

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 19, 2010 Consent [X] Regular [ ]  
Public Hearing [ ]

Submitted By: Water Utilities Department  
Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: a Mitigation Agreement with the City of West Palm Beach (WPB) and payment in the amount of \$281,600 relating to the Reclaimed Water Agreement with Florida Power and Light (FPL).


**Summary:** On May 20, 2008, the Board of County Commissioners (BCC) approved an Interlocal Agreement (R2008-0908) with WPB related to the County providing reclaimed water to the FPL West County Energy Center (WCEC). This Agreement establishes the off-site mitigation required due to the construction of the County/FPL Reclaimed Pipeline Project (Project). WPB will enhance, restore, operate, monitor, and maintain approximately 8.8 acres of wetlands in WPB's Water Catchment Area at a total cost of \$281,600, to be reimbursed by FPL. District 6 (MJ)

**Background and Justification:** The Project requires environmental mitigation and WPB is the owner of the Water Catchment Area (GWP/WCA) for public water supply purposes and for environmental, educational, and conservation purposes. WPB has authority under regulatory rules of the South Florida Water Management District (SFWMD), Florida Department of Environmental Protection (FDEP), and the US Army Corps of Engineers (USACOE) to provide and manage long-term, applicable offsite mitigation sites within the ascribed boundaries of the GWP/WCA to act as compensatory mitigation to offset offsite wetland impacts. The COUNTY wishes to use 8.8 acres of freshwater herbaceous wetland (FHW) mitigation acres from the GWP/WCA to satisfy COUNTY's mitigation obligation to the FDEP and the USACOE for the Project.

**Attachments:**

- 1. Location Map
- 2. Three (3) Original Mitigation Agreements with the City of West Palm Beach.

Recommended By:  9/28/10  
Department Director Date

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

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	\$281,600.00	-0-	-0-	-0-	-0-
External Revenues	(\$281,600.00)	-0-	-0-	-0-	-0-
Operating Expenses	-0-	-0-	-0-	-0-	-0-
In-Kind Match County	-0-	-0-	-0-	-0-	-0-
<b>NET FISCAL IMPACT</b>	<b>-0</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-	-0-	-0-	-0-	-0-

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

Reporting Category N/A

Is Item Included in Current Budget? Yes X No

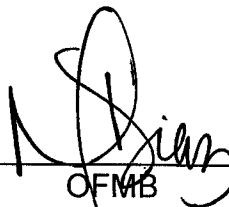
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**


The project is being 100% funded by FPL. The payments will be made from the proceeds of the Revenue Bonds Issue used to fund the project. FPL will pay all the related debt service costs resulting in no net fiscal impact to the County.

C. Department Fiscal Review: Selma M. West

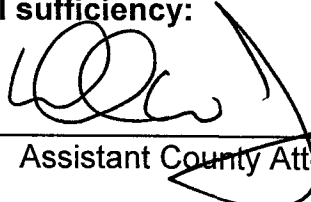
**III. REVIEW COMMENTS**

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


OFMB 10/5/10  
*col/4/10* *2/1/10*


Contract Development and Control 10/5/10

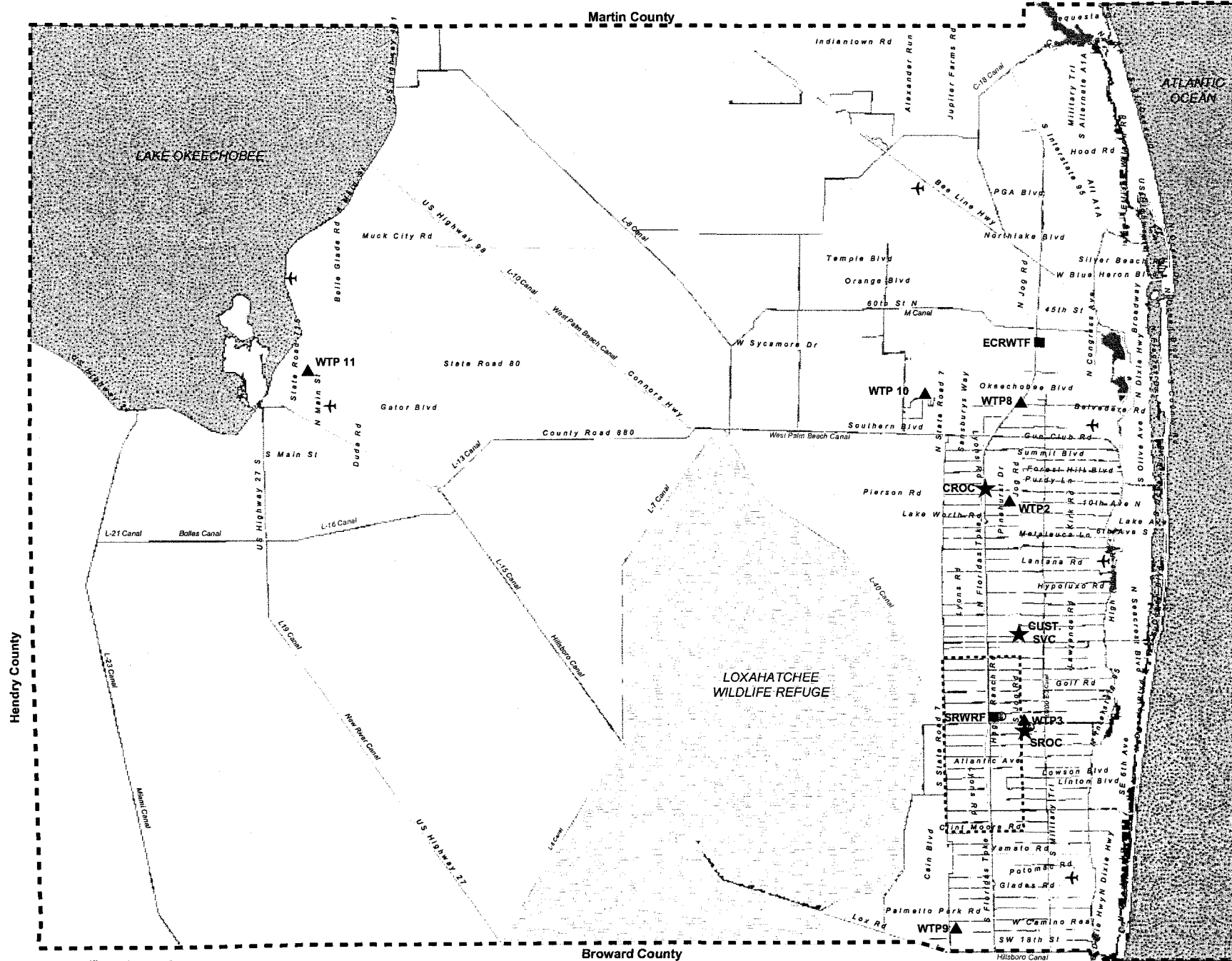
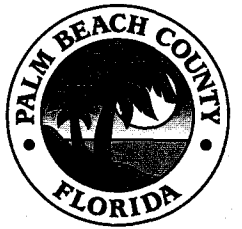
B. Legal sufficiency:


Assistant County Attorney 10/8/10

C. Other Department Review:

Department Director

**PALM BEACH COUNTY, FLORIDA**  
**WATER UTILITIES DEPARTMENT**  
**SERVICE AREA (SA) AND MAJOR FACILITIES**



- Legend**
- P.B.C.W.U.D. SA
  - - - Mandatory Reclaimed SA
  - - - County Limits
  - ★ Administration
  - Water Reclamation Plant
  - ▲ Water Treatment Plant
  - ⊙ Wetlands



NOT TO SCALE

ATTACHMENT 1

**INTERLOCAL AGREEMENT REGARDING MITIGATION  
RELATED TO PALM BEACH COUNTY/FPL RECLAIMED PIPELINE PROJECT**

WPB Contract No. 07857

*Res 287-10*

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2010, between **PALM BEACH COUNTY**, a political subdivision in the State of Florida (herein referred to as "**COUNTY**") and the **CITY OF WEST PALM BEACH**, a municipal corporation of the State of Florida (hereinafter referred to as "**CITY**").

**WITNESSETH:**

WHEREAS, the COUNTY, by separate agreements with Florida Power and Light, the East Central Regional Water Wastewater Treatment Facilities Operations Board and the CITY, will construct certain Reclaimed Water facilities (hereinafter the "PBC/FPL Reclaimed Pipeline Project"); and

WHEREAS, the PBC/FPL Reclaimed Pipeline Project requires environmental mitigation; and

WHEREAS, the CITY is the owner of the Water Catchment Area (the "GWP/WCA") for public water supply purposes and for environmental, educational and conservation purposes, pursuant to the Special Laws of the Florida Legislature, Ch. 67-2169 ("The Special Act"), as amended; and the Water Catchment Area serves as a natural surface water supply source for the CITY and has been designated as a Class I potable water supply protected by State and Federal laws; and

WHEREAS, the CITY has precedence under regulatory rules of the South Florida Water Management District (SFWMD), Florida Department of Environmental Protection (FDEP), and the US Army Corps of Engineers (USACOE) to provide and manage long-term, applicable

offsite mitigation sites within the ascribed boundaries of the CITY's GWP/WCA to act as compensatory mitigation to offset requisite offsite wetland impacts associated with, but not limited to, such wetland variants so described or defined by SFWMD, FDEP and USACOE as: freshwater herbaceous wetlands (FHW), freshwater forested wetlands (FFW) and hydric pine flatwoods (HPF): and

WHEREAS, the CITY maintains a position to operate as a recipient offsite mitigation site within specific areas of the GWP/WCA for purposes of satisfying specific offsite mitigation/compensation needs described, defined and/or negotiated to under an Environmental Resource Permit (ERP) regulatory instrument; and

WHEREAS, the COUNTY wishes to use 8.8 acres of freshwater herbaceous wetland (FHW) mitigation acres from the CITY's GWP/WCA to satisfy COUNTY's mitigation obligation to the FDEP and the USACOE for the COUNTY's PBC/FPL Reclaimed Pipeline Project; and

WHEREAS, the COUNTY and CITY are authorized to enter into this Agreement pursuant to Section 163.01, Florida Statutes, which permits local government units to make the most efficient use of their powers by enabling them to cooperate with other governmental entities on a basis of mutual advantage.

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

## **SECTION 1: RECITALS**

1.1 The foregoing recitals are true, correct and are incorporated herein by this reference.

## **SECTION 2: MITIGATION OBLIGATIONS**

2.1 Solely to provide off-site compensatory mitigation for the unavoidable impacts to wetlands and other surface waters that are proposed to result from County's PBC/FPL Reclaimed Pipeline Project, and at the COUNTY's expense, the CITY agrees to restore and enhance freshwater herbaceous wetlands located within the CITY's GWP/WCA as required, and within the time frame imposed by Environmental Resource Permit No. 50-0293213-001 (FDEP) and Permit No. SAJ2008-04620 (USACOE) (including any amendments and revisions to the same)(collectively, the "Permits"). The parties estimate that the CITY will enhance, restore, operate, monitor, and maintain approximately 8.8 acres, but the exact acreage will be determined based upon the acreage required pursuant to the Permits. The CITY shall be responsible for the continued monitoring, maintenance and reporting as required by the Permits.

2.2 The CITY's obligation to perform mitigation shall commence upon receipt of payment in full from the COUNTY in accordance with Section 3 of this Agreement.

2.3 The COUNTY will obtain any other permits, permit modifications, or other authorizations necessary to timely perform this mitigation enhancement or restoration work and/or related to the COUNTY'S PBC/FPL Reclaimed Pipeline Project. The COUNTY will take all actions necessary to obtain Permit modifications to extend the time for completion of the mitigation in accordance with a schedule to be agreed upon by the mitigation contractor and CITY. The CITY shall be granted an extension of time for performance of its obligations under this Agreement in accordance with the schedule to be agreed upon with its mitigation contractor.

## **SECTION 3: PAYMENT OBLIGATIONS**

3.1 CITY agrees to perform the mitigation for COUNTY and COUNTY agrees to pay to CITY the sum of \$32,000 per acre, for the prescribed mitigation compensation associated with

the County's PBC/FPL Reclaimed Pipeline Project.

3.2 The total estimated cost to be paid by COUNTY to CITY under this Agreement is estimated at Two Hundred Eighty-One Thousand Six Hundred Dollars (\$281,600.00) based on the estimated acreage. Any increase required over the mitigation acres specified above are subject to availability from the CITY's GWP/WCA. The CITY agrees to hold the prices per mitigation acre of this Agreement for a period of six (6) months if additional mitigation acres are required under the Permits.

3.3 Upon execution of this Agreement, the COUNTY shall make payment in the full amount to the CITY within 30 days; whereupon receipt of the required payment, the CITY shall assume the responsibility for fulfilling the mitigation requirements of the Permits.

**SECTION 4: TERMINATION**

4.1 Should any permits for the PBC/FPL Reclaimed Pipeline Project be denied or disapproved by any permitting authority and COUNTY elects not to proceed with the Project, COUNTY may terminate this Agreement in its entirety. In such instance the City is entitled to notice should the County intend to terminate this Agreement and shall be provided a copy of the permit denial or disapproval received by COUNTY.

4.2 In the event of any such termination, CITY's sole obligation and COUNTY's sole right shall be for the return and receipt, respectively, of COUNTY's previous payments. In the event CITY has commenced fulfilling the mitigation requirements of the Permits prior to such notice of termination, the CITY's costs or amount contracted by CITY for such mitigation shall be deducted from the payments returned to COUNTY.

4.3 In the event of a hurricane, tornado, fire, flood, major storm event or other natural disaster or epidemic, war, civil disturbance, terrorist activity, or governmental actions beyond the

control of the CITY and which results in the prevention or delay of the performance by the CITY, the CITY shall be granted an extension of time for performance of its obligations under this Agreement.

**SECTION 5: TERM AND EFFECTIVE DATE.**

5.1 The Effective Date of this Agreement shall be the date the Agreement is approved by the Palm Beach County Board of County Commissioners and filed with the Clerk of the County Court pursuant to 163.01(11), Florida Statutes (the "Effective Date").

**SECTION 6: MISCELLANEOUS**

6.1 COUNTY and CITY shall fully comply with all federal, state and local laws, ordinances, statutes, rules, regulations, orders, judgments and license and permit conditions or requirements (hereinafter "Laws"), including but not limited to all Laws pertaining to the environment and/or natural resources as same relate to COUNTY obtaining permits and/or the use of said mitigation acres in fulfilling the permit requirements. Either Party shall, if requested, furnish proof of any license or permit required in connection with the performance of the Agreement. All fees and charges in connection with either Party's compliance with applicable Laws shall be borne by such party.

6.2 COUNTY accepts the responsibility to obtain all necessary regulatory approvals, permits or the like relating to COUNTY's PBC/FPL Reclaimed Pipeline Project or use of the mitigation acres.

6.3 The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party. Nothing contained herein shall be construed as a waiver, by either party, of the liability limits established in Section 768.28, Florida Statutes.



6.4 Each party will promptly notify the other of any citizen complaint, claim, suit, or cause of action threatened or commenced against it which arises out of, or relates in any manner to, the performance of this Agreement.

6.5 Each Party's performance and obligations under this Agreement is contingent upon budgetary appropriation by its respective governing body for the purposes herein provided.

6.6 The Parties expressly covenant and agree that in the event either party is in default of its obligations under this Agreement, the party not in default shall provide to the defaulting party thirty (30) days' written notice before exercising any of its rights.

6.7 Any costs or expenses (including reasonable attorneys' fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to the Agreement.

6.8 All notices required to be given under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States mail, postage prepaid, to the following:

As to the County: Palm Beach County Utilities Department Director  
PO Box 16097  
8100 Forest Hill Boulevard  
West Palm Beach, FL 33416

*With a copy to:* County Attorney  
Palm Beach County  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401

As to the City: City Administrator  
City of West Palm Beach  
P.O. Box 3366  
401 Clematis Street  
West Palm Beach, FL 33401

*With a copy to:* City Attorney  
City of West Palm Beach  
PO Box 3366  
West Palm Beach, FL 33402

6.9 Except as otherwise expressly herein provided, no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

6.10 This Agreement shall be construed and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

6.11 The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, as matter of judicial constraint, be construed more severely against one of the parties than the other.

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

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

6.14 Except as expressly hereinabove provided, neither the COUNTY nor the CITY may assign this Agreement or any interest herein without the written consent of the other party. Such consent shall not be unreasonably withheld.

6.15 Time is of the essence with respect to the performance of each and every provision of this

Agreement where a time is specified for performance.

6.16 Failure of either party to insist upon compliance with any provision hereof shall not constitute a waiver thereof, and, unless specifically otherwise provided in this Agreement, no waiver of any provision of this Agreement shall be effective unless it is in writing signed by the party against whom it is asserted. Any waiver of any provision and instance to which it is related shall not be deemed to be a continuing or future waiver to such provision or as to any other provision.

6.17 All terms and words used in this Agreement, regardless of the number and gender used, shall be deemed to include any other gender or number the context or use thereof may require or permit.

6.18 Captions and headings contained in this Agreement are for convenience and reference only and in no way defined, describe, extend or limit the scope or intent of any provision hereof.

6.19 Any exhibits referred to in and attached to this Agreement are hereby incorporated in full in this Agreement by reference.

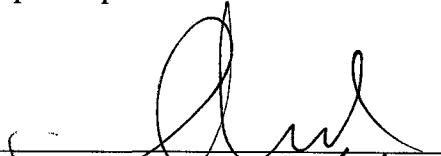
6.20 No person or entity other than the parties hereto shall be entitled to the benefit of or have any right to enforce this Agreement as a third party beneficiary or otherwise.

6.21 The COUNTY and the CITY agree that no person shall, on the grounds of race, color, national origin, sexual orientation, religion or creed, sex, age or handicap, be discriminated against in performance of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the individuals signing below pursuant to the authority vested in them.

**CITY OF WEST PALM BEACH**  
A municipal corporation

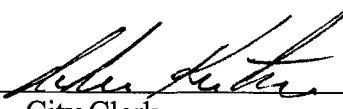
**PALM BEACH COUNTY, FLORIDA**  
BY ITS  
BOARD OF COUNTY COMMISSIONERS

By:   
Lois Frankel, Mayor 9/7/10

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

ATTEST:

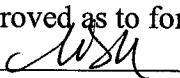
ATTEST:

By:   
City Clerk

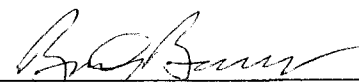
By: \_\_\_\_\_  
SHARON R. BOCK,  
CLERK & COMPTROLLER

DATE: 9/7/10

By: \_\_\_\_\_  
DEPUTY CLERK

City Attorney's Office  
Approved as to form and legal sufficiency:  
By:  Date: 9.2.10

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:  
  
By: \_\_\_\_\_  
ASSISTANT COUNTY ATTORNEY

APPROVED AS TO TERMS  
AND CONDITIONS  
  
By:   
Bevin A. Beaudet, PE  
WUD Director