPS	EA	370.00	370.00
1950	1	FB500-7 2 BALLCORP MIPXMIP	EA	125.00	125.00
1960	1	2 BRASS TEE	EA	30.00	30.00
1970	1	2X3 BRASS NIPPLE	EA	10.00	10.00
1980	1	2" VM38.2 ARV	EA	188.00	188.00
1990	1	2X1/2 BRASS HEX BUSHING	EA	12.00	12.00
2000	1	1/2X2 BRASS NIPPLE	EA	1.50	1.50
2010	1	1/2 SS BALL VALVE	EA	20.00	20.00
2020	1	2-1/2" 0-300 PSI LIQUID GAUGE	EA	15.00	15.00
2040	2	FAN GUARDS GALV	EA	2,955.00	5,910.00
2050	5	HOLD DOWN STRAPS	EA	285.00	1,425.00
2060	10	36" SS FLG ACCES W/TORUSEAL	EA	925.00	9,250.00
				END PACKAGE	103,032.50
ITEM 243 (SR7 JACK & BORE)					
STA #575+16 - 576+25					
2100	60	54" .50 WALL STEEL CASING PIPE	FT	165.00	9,900.00
2110	21	36X54 CASING SPACERS	EA	365.00	7,665.00
2120	2	36X54 ENDSEALS	EA	105.00	210.00
2140	1	36 MJ 45 BEND(I) CP DI C153	EA	1,725.00	1,725.00
2150	1	36 MJ 22-1/2 BEND (I) CP DI C1	EA	1,495.00	1,495.00
2160	1	36 MJ 11-1/4 (I) CP DI C153 IMPORT	EA	1,295.00	1,295.00
2170	6	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	3,780.00
2180	6	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
2200	1	36 B3211-23 MJ BFV OR 2"ON L/ACC	EA	7,850.00	7,850.00
2210	2	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	1,260.00
2220	2	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
2230	1	3' VLV EXT STEM F/2"NUT	EA	55.00	55.00
2240	1	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	55.00
2250	1	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	25.00
2270	1	36X2 IP SB366 W/SS STRAPS	EA	370.00	370.00
2280	2	2X6 BRASS NIPPLE	EA	15.00	30.00
2290	1	BA11-777W 2" ANGLE BV FIPT	EA	148.00	148.00
2300	2	C84-77 2 CPLG MIPXPJCTS	EA	40.00	80.00
2310	1	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	55.00

Seq#	Qty	Description	Units	Price	Ext. Price
2320	1	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	25.00
2330	21	4 STD BLK PE IMPORT PIPE	FT	3.25	68.25
2340	20	2X20' PVC SCH40 PIPE SWB BE SOLVENT WELD BELL	FT	0.50	10.00
2350	1	B77-777W 2 BALL CURB PJ(PVC)	EA	198.00	198.00
2360	1	2 PVC S80 UNION HXH 857-020	EA	12.00	12.00
2370	1	2 BRASS TEE	EA	30.00	30.00
2380	1	FB500-7 2 BALLCORP MIPXMIP	EA	125.00	125.00
2390	1	2" VM38.2 ARV	EA	188.00	188.00
2400	1	2 BRASS CAP	EA	20.00	20.00
END PACKAGE					36,674.25

**ITEM 244 (JOG RD JACK & BORE)
STA #762+25 - 764+30**

2450	24	36X54 CASING SPACERS	EA	365.00	8,760.00
2460	2	36X54 ENDSEALS	EA	105.00	210.00
2480	4	36 MJ 45 BEND(I) CP DI C153	EA	1,725.00	6,900.00
2490	8	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	5,040.00
2500	8	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
2520	1	36 B3211-23 MJ BFV OR 2"ON L/ACC	EA	7,850.00	7,850.00
2530	2	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	1,260.00
2540	2	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
2550	1	3' VLV EXT STEM F/2"NUT	EA	55.00	55.00
2560	1	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	55.00
2570	1	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	25.00
2590	1	36X2 IP SB366 W/SS STRAPS	EA	370.00	370.00
2600	2	2X6 BRASS NIPPLE	EA	15.00	30.00
2610	1	BA11-777W 2" ANGLE BV FIPT	EA	148.00	148.00
2620	2	C84-77 2 CPLG MIPXPJCTS	EA	40.00	80.00
2630	1	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	55.00
2640	1	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	25.00
2650	20	2X20' PVC SCH40 PIPE SWB BE SOLVENT WELD BELL	FT	0.50	10.00
2660	1	B77-777W 2 BALL CURB PJ(PVC)	EA	198.00	198.00
2670	1	2 PVC S80 UNION HXH 857-020	EA	12.00	12.00
2680	1	2 BRASS TEE	EA	30.00	30.00
2690	1	FB500-7 2 BALLCORP MIPXMIP	EA	125.00	125.00
2700	1	2" VM38.2 ARV	EA	188.00	188.00
2710	1	2 BRASS CAP	EA	20.00	20.00

Job Name: FP&L/PBC RW EAST (APP2 L/DI)

OAKLAND PARK

Seq#	Qty	Description	Units	Price	Ext. Price
			END PACKAGE		31,446.00
ITEM 245 (TURNPIKE CROSSING)					
STA#808+10 - 816+66					
ALT DIRECTIONAL BORE					
2760	965	36" HDPE DR11 DIPS PURP STRIPE	LF	99.50	96,017.50
2780	2	36" HDPE DR11 MJ ADAPT DIPS	EA	3,505.00	7,010.00
2800	2	36 MJ 11-1/4 (I) CP DI C153 IMPORT	EA	1,295.00	2,590.00
2810	1	36 MJ L/P SLEEVE(I) CP DI C153	EA	1,335.00	1,335.00
2820	1	36X16 MJ TEE 9I) CP DI C153	EA	1,850.00	1,850.00
2830	8	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	5,040.00
2840	8	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
2850	1	16 MEGALUG MJ RESTR. BLK 1116	EA	140.00	140.00
2860	1	16 MJ ACC GSKT&BOLTS SET L/GL LESS GLAND	EA	N/C	N/C
2880	3	36 B3211-23 MJ BFV OR 2"ON L/ACC	EA	7,850.00	23,550.00
2890	6	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	3,780.00
2900	6	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
2910	3	3' VLV EXT STEM F/2"NUT	EA	55.00	165.00
2920	3	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	165.00
2930	3	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	75.00
2950	3	16 FIELD LOK GASKET	EA	345.00	1,035.00
2970	2	16 B3211-23 MJ BFV OL 2"ON L/ACC WORM GEAR	EA	1,775.00	3,550.00
2980	4	16 MEGALUG MJ RESTR. BLK 1116	EA	140.00	560.00
2990	4	16 MJ ACC GSKT&BOLTS SET L/GL LESS GLAND	EA	N/C	N/C
3000	2	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	110.00
3010	2	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	50.00
3030	1	16X16 MJ TEE C/L CP DI C153	EA	925.00	925.00
3040	1	16 MJ L/P SLEEVE(I) CP DI C153	EA	225.00	225.00
3050	5	16 MEGALUG MJ RESTR. BLK 1116	EA	140.00	700.00
3060	5	16 MJ ACC GSKT&BOLTS SET L/GL LESS GLAND	EA	N/C	N/C

Job Name: FP&L/PBC RW EAST (APP2 L/DI)

OAKLAND PARK

Seq#	Qty	Description	Units	Price	Ext. Price
3090	3	36 MJ 90 BEND(I) CP DI C153	EA	2,225.00	6,675.00
3100	4	36 MJ 45 BEND(I) CP DI C153	EA	1,725.00	6,900.00
3110	14	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	8,820.00
3120	14	36 MJ BOLT & GASKET KIT	EA	N/C	N/C
3140	1	36X2 IP SB366 W/SS STRAPS	EA	370.00	370.00
3150	2	2X6 BRASS NIPPLE	EA	15.00	30.00
3160	1	BA11-777W 2" ANGLE BV FIPT	EA	148.00	148.00
3170	2	C84-77 2 CPLG MIPXPJCTS	EA	40.00	80.00
3180	1	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	55.00
3190	1	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	25.00
3200	20	2X20' PVC SCH40 PIPE SWB BE SOLVENT WELD BELL	FT	0.50	10.00
3210	1	B77-777W 2 BALL CURB PJ(PVC)	EA	198.00	198.00
3220	1	2 PVC S80 UNION HXH 857-020	EA	12.00	12.00
3230	1	2 BRASS TEE	EA	30.00	30.00
3240	1	FB500-7 2 BALLCORP MIPXMIP	EA	125.00	125.00
3250	1	2" VM38.2 ARV	EA	188.00	188.00
3260	1	2 BRASS CAP	EA	20.00	20.00
3280	1	4" WELDED OUTLET	A	1,089.00	1,089.00
3290	1	4 FLGXPE DI PIPE 6'0" C/L	EA	165.00	165.00
3300	1	4 F6102 FLG RW GV OL HW CLOW CLOW GATE VALVE	EA	285.00	285.00
3310	2	4 FLGXFLG DI PIPE 1'0"	EA	92.00	184.00
3320	1	4 BLIND FLANGE DI C110	EA	35.00	35.00
3330	1	4X4 FLG TEE C/L DI C110	EA	140.00	140.00
3340	2	4 FLG 90 BEND C/L DI C110	EA	105.00	210.00
3350	1	4" VM #154SF ARV	EA	2,385.00	2,385.00
3360	4	4X1/8 FLG ACC RR FF 304SS B&N	EA	25.00	100.00
END PACKAGE					177,151.50

Job Name: FP&L/PBC RW EAST (APP2 L/DI)

OAKLAND PARK

Seq#	Qty	Description	Units	Price	Ext. Price
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**MATERIAL THAT MAYBE NEEDED
BUT HAVE NO PAY ITEMS**

CROSSING @ STA 730+00

3440	40	54" .50 WALL STEEL CASING PIPE	FT	165.00	6,600.00
3450	6	36X54 CASING SPACERS	EA	365.00	2,190.00
3460	2	36X54 ENDSEALS	EA	105.00	210.00
				END PACKAGE	9,000.00

AERIAL AT STA #663 +20

3500	2	36 MJ 45 BEND(I) CP DI C153	EA	1,725.00	3,450.00
3510	4	36 MEGALUG MJ RESTR. BLK 1136	EA	630.00	2,520.00
3520	4	36 MJ BOLT & GASKET KIT	EA	N/C	N/C

**FLANGE PIPE IS CEMENT LINED
5 PART EPOXY COATED PER PBC**

3560	2	36" FLGXPE DIP 15'0"	EA	5,426.00	10,852.00
3570	2	36" FLG 45 BEND C/L Di C110	EA	4,295.00	8,590.00
3580	2	36" FLGXFLG DIP 20'0"	EA	8,404.00	16,808.00
3590	1	36" FLGXFLG DIP 9'6"	EA	5,190.00	5,190.00
3610	2	FAN GUARDS GALV	EA	2,955.00	5,910.00
THE ABOVE NOT SHOWN ON PLANS					
3630	2	HOLD DOWN STRAPS	EA	285.00	570.00
3640	6	36" SS FLG ACCES W/TORUSEAL	EA	925.00	5,550.00
3660	1	36X2 IP SB366 W/SS STRAPS	EA	370.00	370.00
3670	2	2X6 BRASS NIPPLE	EA	15.00	30.00
3680	1	BA11-777W 2" ANGLE BV FIPT	EA	148.00	148.00
3690	2	C84-77 2 CPLG MIPXPJCTS	EA	40.00	80.00
3700	1	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	55.00
3710	1	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	25.00
3720	20	2X20' PVC SCH40 PIPE SWB BE SOLVENT WELD BELL	FT	0.50	10.00
3730	1	B77-777W 2 BALL CURB PJ(PVC)	EA	198.00	198.00
3740	1	2 PVC S80 UNION HXH 857-020	EA	12.00	12.00
3750	1	2 BRASS TEE	EA	30.00	30.00
3760	1	FB500-7 2 BALLCORP MIPXMIP	EA	125.00	125.00
3770	1	2" VM38.2 ARV	EA	188.00	188.00
3780	1	2 BRASS CAP	EA	20.00	20.00
				END PACKAGE	60,731.00

Job Name: FP&L/PBC RW EAST (APP2 L/DI)

OAKLAND PARK

Seq#	Qty	Description	Units	Price	Ext. Price
3800	3	12 DZ MJ BUTTERFLY VLV	EA	975.00	2,925.00
3810	6	12 MEGALUG MJ RESTR. BLK 1112	EA	79.00	474.00
3820	6	12 MJ ACC GSKT&BOLTS SET L/GL (LESS GLAND)	EA	N/C	N/C
3830	3	B&T #4905-18 DOM VALVE BOX LESS LID	EA	55.00	165.00
3840	3	SQ VLV BOX CVR M/RECLAIMED WAT	EA	25.00	75.00
END PACKAGE					3,639.00
Average price per				EA	1,213.00
PB CTY BLOW OFF					
3870	2	12X2 MJ TAPT PLUG CP DI C153	EA	150.00	300.00
3880	3	FB1102-7 2 BALLCORP MIPXPJ(PVC)	EA	148.00	444.00
3890	3	2 PVC SCH40 MALE ADPT MIPTXH	EA	1.00	3.00
3900	3	2 PVC SCH40 90 BEND HXH	EA	1.00	3.00
3910	3	2 ANGLE GLOBE VLV AMER 14N	EA	75.00	225.00
3920	3	2XCL BRASS NIPPLE	EA	9.00	27.00
3930	3	2 BRASS 90 ELL	EA	25.00	75.00
3940	3	2-1/2 NST CAP & CHAIN 1712650	EA	25.00	75.00
3950	3	2-1/2 BRASS CAP	EA	45.00	135.00
3960	3	CDR BX 11X18X12M STRAIGHT WALL	EA	45.00	135.00
3970	3	CDR COVER 11X18X2" SOLID	EA	30.00	90.00
3980	15	2 PVC SCH40 PIPE SWB 20' SOLVENT WELD BELL	FT	0.75	11.25
END PACKAGE					1,523.25
Average price per				EA	507.75

Bid Totals	Sub Total	\$1,247,569.10
	Bid Total	\$1,247,569.10

ATTACHMENT A TO PBC SPECIAL CONDITIONS
TERMS AND CONDITIONS FOR MATERIALS – RECLAIM WATER PIPELINE PROJECT

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TERMS AND CONDITIONS FOR MATERIALS – RECLAIM WATER PIPELINE PROJECT

1.0 **DEFINITIONS:**

When used in these TERMS AND CONDITIONS FOR MATERIALS – RECLAIM WATER PIPELINE PROJECT (“Terms”) with initial or complete capitalization, whether in singular or in plural, the following terms have the following defined meanings:

- 1.1 **Change Form:** A signed County form which serves as an amendment to the Materials Contract and which may include changes in the scope of Work.
- 1.2 **Company Representative:** The individual within County having responsibility and authority for administration of the Materials Contract on behalf of County and his alternates. If the Company Representative is not identified in the Materials Contract, Supplier shall contact the procurement representative identified in the Materials Contract to identify such individual(s).
- 1.3 **County:** Palm Beach County, Florida, a political subdivision of the State of Florida.
- 1.4 **County Entities:** County, the City of West Palm Beach, the East Central Regional Wastewater Treatment Facilities Operations Board, and the FPL Entities and their respective officers, directors, agents and employees.
- 1.5 **Cure:** Supplier’s obligation and actions to repair, replace or otherwise correct any failure to meet a warranty obligation or to repair, replace or otherwise correct any defect, deficiency or nonconformance with the conditions and standards prescribed in Section 9.0, WARRANTY.
- 1.6 **Force Majeure Event:** Any event or circumstance, or combination of events or circumstances, that arises after the date hereof, is beyond the reasonable control of the party claiming the Force Majeure Event, is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the party claiming the Force Majeure Event and has an impact which will actually, demonstrably, adversely and materially affect County’s ability to perform its obligations in accordance with the terms of the Materials Contract or has an impact which will actually, demonstrably, adversely and materially affect the performance of Supplier’s obligations in accordance with the terms of the Materials Contract; subject to the satisfaction of the foregoing criteria, Force Majeure Events include the following: acts of God, natural disasters, fires, earthquakes, lightning, floods, storms, civil disturbances, riots, war and military invasion. Notwithstanding the foregoing, the definition of “Force Majeure Event” shall not include: strikes, work stoppages (or deteriorations), slowdowns or other labor actions; any labor or manpower shortages; unavailability, late delivery, failure, breakage or malfunction of equipment or materials or events that affect the cost of equipment or materials; economic hardship (including lack of money); delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by governmental authorities; changes in applicable laws or applicable permits; reasonably foreseeable weather conditions in the Jobsite’s geographic area (Supplier acknowledges that it has factored into the schedule a sufficient number of lost days to account for such weather conditions) or elsewhere; actions of a government authority with respect to Supplier’s compliance with applicable laws or applicable permits; any failure by Supplier to obtain and/or maintain any applicable permit it is required to obtain and/or maintain hereunder; or any other act, omission, delay, default or failure (financial or otherwise) of a Subcontractor.
- 1.7 **FPL Entities:** Florida Power & Light Company, its contractors, parent, subsidiaries and any affiliated company of FPL Group, Inc. and their respective officers, directors, agents and employees.
- 1.8 **Materials Contract:** The agreement between County and Supplier as set forth in (i) the body of the Purchase Document, (ii) these Terms, (iii) other documents as may be incorporated into the Purchase Document such as supplemental terms and conditions, drawings, specifications, and schedules, and (iv) any subsequent Change Forms.
- 1.9 **Purchase Document:** The County purchase order or purchase contract form that is part of and incorporates the remaining documents comprising the Materials Contract.
- 1.10 **Subcontractor:** Any person, firm, partnership, association, joint venture, company, corporation or other entity, regardless of tier, having an agreement, formal or informal, with Supplier to provide any part of the Work under the Materials Contract. The term Subcontractor shall include vendors and suppliers of Supplier.
- 1.11 **Supplier:** The individual or organization responsible for performing the Work identified in the Purchase Document.
- 1.12 **Supplier Event of Default:** Has the meaning as set forth in Section 21.1.
- 1.13 **Work:** Work shall include any and all materials, goods, consumables, equipment, delivery, tools, drawings, manuals, documents, and all other necessary activities for the execution and timely completion of Supplier’s obligations under the Materials Contract.

2.0 **ACCEPTANCE AND ACKNOWLEDGMENT:**

Supplier shall acknowledge agreement to any Purchase Document or Change Form, or notify County by phone, followed by a mailed summary, of any exceptions within five (5) working days of receipt of such document. Acknowledgements for Purchase Documents shall be mailed to the County purchasing agent who issued the document. Acknowledgements for Change Forms shall be mailed to the County purchasing agent or Company Representative, as applicable, who issued the document. Acknowledgements for Purchase Documents shall be mailed to the Company Representative. Failure of Supplier to respond within the time period or Supplier’s commencement or delivery of Work, whichever is earlier, shall be deemed

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acceptance of the terms by Supplier. No terms and conditions stated by Supplier in the acknowledgement or otherwise in accepting the Materials Contract shall be binding upon County unless specifically accepted by County through its issuance a Change Form, and County hereby objects to any such additional terms and conditions.

3.0 SCOPE OF WORK:

- 3.1 Supplier shall perform all activities necessary for its completion of the Work specified in the Materials Contract.
- 3.2 Changes in the scope of the Materials Contract, including any and all modifications, changes and/or additions to the Work, will only be performed when authorized by a Change Form.
- 3.3 Any claims for recovery of costs which are not clearly set forth herein or by issuance of a Change Form must be asserted by Supplier in writing within thirty (30) calendar days after the cause of such claim has occurred. In the event a dispute arises as to the equitable adjustment of such claim, Supplier, at the direction of County, shall proceed with the Work pending resolution of the dispute.
- 3.4 In performing any part of the Work at a County Entities' site, including Cure pursuant to Section 9.0, WARRANTY, Supplier shall comply with the County site rules and regulations, copies of which shall be provided to Supplier upon request.
- 3.5 Supplier shall not permit or suffer the introduction or use of intoxicating liquor, firearms, or drugs upon the Work, including Cure, or upon any of the grounds occupied or controlled by Supplier.
- 3.6 All Supplier and Subcontractor employees shall be subject to "post accident" and/or "reasonable suspicion" controlled substances and alcohol testing while at a County site. "Reasonable suspicion" shall be determined in the sole discretion of County. No Supplier or Subcontractor employee required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- 3.7 It is understood and agreed that County is entering into the Materials Contract not only for its own benefit but also equally for the direct benefit of the FPL Entities and that each and every right, benefit, remedy and warranty accruing to County hereunder likewise accrue to the FPL Entities, including, but not limited to, the right of FPL to enforce the Materials Contract it is name or on behalf of the County.

4.0 PACKAGING AND SHIPPING:

- 4.1 Supplier shall comply with the specifications requirements regarding packaging or in the absence thereof shall package and/or crate all shipments to ensure adequate protection from damage during loading, shipping, haulin unloading and storing. Supplier shall load and secure all shipments to comply with all tariff rules and regulations to ensure adequate protection from in-transit damage to the applicable delivery destination.

5.0 DELIVERY AND RECOVERY PLAN:

- 5.1 Time of delivery or performance of the Materials Contract is of the essence. Supplier shall give immediate written notice to County setting forth the length of and reason for any anticipated delay.
- 5.2 If, at any time or from time to time, County determines, in its sole discretion, that: (i) Supplier has failed to show adequate progress of performance of the Work toward completion of a milestone by the date required by the applicable milestone date, or (ii) Supplier has failed to achieve a milestone by the applicable milestone date, then, on each such date, Supplier shall promptly, but in any event within two (2) business days of such date, submit for approval by County a written recovery plan to complete all necessary Work to achieve completion of the remaining milestones by the applicable milestone dates. County shall approve or submit reasonable revisions to such written recovery plan. Supplier shall incorporate such revisions into such recovery plan and resubmit such recovery plan to County for approval within two (2) business days of receipt of County's revisions. Upon approval by County, Supplier shall diligently prosecute the Work in accordance with such recovery plan. Neither approval by County of such recovery plan nor Supplier's prosecution of the Work in compliance with such recovery plan shall (i) be deemed in any way to have relieved Supplier of its obligations under the Materials Contract relating to the failure to timely achieve any milestone by the applicable milestone date, or (ii) be a basis for a Change Form or any other compensation or an increase in the Materials Contract price. In the event that Supplier fails to deliver a recovery plan in accordance with this Section 5.2 or fails to comply with such recovery plan or thereafter fails to achieve a milestone by the applicable milestone date, County shall have the right to direct Supplier to accelerate the Work by means of overtime, additional personnel, additional shifts, additional equipment and/or re-sequencing of the Work. Supplier agrees that it shall not be entitled to a Change Form or any other compensation or increase in the Materials Contract price in connection with the implementation of any recovery plan or any such direction to accelerate. This Section 5.2 shall not be construed to limit any of the rights and remedies hereunder.

6.0 PAYMENT:

- 6.1 All payments shall be due and payable in accordance with the County Purchase Document. Payment due dates a cash discounts shall be calculated based on the latter of the date (i) of receipt of a correct invoice, (ii) of receipt of all required documentation, and (iii) of acceptance of Work. Invoices shall be dated to reflect the actual transmittal

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date. Invoices that are not correct or properly documented shall be returned to Supplier. Corrected invoices shall be retransmitted.

6.2 County may withhold any payment or any portion thereof to protect it from loss on account of Supplier's failure, or County's reasonable belief that Supplier may fail, to comply with the provisions of the Materials Contract or any Supplier Event of Default. After Supplier remedies the cause of withholding identified pursuant to this Section 6.2, payment shall be made for the amounts withheld within forty-five (45) days after Supplier demand therefore after such remedy.

6.3 Supplier shall, at Supplier's sole expense, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with applicable law, within ten (10) days after receipt of a demand from County, any lien in respect to the Work, the Materials Contract, the equipment, the jobsite or any fixtures or personal property included in the Work (whether or not any such lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Supplier or any Subcontractor, or other person or entity providing labor or materials within the scope of the Work. Upon the failure of Supplier to promptly discharge or cause to be released any lien as required by this Section 6.3, within thirty (30) days of notice of the existence thereof, County may, but shall not be obligated to, pay, discharge or obtain a surety bond for such lien and, upon such payment, discharge or posting of surety bond therefore, shall be entitled to immediately recover from Supplier the amount thereof together with all actual and reasonable expenses incurred by County in connection with such payment, discharge or posting, or set-off all such amounts against any sums owed by County to Supplier. Supplier shall immediately provide County notice of the filing of any lien against the Work, the Materials Contract, the equipment, the jobsite or any fixtures or personal property included in the Work promptly upon learning of the existence or filing of such lien.

6.4 In consideration of each payment to Supplier by County hereunder, Supplier does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit claim all liens, lien rights and claims of lien, and other claims for payment for Work covered by said payment which Supplier ever had or then has (except for claims previously asserted in writing but unresolved at the time of payment, but upon final payment hereunder, may have in the future) against the Work, the property on which the Work is located, or against County Entities and all persons and entities acting for any of them, including, without limitation, all liens related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like which have occurred or may be claimed to have occurred to the extent any of the foregoing are related to the Work for which Supplier receives payment by County. Supplier acknowledges and agrees that the releases and waivers given by Supplier pursuant to this Section 6.4 are freely and voluntarily given by Supplier and Supplier has had the advice of counsel in connection herewith and is fully informed as to the legal effects of such releases and waivers.

7.0 **SET-OFF:**

County shall be entitled at all times to set-off any amount due from Supplier, or its affiliates, to County Entities against any amount payable by County to Supplier.

8.0 **VISITS AND INSPECTIONS:**

8.1 All Work shall be properly inspected by Supplier and shall at all times be subject to additional inspection by County. Representatives of County shall have the right to visit the facilities of Supplier and Subcontractors, if any, and witness the Work being performed provided they make arrangements in advance of such visits. Representatives from County shall comply with pertinent safety and security regulations.

8.2 Supplier shall maintain books and records supporting all costs for the work hereunder. During Supplier's customary business hours for the duration of the Contract, and for a period of two years thereafter, County shall have access to such books and to other records of Supplier as may be required to verify any and all reimbursable costs that Supplier is entitled to under the Materials Contract.

9.0 **WARRANTY:**

9.1 Supplier warrants that the Work furnished under the Materials Contract shall be (i) provided in conformance with all specifications and other descriptions and requirements set forth in the Materials Contract; (ii) performed in accordance with standards of care, skill and diligence consistent with recognized and sound industry practices, procedures and techniques; (iii) delivered to County free from faulty design (to the extent of Supplier's design responsibilities); (iv) constructed utilizing new materials and equipment free from faults and defects and of sufficient size, capability and materials to meet in all respects the requirements and operating conditions specified in the Materials Contract; (v) suitable for the use intended; (vi) in conformance with applicable laws, regulations and codes; and (vii) conveyed with free and clear title.

9.2 If any failure to meet the foregoing warranty occurs or is discovered during the performance of the Work or within twelve (12) months from the date Work is placed in service or eighteen months after delivery to the applicable County location, whichever is earlier (or such longer period of time as may be stated elsewhere in the Materials

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Contract), Supplier shall immediately Cure all materials, equipment or Work (including payment for labor associated with such Cure inclusive of disassembly, removal, replacement and reinstallation charges) affected by such failure at Supplier's sole cost and expense. Supplier shall reimburse County for costs directly incurred by County as a result of reliance by County on Work that fails to meet such warranties. Work so Cured shall be warranted for an additional period of twelve (12) months (or such longer period of time as may be stated elsewhere in the Materials Contract), following completion of the Cure. Notwithstanding the above, there shall be no time limitations on Supplier's warranty of free and clear title.

- 9.3 Neither payment, nor any other provision of the Materials Contract, nor partial or entire use or possession of the Work shall relieve Supplier of liability with respect to the warranties contained herein.
- 9.4 County shall give written notice to Supplier of any failure of the Work or nonconformance with the warranties or performance guarantees discovered by County. All warranty Work shall be performed on a schedule established by County as required to support system operations. County shall, without impact to the warranties provided in this Section 9.0, have the right to operate and otherwise use the Work until such time as County deems prudent to suspend such operation or use for Cure by Supplier. If the Work has been placed in service, Supplier shall make such corrections or replacements as soon as County deems it prudent to remove the Work from service for any warranty Cure by Supplier, even if the warranty expires prior to the removal of the Work from service. Supplier shall provide labor for Cure on a straight time and overtime basis, at its expense, as necessary to meet County's schedule.
- 9.5 On all warranty issues, Supplier shall address such issues and provide County with the following information on each issue as it occurs: (i) root cause of the issue; (ii) analysis information concluding root cause as defined; (iii) material required for repair or replacement; and (iv) manpower requirements for repair or replacement.
- 9.6 Whenever Cure is required, Supplier shall bear the risk of loss or damage for Work requiring Cure during the period of such Cure. If any Work must be removed from the jobsite, transportation charges associated with any Cure shall be borne by Supplier. Supplier shall revise any and all drawings, as appropriate, to reflect any changes or modifications made during Cure.
- 9.7 If Supplier fails or refuses to effect Cure of nonconforming Work or fails to (i) identify the problem, schedule for Cure and initiate Cure within a reasonable period not to exceed two (2) calendar days after written notice of nonconformance and (ii) complete Cure, utilizing its best efforts, within a reasonable period of time not to exceed ten (10) calendar days (or such period or periods as County may authorize in writing), County may effect such Cure without impairing the warranties stated in this Section 9.0, and charge the cost incurred by County thereby to Supplier. In addition, if Supplier fails to furnish timely disposition instructions, County may dispose of the non-conforming Work in a reasonable manner, in which case County shall be entitled to reimbursement from Supplier for reasonable expenses as well as for any excess cost incurred in the disposition of said Work.
- 9.8 Supplier shall obtain, for the benefit of County, all available warranties of Subcontractors for all materials and equipment manufactured or furnished or Work performed by them to the extent such warranties exceed the requirement of the warranties set forth in this Section 9.0. To the extent such warranties are in written form, originals identifying County as the warranty beneficiary shall be furnished to County. Supplier's warranty shall be primary to any additional warranties furnished under this Section 9.8.
- 9.9 Supplier warrants that the written instructions regarding use of the Work shall conform to accepted engineering and operating practices as of the time such instructions are prepared. If any non-conformance of this warranty occurs or is discovered, Supplier shall furnish, at no cost to County, corrected instructions. In the event such non-conformance causes the Work to (i) be damaged or (ii) fail to meet applicable performance standards, Supplier shall effect Cure as specified in this Section 9.0.
- 9.10 On a schedule convenient to County, Supplier shall be granted access to the Work to perform Cure and shall be solely responsible for the disassembly, removal, replacement and reinstallation of all ductwork, structures, electrical work, instrumentation, insulation or any equipment or any obstruction, all at Supplier's expense. Upon completion of Cure, all Work shall be returned or restored to its proper and original conditions, including but not limited to fit alignment, adjustment and finish.
- 9.11 The warranties and remedies provided herein shall be in addition to all warranties and remedies provided by law.

10.0 INTENTIONALLY LEFT BLANK

11.0 TAXES:

- 11.1 Supplier is responsible for and shall pay all taxes due under the Materials Contract, if any, including all present or future import duty, federal, state, county, municipal or other excise or similar taxes levied with respect to the Work, excepting all current Florida sales and use taxes which shall be paid in accordance with the instructions contained in the Purchase Document. Supplier expressly agrees that County shall incur no liability or expense under the Materials Contract due to change in tax or duty requirements, excluding Florida sales and use tax. Any increase in taxes or duties, excluding Florida sales and use tax, shall be at the expense of Supplier and not County.

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- 11.2 In no event shall County be required to pay any tax levied on or determined by Supplier's income, taxes expressly designed to be paid solely by Supplier or licenses and permits required for Supplier to conduct business.
- 11.3 County shall not be obligated to pay, and shall be immediately reimbursed by Supplier if County does pay, any taxes, including penalties or interest charges levied or assessed by reason of any failure of Supplier to comply with the Materials Contract, applicable laws or governmental regulations, and Supplier shall indemnify and save County harmless from the payment of any and all such taxes penalties and interest.

12.0 **RISK OF LOSS; F.O.B. AND TRANSPORTATION TERMS:**

- 12.1 The following are the risk of loss and transportation terms application to the Work under the Materials Contract:
- 12.1.1 F.O.B. destination, freight prepaid and allowed;
 - 12.1.2 Title and risk of loss pass to County at destination point;
 - 12.1.3 Supplier prepays freight charges;
 - 12.1.4 Supplier bears freight charges; and
 - 12.1.5 Supplier must file claims for loss, damage or overcharges (if any) for Work in transit.
- 12.2 Supplier shall bear all costs related to any demurrage incurred in connection with the delivery of the Work except to the extent any such demurrage costs are solely the result of County's inability to accept the applicable portion of the Work on the dates that County is obligated to take delivery of such Work. However, Supplier waives all right to claim that it entitled to any demurrage costs related to: (i) delays due to local restrictions as may be specified by local authorities; (ii) delays due to any Supplier (or Subcontractor) vehicle's condition, or breakdown, or inability of the Supplier (or its Subcontractors) vehicle's facilities to discharge the Work; (iii) delays due to prohibition of discharging at anytime by the owner or operator of the vehicle or by local authorities; (iv) delays due to any Work spill or discharge or threat thereof caused by any defect in the Supplier (or Subcontractor) vehicle or equipment or act or failure to act by the operator of the vehicle; (v) delays due to the vehicle's violation of operating or safety rules, regulations or requirements in place at the time of delivery; or (vi) delays due to noncompliance with applicable laws, rules and regulations. If County is not able to accept Work as required under the Materials Contract and Supplier incurs demurrage costs for which it is entitled to relief, then any such demurrage cost relief that Supplier may be entitled to collect shall be in accordance with Section 23.0, SUSPENSION FOR CONVENIENCE.

13.0 **ORDER OF INTERPRETATION:**

In case of conflict between or among documents related to the Materials Contract, the following order of precedence shall apply unless otherwise specified: first: Change Forms, second: information contained in the body of the Purchase Document, third: these Terms, and last: other documents incorporated into the Purchase Document. In case of conflict among Change Forms, the Change Form with the most recent date shall take precedence.

14.0 **PATENT OR COPYRIGHT INFRINGEMENT:**

- 14.1 Supplier shall pay all royalties and license fees and at its sole expense shall provide for County Entities the right to use any Supplier-provided design, device, material or process covered by a patent or copyright. Supplier shall, at its sole expense, defend, indemnify and hold County Entities harmless from and against liability or loss, including all costs, expenses, and attorneys' fees, claims, suits or judgments in connection with alleged infringements of patents, copyrighted or uncopyrighted works, secret processes, trade secrets, patented or unpatented inventions, articles or appliances, or claims thereof pertaining to the Work, or any parts or combinations thereof, processes therein or the tools or implements used by Supplier.
- 14.2 If, in any such suit or proceeding, a temporary restraining order or preliminary injunction is granted, Supplier shall immediately exert its best efforts, by giving satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order.
- 14.3 If, in any such suit or proceeding, the Work, any part, combination or process thereof is held to constitute an infringement and its use is permanently enjoined, Supplier shall immediately exert its best efforts to secure for County a license, at no expense to County, authorizing its continued use. If Supplier is unable to secure such license within a reasonable time, Supplier shall, at its own expense, and without impairing either (i) performance requirements of the Work, any part, combination, or process thereof, or (ii) other normal operations of County, use its best efforts to either replace the affected Work, part, combination or process thereof with non-infringing components or parts, or modify same so that they become non-infringing.
- 14.4 At County's option and sole discretion, Supplier shall immediately refund all monies paid by County to Supplier for the Work, should Supplier fail to secure a license or replace or modify such Work, pursuant to Section 14.3, or secure the lifting of an injunction, pursuant to Section 14.2, within a reasonable time.

15.0 **OWNERSHIP:**

Supplier acknowledges and agrees that County is permitted to create training materials and/or manuals to be used internally by County. All rights and title to such materials and manuals will be owned by County. Supplier hereby authorizes and grants to County the right to use Supplier provided documentation, data, drawings, pictures in such materials and manuals.

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16.0 **INDEPENDENT CONTRACTOR:**

Supplier is at all times and shall remain an independent contractor and not a subcontractor, agent or employee of County Entities, solely responsible for completing its Work under the Materials Contract with full power and authority to select the methods, means and manner of performing such Work, so long as such methods, means and manner conform to all applicable specifications and drawings or authorized changes thereto and do not adversely affect the completed improvements or efforts of other suppliers and subcontractors in the execution of their work. County retains no control or direction over Supplier, its employees and Subcontractors or over the detail, manner or methods of performance of the Work by Supplier, its employees and Subcontractors.

17.0 **INDEMNITY:**

Supplier agrees to protect, defend, indemnify and hold County Entities free and unharmed from and against all expenses, costs, charges, damages, claims, suits, losses or liabilities (including attorney's fees) whatsoever arising out of claims arising or resulting from any bodily injury (including death) or property damage claim or allegation in connection with the Materials Contract to the extent caused by the negligence of Supplier, its employees, Subcontractors, Subcontractor employees.

18.0 **INSURANCE:**

18.1 Before commencing Work at any County site, Supplier shall procure and maintain the following minimum insurance, unless otherwise specified in the Purchase Document, covering all operations required to complete the Work in forms and with insurance companies acceptable to County:

18.1.1 All insurance requirements required by law, which shall include without limitation, workers' compensation insurance for statutory requirement imposed by workers' compensation laws and comprehensive automobile liability insurance.

18.1.2 Comprehensive Automobile Liability Insurance which shall apply to all owned, non-owned, leased and hired automobiles used by Supplier with minimum limits of liability as follows:

18.1.2.1 Automobile Physical Damage - Insured for the replacement value of all vehicles leased or borrowed by Supplier from County Entities; and

18.1.2.2 Bodily Injury Liability and Property Damage Liability - One Million Dollars (\$1,000,000) combined single limit per occurrence.

18.1.3 General Liability Insurance, including Broad Form Contractual Liability Coverage and Products/Completed Operations Liability Coverage, including coverage for damage caused by explosion, collapse or structural injury and damage to underground facilities, with minimum limits of One Million Dollars (\$1,000,000) combined single limit per occurrence for Bodily Injury and Property Damage Liability, which shall insure the performance of the contractual obligations assumed by Supplier under the Materials Contract. The Products/Completed Operations Liability Insurance shall be provided for a period of at least one year after completion of the Work.

18.2 In the event that any policy furnished by Supplier provides for coverage on a "claims made" basis, the retroactive date of the policy shall be the same as the effective date of the Materials Contract, or such other date, as to protect the interest of County Entities. Furthermore, for all policies furnished on a "claims made" basis, Supplier's providing of such coverage shall survive the termination of the Materials Contract and the expiration of any applicable warranty period, pursuant to Section 9.0, WARRANTY, until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. If coverage is on "occurrence" basis, Supplier shall maintain such insurance during the entire term of the Materials Contract.

18.3 Supplier shall promptly provide evidence of the minimum coverage by providing an ACORD or other certificate of insurance acceptable to County. Neither Supplier's failure to provide evidence of minimum coverage of insurance following County's request, nor County's decision to not make such request, shall release Supplier from its obligation to maintain the minimum coverage provided for in this Section 18.0.

18.4 Supplier shall name County Entities as additional insureds on Supplier's liability policies required pursuant to this Section 18.0. All policies of insurance required to be maintained by Supplier hereunder shall: (i) be endorsed to specify that they are primary to and not excess to or on a contributing basis with any insurance or self-insurance maintained by County Entities; (ii) provide a severability of interests or cross liability clause; (iii) provide for waivers of subrogation (or the equivalent thereof) in favor of County Entities as may be requested by County, from its Subcontractors and their respective agents, officers and employees; (iv) provide that County and any additional insured shall be provided thirty (30) days' prior written notice of any material policy changes, non-renewals or cancellations; and (v) waive any right of subrogation against County Entities and waive any other right of the insurers to any off-set or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of County Entities.

18.5 Nothing in this Section 18.0 shall be deemed to limit Supplier's liability under the Materials Contract regardless of the insurance coverages required by this Section 18.0. No limitation of liability provided to Supplier under the Materials Contract is intended nor shall run to the benefit of any insurance company or in any way prejudice, alter,

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diminish, abridge or reduce, in any respect, the amount of proceeds of insurance otherwise payable to County under coverage required to be carried by Supplier under the Materials Contract, it being the intent of the parties that the full amount of insurance coverage bargained for be actually available notwithstanding any limitation of liability contained in the Materials Contract, if any.

- 18.6 Supplier shall be responsible for the payment of any deductible of any insurance coverage required pursuant to this Section 18.0.
- 18.7 In the event Supplier performs Work pursuant to Section 9.0, WARRANTY, Supplier shall comply with the requirements in this Section 18.0.

19.0 **LIMITATIONS OF LIABILITY:**

Neither the County nor any of the County Entities shall be liable to Supplier for consequential, special, exemplary, indirect or incidental losses or damages, including loss of use, lost production, cost of capital, loss of goodwill, loss of contract, lost revenues or loss of profit, and Supplier hereby releases County and each of the County Entities from any such liability. Supplier shall secure the limitations of liability in this Section 19.0 in all its subcontracts.

20.0 **FORCE MAJEURE:**

20.1 So long as the conditions set forth in this Section 20.1 are satisfied, neither party shall be responsible or liable for or deemed in breach of the Materials Contract because of any failure or delay in complying with its obligations under or pursuant to the Materials Contract to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof, and in such event:

20.1.1 The party claiming a Force Majeure Event shall give the other party Notice describing the particulars of the cause and nature of the occurrence, with written notice given promptly after the occurrence of the Force Majeure Event, and in no event more than ten (10) business days after the affected party becomes aware of such occurrence and as soon as reasonably practicable, but in any case within fifteen (15) business days after such occurrence, the party claiming a Force Majeure Event shall give the other party sufficient proof of the occurrence of such Force Majeure Event and written notice estimating the Force Majeure Event's expected duration and probable impact on the performance of such party's obligations hereunder, and such affected party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;

20.1.2 The performance of the party claiming the Force Majeure Event of its obligations hereunder shall be suspended, provided the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the effects of the Force Majeure Event;

20.1.3 Any liability of either party, which arose before the occurrence of the Force Majeure Event causing the suspension of performance, shall not be excused as a result of the occurrence;

20.1.4 The affected party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform and limit damages to the other party;

20.1.5 The affected party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

20.1.6 When the affected party is able to resume performance of the affected obligations under the Materials Contract, that party shall give the other party written notice to that effect, and the affected party promptly shall resume performance under the Materials Contract.

20.2 So long as the conditions set forth in Section 20.1 are satisfied, Supplier shall be entitled to suspension of performance or extension of time (including an extension of the applicable Guaranteed Substantial Completion Date to the extent achievement thereof is affected) with respect to a Force Majeure Event to the extent agreed upon by both parties pursuant to a Change Form. A party's failure to comply with the provisions of this Section 20.1 shall constitute a waiver of any claim of a Force Majeure Event.

20.3 The burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses a party from performance under Section 20.1 shall be upon the party claiming such Force Majeure Event.

21.0 **CANCELLATION AND TERMINATION FOR CAUSE:**

21.1 The occurrence of any one or more of the following events shall constitute an event of default by Supplier hereunder ("Supplier Event of Default"):

21.1.1 Supplier disregards any provision of any applicable law, and such condition remains un-remedied for five (5) calendar days (or other such period approved by County in writing) following written notice thereof by County

21.1.2 Failure by Supplier to deliver any recovery plan described in Section 5.2 in accordance with the terms of such Section, or following approval of a recovery plan pursuant to such Section, the failure of Supplier to comply with such recovery plan;

21.1.3 Failure by Supplier to maintain the insurance coverages required of it in accordance with Section 18.0;

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- 21.1.4 Failure of Supplier to perform any other obligation hereunder and such failure is not Cured within five (5) business days after receipt from County of notice of such failure;
- 21.1.5 Reasonable grounds for insecurity arise with respect to Supplier's expected performance and Supplier fails to furnish adequate assurance of due performance within five (5) calendar days after a written request by County for such adequate assurance; and
- 21.1.6 Any of the following occurs: (i) Supplier consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Supplier files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of companies, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Supplier's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order; or (iv) Supplier is adjudged bankrupt or insolvent, has any property sequestered by court order or has filed against it a petition or claim under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect.
- 21.2 Notwithstanding anything contained herein, County reserves the right to inspect and/or refuse any Work or to cancel all or any part of the Materials Contract if Supplier fails to deliver or perform in accordance with the terms of the Materials Contract. Work rejected as not conforming to the Materials Contract shall be returned at Supplier's risk and expense. Acceptance of any part of the Work shall not bind County to accept future shipment or service, or deprive it of the right to revoke acceptance of Work already accepted.
- 21.3 Upon the occurrence and during the continuation of any Supplier Event of Default, County, in addition to other rights and remedies it may have at law, in equity or under the Materials Contract, shall have the right to terminate the Materials Contract for cause by written notice to Supplier without termination charge or penalty. County shall, within a reasonable period of time after the Work is finally completed by the work of one or more replacement supplier determine the total cost (including such other supplier's fees) to County for completing the Work, including all sums previously paid or then owed to Supplier pursuant to the Materials Contract. If the total price for the re-procured Work hereunder is less than the sum of (i) all costs and expenses incurred by County to engage a substitute supplier to complete (or Cure deficiencies or defects in) the Work and/or deliver replacement Work, including, without limitation, overhead and legal, engineering and other professional expenses, (ii) all other costs, expenses and damages suffered by County as a result of a default or breach by Supplier of the requirements of the Materials Contract and the termination of the Materials Contract as a result thereof, and (iii) all amounts payable or previously paid to Supplier pursuant to the Materials Contract, Supplier shall pay to County on demand, the amount of such difference. Acceptance of any part of the Work shall not bind County to accept future shipment, or deprive it of the right to revoke acceptance of Work already accepted. Supplier shall receive payment for Work accepted by County but shall be retained by County until after completion of the Work and applied by County to pay any amounts and damages owed by Supplier pursuant to this Section 21.3. Any excess shall be remitted to Supplier within sixty (60) days after the Work is finally completed. Such payment shall be Supplier's exclusive remedy for termination. Upon written notice, Supplier shall stop all Work hereunder unless specified otherwise by County in the notice. County shall not incur any costs for Work in process or any associated costs for Work not accepted or when acceptance has been revoked when terminating for cause (e.g., material commitments, production or assembly line expenses, or warehouse costs).
- 21.4 Upon the occurrence and during the continuance of a Supplier Event of Default but prior to termination of the Materials Contract with respect to any Work by County, County may, without prejudice to any of its other rights or remedies, (i) make such payments or perform such obligations as are required to cure such Supplier Event of Default, and (ii) County may seek reimbursement of any actual costs it incurs in making such payments or performing such obligations as required to cure such Supplier Event of Default.
- 21.5 In the event of termination for cause under Section 21.0, County shall have no liability to Supplier for costs incurred by Supplier as a result of such termination nor for any costs incurred by Supplier following its receipt of a written termination notice.
- 21.6 In the event the cause for termination is determined by a court of competent jurisdiction to be unfounded, the parties agree to treat the termination as one of convenience under Section 22.0, TERMINATION FOR CONVENIENCE.

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- 22.0 **TERMINATION FOR CONVENIENCE:**
- 22.1 In addition to County's rights to terminate pursuant to Section 21.0, TERMINATION FOR CAUSE, upon two (2) business days written notice to Supplier, County may at its sole discretion and without prejudice to any other right or remedy, terminate the whole or any part of the Materials Contract for its convenience. Such termination shall be effective in the manner specified in the written notice. Should County elect to terminate the Materials Contract under this Section 22.0, complete settlement of all claims of Supplier arising thereunder shall be made as follows:
- 22.1.1 County shall pay Supplier a payment ("Termination Payment") equal to (i) that portion of the Materials Contract price that is applicable to Work completed and delivered to County up to the date of termination that has not previously been paid to Supplier, (ii) the early termination fees reasonably incurred by Supplier in terminating contracts with subcontractors pertaining to the Work (excluding fees of any affiliated company of Supplier), except to the extent County has instructed Supplier in writing not to terminate such contracts, in which event such contracts will be assigned to County, subject to County's assumption of the same, and (iii) that portion of the Work identified in the Purchased Document by Supplier as non-standard special order items; provided, however, to the extent that County is required to pay for and take delivery of any non-standard special order items, Supplier agrees that it shall have an obligation to deliver such non-standard special order items to County's designated sites.
- 22.1.2 Supplier agrees to waive any claims for damages, including loss of anticipated profits on Work not yet completed, unabsorbed administrative expense, other overhead costs and continuing costs. Any Termination Payment shall not include any costs incurred by Supplier after the date of the event giving rise to such termination that Supplier reasonably could have mitigated.
- 22.1.3 Supplier shall use its best efforts to mitigate the costs associated with termination of the Materials Contract under Section 22.1, including identifying and pursuing other uses for equipment or supplies manufactured or obtained pursuant to the Materials Contract.
- 22.1.4 Supplier shall submit an invoice to County for the Termination Payment with the supporting information and documentation of any fees or expenses claimed by Supplier pursuant to this Section 22.0.
- 22.1.5 At its option, County may conduct an audit of Supplier's records to verify that termination charges are reasonable and proper. Payment of such termination charges shall be County's sole obligation and Supplier's exclusive remedy for termination for convenience.
- 22.2 Payment of the Termination Payment shall be the sole and exclusive liability of County, and the sole and exclusive remedy of Supplier, with respect to termination of the Materials Contract under this Section 22.1, and in such event County shall have no further liability to Supplier notwithstanding the actual amount of damages that Supplier may have sustained in connection with such termination. Calculation of the Termination Payment has been agreed upon hereunder because of the difficulty of ascertaining the exact amount of such damages Supplier will actually sustain in the event of a termination of the Materials Contract pursuant to this Section 22.1, and County and Supplier agree that the calculation of the Termination Payment is fair and reasonable. If the Materials Contract is terminated pursuant to Section 21.1, then no Termination Payment shall be due and payable pursuant to this Section 22.0 from County and any payment to Supplier shall be computed solely in accordance with Section 21.0.
- 22.3 Prior to final settlement, Supplier shall furnish a complete general release of all claims by Supplier against County.
- 23.0 **SUSPENSION FOR CONVENIENCE:**
- 23.1 County may, at its convenience and in its sole discretion, by notice to Supplier, suspend at any time the performance of all or any portion of the Work. If all of the Work is suspended, the expiration date of the Materials Contract shall automatically be extended for a period of time equal to the duration of the anticipated suspension period. During the period of suspension, Supplier shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with suspension.
- 23.2 Upon receipt of any such notice, Supplier shall, unless the notice requires otherwise:
- 23.2.1 Immediately discontinue Work on the date and to the extent specified in the notice;
- 23.2.2 Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
- 23.2.3 Immediately make every reasonable effort to obtain suspension upon terms satisfactory to County of all orders, subcontracts and rental agreements to the extent they relate to performance of Work suspended;
- 23.2.4 Continue to protect and preserve the Work; and
- 23.2.5 Immediately consult with County to determine if any portion of the Work is in a state of manufacture, fabrication, or erection such that interruption of Work would result in substantially increased costs. If both parties agree, with County's written concurrence, Supplier may complete such portion of the Work.
- 23.3 As full compensation for such suspension, Supplier shall be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such direct costs result from such suspension of Work:

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- 23.3.1 All reasonable costs of mobilization and demobilization of Supplier's, forces and equipment actually incurred by Supplier; and
- 23.3.2 All reasonable costs of protecting and preserving any portion of the Work completed or delivered actual, incurred by Supplier.

24.0 COMPLIANCE WITH LAWS, RULES AND REGULATIONS:

- 24.1 The Materials Contract shall be construed in accordance with and governed by the laws of the State of Florida without giving effect to its conflict of laws provisions.
- 24.2 Supplier shall perform all Work in accordance with all applicable codes, laws, rules, regulations, orders and standards of federal, state, regional, local and municipal governmental agencies, and all standards, rules, regulations and orders issued by such agencies.
- 24.3 Supplier shall provide all inspections required by law and shall pay all fees and charges in connection therewith, unless otherwise provided in the Materials Contract.
- 24.4 If Supplier observes that any part of the Materials Contract is at variance with this Section 24.0 in any respect, it shall immediately notify the Company Representative in writing and any necessary changes shall be made by Change Form. If Supplier performs any work contrary to law, Supplier shall assume full responsibility therefor and shall bear all costs attributable thereto.
- 24.5 Supplier shall, at its own expense, defend, indemnify and save harmless County Entities from and against all liability, loss or damage (including attorneys' fees and other defense costs) assessed against or suffered by County Entities as a result of an allegation or claim of noncompliance by Supplier with this Section 24.0.
- 24.6 Supplier agrees to conduct all business with County in an ethical manner. Supplier shall not give any commissions or payments whatsoever to any employee or agent of County, nor give any gifts or entertainment which reasonably could be considered as intending to influence such person. Supplier hereby confirms that there are no conflicts of interest between County Entities and Supplier of which Supplier's management is (or reasonably should be) aware. Prohibited conflicts of interest include, but are not limited to, circumstances where, (i) an County employee (or a close family member of an employee) is an officer of Supplier, (ii) an County employee and/or close family members of an employee collectively have a greater than 5% ownership interest in Supplier, or (iii) an employee of County (or close family member of an employee) stands to gain personally from business between County and Supplier. Supplier hereby acknowledges that any violation of this Section 24.6 would constitute a violation of County corporate policies, and may result in the termination for cause of this Materials Contract and of other contracts between Supplier and County. Should Supplier become aware, or have reasonable suspicion, that a violation of this Section 24.6 exists, Supplier shall promptly notify County's Company Representative. In addition, Supplier shall promptly notify County's Internal Auditing department of any solicitation of Supplier by an employee or agent of County with the apparent intent of encouraging Supplier to violate this Section 24.6.
- 24.7 It is County's policy to seek out and encourage the use of small business concerns (as defined by the Federal government) to the greatest extent possible and County encourages Supplier to do the same. In the event that this Materials Contract offers opportunities for subcontracting, Supplier shall to the extent consistent with efficient contract performance, provide opportunities to participate to small, disadvantaged, veteran, woman- or minority-owned subcontractors as described in the "Utilization Clause" set forth in Federal regulation FAR 52-219-8. In addition, if this Materials Contract offers opportunities for subcontracting and has a value in excess of Five Hundred Fifty Thousand Dollars (\$550,000) and offers opportunities for subcontracting, Supplier (unless Supplier is itself a defined small business concern) shall adopt and comply with a subcontracting plan as described in Federal regulation FAR 52-219-9.

25.0 EQUAL EMPLOYMENT OPPORTUNITY, CIVIL RIGHTS AND HOMELAND SECURITY:

- 25.1 Supplier shall conform to the requirements of (i) the Equal Employment Opportunity clause in Section 202, Paragraphs 1 through 7, of Executive Order 11246, as amended, (ii) applicable portions of Executive Orders 11701 and 11758, relative to Equal Employment Opportunity, (iii) Section 503 of the Rehabilitation Act of 1973, (iv) the Americans with Disabilities Act, (v) and the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (vi) the Implementing Rules and Regulations of the Office of Federal Contract Compliance Programs, and to impose these requirements upon applicable Subcontractors.
- 25.2 Supplier shall ensure that it has as well as its Subcontractors have complied with the Department of Homeland Security Bureau of U.S. Citizenship and Immigration Services Employment Eligibility Form I-9 for all employees performing any Work at any County site, including, without limitation, examination of documents that establish identity and citizenship.

26.0 ASSIGNMENT:

- 26.1 Neither the Materials Contract, nor the Work, nor any duty, interest or rights hereunder shall be subcontracted, assigned, transferred, delegated or otherwise disposed of by Supplier without County's prior written approval.

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However, County may at any time and at its sole and unrestrained discretion assign the Materials Contract to any of the County Entities by written notice to Supplier.

- 26.2 No assignment or transfer of the Materials Contract shall relieve either party of any of its obligations hereunder until such obligations have been assumed by the assignee and agreed to by County, Supplier and assignee.
- 26.3 If the Materials Contract should be permitted to be assigned by either party, it shall be binding upon and shall inure to the benefit of the permitted assignee.

27.0 **EFFECT OF SECTION HEADINGS:**

Section headings appearing in the Materials Contract are inserted for convenience of reference only and shall in no way be construed to be interpretations of the text.

28.0 **SEVERABILITY OF PROVISIONS:**

Should any provision, portion or application thereof, of the Materials Contract be determined by a court of competent jurisdiction to be illegal, unenforceable or in conflict with any applicable law, the parties shall negotiate an equitable adjustment to the affected provisions of the Materials Contract with a view toward effecting the purpose of the Materials Contract and the validity and enforceability of the remaining provisions, portions or applications thereof, shall not be impaired.

29.0 **SURVIVAL:**

The obligations of the parties hereunder which by their nature survive the termination of the Materials Contract and/or the completion of the Work hereunder, shall survive and inure to the benefit of the parties including but not limited to Sections 6.0, 9.0, 11.0, 14.0, 15.0, 17.0, 18.0, 19.0, 25.0, 32.0, 33.0, 34.0. Those provisions of the Materials Contract which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination of the Materials Contract and/or completion of the Work.

30.0 **County APPROVAL:**

The parties explicitly recognize that County's reviews, agreement, approvals, disapprovals and authorizations pursuant to the Materials Contract are administrative in nature and do not relieve Supplier of its obligations under the Materials Contract or impose any such obligations on County.

31.0 **NONWAIVER:**

Failure by County or the Company Representative to enforce any provisions hereof, County's or the Company Representative's failure or delay in exercising any rights or remedies provided herein or by law, County's approval of, acceptance of, or payment for the Work, or any part or combination thereof, or any purported oral modification or rescission of the Materials Contract by an employee or agent of County shall neither relieve nor release Supplier from any of its obligations under the Materials Contract, shall not be deemed a waiver of any right of County to insist upon strict performance hereof or of County's rights or remedies under the Materials Contract or by law, and shall not operate as a waiver of any of the provisions hereof.

32.0 **CONSTRUCTION:**

32.1 The parties acknowledge and agree that each party has carefully reviewed these Terms, and that any presumption or rule of construction resolving ambiguities against the drafting party shall not be employed in the interpretation of these Terms.

32.2 The provisions of the Convention on the International Sale of Goods shall not apply to the Materials Contract.

33.0 **DISPUTE RESOLUTION:**

Any disputes resulting in litigation between the parties shall be conducted in the state courts of the State of Florida. Proceedings shall take place in the Circuit Court for Palm Beach County, Florida, or the United States District Court for the Southern District of Florida located in West Palm Beach.

34.0 **PROPRIETARY MATERIAL AND CONFIDENTIALITY:**

34.1 Any materials belonging to or in the possession of County, whether written, printed or otherwise recorded, as well as all Work products resulting from the Materials Contract, shall be used by Supplier only in the performance of its duties hereunder and Supplier shall not record, reference, reproduce or use such materials for any other purpose without the express written consent of County. All rights, title to and interest in such material shall remain with County, and all such material shall be surrendered to County immediately upon termination of the Materials Contract, or any time prior thereto, upon the request of County.

34.2 Supplier and its agents, Subcontractors and employees shall not disclose or use, other than as may be required in the performance of the Materials Contract, such material including, without limitation, any material relating to (i) County Entities or (ii) any person or organization dealing with County, both during the period of performance of the Materials Contract and thereafter.

34.3 Neither Supplier nor Subcontractors shall (i) release any information (including photographic recordings or any information concerning the Materials Contract, the Work, or any part thereof) or (ii) make any announcements except as may be required by law, to any third party, member of the public, press or official body, unless prior written consent is obtained from County.

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- 34.4 Supplier, in the performance of the Work under the Materials Contract, shall comply with and shall protect, and shall require Subcontractors to comply with and protect, all rights of patents, including patent pending, copyright, trademarks, secret processes, trade secrets and any other proprietary interest (i) of County, (ii) which County is obligated to comply with or protect or (iii) which are otherwise involved in or related to Supplier's performance of the Work under the Materials Contract.
- 34.5 Any information, designs, data or engineering results delivered to County hereunder and which are generated for the first time by Supplier under the Materials Contract solely at County's expense shall be considered County confidential material and shall become the property of County.
- 34.6 Supplier shall include the provisions of this Section 34.0 in all its subcontracts.

35.0 **CHARACTER OF WORKERS:**

- 35.1 Supplier shall at all times enforce strict discipline and good order among personnel engaged in the performance of the Work and shall ensure that all personnel are skilled in, qualified for and otherwise fit for the performance of the portion of the Work assigned to such personnel. Supplier shall immediately remove from the Work Supplier's personnel who Supplier determines are unfit, who create disciplinary, security or safety problems.
- 35.2 County reserves the right to request Supplier to remove immediately from County's site any personnel of Supplier, any Subcontractor, or any Subcontractor personnel, who in the sole opinion of County, (i) poses any threat to the security, health or safety of County, its property, its customers, or the public, (ii) whose conduct adversely affects the Work or reflects unfavorably upon County (iii) who have been terminated for cause by County.

36.0 **COMPLETE AGREEMENT:**

The Materials Contract is intended as the complete and exclusive statement of the terms of the agreement between the parties. The parties agree that parol or extrinsic evidence shall not be used to vary or contradict the express terms of the Materials Contract and that recourse shall not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of the Materials Contract. Except as specifically provided herein, the Materials Contract shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed with the same formality as the Materials Contract.



**WATER UTILITIES DEPARTMENT
INTEROFFICE MEMORANDUM**

DATE: August 14, 2009
TO: Jim Mize, Chief Assistant County Attorney
FROM: Stephen McGrew, P.E. through
Maurice Tobon, P.E., Director of Engineering
Water Utilities Department
RE: Florida Power and Light
Reclaimed Water Pipeline Project / WUD 08-031
Sales Tax Recovery on Owner Furnished Material
Attorney Approval Form - Purchase Order No. WUD 08-031 - 11

MEMO:

The attached submittal includes the necessary paperwork to process a purchase order for tangible personal property to be provided to the contractor as "government furnished equipment" under the Tax Recovery Program.


Please review the package including the terms and conditions and verify that the purchase complies with the rules governing this program. Your signature below will serve as the Assistant County Attorney's Approval as required by the Purchasing Department.

Should you have any questions, please call Steve McGrew at 493-6110.

Please Check One:

Approved, and package:
forwarded to WUD Procurement (Attn: Conrad Ailstock, 493-6240 - Fax)
Copy to Water Utilities (Attn: Steve McGrew, 493-6113 - Fax)

Returned to Water Utilities with comments (WUD – Attn: Steve McGrew, 493-6110)


Signature

9/1/09
Date

c: Brian Shields, P.E.
Maurice Tobon, P.E.
File 08-031-11

ATTACHMENT B
PER PALM BEACH COUNTY PO # 08-031-11

PBC Central Regional Reclaimed Water Pipeline Eastern Section
Project Nos. WUD 08-031-B
Palm Beach County, Florida

Invoicing address:
Palm Beach County Water Utilities
8100 Forest Hill Blvd.
West Palm Beach, FL 33413

Per Palm Beach County

Issued To: US Pipe & Foundry Company, LLC
5205 Watermill Lane #305
Titusville, Florida 32780
Attn: Todd Lewis

Delivery Address:

TBD

Call for delivery instruction: (772) 528-9025

Date	Project No.	Deliverery Date	Ship via	F.O.B.	Terms
8/18/2009	WUD 08-031-B	As released by Felix Associates, LLC	VENDOR	Project Site	Net 30

In the event of a conflict between the elements of this Purchase Order, the descending order of enforcement precedence shall be: 1. the Purchase Order, 2. Attachment A and 3. this Attachment B. Invalidation of terms of any portion of this agreement by a terms of higher precedence will be done without invalidating the remaining terms and conditions.

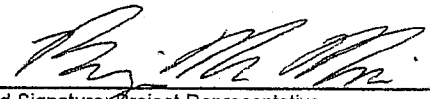
Attachments:

1. Palm Beach County Purchase Order # 08-031-11.
2. Attachment A is included by reference and provides Palm Beach County Terms and Conditions applicable to this Purchase Order.
3. Attachment B, this Purchase Requisition Request Form with attachments, is included by reference and provides a description of materials and equipment as required and provides applicable terms and conditions.

Notes:

1. Contract Schedule: Schedule Shipment as coordinated by Felix Associates, LLC. Submit a minimum of six (6) copies of shop drawings for approval.
2. Vendor shall sign a duplicate copy of the Purchase Order to acknowledge the receipt of this order, acceptance of of all Terms and Conditions and return to the Water Utilities Department, Attn: Procurement Manager, 8100 Forest Hill Blvd., WPB, FL 33413
3. This Purchase Order confirms acceptance of WUD 08-031-B.
4. Materials for FOB jobsite.
5. All shipments must be labeled "County Furnished material for Project No.WUD 08-031-B"
6. Materials shall be complete and in strict accordance with Plans and Specifications "PBC Central Regional Reclaimed Water Pipeline prepared by PBCWUD, WUD 08-031-B"
7. All deliveries must be scheduled 24 hours in advance.

Quantity	Description	Unit Cost	Total
30500 LF	36" TYTON DIP CL200 NOM ACL/AC	\$ 73.17	\$2,231,685.00
4620 LF	36" TR FLEX DIP CL200 17'11 NOM ACL/AC	\$ 115.67	\$534,395.40
	S&H		
	SubTotal		\$2,766,080.40
	Sales Tax Rate		Exempt
	Sales Tax		Exempt
	Total Due		\$2,766,080.40


Authorized Signature Project Representative
Benjamin M. Miller



**MORE
THAN
JUST
PIPE.**

U.S. Pipe & Foundry Company, LLC

14580 Saint Georges Hill Dr Orlando, FL 32828
PHONE: (407) 482-3996 FAX: (407) 482-3997

Date: 5/29/2009 ATTN--> BEN MILLER-FELIX & ASSOC
Project: WEST PALM BEACH, FL
FPL RECLAIMED WATER MAIN
Quote # 052909FTL Revision # 1 Bid Date: 5/29/2009 Addendums:
Engineer:

Sales Terms: Sales Terms posted at www.uspipe.com under Terms and Conditions of Sale / Purchase.
Payment: Net 30 Days - 1.5% surcharge per month after.
Taxes: Prices do not include any local, state, or federal taxes. Applicable taxes will be added to your invoice unless a valid Tax Exemption Certificate is furnished in a form satisfactory to taxing authorities.
Freight: Freight allowed to **JOBSITE** defined as WEST PALM BEACH, FL for FULL TRUCKLOAD quantities only. (40,000#)
Delivery: Shipment available Stock to 16 weeks ARO. Please call prior to release for most current lead times by item.
Acceptance: This quote is subject to acceptance by purchase order within 30 days from Bid Date listed above. If a purchase order is not received within 30 days from the Bid Date, this proposal may be withdrawn.

Pricing Escalation Terms: Due to continuing volatility in the price of raw materials, energy, and transportation, the pricing for TYTON®, TR FLEX®, and HP LOK® pipe represented on this quotation cannot be held firm for a period of more than **90 days**. Fittings and Flanged/Fabricated ductile iron pipe prices cannot be held for a period of more than 180 days from the date of quotation. Orders, releases, and or shipments placed or made after these time periods lapse will be subject to price in effect at the time of release. This requirement is expected to continue until such a time that the volatility referenced above moderates. The reasons for this volatility continue to be well documented in the media and we therefore must also reserve the right to increase prices on short notice if extreme volatility is experienced.

We are pleased to offer you our proposal for furnishing the ductile iron pipe and fittings listed herein: All pipe and fittings are quoted with our standard cement mortar lining and seal coated on the inside and outside with our standard asphaltic coating unless otherwise noted. This is our understanding of the requirements as indicated in the project plans & specifications. We believe the material included does reasonably cover the requirements. **However, you should carefully check this list, as it is not in any way guaranteed.** This quotation contains special material not subject to return or cancellation. It is the responsibility of the ordering party to verify quantities, sizes, and descriptions prior to order placement. The responsibility lies with the ordering party to determine the suitability of the material being quoted for the intended use. We appreciate the opportunity of submitting this proposal and hope that we may have the pleasure of furnishing your ductile iron pressure pipe and fitting requirements on this project. If we can be of further assistance, please do not hesitate to call.

Sincerely,

Todd Lewis

NOTES: SPECIFICATION AND SCOPE

1. NOTE: Some components and other materials including but not limited to flanges, gaskets, and fittings, may be globally sourced and **NOT of domestic manufacture**. We supply third-party manufactured items to augment our product line and production capacity to meet customer's needs.
2. NOTE: All Fabricated Products are subject to U.S. Pipe Engineering Review and approval prior to production.
3. NOTE: All WELDED OUTLET and BOSSES must have adequate support designed and/or approved by the project engineer. The support must be provided to prevent loads and moments being applied during installation and/or operation. Refer to our brochure for more information.
4. NOTE: All prices included on this quotation are based on ALL items to be purchased from U.S. PIPE. If any items are to be furnished by others, ALL prices for ALL items are subject to change.
5. NOTE: FBE (Fusion Bonded Epoxy) Coated Fittings may be quoted and/or furnished on this project. These fittings meet all the requirements of AWWA C153 specification.
6. NOTE: All Lead Times are based on the manufacturing schedule at the time of this quotation. Manufacturing Lead Times at the time of order may change.
7. NOTE: All cost for materials and labor required to electrically bond ductile iron pipe and fittings joints is **NOT** included in our quotation and will **NOT** be furnished by U.S. Pipe.
8. NOTE: All FLANGED joint prices do **NOT** include FLG accessories (bolts, nuts, gaskets) unless noted separately. We can furnish pricing upon request.
9. NOTE: All MJ fittings and MJ valves are quoted **W/O Accessories**. We can furnish itemized pricing for MJ accessories upon request.
10. NOTE: Gaskets for TYTON® and TR FLEX® joint pipe and fittings are quoted as standard SBR material unless specifically shown on our quote. We can furnish pricing for special push on gaskets upon request.
11. NOTE: All POLYWRAP is to be furnished **by others** if required unless specifically itemized on this quotation. We can furnish pricing upon request.
12. NOTE: Unless otherwise stated, we have **NOT** quoted restraint connections for materials quoted by others or not manufactured by U.S. Pipe. Please check the quotation carefully to insure you have the restraint you require. We may quote additional restraint upon request.

13. NOTE: Unless materials are specifically listed in our quotation, they are **NOT** included as part of our proposal. If you have any questions concerning the items which are included or NOT included, please discuss with your U.S. Pipe Sales Rep listed on this quotation prior to project bid time.
14. CAUTION: U.S. Pipe recommends the use of FULL FACE FLANGE-TYTE® Gaskets or RING FLANGE-TYTE® Gaskets with ductile iron flanged joint products supplied by U.S. Pipe. These gaskets were designed specifically for the unique surface of ductile iron. Flat rubber gaskets are NOT considered equal in performance and may not provide the sealing capability the project requires. In addition, their use could result in unintended damage to the flanges and threads of the fabricated pipe by applying excess torque to the bolts/flanges in order to seal the joint.
15. LAYOUT DRAWINGS: We can furnish products from your bill of material or we can furnish a dimensioned bill of material complete with LAYOUT DRAWINGS of our products from the Engineer's plans and specifications for your approval. LAYOUT DRAWINGS are \$800/sheet. This charge includes up to (2) revisions per drawing. Additional revisions cost \$50/revision or \$800 for a complete re-draw. These costs include 4 copies for distribution. Additional copies cost \$10 per drawing. Drawing charges are additional and not included in the totals below unless specifically shown.

Date: 5/29/2009 ATTN--> BEN MILLER-FELIX & ASSOC

Project: WEST PALM BEACH, FL
FPL RECLAIMED WATER MAIN

Quote # 052909FTL Revision # 1 Bid Date: 5/29/2009 Addendums:

SEQ#	QUAN.	DESCRIPTION	LENGTH	WEIGHT #	PRICE	TOTAL	
		<p>ARRA (6-1-09): We understand this project may receive funds from the American Recovery and Reinvestment Act of 2009. The Buy American Section 1605 of the ARRA requires that all iron, steel and manufactured goods used in a public project be produced or manufactured in the United States.</p> <p>PIPE: All of our ductile iron pipe is manufactured at locations in Alabama and California.</p> <p>FLANGED PIPE: All of our ductile iron flanged pipe utilizes only U.S. manufactured ductile iron pipe and all machining and flange assembly required to complete the finished product is done in the USA.</p> <p>FITTINGS: Ductile iron fittings quoted are manufactured in the USA with exceptions noted by the letter (F) in the product description. Based on our current understanding on the date of this quotation, these items will require a waiver from the regulating authority prior to use for this project.</p> <p>DE MINIMIS JOINT MATERIALS: Items noted by the letters (FC) in the product description are currently considered foreign de minimis joint components. In addition, TYTON® and TR FLEX® pipe and fittings include foreign de minimis components such as gaskets, glands, bolts, and locking segments. On May 22nd, 2009, the EPA issued a national waiver for these items "where such components comprise no more than 5% of the total cost of the materials used in the project". If necessary, U.S. Pipe will certify the % content of these items for our bid and/or sales order.</p>					
	30,500 FT	36" TYTON® DIP CL200 18' NOM ACL/AC		4,944,050	\$73.17 FT	\$2,231,685.00	
	4,620 FT	36" TR FLEX® DIP CL200 17'11 NOM ACL/AC		748,902	\$115.67 FT	\$534,395.40	
						\$2,766,080.40	

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ATTACHMENT A TO PBC SPECIAL CONDITIONS
TERMS AND CONDITIONS FOR MATERIALS – RECLAIM WATER PIPELINE PROJECT

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ATTACHMENT A TO PBC SPECIAL CONDITIONS
TERMS AND CONDITIONS FOR MATERIALS – RECLAIM WATER PIPELINE PROJECT

1.0 **DEFINITIONS:**

When used in these TERMS AND CONDITIONS FOR MATERIALS – RECLAIM WATER PIPELINE PROJECT (“Terms”) with initial or complete capitalization, whether in singular or in plural, the following terms have the following defined meanings:

- 1.1 Change Form: A signed County form which serves as an amendment to the Materials Contract and which may include changes in the scope of Work.
- 1.2 Company Representative: The individual within County having responsibility and authority for administration of the Materials Contract on behalf of County and his alternates. If the Company Representative is not identified in the Materials Contract, Supplier shall contact the procurement representative identified in the Materials Contract to identify such individual(s).
- 1.3 County: Palm Beach County, Florida, a political subdivision of the State of Florida.
- 1.4 County Entities: County, the City of West Palm Beach, the East Central Regional Wastewater Treatment Facilities Operations Board, and the FPL Entities and their respective officers, directors, agents and employees.
- 1.5 Cure: Supplier’s obligation and actions to repair, replace or otherwise correct any failure to meet a warranty obligation or to repair, replace or otherwise correct any defect, deficiency or nonconformance with the conditions and standards prescribed in Section 9.0, WARRANTY.
- 1.6 Force Majeure Event: Any event or circumstance, or combination of events or circumstances, that arises after the date hereof, is beyond the reasonable control of the party claiming the Force Majeure Event, is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the party claiming the Force Majeure Event and has an impact which will actually, demonstrably, adversely and materially affect County’s ability to perform its obligations in accordance with the terms of the Materials Contract or has an impact which will actually, demonstrably, adversely and materially affect the performance of Supplier’s obligations in accordance with the terms of the Materials Contract; subject to the satisfaction of the foregoing criteria, Force Majeure Events include the following: acts of God, natural disasters, fires, earthquakes, lightning, floods, storms, civil disturbances, riots, war and military invasion. Notwithstanding the foregoing, the definition of “Force Majeure Event” shall not include: strikes, work stoppages (or deteriorations), slowdowns or other labor actions; any labor or manpower shortages; unavailability, late delivery, failure, breakage or malfunction of equipment or materials or events that affect the cost of equipment or materials; economic hardship (including lack of money); delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by governmental authorities; changes in applicable laws or applicable permits; reasonably foreseeable weather conditions in the Jobsite’s geographic area (Supplier acknowledges that it has factored into the schedule a sufficient number of lost days to account for such weather conditions) or elsewhere; actions of a government authority with respect to Supplier’s compliance with applicable laws or applicable permits; any failure by Supplier to obtain and/or maintain any applicable permit it is required to obtain and/or maintain hereunder; or any other act, omission, delay, default or failure (financial or otherwise) of a Subcontractor.
- 1.7 FPL Entities: Florida Power & Light Company, its contractors, parent, subsidiaries and any affiliated company of FPL Group, Inc. and their respective officers, directors, agents and employees.
- 1.8 Materials Contract: The agreement between County and Supplier as set forth in (i) the body of the Purchase Document, (ii) these Terms, (iii) other documents as may be incorporated into the Purchase Document such as supplemental terms and conditions, drawings, specifications, and schedules, and (iv) any subsequent Change Forms.
- 1.9 Purchase Document: The County purchase order or purchase contract form that is part of and incorporates the remaining documents comprising the Materials Contract.
- 1.10 Subcontractor: Any person, firm, partnership, association, joint venture, company, corporation or other entity, regardless of tier, having an agreement, formal or informal, with Supplier to provide any part of the Work under the Materials Contract. The term Subcontractor shall include vendors and suppliers of Supplier.
- 1.11 Supplier: The individual or organization responsible for performing the Work identified in the Purchase Document.
- 1.12 Supplier Event of Default: Has the meaning as set forth in Section 21.1.
- 1.13 Work: Work shall include any and all materials, goods, consumables, equipment, delivery, tools, drawings, manuals, documents, and all other necessary activities for the execution and timely completion of Supplier’s obligations under the Materials Contract.

2.0 **ACCEPTANCE AND ACKNOWLEDGMENT:**

Supplier shall acknowledge agreement to any Purchase Document or Change Form, or notify County by phone, followed by a mailed summary, of any exceptions within five (5) working days of receipt of such document. Acknowledgements for Purchase Documents shall be mailed to the County purchasing agent who issued the document. Acknowledgements for Change Forms shall be mailed to the County purchasing agent or Company Representative, as applicable, who issued the document. Acknowledgements for Purchase Documents shall be mailed to the Company Representative. Failure of Supplier to respond within the time period or Supplier’s commencement or delivery of Work, whichever is earlier, shall be deemed

ATTACHMENT A TO PBC SPECIAL CONDITIONS
TERMS AND CONDITIONS FOR MATERIALS – RECLAIM WATER PIPELINE PROJECT

acceptance of the terms by Supplier. No terms and conditions stated by Supplier in the acknowledgement or otherwise in accepting the Materials Contract shall be binding upon County unless specifically accepted by County through its issuance of a Change Form, and County hereby objects to any such additional terms and conditions.

3.0 **SCOPE OF WORK:**

- 3.1 Supplier shall perform all activities necessary for its completion of the Work specified in the Materials Contract.
- 3.2 Changes in the scope of the Materials Contract, including any and all modifications, changes and/or additions to the Work, will only be performed when authorized by a Change Form.
- 3.3 Any claims for recovery of costs which are not clearly set forth herein or by issuance of a Change Form must be asserted by Supplier in writing within thirty (30) calendar days after the cause of such claim has occurred. In the event a dispute arises as to the equitable adjustment of such claim, Supplier, at the direction of County, shall proceed with the Work pending resolution of the dispute.
- 3.4 In performing any part of the Work at a County Entities' site, including Cure pursuant to Section 9.0, WARRANTY, Supplier shall comply with the County site rules and regulations, copies of which shall be provided to Supplier upon request.
- 3.5 Supplier shall not permit or suffer the introduction or use of intoxicating liquor, firearms, or drugs upon the Work, including Cure, or upon any of the grounds occupied or controlled by Supplier.
- 3.6 All Supplier and Subcontractor employees shall be subject to "post accident" and/or "reasonable suspicion" controlled substances and alcohol testing while at a County site. "Reasonable suspicion" shall be determined in the sole discretion of County. No Supplier or Subcontractor employee required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- 3.7 It is understood and agreed that County is entering into the Materials Contract not only for its own benefit but also equally for the direct benefit of the FPL Entities and that each and every right, benefit, remedy and warranty accruing to County hereunder likewise accrue to the FPL Entities, including, but not limited to, the right of FPL to enforce the Materials Contract in its name or on behalf of the County.

4.0 **PACKAGING AND SHIPPING:**

- 4.1 Supplier shall comply with the specifications requirements regarding packaging or in the absence thereof shall package and/or crate all shipments to ensure adequate protection from damage during loading, shipping, and hauling. Supplier shall load and secure all shipments to comply with all tariff rules and regulations to ensure adequate protection from in-transit damage to the applicable delivery destination.

5.0 **DELIVERY AND RECOVERY PLAN:**

- 5.1 Time of delivery or performance of the Materials Contract is of the essence. Supplier shall give immediate written notice to County setting forth the length of and reason for any anticipated delay.
- 5.2 If, at any time or from time to time, County determines, in its sole discretion, that: (i) Supplier has failed to show adequate progress of performance of the Work toward completion of a milestone by the date required by the applicable milestone date, or (ii) Supplier has failed to achieve a milestone by the applicable milestone date, then, on each such date, Supplier shall promptly, but in any event within two (2) business days of such date, submit for approval by County a written recovery plan to complete all necessary Work to achieve completion of the remaining milestones by the applicable milestone dates. County shall approve or submit reasonable revisions to such written recovery plan. Supplier shall incorporate such revisions into such recovery plan and resubmit such recovery plan to County for approval within two (2) business days of receipt of County's revisions. Upon approval by County, Supplier shall diligently prosecute the Work in accordance with such recovery plan. Neither approval by County of such recovery plan nor Supplier's prosecution of the Work in compliance with such recovery plan shall (i) be deemed in any way to have relieved Supplier of its obligations under the Materials Contract relating to the failure to timely achieve any milestone by the applicable milestone date, or (ii) be a basis for a Change Form or any other compensation or an increase in the Materials Contract price. In the event that Supplier fails to deliver a recovery plan in accordance with this Section 5.2 or fails to comply with such recovery plan or thereafter fails to achieve a milestone by the applicable milestone date, County shall have the right to direct Supplier to accelerate the Work by means of overtime, additional personnel, additional shifts, additional equipment and/or re-sequencing of the Work. Supplier agrees that it shall not be entitled to a Change Form or any other compensation or increase in the Materials Contract price in connection with the implementation of any recovery plan or any such direction to accelerate. This Section 5.2 shall not be construed to limit any of the rights and remedies hereunder.

6.0 **PAYMENT:**

- 6.1 All payments shall be due and payable in accordance with the County Purchase Document. Payment due dates and cash discounts shall be calculated based on the latter of the date (i) of receipt of a correct invoice, (ii) of receipt of required documentation, and (iii) of acceptance of Work. Invoices shall be dated to reflect the actual transmittal

ATTACHMENT A TO PBC SPECIAL CONDITIONS
TERMS AND CONDITIONS FOR MATERIALS – RECLAIM WATER PIPELINE PROJECT

date. Invoices that are not correct or properly documented shall be returned to Supplier. Corrected invoices shall be retransmitted.

6.2 County may withhold any payment or any portion thereof to protect it from loss on account of Supplier's failure, or County's reasonable belief that Supplier may fail, to comply with the provisions of the Materials Contract or any Supplier Event of Default. After Supplier remedies the cause of withholding identified pursuant to this Section 6.2, payment shall be made for the amounts withheld within forty-five (45) days after Supplier demand therefore after such remedy.

6.3 Supplier shall, at Supplier's sole expense, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with applicable law, within ten (10) days after receipt of a demand from County, any lien in respect to the Work, the Materials Contract, or personal property included in the Work (whether or not any such lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Supplier or any Subcontractor, or other person or entity providing labor or materials within the scope of the Work. Upon the failure of Supplier to promptly discharge or cause to be released any lien as required by this Section 6.3, within thirty (30) days of notice of the existence thereof, County may, but shall not be obligated to, pay, discharge or obtain a surety bond for such lien and, upon such payment, discharge or posting of surety bond therefore, shall be entitled to immediately recover from Supplier the amount thereof together with all actual and reasonable expenses incurred by County in connection with such payment, discharge or posting, or set-off all such amounts against any sums owed by County to Supplier. Supplier shall immediately provide County notice of the filing of any lien against the Work, the Materials Contract, or personal property included in the Work promptly upon learning of the existence or filing of such lien.

6.4 In consideration of each payment to Supplier hereunder and on the date of any request for payment hereunder, Supplier does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit claim all actions, claims and demands, of any kind whatsoever, which Supplier ever had or then has (or, upon final payment hereunder, may have in the future), known or unknown, against the Work, the property on which the Work is located, or against County Entities and all persons and entities acting for any of them, including, without limitation, all claims related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like which have occurred or may be claimed to have occurred related to the Work for which Supplier receives payment by County. Supplier acknowledges and agrees that the releases and waivers given by Supplier pursuant to this Section 6.4 are freely and voluntarily given by Supplier and Supplier has had the advice of counsel in connection herewith and is fully informed as to the legal effects of such releases and waivers.

7.0 **SET-OFF:**

County shall be entitled at all times to set-off any amount due from Supplier to County against any amount payable by County to Supplier under the Materials Contract.

8.0 **VISITS AND INSPECTIONS:**

8.1 All Work shall be properly inspected by Supplier and shall at all times be subject to additional inspection by County. Representatives of County shall have the right to visit the facilities of Supplier and Subcontractors, if any, and witness the Work being performed provided they make arrangements in advance of such visits. Representatives from County shall comply with pertinent safety and security regulations.

8.2 Supplier shall maintain books and records supporting all costs for the work hereunder. During Supplier's customary business hours for the duration of the Contract, and for a period of two years thereafter, County shall have access to such books and to other records of Supplier as may be required to verify any and all reimbursable costs.

9.0 **WARRANTY:**

9.1 Supplier warrants that the Work furnished under the Materials Contract shall be (i) provided in conformance with all specifications and other descriptions and requirements set forth in the Materials Contract; (ii) performed in accordance with standards of care, skill and diligence consistent with recognized and sound industry practices, procedures and techniques; (iii) delivered to County free from faulty design (to the extent of Supplier's design responsibilities); (iv) constructed utilizing new materials and equipment free from faults and defects and of sufficient size, capability and materials to meet in all respects the requirements and operating conditions specified in the Materials Contract; (v) suitable for the use intended; (vi) in conformance with applicable laws, regulations and codes; and (vii) conveyed with free and clear title.

9.2 If any failure to meet the foregoing warranty, or any additional warranties or performance guarantees as may be specified elsewhere in the Materials Contract, occurs or is discovered during the performance of the Work or within twelve (12) months from the date Work is placed in service or eighteen months after delivery to the applicable County location, whichever is earlier (or such longer period of time as may be stated elsewhere in the Materials Contract), Supplier shall immediately Cure all materials, equipment or Work (including payment for labor associated with such Cure inclusive of disassembly, removal, replacement and reinstallation charges) affected by such failure at

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Supplier's sole cost and expense. Supplier shall reimburse County for costs directly incurred by County as a result of reliance by County on Work that fails to meet such warranties. Work so Cured shall be warranted for an additional period of twelve (12) months (or such longer period of time as may be stated elsewhere in the Materials Contract), following completion of the Cure. Notwithstanding the above, there shall be no time limitations on Supplier's warranty of free and clear title.

9.3 Neither payment, nor any other provision of the Materials Contract, nor partial or entire use or possession of the Work shall relieve Supplier of liability with respect to the warranties contained in the Materials Contract.

9.4 County shall give written notice to Supplier of any failure of the Work or nonconformance with the warranties or performance guarantees discovered by County. All warranty Work shall be performed on a schedule established by County as required to support system operations. County shall, without impact to the warranties provided in this Section 9.0, have the right to operate and otherwise use the Work until such time as County deems prudent to suspend such operation or use for Cure by Supplier. If the Work has been placed in service, Supplier shall make such corrections or replacements as soon as County deems it prudent to remove the Work from service for any warranty Cure by Supplier, even if the warranty expires prior to the removal of the Work from service. Supplier shall provide labor for Cure on a straight time and overtime basis, at its expense, as necessary to meet County's schedule.

9.5 On all warranty issues, Supplier shall address such issues and provide County with the following information on each issue as it occurs: (i) root cause of the issue; (ii) analysis information concluding root cause as defined; (iii) material required for repair or replacement; and (iv) manpower requirements for repair or replacement.

9.6 Whenever Cure is required, Supplier shall bear the risk of loss or damage for Work requiring Cure during the period of such Cure. If any Work must be removed from the jobsite, transportation charges associated with any Cure shall be borne by Supplier. Supplier shall revise any and all drawings, as appropriate, to reflect any changes or modifications made during Cure.

9.7 If Supplier fails or refuses to effect Cure of nonconforming Work or fails to (i) identify the problem, schedule for Cure and initiate Cure within a reasonable period not to exceed two (2) calendar days after written notice of nonconformance and (ii) complete Cure, utilizing its best efforts, within a reasonable period of time not to exceed ten (10) calendar days (or such period or periods as County may authorize in writing), County may effect such Cure without impairing the warranties stated in this Section 9.0, and charge the cost incurred by County thereby to Supplier. In addition, if Supplier fails to furnish timely disposition instructions, County may dispose of the nonconforming Work in a reasonable manner, in which case County shall be entitled to reimbursement from Supplier for reasonable expenses as well as for any excess cost incurred in the disposition of said Work.

9.8 Supplier shall obtain, for the benefit of County, all available warranties of Subcontractors for all materials and equipment manufactured or furnished or Work performed by them to the extent such warranties exceed the requirement of the warranties set forth in this Section 9.0. To the extent such warranties are in written form, originals identifying County as the warranty beneficiary shall be furnished to County. Supplier's warranty shall be primary to any additional warranties furnished under this Section 9.8

9.9 Supplier warrants that the written instructions regarding use of the Work shall conform to accepted engineering and operating practices as of the time such instructions are prepared. If any non-conformance of this warranty occurs or is discovered, Supplier shall furnish, at no cost to County, corrected instructions. In the event such non-conformance causes the Work to (i) be damaged or (ii) fail to meet applicable performance standards, Supplier shall effect Cure as specified in this Section 9.0.

9.10 On a schedule convenient to County, Supplier shall be granted access to the Work to perform Cure and shall be solely responsible for the disassembly, removal, replacement and reinstallation of all ductwork, structures, electrical work, instrumentation, insulation or any equipment or any obstruction, all at Supplier's expense. Upon completion of Cure, all Work shall be returned or restored to its proper and original conditions, including but not limited to fit alignment, adjustment and finish.

9.11 The warranties and remedies provided herein shall be in addition to all warranties and remedies provided by law.

10.0 **INTENTIONALLY LEFT BLANK**

11.0 **TAXES:**

11.1 Supplier is responsible for and shall pay all taxes due under the Materials Contract, if any, including all present or future import duty, federal, state, county, municipal or other excise or similar taxes levied with respect to the Work, excepting all current Florida sales and use taxes which shall be paid in accordance with the instructions contained in the Purchase Document. Supplier expressly agrees that County shall incur no liability or expense under the Materials Contract due to change in tax or duty requirements, excluding Florida sales and use tax. Any increase in taxes or duties, excluding Florida sales and use tax, shall be at the expense of Supplier and not County.

11.2 In no event shall County be required to pay any tax levied on or determined by Supplier's income, taxes expressly designed to be paid solely by Supplier or licenses and permits required for Supplier to conduct business.

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- 11.3 County shall not be obligated to pay, and shall be immediately reimbursed by Supplier if County does pay, any taxes, including penalties or interest charges levied or assessed by reason of any failure of Supplier to comply with the Materials Contract, applicable laws or governmental regulations, and Supplier shall indemnify and save County harmless from the payment of any and all such taxes penalties and interest.
- 12.0 **RISK OF LOSS; F.O.B. AND TRANSPORTATION TERMS:**
- 12.1 The following are the risk of loss and transportation terms application to the Work under the Materials Contract:
- 12.1.1 F.O.B. destination, freight prepaid and allowed;
 - 12.1.2 Title and risk of loss pass to County at destination point;
 - 12.1.3 Supplier prepays freight charges;
 - 12.1.4 Supplier bears freight charges; and
 - 12.1.5 Supplier must file claims for loss, damage or overcharges (if any) for Work in transit. Supplier will file such claim as long as the County provides the Supplier with notice of damage upon receiving the damaged goods and can provide a legible and (i) in the case of non-crated Work, a signed bill of lading acknowledged in writing by the freight carrier personnel stating that the materials were rejected due to damage or received with damage, or (ii) in the case of crated Work, a signed bill of lading stating that the materials were rejected due to damage or received with damage.
- 12.2 Supplier shall bear all costs related to any demurrage incurred in connection with the delivery of the Work except to the extent any such demurrage costs are the result of any of the County Entities' inability to accept the applicable portion of the Work on the dates that County is obligated to take delivery of such Work. However, Supplier waives all right to claim that it entitled to any demurrage costs related to: (i) delays due to local restrictions as may be specified by local authorities; (ii) delays due to any Supplier (or Sub-contractor) vehicle's condition, or breakdown, or inability of the Supplier (or its Subcontractors) vehicle's facilities to discharge the Work; (iii) delays due to prohibition of discharging at anytime by the owner or operator of the vehicle or by local authorities; (iv) delays due to any Work spill or discharge or threat thereof caused by any defect in the Supplier (or Subcontractor) vehicle or equipment or act or failure to act by the operator of the vehicle; (v) delays due to the vehicle's violation of operating or safety rules, regulations or requirements in place at the time of delivery; or (vi) delays due to noncompliance with applicable laws, rules and regulations. If County is not able to accept Work as required under the Materials Contract and Supplier incurs demurrage costs for which it is entitled to relief, then any such demurrage cost relief that Supplier may be entitled to collect shall be in accordance with Section 23.0, SUSPENSION FOR CONVENIENCE.
- 13.0 **ORDER OF INTERPRETATION:**
In case of conflict between or among documents related to the Materials Contract, the following order of precedence shall apply unless otherwise specified: first: Change Forms, second: information contained in the body of the Purchase Document, third: these Terms, and last: other documents incorporated into the Purchase Document. In case of conflict among Change Forms, the Change Form with the most recent date shall take precedence.
- 14.0 **PATENT OR COPYRIGHT INFRINGEMENT:**
- 14.1 Supplier shall pay all royalties and license fees and at its sole expense shall provide for County Entities the right to use any Supplier-provided design, device, material or process covered by a patent or copyright. Supplier shall, at its sole expense, defend, indemnify and hold County Entities harmless from and against liability or loss, including all costs, expenses, and attorneys' fees, claims, suits or judgments in connection with alleged infringements of patents, copyrighted or uncopyrighted works, secret processes, trade secrets, patented or unpatented inventions, articles or appliances, or claims thereof pertaining to the Work, or any parts or combinations thereof, processes therein or the tools or implements used by Supplier.
- 14.2 If, in any such suit or proceeding, a temporary restraining order or preliminary injunction is granted, Supplier shall immediately exert its best efforts, by giving satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order.
- 14.3 If, in any such suit or proceeding, the Work, any part, combination or process thereof is held to constitute an infringement and its use is permanently enjoined, Supplier shall immediately exert its best efforts to secure for County a license, at no expense to County, authorizing its continued use. If Supplier is unable to secure such license within a reasonable time, Supplier shall, at its own expense, and without impairing either (i) performance requirements of the Work, any part, combination, or process thereof, or (ii) other normal operations of County, use its best efforts to either replace the affected Work, part, combination or process thereof with non-infringing components or parts, or modify same so that they become non-infringing.
- 14.4 At County's option and sole discretion, Supplier shall immediately refund all monies paid by County to Supplier for the Work, should Supplier fail to secure a license or replace or modify such Work, pursuant to Section 14.3, or secure the lifting of an injunction, pursuant to Section 14.2, within a reasonable time.

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15.0 **OWNERSHIP:**

Supplier acknowledges and agrees that County is permitted to create training materials and/or manuals to be used internally by County. All rights and title to such materials and manuals will be owned by County. Supplier hereby authorizes and grants to County the right to use Supplier provided documentation, data, drawings, pictures and logos in such materials and manuals.

16.0 **INDEPENDENT CONTRACTOR:**

Supplier is at all times and shall remain an independent contractor and not a subcontractor, agent or employee of County Entities, solely responsible for completing its Work under the Materials Contract with full power and authority to select the methods, means and manner of performing such Work, so long as such methods, means and manner conform to all applicable specifications and drawings or authorized changes thereto and do not adversely affect the completed improvements or efforts of other suppliers and subcontractors in the execution of their work. County retains no control or direction over Supplier, its employees and Subcontractors or over the detail, manner or methods of performance of the Work by Supplier, its employees and Subcontractors.

17.0 **INDEMNITY:**

Supplier agrees to protect, defend, indemnify and hold County Entities free and unharmed from and against all expenses, costs, charges, damages, claims, suits, losses or liabilities (including attorney's fees) whatsoever arising out of claims arising or resulting from any bodily injury (including death) or property damage claim or allegation in connection with the Materials Contract to the extent caused by the negligence of Supplier, its employees, Subcontractors, Subcontractor employees.

18.0 **INSURANCE:**

18.1 Before commencing Work at any County site, Supplier shall procure and maintain the following minimum insurance, unless otherwise specified in the Purchase Document, covering all operations required to complete the Work in forms and with insurance companies acceptable to County:

18.1.1 All insurance requirements required by law, which shall include without limitation, workers' compensation insurance for statutory requirement imposed by workers' compensation laws and comprehensive automobile liability insurance.

18.1.2 Comprehensive Automobile Liability Insurance which shall apply to all owned, non-owned, leased and hired automobiles used by Supplier with minimum limits of liability as follows:

18.1.2.1 Automobile Physical Damage - Insured for the replacement value of all vehicles leased borrowed by Supplier from County Entities; and

18.1.2.2 Bodily Injury Liability and Property Damage Liability - One Million Dollars (\$1,000,000) combined single limit per occurrence.

18.1.3 General Liability Insurance, including Broad Form Contractual Liability Coverage and Products/Completed Operations Liability Coverage, including coverage for damage caused by explosion, collapse or structural injury and damage to underground facilities, with minimum limits of One Million Dollars (\$1,000,000) combined single limit per occurrence for Bodily Injury and Property Damage Liability, which shall insure the performance of the contractual obligations assumed by Supplier under the Materials Contract. The Products/Completed Operations Liability Insurance shall be provided for a period of at least one year after completion of the Work.

18.2 In the event that any policy furnished by Supplier provides for coverage on a "claims made" basis, the retroactive date of the policy shall be the same as the effective date of the Materials Contract, or such other date, as to protect the interest of County Entities. Furthermore, for all policies furnished on a "claims made" basis, Supplier's providing of such coverage shall survive the termination of the Materials Contract and the expiration of any applicable warranty period, pursuant to Section 9.0, WARRANTY, until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. If coverage is on "occurrence" basis, Supplier shall maintain such insurance during the entire term of the Materials Contract.

18.3 Supplier shall promptly provide evidence of the minimum coverage by providing an ACORD or other certificate of insurance acceptable to County. Neither Supplier's failure to provide evidence of minimum coverage of insurance following County's request, nor County's decision to not make such request, shall release Supplier from its obligation to maintain the minimum coverage provided for in this Section 18.0.

18.4 Supplier shall name County Entities as additional insureds on Supplier's liability policies required pursuant to this Section 18.0. All policies of insurance required to be maintained by Supplier hereunder shall: (i) be endorsed to specify that they are primary to and not excess to or on a contributing basis with any insurance or self-insurance maintained by County Entities; (ii) provide a severability of interests or cross liability clause; (iii) provide waivers of subrogation (or the equivalent thereof) in favor of County Entities as may be requested by County, from its Subcontractors and their respective agents, officers and employees; (iv) provide that County and any additional insured shall be provided thirty (30) days' prior written notice of any material policy changes, non-renewals or

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cancellations; and (v) waive any right of subrogation against County Entities and waive any other right of the insurers to any off-set or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of County Entities.

18.5 Nothing in this Section 18.0 shall be deemed to limit Supplier's liability under the Materials Contract regardless of the insurance coverages required by this Section 18.0. No limitation of liability provided to Supplier under the Materials Contract is intended nor shall run to the benefit of any insurance company or in any way prejudice, alter, diminish, abridge or reduce, in any respect, the amount of proceeds of insurance otherwise payable to County under coverage required to be carried by Supplier under the Materials Contract, it being the intent of the parties that the full amount of insurance coverage bargained for be actually available notwithstanding any limitation of liability contained in the Materials Contract, if any.

18.6 Supplier shall be responsible for the payment of any deductible of any insurance coverage required pursuant to this Section 18.0.

18.7 In the event Supplier performs Work pursuant to Section 9.0, WARRANTY, Supplier shall comply with the requirements in this Section 18.0.

19.0 **LIMITATIONS OF LIABILITY:**

Neither the County nor any of the County Entities shall be liable to Supplier for consequential, special, exemplary, indirect or incidental losses or damages, including loss of use, lost production, cost of capital, loss of goodwill, loss of contract, lost revenues or loss of profit, and Supplier hereby releases County and each of the County Entities from any such liability. Supplier shall secure the limitations of liability in this Section 19.0 in all its subcontracts.

20.0 **FORCE MAJEURE:**

20.1 So long as the conditions set forth in this Section 20.1 are satisfied, neither party shall be responsible or liable for or deemed in breach of the Materials Contract because of any failure or delay in complying with its obligations under or pursuant to the Materials Contract to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof, and in such event:

20.1.1 The party claiming a Force Majeure Event shall give the other party Notice describing the particulars of the cause and nature of the occurrence, with written notice given promptly after the occurrence of the Force Majeure Event, and in no event more than ten (10) business days after the affected party becomes aware of such occurrence and as soon as reasonably practicable, but in any case within fifteen (15) business days after such occurrence, the party claiming a Force Majeure Event shall give the other party sufficient proof of the occurrence of such Force Majeure Event and written notice estimating the Force Majeure Event's expected duration and probable impact on the performance of such party's obligations hereunder, and such affected party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;

20.1.2 The performance of the party claiming the Force Majeure Event of its obligations hereunder shall be suspended, provided the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the effects of the Force Majeure Event;

20.1.3 Any liability of either party, which arose before the occurrence of the Force Majeure Event causing the suspension of performance, shall not be excused as a result of the occurrence;

20.1.4 The affected party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform and limit damages to the other party;

20.1.5 The affected party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

20.1.6 When the affected party is able to resume performance of the affected obligations under the Materials Contract, that party shall give the other party written notice to that effect, and the affected party promptly shall resume performance under the Materials Contract.

20.2 So long as the conditions set forth in Section 20.1 are satisfied, Supplier shall be entitled to suspension of performance or extension of time (including an extension of the applicable Guaranteed Substantial Completion Date to the extent achievement thereof is affected) with respect to a Force Majeure Event to the extent agreed upon by both parties pursuant to a Change Form. A party's failure to comply with the provisions of this Section 20.1 shall constitute a waiver of any claim of a Force Majeure Event.

20.3 The burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses a party from performance under Section 20.1 shall be upon the party claiming such Force Majeure Event.

21.0 **CANCELLATION AND TERMINATION FOR CAUSE:**

21.1 The occurrence of any one or more of the following events shall constitute an event of default by Supplier hereunder ("Supplier Event of Default"):

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- 21.1.1 Supplier disregards any provision of any applicable law, and such condition remains un-remedied for five (5) calendar days (or other such period approved by County in writing) following written notice thereof by County
 - 21.1.2 Failure by Supplier to deliver any recovery plan described in Section 5.2 in accordance with the terms of such Section, or following approval of a recovery plan pursuant to such Section, the failure of Supplier to comply with such recovery plan;
 - 21.1.3 Failure by Supplier to maintain the insurance coverages required of it in accordance with Section 18.0;
 - 21.1.4 Failure of Supplier to perform any other obligation hereunder and such failure is not Cured within five (5) business days after receipt from County of notice of such failure;
 - 21.1.5 Reasonable grounds for insecurity arise with respect to Supplier's expected performance and Supplier fails to furnish adequate assurance of due performance within five (5) calendar days after a written request by County for such adequate assurance; and
 - 21.1.6 Any of the following occurs: (i) Supplier consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Supplier files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of companies, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Supplier's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order; or (iv) Supplier is adjudged bankrupt or insolvent, has any property sequestered by court order or has filed against it a petition or claim under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect.
- 21.2 Notwithstanding anything contained herein, County reserves the right to inspect and/or refuse any Work or to cancel all or any part of the Materials Contract if Supplier fails to deliver or perform in accordance with the terms of the Materials Contract. Work rejected as not conforming to the Materials Contract shall be returned at Supplier's risk and expense. Acceptance of any part of the Work shall not bind County to accept future shipment or service, or deprive it of the right to revoke acceptance of Work already accepted.
- 21.3 Upon the occurrence and during the continuation of any Supplier Event of Default, County, in addition to other rights and remedies it may have at law, in equity or under the Materials Contract, shall have the right to terminate the Materials Contract for cause by written notice to Supplier without termination charge or penalty. County shall, within a reasonable period of time after the Work is finally completed by the work of one or more replacement suppliers, determine the total cost (including such other supplier's fees) to County for completing the Work, including all sums previously paid or then owed to Supplier pursuant to the Materials Contract. If the total price for the re-procured Work hereunder is less than the sum of (i) all costs and expenses incurred by County to engage a substitute supplier to complete (or Cure deficiencies or defects in) the Work and/or deliver replacement Work, including, without limitation, overhead and legal, engineering and other professional expenses, (ii) all other costs, expenses and damages suffered by County as a result of a default or breach by Supplier of the requirements of the Materials Contract and the termination of the Materials Contract as a result thereof, and (iii) all amounts payable or previously paid to Supplier pursuant to the Materials Contract, Supplier shall pay to County on demand, the amount of such difference. Acceptance of any part of the Work shall not bind County to accept future shipment, or deprive it of the right to revoke acceptance of Work already accepted. Supplier shall receive payment for Work accepted by County but shall be retained by County until after completion of the Work and applied by County to pay any amounts and damages owed by Supplier pursuant to this Section 21.3. Any excess shall be remitted to Supplier within sixty (60) days after the Work is finally completed. Such payment shall be Supplier's exclusive remedy for termination. Upon written notice, Supplier shall stop all Work hereunder unless specified otherwise by County in the notice. County shall not incur any costs for Work in process or any associated costs for Work not accepted or when acceptance has been revoked when terminating for cause (e.g., material commitments, production or assembly line expenses, or warehouse costs).
- 21.4 Upon the occurrence and during the continuance of a Supplier Event of Default but prior to termination of the Materials Contract with respect to any Work by County, County may, without prejudice to any of its other rights and remedies, (i) make such payments or perform such obligations as are required to cure such Supplier Event of Default, and (ii) County may seek reimbursement of any actual costs it incurs in making such payments or performing such obligations as required to cure such Supplier Event of Default.

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- 21.5 In the event of termination for cause under Section 21.0, County shall have no liability to Supplier for costs incurred by Supplier as a result of such termination nor for any costs incurred by Supplier following its receipt of a written termination notice.
- 21.6 In the event the cause for termination is determined by a court of competent jurisdiction to be unfounded, the parties agree to treat the termination as one of convenience under Section 22.0, TERMINATION FOR CONVENIENCE.
- 22.0 **TERMINATION FOR CONVENIENCE:**
- 22.1 In addition to County's rights to terminate pursuant to Section 21.0, TERMINATION FOR CAUSE, upon two (2) business days written notice to Supplier, County may at its sole discretion and without prejudice to any other right or remedy, terminate the whole or any part of the Materials Contract for its convenience. Such termination shall be effective in the manner specified in the written notice. Should County elect to terminate the Materials Contract under this Section 22.0, complete settlement of all claims of Supplier arising thereunder shall be made as follows:
- 22.1.1 County shall compensate Supplier for such services performed after the date written notice is given only as approved in advance by County.
- 22.1.2 County shall pay Supplier for that portion of the Work actually completed in accordance with the terms of the Materials Contract.
- 22.1.3 Supplier shall take all reasonable steps to minimize termination charges, costs and liability with respect to terminated Work. At its option, County may conduct an audit of Supplier's records to verify that termination charges are reasonable and proper. Payment of such termination charges shall be County's sole obligation and Supplier's exclusive remedy for termination for convenience.
- 22.2 Prior to final settlement, Supplier shall furnish a complete general release of all claims by Supplier against County.
- 23.0 **SUSPENSION FOR CONVENIENCE:**
- 23.1 County may, at its convenience and in its sole discretion, by notice to Supplier, suspend at any time the performance of all or any portion of the Work. If all of the Work is suspended, the expiration date of the Materials Contract shall automatically be extended for a period of time equal to the duration of the anticipated suspension period. During the period of suspension, Supplier shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with suspension.
- 23.2 Upon receipt of any such notice, Supplier shall, unless the notice requires otherwise:
- 23.2.1 Immediately discontinue Work on the date and to the extent specified in the notice.
- 23.2.2 Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
- 23.2.3 Immediately make every reasonable effort to obtain suspension upon terms satisfactory to County of all orders, subcontracts and rental agreements to the extent they relate to performance of Work suspended;
- 23.2.4 Continue to protect and preserve the Work; and
- 23.2.5 Immediately consult with County to determine if any portion of the Work is in a state of manufacture, fabrication, or erection such that interruption of Work would result in substantially increased costs. If both parties agree, with County's written concurrence, Supplier may complete such portion of the Work.
- 23.3 As full compensation for such suspension, Supplier shall be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such direct costs result from such suspension of Work:
- 23.3.1 All reasonable costs of mobilization and demobilization of Supplier's forces and equipment actually incurred by Supplier; and
- 23.3.2 All reasonable costs of protecting and preserving any portion of the Work completed or delivered actually incurred by Supplier.
- 24.0 **COMPLIANCE WITH LAWS, RULES AND REGULATIONS:**
- 24.1 The Materials Contract shall be construed in accordance with and governed by the laws of the State of Florida without giving effect to its conflict of laws provisions.
- 24.2 Supplier shall perform all Work in accordance with all applicable codes, laws, rules, regulations, orders and standards of federal, state, regional, local and municipal governmental agencies, and all standards, rules, regulations and orders issued by such agencies.
- 24.3 Supplier shall provide all inspections required by law and shall pay all fees and charges in connection therewith, unless otherwise provided in the Materials Contract.
- 24.4 If Supplier observes that any part of the Materials Contract is at variance with this Section 24.0 in any respect, it shall immediately notify the Company Representative in writing and any necessary changes shall be made by Change Form. If Supplier performs any work contrary to law, Supplier shall assume full responsibility therefor and shall bear all costs attributable thereto.
- 24.5 Supplier shall, at its own expense, defend, indemnify and save harmless County Entities from and against all liability, loss or damage (including attorneys' fees and other defense costs) assessed against or suffered by County Entities as a result of an allegation or claim of noncompliance by Supplier with this Section 24.0.

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24.6 Supplier agrees to conduct all business with County in an ethical manner. Supplier shall not give any commissions or payments whatsoever to any employee or agent of County, nor give any gifts or entertainment which reasonably could be considered as intending to influence such person. Supplier hereby confirms that there are no conflicts of interest between County Entities and Supplier of which Supplier's management is (or reasonably should be) aware. Prohibited conflicts of interest include, but are not limited to, circumstances where, (i) an County employee (or a close family member of an employee) is an officer of Supplier, (ii) an County employee and/or close family members of an employee collectively have a greater than 5% ownership interest in Supplier, or (iii) an employee of County (or close family member of an employee) stands to gain personally from business between County and Supplier. Supplier hereby acknowledges that any violation of this Section 24.6 would constitute a violation of County's corporate policies, and may result in the termination for cause of this Materials Contract and of other contracts between Supplier and County. Should Supplier become aware, or have reasonable suspicion, that a violation of this Section 24.6 exists, Supplier shall promptly notify County's Company Representative. In addition, Supplier shall promptly notify County's Internal Auditing department of any solicitation of Supplier by an employee or agent of County with the apparent intent of encouraging Supplier to violate this Section 24.6.

24.7 It is County's policy to seek out and encourage the use of small business concerns (as defined by the Federal government) to the greatest extent possible and County encourages Supplier to do the same. In the event that this Materials Contract offers opportunities for subcontracting, Supplier shall to the extent consistent with efficient contract performance, provide opportunities to participate to small, disadvantaged, veteran, woman- or minority-owned subcontractors as described in the "Utilization Clause" set forth in Federal regulation FAR 52-219-8. In addition, if this Materials Contract offers opportunities for subcontracting and has a value in excess of Five Hundred Fifty Thousand Dollars (\$550,000) and offers opportunities for subcontracting, Supplier (unless Supplier is itself a defined small business concern) shall adopt and comply with a subcontracting plan as described in Federal regulation FAR 52-219-9.

25.0 **EQUAL EMPLOYMENT OPPORTUNITY, CIVIL RIGHTS AND HOMELAND SECURITY:**

25.1 Supplier shall conform to the requirements of (i) the Equal Employment Opportunity clause in Section 202, Paragraphs 1 through 7, of Executive Order 11246, as amended, (ii) applicable portions of Executive Orders 11701 and 11758, relative to Equal Employment Opportunity, (iii) Section 503 of the Rehabilitation Act of 1973, (iv) the Americans with Disabilities Act, (v) and the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (vi) the Implementing Rules and Regulations of the Office of Federal Contract Compliance Programs, and to impose these requirements upon applicable Subcontractors.

25.2 Supplier shall ensure that it has as well as its Subcontractors have complied with the Department of Homeland Security Bureau of U.S. Citizenship and Immigration Services Employment Eligibility Form I-9 for all employees performing any Work at any County site, including, without limitation, examination of documents that establish identity and citizenship.

26.0 **ASSIGNMENT:**

26.1 Neither the Materials Contract, nor the Work, nor any duty, interest or rights hereunder shall be subcontracted, assigned, transferred, delegated or otherwise disposed of by Supplier without County's prior written approval. However, County may at any time and at its sole and unrestrained discretion assign the Materials Contract to any of the County Entities by written notice to Supplier.

26.2 No assignment or transfer of the Materials Contract shall relieve either party of any of its obligations hereunder until such obligations have been assumed by the assignee and agreed to by County, Supplier and assignee.

26.3 If the Materials Contract should be permitted to be assigned by either party, it shall be binding upon and shall inure to the benefit of the permitted assignee.

27.0 **EFFECT OF SECTION HEADINGS:**

Section headings appearing in the Materials Contract are inserted for convenience of reference only and shall in no way be construed to be interpretations of the text.

28.0 **SEVERABILITY OF PROVISIONS:**

Should any provision, portion or application thereof, of the Materials Contract be determined by a court of competent jurisdiction to be illegal, unenforceable or in conflict with any applicable law, the parties shall negotiate an equitable adjustment to the affected provisions of the Materials Contract with a view toward effecting the purpose of the Materials Contract and the validity and enforceability of the remaining provisions, portions or applications thereof, shall not be impaired.

29.0 **SURVIVAL:**

The obligations of the parties hereunder which by their nature survive the termination of the Materials Contract and/or the completion of the Work hereunder, shall survive and inure to the benefit of the parties including but not limited to Sections 6.0, 9.0, 11.0, 14.0, 15.0, 17.0, 18.0, 19.0, 25.0, 32.0, 33.0, 34.0. Those provisions of the Materials Contract which provide

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for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination of the Materials Contract and/or completion of the Work.

30.0 **County APPROVAL:**

The parties explicitly recognize that County's reviews, agreement, approvals, disapprovals and authorizations pursuant to the Materials Contract are administrative in nature and do not relieve Supplier of its obligations under the Materials Contract or impose any such obligations on County.

31.0 **NONWAIVER:**

Failure by County or the Company Representative to enforce any provisions hereof, County's or the Company Representative's failure or delay in exercising any rights or remedies provided herein or by law, County's approval of, acceptance of, or payment for the Work, or any part or combination thereof, or any purported oral modification or rescission of the Materials Contract by an employee or agent of County shall neither relieve nor release Supplier from any of its obligations under the Materials Contract, shall not be deemed a waiver of any right of County to insist upon strict performance hereof or of County's rights or remedies under the Materials Contract or by law, and shall not operate as a waiver of any of the provisions hereof.

32.0 **CONSTRUCTION:**

32.1 The parties acknowledge and agree that each party has carefully reviewed these Terms, and that any presumption or rule of construction resolving ambiguities against the drafting party shall not be employed in the interpretation of these Terms.

32.2 The provisions of the Convention on the International Sale of Goods shall not apply to the Materials Contract.

33.0 **DISPUTE RESOLUTION:**

Any disputes resulting in litigation between the parties shall be conducted in the state courts of the State of Florida. Proceedings shall take place in the Circuit Court for Palm Beach County, Florida, or the United States District Court for the Southern District of Florida located in West Palm Beach.

34.0 **PROPRIETARY MATERIAL AND CONFIDENTIALITY:**

34.1 Any materials belonging to or in the possession of County, whether written, printed or otherwise recorded, as well as all Work products resulting from the Materials Contract, shall be used by Supplier only in the performance of its duties hereunder and Supplier shall not record, reference, reproduce or use such materials for any other purpose without the express written consent of County. All rights, title to and interest in such material shall remain with County, and all such material shall be surrendered to County immediately upon termination of the Materials Contract, or any time prior thereto, upon the request of County.

34.2 Supplier and its agents, Subcontractors and employees shall not disclose or use, other than as may be required in the performance of the Materials Contract, such material including, without limitation, any material relating to (i) County Entities or (ii) any person or organization dealing with County, both during the period of performance of the Materials Contract and thereafter.

34.3 Neither Supplier nor Subcontractors shall (i) release any information (including photographic recordings or any information concerning the Materials Contract, the Work, or any part thereof) or (ii) make any announcements except as may be required by law, to any third party, member of the public, press or official body, unless prior written consent is obtained from County.

34.4 Supplier, in the performance of the Work under the Materials Contract, shall comply with and shall protect, and shall require Subcontractors to comply with and protect, all rights of patents, including patent pending, copyrights, trademarks, secret processes, trade secrets and any other proprietary interest (i) of County, (ii) which County is obligated to comply with or protect or (iii) which are otherwise involved in or related to Supplier's performance of the Work under the Materials Contract.

34.5 Any information, designs, data or engineering results delivered to County hereunder and which are generated for the first time by Supplier under the Materials Contract solely at County's expense shall be considered County confidential material and shall become the property of County.

34.6 Supplier shall include the provisions of this Section 34.0 in all its subcontracts.

35.0 **CHARACTER OF WORKERS:**

35.1 Supplier shall at all times enforce strict discipline and good order among personnel engaged in the performance of the Work and shall ensure that all personnel are skilled in, qualified for and otherwise fit for the performance of the portion of the Work assigned to such personnel. Supplier shall immediately remove from the Work Supplier's personnel who Supplier determines are unfit, who create disciplinary, security or safety problems.

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35.2 County reserves the right to request Supplier to remove immediately from County's site any personnel of Supplier, any Subcontractor, or any Subcontractor personnel, who in the sole opinion of County, (i) poses any threat to the security, health or safety of County, its property, its customers, or the public, (ii) whose conduct adversely affects the Work or reflects unfavorably upon County (iii) who have been terminated for cause by County.

36.0 **COMPLETE AGREEMENT:**

The Materials Contract is intended as the complete and exclusive statement of the terms of the agreement between the parties. The parties agree that parol or extrinsic evidence shall not be used to vary or contradict the express terms of the Materials Contract and that recourse shall not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of the Materials Contract. Except as specifically provided herein, the Materials Contract shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed with the same formality as the Materials Contract.