

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

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<b>Meeting Date:</b>	July 20, 2010	<b>Consent [X]</b>	<b>Regular [ ]</b>
		<b>Public Hearing [ ]</b>	
<b>Submitted By:</b>	Water Utilities Department		
<b>Submitted For:</b>	Water Utilities Department		

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**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to approve:** A Purchase Agreement with Orica Watercare, Inc. for Miex DOC Anion Exchange Resin for the Water Treatment Plant (WTP) No. 2 Miex Treatment System in the total estimated amount of \$1,900,000 over a five year term.

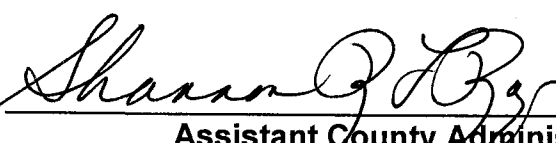
**Summary:** On June 29, 2010 (R2010-1038) the Board of County Commissioners awarded the Contract for the construction of the WTP No. 2 Miex Treatment System to John J. Kirlin LLC. The Miex anion exchange process will remove the dissolved organic carbon (DOC) color compounds, improve the water quality and reduce energy consumption compared to the existing ozone treatment process. Orica Watercare, Inc. located in Watkins, Colorado is a sole source provider of the proprietary Miex DOC Anion Exchange resin. The initial delivery in February of 2011 will fill the treatment basins at an estimated cost of \$700,000. Yearly operational costs for resin replacement are estimated to be \$300,000 for treating an average of 10 million gallons of water per day. The five year Purchase Agreement includes a consumer price index (CPI) escalation clause. The Small Business Enterprise (SBE) participation goal established by the SBE Ordinance (R2002-0064) is 15.00% overall. This Contract with Orica Watercare, Inc. provides for SBE participation of zero overall. Overall the WTP No. 2 Miex Treatment System project including design, construction and start-up resin provides 15.70% SBE participation which exceeds the 15% SBE goal. (WUD Project No. 09-046) District 2 (JM)

**Background and Justification:** The Ozone treatment system at WTP No. 2 is reaching the end of its useful life and spare parts are no longer available. Miex DOC Anion Exchange Resin is a proprietary process and Orica Watercare, Inc. is the sole source provider of the resin which is manufactured in Australia. The Purchase Agreement is recommended for Board approval in July 2010 to avoid the scheduled August 2010 price increase by Orica Watercare, Inc. The Agreement was reviewed by the County Attorney's office and the terms and conditions are acceptable.

**Attachments:**

1. Two (2) Original Purchase Agreements
2. Sole Source Letter
3. Insurance Certificate
4. Location Map

Recommended By:  7/1/2010  
Department Director Date

Approved By:  7/12/10  
Assistant County Administrator Date

## **II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2010	2011	2012	2013	2014	2015
Capital Expenditures	<u>0</u>	<u>\$700,000.00</u>	<u>\$300,000.00</u>	<u>\$300,000.00</u>	<u>\$300,000.00</u>	<u>\$300,000.00</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>\$700,000.00</u>	<u>\$300,000.00</u>	<u>\$300,000.00</u>	<u>\$300,000.00</u>	<u>\$300,000.00</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Budget Account No.:	Fund <u>4011</u>	Dept <u>721</u>	Unit <u>W002</u>	Object <u>6541</u>	\$700,000.00 (FY 11)	
Budget Account No.:	Fund <u>4001</u>	Dept <u>720</u>	Unit <u>2535</u>	Object <u>5205</u>	\$300,000.00 (FY 12 -15)	

Is Item Included in ~~Proposed~~ Budget? Yes X No       

Reporting Category N/A

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

One time capital expenditure to be funded from user fees and balance brought forward for FY 2011. Yearly resin replacement costs (FY 12 to FY 15) will be funded by operations and maintenance.

C. Department Fiscal Review: *Allura M Street*

### III. REVIEW COMMENTS

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

OFMB 7/7/10  
7/16/10

Dr. J. Jacob 7B110  
Contract Development and Control  
E. Jones 7/18/10  
This is a sole source  
requirements contract.

**B. Legal Sufficiency:**

James C. Meyer 7/12/10  
Assistant County Attorney

**C. Other Department Review:**

Department Director



Orica Watercare Inc.  
33101 East Quincy Avenue  
Watkins, CO 80137

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**MIEX® DOC RESIN SUPPLY AGREEMENT ("AGREEMENT")**

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**BUYER**                      Palm Beach County Water Utility Department, having a place of business at 8100 Forest Hill Boulevard, West Palm Beach, FL 33413

SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, ORICA WATERCARE INC. ("SELLER") AGREES TO SELL TO BUYER, AND BUYER AGREES TO PURCHASE FROM SELLER, MIEX® DOC RESIN ("GOODS") FOR USE IN BUYER'S WATER TREATMENT PLANT.

**TERM**                      This Agreement shall be effective for a period of three (3) years beginning on the date shown below (the "Term"). Thereafter, the Agreement shall be renewed automatically on a year-to-year basis for subsequent two (2) year periods ("Renewal Period"), unless either party notifies the other party in writing at least ninety (90) days prior to the end of the Term or any Renewal Period of its intention not to renew, in which event the Agreement shall terminate at the end of the then current Term or the Renewal Period.

**PRICES;  
QUANTITIES**              The price for the Goods shall be fixed for the first 12 months at \$13.50/liter (\$8,775.00 per Bulk 650 liter pack), exclusive of shipping charges. Thereafter, prices for the Goods shall be adjusted on each anniversary of the effective date of this Agreement as set out in Attachment A.

**ORDERS**                      Seller will ensure that sufficient quantities of MIEX ® Resin are supplied as may be required for the continued operation of the Plant. During the Term and any Renewal Period, Buyer shall source its requirements for water treatment resin for WTP #2 exclusively from Seller. At all times, Buy shall maintain an inventory of no less than four (4) 650 Liter bulk packs.

**PACKAGING**              Goods will be supplied in 1000 Liter bulk packs containing 650L of settled resin (see Attachment B).

**DELIVERY**                      Deliveries shall be made to Buyer's Plant. Buyer shall have available during normal business hours suitable equipment and personnel at the Plant to promptly unload all deliveries of Goods from the delivery vehicle. Deliveries shall be made within fifteen (15) business days from the date Seller receives Buyer's written order.

**PLANT  
OPERATIONS**              Buyer agrees to operate plant according to plant operating manual provided by Seller and to maintain records of operating history and conditions during the term of this Contract. Buyer agrees to provide Seller with access to relevant records and calculations on request.

**AGREEMENT  
DOCUMENTS**              This Agreement consists of this page, the attached Terms and Conditions, and Attachments A (Resin Price and Adjustment Terms) and B (Product Specifications).

**MIEX® DOC RESIN SUPPLY AGREEMENT**

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Contract on behalf of the said County ("Buyer") and caused the seal of the said County to be affixed hereto, and Orica Watercare, Inc. ("Seller") has hereunto set his hand and seal the day and year written. The Seller represents that it is authorized to execute this contract on behalf of itself.

ATTEST:  
SHARON R. BOCK  
CLERK AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA, A  
Political Subdivision of the State of Florida  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Burt Aaronson, Chair

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

\_\_\_\_\_  
Assistant County Attorney

\_\_\_\_\_  
Bevin A. Beaudet, P.E., Director  
Water Utilities Department

'SELLER'

By: Orica Watercare Inc.  
(Corporate Name)

a Delaware corporation  
(insert state of corporation)

By: \_\_\_\_\_  
(signatory)

Matthew Rowland  
(print signatory's name)

General Manager  
(print title)

June 25, 20\_\_\_\_  
(date of execution)

33101 East Quincy Avenue  
(Sellers's Official Address)

Watkins, CO 80137  
(Sellers's Official Address)

Ellen Brewer  
(witness signature)

ELLEN BREWER  
(witness name printed)

Scott Mitchell  
(witness signature)

SCOTT MITCHELL  
(witness name printed)

(Corporate Seal)

**Palm Beach County**  
**Resin Supply Agreement Terms and Conditions**

The following Terms and Conditions are applicable to this purchase order/contract entered into by and between Palm Beach County (referred to as Buyer) and Orica Watercare Inc. (referred to as Vendor or Seller).

**MODIFICATIONS**

No modifications of this order/contract, including but not limited to these terms and conditions, shall be binding upon Buyer unless approved by an authorized representative of Buyer's Purchasing Office, and agreed to in writing by the party to be bound.

**ASSIGNMENTS**

Assignments are prohibited unless prior written consent is given by the Buyer and the Seller.

**EXCUSABLE DELAYS**

The Buyer may grant additional time for any delay if the delay will not adversely impact the best interest of the County and is due to causes beyond the control of the Seller. Such grant must be in writing and made part of the order/contract.

If shipments are delayed or suspended by Buyer for any reason, any storage or other charges incurred by Seller as a result of Buyer's request for delay or suspension of a shipment date shall be for Buyer's account. All prices stated are subject to escalation during periods of delay or suspension requested or caused by Buyer. Escalation shall be based upon increases in the U.S. Consumer Price Index occurring between quotation date and date of actual shipment.

Extended Storage: Extended storage instructions, if necessary, will be supplied with the Goods shipped to Buyer. If Equipment installation and start-up is delayed more than thirty (30) days the provisions of the extended storage instructions must be followed in order to keep any warranty on the Goods in force and effect.

Shipment Dates: Shipping dates are estimates only and are subject to Seller's lead time policy.

**DEFAULT**

The County may, by written notice of default to the Seller, terminate the contract in whole or in part if the Seller fails to satisfactorily perform any provisions of this solicitation or resultant contract, or fails to make progress so as to endanger performance under the terms and conditions of this solicitation or resultant contract, or provides repeated non-performance, and does not remedy such failure within a period of 30 days (or such period as the Director of Purchasing may authorize in writing) after receipt of notice from the Director of Purchasing specifying such failure. In the event the County terminates this contract in whole or in part because of default of the successful bidder, the County may procure goods and/or services similar to those terminated, and the successful bidder shall be liable for any excess costs incurred due to this action.

If it is determined that the Seller was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of, the successful bidder), the rights and obligations of the parties shall be those provided in "Termination".

**TERMINATION**

The Buyer may, whenever the interests of the County so require, terminate the order/contract, in whole or in part, for the convenience of the County upon ninety (90) days written notice to seller. Unless directed differently in the notice of termination, the Seller shall incur no further obligations in connection with the order/contract. If Buyer terminates with less than 90 days notice, Buyer agrees to pay Seller an early termination penalty equal to the average monthly order prorated on a daily basis multiplied by the number of days less than 90. For example, if Buyer orders average 1000L per month over the past year and Buyer gives Seller 58 days written notice and price per Liter is \$13.50, Buyer's early termination fee would be  $((1000/30) \times (90 - 58)) \times \$13.50/L = \$14,400.00$ .

**FOB**

The F.O.B. point shall be destination. Freight charges shall be prepaid by the Seller and listed on the invoice; however, Seller retains title and assumes all responsibility, liability and risk in transit, and shall be responsible for the filing of claims for loss or damages.

Insurance: From the date of acceptance until the invoice is paid in full, Buyer shall maintain at its sole expense, insurance against loss or damage to the Goods in an amount no less than the total cost of the Goods. Such insurance shall name Seller as loss payee. Upon Seller's request, Buyer shall furnish evidence confirming the existence of the insurance described herein.

Buyer is responsible for disposing of all non-returnable containers and shipping

#### **PAYMENT TERMS**

The Seller agrees that payment terms shall be in accordance with the Florida Prompt Payment Act, Florida Statute 218.70.

In accordance with the Florida Prompt Payment Act, Florida Statute 218.70 payments not received when due shall incur service charges at the rate of 1% per month (12% per annum) until paid.

Seller reserves the right, among other remedies, to delay or suspend further shipments or require full or partial cash payment in advance until all sums due have been paid.

#### **INVOICING**

Seller must render original invoice to the Palm Beach County Water Utilities Department, 8100 Forest Hills Boulevard, West Palm Beach, Florida 33413

#### **TAXES**

The Buyer is exempt from Federal and State taxes.

Prices stated do not include any sales, use, excise, privilege, or other taxes or assessments imposed on the Goods sold hereunder.

#### **PURCHASE ORDER**

The Buyer will not accept any goods delivered or services performed unless a duly authorized purchase order has been issued for said goods and/or services. The purchase order number must appear on all invoices, packing slips and all correspondence concerning the order.

#### **CONTRACT**

Seller agrees that by submitting an offer (i.e. Request for Quotation) which is accepted by the Buyer (i.e. Purchase Order, Term Contract Notice) a binding contract is formed in accordance with the Buyer's terms, conditions and specifications as set forth in the solicitation and this purchase order. Seller certifies that the offer has been made by an officer or employee having the authority to bind the Seller. Accordingly, payment will **only** be made to the company and the address as provided in the Seller's offer unless prior written authorization is received from the Buyer.

#### **PRICING**

Seller warrants by virtue of submitting an offer that prices shall remain firm until **July 30, 2010** to allow Buyer to complete the balance of its procurement process for the project.

**The proposal from Seller includes only MLEX® DOC Resin specified herein and does not include, equipment, equipment installation or erection, or accessories or associated materials such as controls, piping, etc., unless otherwise specified herein.**

#### **DELIVERIES**

Deliveries are to be made Monday through Friday, excluding holidays, unless otherwise stipulated.

#### **INSPECTION/ACCEPTANCE**

All goods and/or services provided on this Purchase Order are subject to inspection and acceptance upon receipt or completion by an authorized representative of the Buyer. Payment shall not be authorized until the goods and/or services have been received, accepted and properly invoiced.

Receipt and acceptance (or notification in writing of any shortage or damage) shall occur within 10 days of physically receiving Goods. All claims for apparent damage or shortage shall be deemed waived unless made in writing and received by Seller within 20 days after Buyer's receipt of the Goods. For goods or materials which will not be uncrated until immediately prior to use or installation or for which damage or

shortage was not apparent until uncrated, claims shall be made within ten (10) days of uncrating such goods or materials. Failure to timely deliver written notice of any such claim shall be deemed an absolute and unconditional waiver of such claim, irrespective of whether the facts giving rise to such claim shall have then been discovered or of whether use or application of the Goods shall have then taken place.

Returns: Returned Goods shall not be accepted unless Buyer obtains prior written approval and transportation instructions from Seller. All Goods returned to Seller must be in full containers or cases, and in the same condition as when delivered. Goods may be returned for exchange or credit only. Seller shall give no cash refunds for returned Goods. Except for damaged goods, returned goods are subject to a restocking fee of 15% of the invoiced value of such goods and Buyer shall pay all transportation charges.

#### **QUANTITIES**

Quantities specified in the order/contract cannot be changed without Buyer approval. Goods shipped in excess of quantity designated may be returned at Seller's expense.

#### **DISCRIMINATION PROHIBITED**

Sellers doing business with the Buyer are prohibited from discriminating against any employee or client because of race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, or gender identity and expression.

#### **LEGAL REQUIREMENTS**

The Seller must strictly comply with all Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the goods and/or services provided herein. The UCC shall prevail as the basis for contractual obligations between the Seller and the Buyer for any terms and conditions not addressed. The Buyer shall not be liable to the Seller for any legal fees, court costs, or other legal expenses arising from the interpretation or enforcement of this order/contract, or from any other matter generated by or relating to this order/contract.

#### **CRIMINAL HISTORY RECORDS CHECK ORDINANCE**

Pursuant to Ordinance 2003-030, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), the County shall conduct fingerprint based criminal history record checks on all persons not employed by the County who repair, deliver, or provide goods or services for, to, or on behalf of the County. A fingerprint based criminal history record check shall be conducted on all employees and subcontractors of vendors, including repair persons and delivery persons, who are unescorted when entering a facility determined to be critical to the public safety and security of the County. County facilities that require this heightened level of security are identified in Resolution R-2003-1274, as may be amended. The bidder is solely responsible for understanding the financial, schedule, and staffing implications of this Ordinance. Further, the bidder acknowledges that its bid price includes any and all direct or indirect costs associated with compliance of this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the County.

#### **PUBLIC ENTITY CRIMES**

In accordance with the Florida Public Entity Crime Statute 287.132.133, persons and affiliates who are entering into a contract or performing any work in furtherance with Palm Beach County certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by Florida Statute 287.133 (3) (a).

#### **SBE PROGRAM**

In accordance with the Small Business Enterprise Program ("SBE") a preference is given to certified small businesses.

#### **INDEMNIFICATION**

To the extent authorized by law, Seller shall indemnify, save and hold harmless the Buyer, its employees and agents against any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by the Seller, or its employees, agents, subcontractors or assignees pursuant to the terms and conditions of this order/contract.

#### **MATERIAL SAFETY DATA SHEETS (MSDS)**

Seller compliance is required under Chapter 442, Florida Statutes; that any toxic substance delivered as a part of this order/contract must be accompanied by an MSDS.

No endorsements by the Buyer of the goods and/or services will be used by the Seller in any way, manner or form.

#### **VENUE**

Any and all legal actions arising from or necessary to enforce this order/contract shall be governed by the law of Florida and will be held in Palm Beach County.

#### **PUBLIC RECORDS**

Any information submitted relating to this order/contract will become a public document pursuant to Section 119.07, F.S.

#### **SALES PROMOTIONS / PRICE REDUCTIONS**

Should sales promotions occur during the term of the contract that lower the price of the procured item, the Seller shall extend to the County the lower price offered by the manufacturer on any such promotional item. Further, any price decreases effectuated during the contract period by reason of market change or otherwise, shall be passed on to Palm Beach County.

#### **PERFORMANCE DURING EMERGENCY**

Notwithstanding anything to the contrary in this Contract, deliveries and/or performance may be suspended or delayed by: acts of God; acts of civil or military authorities; war; riot; fire; explosion; flood; sabotage or acts of terrorism; lack of adequate fuel, power, raw materials, labor, containers or transportation facilities; changes in applicable governmental laws, regulations, or orders; breakage or failure of machinery or apparatus; labor disputes; acts or omissions of Buyer, its employees, officers or agents; or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of Seller which makes impractical the performance of the Services, or the manufacture, transportation, or shipment of the Products or of a material or other resource upon which the manufacture or transportation of the Goods depends.

#### **USE**

Buyer shall not resell, distribute or supply the Goods to any third party for any reason without Seller's prior written consent. Buyer shall not deconstruct, reverse compile or reverse engineer the Goods in any way for the purpose of deciphering or replicating the chemical composition of the Goods. Buyer shall not use the Goods for any purpose other than that identified in Seller's proposal or literature as the intended use of such Goods. Any warranty granted to Buyer shall be deemed void if any Goods are used for any purpose not permitted hereunder.

#### **INTELLECTUAL PROPERTY**

Seller is the sole and exclusive owner of the Intellectual Property in the Goods and the rights attached to that Intellectual Property. Nothing herein grants to Buyer any right, title or interest in or to any of the Intellectual Property in the Goods. Buyer shall not claim to have acquired any right, title or interest to the Intellectual Property in the Goods by virtue of purchasing Goods sold hereunder. As used herein, "Intellectual Property" means any intellectual or industrial property right anywhere in the world including, without limitation, any patent, patent application, utility model, copyright (including copyright in manuals, databases, and promotional materials), registered design and other design rights, and any other rights that may subsist anywhere in the world in improvements, inventions and other manufacturing processes or technical and other information of Seller.

#### **LIMITED WARRANTY**

Subject to Limitations of Liability below, Seller warrants title and that the Goods shall conform to Seller's standard specifications in effect at the time of manufacture. **SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, WHETHER USED ALONE OR IN COMBINATION WITH ANY OTHER GOODS, SUBSTANCES, PROCESSES OR MATERIALS.**

#### **LIMITATIONS OF LIABILITY**

In no event shall Seller be liable, whether arising under contract, tort (including negligence), strict liability or otherwise, for incidental, indirect, consequential or special damages of any kind, including without limitation lost profits, lost capital or revenues or loss by reason of service interruption or increased expense of operation. Under no circumstances shall Seller's liability exceed the sale price of the Goods giving rise to the liability. This paragraph is not intended to -- and shall not -- limit the indemnification of third party claims against Buyer under the Indemnification paragraph above.

#### **TRAINING**

Buyer warrants that all of its employees, contractors or other third parties to whom it grants access to the Goods (individually and collectively, the "Buyer Personnel") shall be fully trained and informed (without

assistance or reliance on Seller except as to the accuracy of specific safety information actually furnished by Seller or except as otherwise expressly agreed in writing) regarding the proper storage, handling and use of the Goods, including how to safely and properly maintain and operate the Goods. Buyer further warrants that all Buyer Personnel that handle or use the Goods (i) shall do so safely and in accordance with all applicable laws, regulations, warnings and instructions and currently accepted industry practice, and (ii) shall be fully licensed to the extent required by applicable law.

**Palm Beach County Office of the Inspector General**

Pursuant to Ordinance No. 2009-049, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and to detect waste, corruption and fraud. Where applicable, the cost of the Inspector General's Office shall be incorporated into the contract and shall be equal to one quarter (1/4) of one (1) percent of the contract price.

## ATTACHMENT A

### RESIN PRICE AND ADJUSTMENT TERMS

**Annual Adjustments.** On each anniversary of the effective date of this Agreement, the price per liter of the MIEX<sup>®</sup> DOC Resin will be increased by Seller by a percentage not to exceed the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items 1982-84=100, as published by the U.S. Bureau of Labor Statistics, over the immediately preceding twelve (12) month period. In no event, however, shall the prices for MIEX<sup>®</sup> DOC Resin be less than the prices paid during the previous twelve (12) months of the Agreement. In the event the index specified above is either unavailable or is no longer published, the most comprehensive official index then published by the United States Department of Labor, Bureau of Labor Statistics that most clearly approximates the index specified above shall be substituted in place thereof. Seller shall provide Buyer with fifteen (15) days written notice of the adjusted prices.

**Price Adjustments Due to Increased Costs.** If Seller experiences increases of more than ten percent (10%) in the aggregate costs of raw materials, handling and/or transportation of the MIEX<sup>®</sup> DOC Resin in any one calendar year, or more than twenty five percent (25%) in the aggregate during any three consecutive calendar years, Seller may notify Buyer of its need to increase the prices for the MIEX<sup>®</sup> DOC Resin to reflect such increased costs (the "Cost Notice"). Promptly after receipt by Buyer of any Cost Notice, Seller and Buyer shall negotiate in good faith to arrive at a revised price for the Goods that reflects such cost increases. If the parties have negotiated in good faith but are unable to agree on a revised price within sixty (60) days after receipt by Buyer of the Cost Notice, either party may terminate the Agreement upon ninety (90) days' notice to the other party. Seller shall fill all purchase orders received prior to the effective date of the price adjustment at the prices in effect at the time the purchase order was received by Seller.

**ATTACHMENT B**  
**PRODUCT SPECIFICATIONS<sup>1</sup>**

**Product Name:** MIEX<sup>®</sup> DOC Resin

**Product Use:**

Ion exchange resin for use in the MIEX<sup>®</sup> DOC resin process for water treatment.

**Appearance:**

Red-brown, fine, particulate solid, which settles rapidly when suspended in water. Slight frothing may occur when the product is first suspended in water

**Packaging:**

- 650 ± 50L settled resin in a 1000L bulk pack, remainder water
- Shipping weight approx 1500kgs (3300lbs)
- Some settling is expected in transit
- Tamper evident heat shrink wrapping on caps of inner sacks
- Smaller packages are available on request.

**Shelf Life:**

The shelf life of MIEX<sup>®</sup> DOC resin is twelve (12) months from date of delivery to Buyer's Plant, provided it is stored in accordance with Orica's written instructions.

**Product Characteristics:**

Bulk Density	0.220 ± 0.040 kg/L
Magnetic Prop.	>90% final settled volume in 1 min settling
Adsorption	>50% of UV absorbance removed after 30 mins contact
Durability	<60% reduction in mean diameter

*Test methods available on request*

**Test Purposes (for non standard tests)**

**Magnetic Properties:** Qualitative test to show that the MIEX<sup>®</sup> DOC resin is magnetized and settles rapidly.

**Adsorption:** Shows performance of resin under standard conditions.

**Durability:** Test to confirm resin strength.

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<sup>1</sup> Version 1.12: April 19 2004, ©2002 Orica Australia Pty Ltd., MIEX<sup>®</sup> is a registered trademark of Orica Australia Pty Ltd.  
MIEX(R) DOC Resin Supply Contract PBC WUD 06-23-10.doc



INTEROFFICE MEMORANDUM

Water Utilities Department  
Administration

P. O. Box 16097

West Palm Beach, FL 33416-6097

(561) 493-6000

Fax: (561) 493-6074

www.pbwater.com

Palm Beach County  
Board of County  
Commissioners

Burt Aaronson, Chair

Karen T. Marcus, Vice Chair

Jeff Koons

Shelley Vana

Steven L. Abrams

Jess R. Santamaria

Priscilla A. Taylor

County Administrator

Robert Weisman



"An Equal Opportunity  
Affirmative Action Employee"

DATE: June 24, 2010

TO: Bevin A. Beaudet, P.E., Water Utilities Director

FROM: Steve McGrew, P.E., WUD Engineering Division

THRU: Maurice Tobon, P.E., WUD Engineering Director

RE: **Sole Source – ORICA WATERCARE, INC.**

The Engineering Division of the Water Utilities Department requests an extended sole source procurement from ORICA WATERCARE, INC. to purchase MIEX DOC Resin, for the new MIEX DOC Resin system, based on the following sole source justification:

Based upon our expertise and comprehensive search of the market place, MIEX DOC Resin for the new MIEX DOC Resin System offered by ORICA WATERCARE, INC. provides the following unique characteristics that we require and, to the best of our knowledge, no other manufacturer can duplicate.

ORICA WATERCARE, INC. is the sole manufacturer and provider of the patented MIEX DOC Resin product, which is uniquely designed to allow for quick uptake of contaminant species within water, in addition to having a magnetized component allowing resin to quickly agglomerate when mixing energy is removed. The MIEX DOC Resin is the only product that will work in conjunction with the new MIEX DOC system, to be installed at Water Treatment Plant #2, improving water quality by dramatically reducing high levels of color, dissolved organic carbon (DOS), and disinfection byproducts; as required by Water Utilities.

For the above documented reasons and the attached sole source supporting documentation from the manufacturer, I request that the purchase be considered for approval as sole source.

Sole Source Letter attached.



June 17, 2010

Orica Watercare Inc.  
33101 East Quincy Avenue  
Watkins, Colorado 80137

Ms. Vernetha Green  
Manager of Procurement and Stores  
Palm Beach County  
Water Utilities Dept  
8100 Forest Hill Blvd.  
West Palm Beach, FL 33416

Tel 919-690-0008  
Fax 303-268-5250  
email [ellen.gaby@orica.com](mailto:ellen.gaby@orica.com)  
<http://www.miexresin.com>

**Re: MIEX® DOC Resin Sole Source Supply**

Dear Ms. Green:

Orica Watercare, Inc. is the sole manufacturer of the MIEX® DOC Resin. MIEX® DOC Resin is not sold or distributed by any other company.

MIEX® DOC Resin has been certified by the NSF as meeting all requirements for NSF/ANSI Standard 61 – Drinking Water System Components – Health Effects. The MIEX® DOC Resin has two very unique properties as compared to traditional ion exchange resins. First, the resin beads are very small, with an average diameter of 180 µm, which allows for very quick uptake of contaminant species within water. Second, each resin bead contains a magnetized component within their structure, which allows the beads to act as weak individual magnets. This magnetic attraction allows the resin to quickly agglomerate when mixing energy is removed. MIEX® DOC Resin is covered by US Patent 7,514,500 and International Patent AUS 1561 – PCT/AU 95/00583. The properties that make MIEX® DOC Resin unique – and the lowest cost solution to implement - also make it impossible for a substitute product to be used in the MIEX® Process.

Orica Watercare is committed to assisting Palm Beach County in any way that is required. Please feel free to contact me if you have any questions or require any additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ellen Rue Gaby', written over a horizontal line.

Ellen Rue Gaby  
Vice President of Sales  
Orica Watercare, Inc.

CC: Jim Kelley, Moss-Kelley, Inc.  
Shane Jones, Orica Watercare Inc.  
File

The Water Treatment Plant No. 2 Miex Treatment System was designed for removal of DOC to improve water quality using Orica Watercare's Miex DOC resin. This resin has been successfully used by the Village of Palm Springs since January 2005 to dramatically reduce color, DOC and disinfection byproducts. Orica Watercare is the sole source provider of the proprietary Miex DOC resin (US Patent 7,514,500 published April 7, 2009). Attached is the sole source letter from Orica Watercare.



# MIEX<sup>®</sup>DOC

## DBP/Color Problem Solved for Village of Palm Springs, Florida

*Client: Eckler Engineering*

*Location: 6MGD Main & 4MGD R.L. Pratt Water Treatment Plants, Village of Palm Springs, Florida*

### Background:

The Village of Palm Springs has two lime softening plants that utilize groundwater for their water source. Raw water for these plants is drawn from wells in the local surficial aquifer in Eastern Palm Beach County. This water source has high levels of color and dissolved organic carbon (DOC), which are not removed in the existing lime softening process. In the past, chlorine has been used to bleach out color from the treated water, but this practice was no longer acceptable under the Stage 1 EPA DBP Standards. This is a common problem with ground waters on the East Coast of Florida.

Eckler Engineering investigated pretreating the raw water with ozone and MIEX<sup>®</sup> resin to reduce color and DOC prior to disinfection so that 1/ the plants could be brought into compliance with the Stage 1 EPA DBP Standards, and 2/ water received by consumers would be aesthetically more pleasing. It was found that while ozone could reduce the color levels, very little DOC was removed and therefore high levels of DBPs would still be formed after final disinfection with chlorine.

- MIEX<sup>®</sup> resin reduced the raw water THMFP by 69% (from 167 to 51 µg/l) and reduced the HAAFP by 61% (from 94 to 37 µg/l) providing a comfortable safety margin below the EPA Standards (80 to 60 µg/l respectively).
- MIEX<sup>®</sup> treatment reduced raw water DOC by an average of 71% (from 11.8 to 3.4 mg/L), which allowed compliance with the EPA DBP standards
- MIEX<sup>®</sup> reduced the true color of the ground water by an average of 95% (from 27 to 1.3 Pt-Co units)

### Full Scale Performance:

Following the trial at the Main WTP, MIEX<sup>®</sup> pretreatment systems were installed at both the Village of Palm Spring's Main (6MGD) and R.L. Pratt (4MGD) water treatment plants. These plants were started-up in January 2005 and are producing treated water equal or better in quality than was achieved during the trial. Distribution THM and HAA levels have been reduced to less than 25 and 20 µg/l respectively, providing a large comfort margin below the EPA limits.

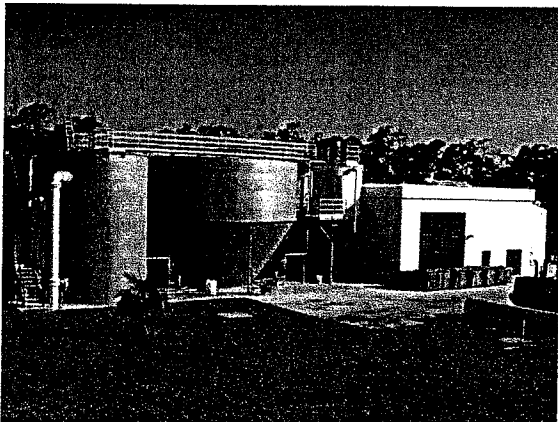


Figure 1: R.L. Pratt WTP (4 MGD) at the Village of Palm Springs, Florida.

### DBP, DOC and Color Reductions:

MIEX<sup>®</sup> bench and pilot scale tests that showed very good removal of color, DOC and DBP Formation Potentials. A pilot plant trial conducted at the Main WTP during January/February, 2003 demonstrated that the following results could be achieved:



Figure 2: MIEX<sup>®</sup> treated water (L) compared to the raw water (R). The small beaker contains brine after regeneration of loaded resin

Additional downstream benefits identified on the full-scale plants have been a 50% reduction in treated water chlorine demand, a 25% reduction in lime required for the softening process and increased filter run times downstream.



Orica Watercare Ph: 1-877-414-MIEX Fax: (303) 268-5250  
Email: [miex@orica.com](mailto:miex@orica.com) Web: [www.miexresin.com](http://www.miexresin.com)



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
06/30/2010

PRODUCER  
Aon Risk Insurance Services West, Inc.  
Denver CO Office  
4100 East Mississippi Avenue  
Suite 1500  
Denver CO 80246 USA

PHONE-(303) 758-7688      FAX-(303) 758-9458

INSURED  
Orica Watercare, Inc.  
33101 E Quincy Avenue  
Watkins CO 80137 USA

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Zurich American Ins Co	16535
INSURER B:	New Hampshire Ins Co	23841
INSURER C:		
INSURER D:		
INSURER E:		

Holder Identifier :

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

LIMITS SHOWN ARE AS REQUESTED

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MM/DD/YYYY)	POLICY EXPIRATION DATE(MM/DD/YYYY)	LIMITS	
A		GENERAL LIABILITY	GLC379286102	09/30/2009	09/30/2010	EACH OCCURRENCE	\$10,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
		<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$10,000,000
						GENERAL AGGREGATE	\$10,000,000
						PRODUCTS - COMP/OP AGG	\$10,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
A		AUTOMOBILE LIABILITY	BAP 3792838-02	09/30/2009	09/30/2010	COMBINED SINGLE LIMIT (Ea accident)	\$10,000,000
		<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	
		<input type="checkbox"/> HIRED AUTOS					
		<input type="checkbox"/> NON OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	
		<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY : EA ACC	
						AGG	
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	
		<input type="checkbox"/> DEDUCTIBLE					
		<input type="checkbox"/> RETENTION					
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC007207720	09/30/2009	09/30/2010	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
		ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)				E.L. EACH ACCIDENT	\$5,000,000
						E.L. DISEASE-EA EMPLOYEE	\$5,000,000
						E.L. DISEASE-POLICY LIMIT	\$5,000,000
		If yes, describe under SPECIAL PROVISIONS below					
		OTHER					

Certificate No : 570039457161

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Palm Beach County, a political subdivision of the State of Florida, its officers, agents and employees are included as Additional Insured with respect to the General Liability and Automobile Liability policies where required by contract.

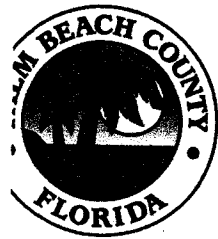
CERTIFICATE HOLDER

Palm Beach County  
Water Utilities Department  
Attn: Steve McGrew  
8100 Forest Hill Blvd.  
West Palm Beach FL 33413 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE *Aon Risk Insurance Services West Inc.*



**m Beach County  
Water Utilities  
Department  
ice Area (SA) and  
lajor Facilities**

Attachment 4

nd

PBC WUD UTILITY SA

Palm Beach County Limits

Mandatory Reclaimed SA

Administration

Water Reclamation Facility

Water Treatment Facility

Wetlands



NOT TO SCALE

