

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: December 6, 2011 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) an Alternative Water Supply Agreement (AWS-FY2012 LEC116/#4600002550) with the South Florida Water Management District (SFWMD) in the amount of \$500,000; and B) a Budget Amendment of \$500,000 in the Water Utilities Department Capital Improvement Fund to budget the award of the funds.

Summary: The Agreement provides Alternative Water Supply grant funding from the SFWMD in the amount of \$500,000 for construction of the Lake Region Floridan Well Field Improvement Project. This phase of the project cost is anticipated to be approximately \$1,584,000. The balance of funding for this phase of the project, \$1,084,000, will come from capital improvement funds already budgeted by the Palm Beach County Water Utilities Department and approved by the Board of County Commissioners (BCC) on June 21, 2011 (R-2011-0955 through 0957). (WUD Project No. 11-113) Districts 6 (MJ)

Background and Justification: The Lake Region Water Treatment Plant (LRWTP) was funded in cooperation with the SFWMD and placed into service in May 2008. The plant is supplied raw water from seven (7) existing Upper Floridan Wells, all designed to pump 1500 gallons per minute (GPM). Over the last three (3) years of operation, a significant decline in the raw water quality from these wells has occurred. Detailed evaluation in coordination with the SFWMD has revealed that the pumping levels in the wellfield must be immediately reduced or the sustainability of the water to meet drinking water standards will be compromised. Presently, one (1) well is no longer useable and the water plant is experiencing operational problems. Modeling has concluded that the flow from the existing wells needs to be significantly reduced to 900 GPM to prevent further decline in the raw water quality. In order to supplement this reduction in flow, the potential of four (4) new wells may need to be drilled, with one (1) needed immediately to ensure continued operation of the LRWTP at the reduced water quality. This grant will offset costs already approved by the BCC for this project.

Attachments:

- 1. Location Map
- 2. Two (2) Original Agreements
- 3. Budget Amendment Form

Recommended By:  for 11/21/11
Department Director Date

Approved By:  11-28-11
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	\$1,584,000.00	0	0	0	0
External Revenues	\$(500,000.00)	0	0	0	0
Program Income (County)	0	0	0	0	0
In-Kind Match County	0	0	0	0	0
NET FISCAL IMPACT	\$1,084,00.00	0	0	0	0
 # ADDITIONAL FTE POSITIONS (Cumulative)	 0	 0	 0	 0	 0

Budget Account No.: Fund 4011 Dept 721 Unit W026 Rev Source 3739
 Budget Account No.: Fund 4011 Dept 721 Unit W026 Object 6541

Is Item Included in Current Budget? Yes X* No

*See attached Budget Amendment

Reporting Category N/A

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

The Water Utilities Department will receive \$500,000 in AWS grant revenue from the SFWMD under this agreement. The balance will come from Water Utility user fees.

C. Department Fiscal Review: *R. Egerton*

III. REVIEW COMMENTS

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

[Signature]
OFMB

[Signature]
Contract Development and Control
11-23-11 B. Wheeler

B. Legal Sufficiency:

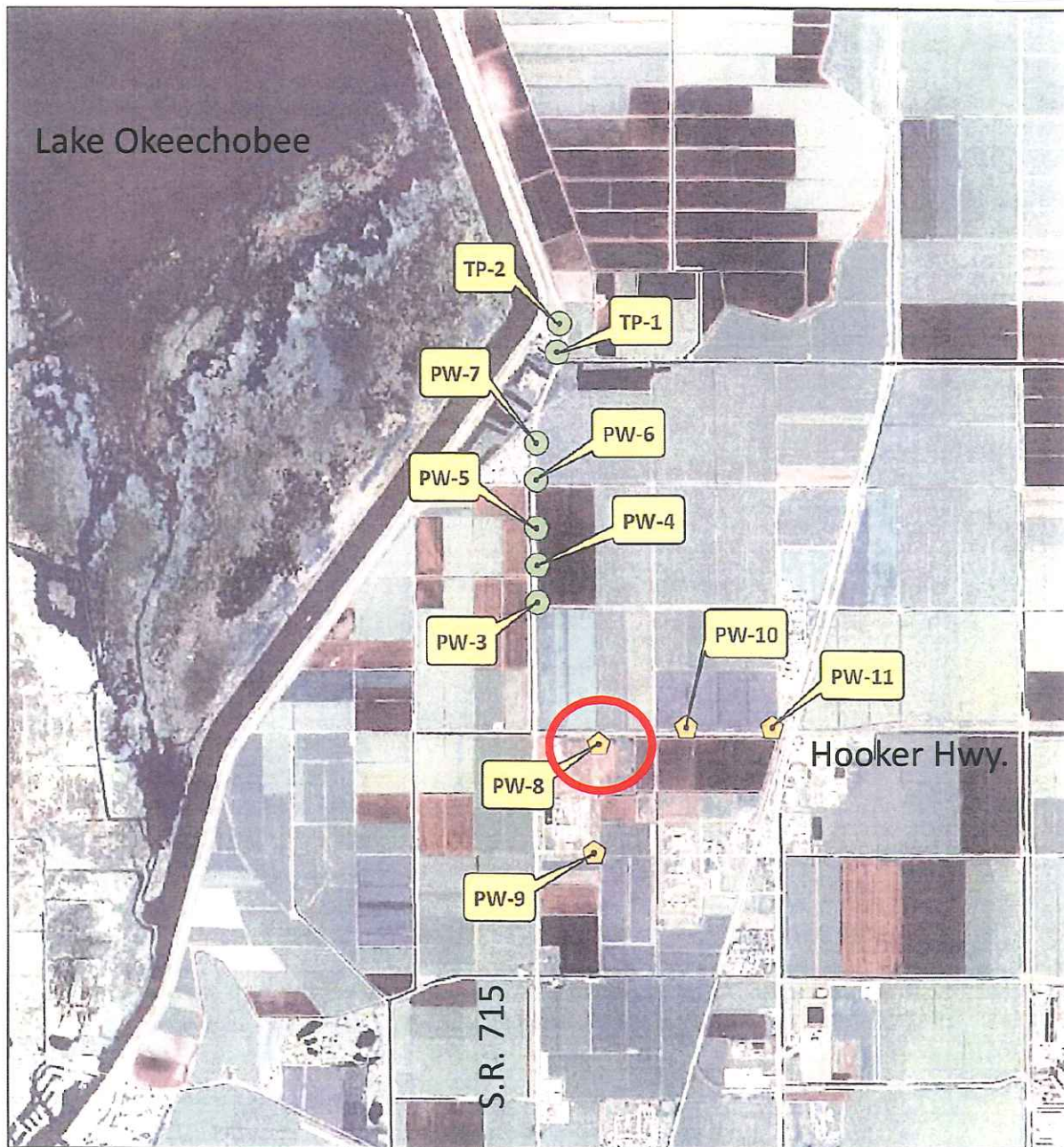
[Signature]
Assistant County Attorney
11/28/11

This Contract complies with our contract review requirements.

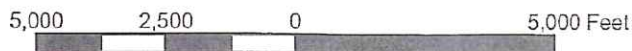
C. Other Department Review:

Department Director

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



- Existing Wells
- Proposed Wells





**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
2011 – 2012 ALTERNATIVE WATER SUPPLY
FUNDING PROGRAM**

Recipient: Palm Beach County Utilities	Agreement Number: 4600002550
Recipient's Project Manager: Brian Shields	Governing Board Approval Date: October 13, 2011
Address: 8100 Forest Hill Boulevard West Palm Beach, FL 33413	District Funding Amount: \$500,000.00
Telephone No.: (561) 493-6081	Contract Term: October 1, 2011 – August 31, 2012*
Fax No.: (561) 493-6008	*All deliverables are due by August 15, 2012
Email: bshields@pbcwater.com	
SFWMD Project Manager: Stacey Adams	
Telephone No.: (561) 682-2577	
E-mail Address: sadams@sfwmd.gov	
Fax No.: (561) 682-2027	
Contract Specialist: Sharman Rose	
Telephone No.: (561) 682-2167	
Fax No.: (561) 682-5624	
Address: 3301 Gun Club Road West Palm Beach, FL 33406	
Insurance: Not Applicable	
Federal Employer Identification Number: 59-6000429	
Project Title: FY2012 AWS – LEC 116	
Description: 1.3 MGD Lake Region WTP Floridan Wellfield Improvements	

This **Agreement** is entered into between “the Parties,” the South Florida Water Management **District**, the “**District**”, and the undersigned party, hereinafter referred to as the “**Recipient**.” The **Recipient** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **Agreement**, and shall abide by all legal, financial and reporting requirements, such as matching funds and final reports for all funding received by the **Recipient** from the **District**.

ARTICLE 1 – PROJECT

- 1.1 The **Recipient** shall, to the satisfaction of the **District**, fully and timely construct and perform all work items described in the “Statement of Work,” attached hereto as Exhibit “A”, hereinafter referred to as the “Project”, and made a part of this **Agreement**.
- 1.2 As part of the deliverables to be provided by the **Recipient** under this **Agreement**, the **Recipient** shall substantiate, in whatever form reasonably requested by the **District**, any supporting documentation utilized as a basis for payment by the **District**. This paragraph shall survive the expiration or termination of this **Agreement**.
- 1.3 Attached to this **Agreement** are the following exhibits which are incorporated herein:

Exhibit A	Statement of Work
Exhibit B	Payment and Deliverable Schedule
Exhibit C	Status Report
Exhibit D	Final Project Summary Report

ARTICLE 2 – TERM OF THE AGREEMENT

- 2.1 The period of performance of this **Agreement** shall be the dates noted on the first page of this **Agreement**.
- 2.2 The Parties agree that time is of the essence in the performance of each and every obligation under this **Agreement**.

ARTICLE 3 – COMPENSATION / CONSIDERATION

- 3.1 As consideration for the Project required by this **Agreement**, the **District** shall pay the **Recipient** the funding amount as specified on page one of this **Agreement**. Such amount is not to exceed the specified amount and therefore, no additional consideration shall be authorized. The **Recipient** shall provide *at least* sixty percent (60%) or more of the Project’s construction cost, unless a different amount is authorized pursuant to s. 373.707(8)(e), Florida Statutes. The **Recipient** acknowledges that the **District** may authorize an amount less than forty percent (40%); and, if current fiscal year construction costs decrease the approved funding may be decreased. The approved funding is a

percentage, up to forty percent (40%) based on the estimated current fiscal year project construction cost. For FY12, payment will be made by the **District** for work authorized and completed between October 1, 2011 and August 15, 2012. The **District** will not reimburse the **Recipient** for FY12 work that commences prior to the start date of the **Agreement** or for work completed after August 15, 2012.

- 3.2 The **Recipient** assumes sole responsibility for all work which is performed pursuant to Exhibit "A". By providing funding hereunder, the **District** does not make any warranty, guaranty or any representation whatsoever regarding any of the work performed hereunder, including but not limited to, the adequacy or sufficiency of all or any part of work described in Exhibit "A".
- 3.3 The **Recipient** hereby agrees *not* to use **District** funding for any work associated with the research, design and permitting aspects of the Project. **District** funds shall only be used for the construction activities described in Exhibit "A".
- 3.4 The **Recipient** agrees to reimburse the **District** funds provided through this **Agreement** for facilities (i.e. test/production wells, etc.) that do not become an operational component of the overall alternative water supply facility within the timeframe established in the proposal. Notwithstanding anything in this **Agreement** to the contrary, this paragraph shall remain in full force and effect for twenty (20) years from the date of contract execution.

ARTICLE 4 – FUNDING PAYMENTS AND REPORTING

- 4.1 The **District** shall make payment to the **Recipient** upon completion and acceptance of the deliverable(s) as described in the "Summary Schedule of Tasks and Deliverables", attached hereto as Exhibit "B". The **Recipient** shall provide a completed Project Status Report attached hereto as Exhibit "C" within ten (10) business days of the following due dates December 31, 2011, March 31, 2012; and June 30, 2012. In addition, on or before August 15, 2012, the **Recipient** shall provide a completed Project Summary Final Report, attached hereto as Exhibit "D" and the Final Reimbursement Request Package. Concurrent with delivery of the final deliverable(s), the **Recipient** shall provide certification that all construction has been completed in accordance with Exhibit "A" of this **Agreement**.
- 4.2 The **Recipient's** invoice(s) shall reference the **District's Agreement** Number and Purchase Order Number and shall be sent to the following address:

South Florida Water Management District
ATTN: Accounts Payable
PO Box 24682
West Palm Beach, FL 33416-4682

The **Recipient** shall *not* submit an invoice to any other address at the **District**. In order to expedite the invoice review and approval process, the **Recipient** shall also submit a copy of each reimbursement request package to the **Project Manager**. The **Recipient's**

reimbursement request package shall contain the backup documentation required (*e.g.*, the request shall include but is not limited to a copy of **Recipient's** invoice (include the **District's Agreement** Number and Purchase Order number), signed certification letter on **Recipient's** letterhead (signed by an authorized representative of the **Recipient**), tasks completed per the **Agreement** (if all tasks finished, a statement indicating that the project is completed per the **Agreement**) and, vendor invoices/application for payment) for the **Project Manager** to ascertain that each deliverable in the invoice has been substantially complete. The **Recipient** shall submit the final reimbursement request and Exhibit "D" on or before August 15, 2012. Failure of the **Recipient** to follow the instructions set forth in the **Agreement** regarding a proper invoice and acceptable services and/or deliverables may result in an unavoidable delay in payment by the **District**.

- 4.3. Upon completion of the Project, any data that was generated during the performance of the Project shall be submitted to the **District** upon request.

New Well Construction Projects: For projects involving construction of new wells, the **Recipient** shall:

1. Submit design of well construction and testing programs to the **District** for review and comment prior to implementation. The **Recipient** shall integrate the **District's** comments into the final testing plan where feasible.
2. Submit all pertinent well information collected during well construction and testing (*i.e.*, depths, cuttings descriptions, geophysical logs, aquifer test data, etc.), as available. Submissions shall be provided electronically as specified by the **District**.
3. If the final location of the well(s) varies from the original location specified in the Consumptive Use or other permit or permit applications, the **Recipient** shall provide the **Project Manager** with written proof that the appropriate permitting agency contact is aware of and agrees with the changes.

The data shall be archived in the **District's** permanent database and available to the public. Please contact Emily Richardson (561) 682-6824, Emily.Richardson@sfwmd.gov, for instructions on submitting data.

- 4.4 The **Recipient** shall provide to the **District** regular project status reports (Exhibit "C") quarterly by December 31, 2011; March 31, 2012; and June 30, 2012. Reports shall provide detail on the progress of the Project; amounts expended to date per task and outline any potential issues affecting Project completion or overall schedule. Exhibit "C" shall be submitted to the **District's Project Manager** via e-mail within ten (10) business days of the specified due date. In the event actual construction costs are less than the not-to-exceed amount for a particular task stated in Exhibit "B", the **Recipient** will have the right to apply the unexpended balance toward another task, unless the total current fiscal year construction cost has decreased. The **Recipient** shall provide prior written notice of its decision to exercise this right. If the **Recipient** does not exercise this right, the **Recipient** agrees to amend the contract to revise the approved funding consistent with the original

percentage to the lower construction cost. In no event, shall the **District's** total obligation exceed the amount specified in Exhibit "B" for this Cooperative **Agreement**; however, an actual construction cost less than an estimated construction cost may result in a reduced final payment. The **Recipient** is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.

ARTICLE 5 – CONTRACT MANAGEMENT

- 5.1 The Parties shall direct all matters arising in connection with the performance of this **Agreement** to the attention of the **Project Manager** for attempted resolution or action. The **Project Manager** shall be responsible for overall coordination and oversight relating to the performance of this **Agreement**.
- 5.2 All notices, demands or other communications regarding this **Agreement**, other than those set forth in paragraph 4.2 above, shall be in writing and forwarded to the attention of both the **Project Manager** and the Contract Specialist noted on the first page of this **Agreement** by certified mail, return receipt requested.
- 5.3 Should either Party change its address, written notice of such new address shall promptly be sent to the other Party.
- 5.4 All correspondence to the **District** under this **Agreement** shall reference the **District's Agreement** Number and Purchase Order Number.

ARTICLE 6 – TERMINATION / REMEDIES

- 6.1 It is the policy of the **District** to encourage good business practices by requiring the **Recipient** to materially perform in accordance with the terms and conditions of the **Agreement**. In accordance with Chapter 40E-7, Part II of the Florida Administrative Code, "Material Breach" is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the **Agreement**.

If the **Recipient** materially fails to fulfill its obligations under this **Agreement**, the **District** will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The **Recipient** shall have thirty (30) days to cure the breach. If the **Recipient** fails to cure the breach within the thirty (30) day period, the **District** shall issue a Termination for Default Notice. Once the **District** has notified the **Recipient** that it has materially breached its contract with the **District**, by sending a Termination for Default Notice, the **District's** Governing Board shall determine whether the **Recipient** should be suspended from doing future work with the **District**, and if so, for what period of time. The **District's** Governing Board will consider the factors detailed in Chapter 40E-7, Part II of the Florida Administrative Code in making a determination as to whether a **Recipient** should be suspended, and if so, for what period of time. Should the **District** terminate for

default in accordance with this provision, the **District** shall be entitled to recover procurement costs in addition to all other remedies under law and/or equity.

- 6.2 The **District** may terminate this **Agreement** at any time for convenience upon thirty (30) calendar days prior written notice to the **Recipient**. The performance of work under this **Agreement** may be terminated by the **District** in accordance with this clause in whole, or from time to time in part, whenever the **District** shall determine that such termination is in the best interest of the **District**. Any such termination shall be effected by delivery of a Notice of Termination to the **Recipient**, specifying the extent to which performance of work under the **Agreement** is terminated, and the date upon which such termination becomes effective. In the event of termination, the **District** shall compensate the **Recipient** for all authorized and accepted work performed through the termination date. The **District** shall be relieved of any and all future obligations hereunder, including but not limited to, lost profits and consequential damages under this **Agreement**. The **District** may withhold all payments to the **Recipient** for such work until such time as the **District** determines the exact amount due to the **Recipient**.
- 6.3 In the event a dispute arises, which the **Project Managers'** cannot resolve between themselves, the Parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law.
- 6.4 Notwithstanding anything in this **Agreement** to the contrary, the **District** reserves the right to terminate this **Agreement** immediately without notice in the event any of the representations contained in the **Recipient's** project proposal are found to be false or if the **Recipient** fails to complete the construction and performance of all work items described in Exhibit A, Statement of Work.

ARTICLE 7 – RECORDS RETENTION

- 7.1 The **Recipient** shall maintain records and the **District** shall have inspection and audit rights as follows:
- A. Maintenance of Records. The **Recipient** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **Agreement**, including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from completing performance and receiving final payment under this **Agreement**.
- B. Examination of Records. The **District** or designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **Agreement**. Such examination may be made only within five (5) years from the date of final payment under this **Agreement** and upon reasonable notice, time and place.

- C. Extended Availability of Records for Legal Disputes. In the event the **District** should become involved in a legal dispute with a third party arising from performance under this **Agreement**, the **Recipient** shall extend the period of maintenance for all records relating to this **Agreement** until the final disposition of the legal dispute. All such records shall be made readily available to the **District**.
- D. Periodic Audits. The **District** shall perform audits periodically to ensure funding objectives are being met.
- 7.2 Whenever the **District's** contribution includes state or federal appropriated funds, the **Recipient** shall, in addition to the inspection and audit rights set forth in Article 7.1 above, maintain records and similarly require each subcontractor to maintain and allow access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act, as follows:
- A. The **Recipient** shall maintain all financial/non-financial records through:
- (1) Identification of the state or federal awarding agency, as applicable
 - (2) Project identification information included in the Catalog of State Financial Assistance (CSFA) or the Catalog of Federal Financial Assistance (CFDA), as applicable
 - (3) Audit and accountability requirements for state projects as stated in the Single Audit Act and applicable rules of the Executive Office of Governor, rules of the Chief Financial Officer and rules of the Auditor General and the State Projects Compliance Supplement
 - (4) Audit/accountability requirements for federal projects as imposed by federal laws and regulations
 - (5) Submission of the applicable single audit report to the **District**, as completed per fiscal year
- B. Examination of Records: The **District** or designated agent, the state awarding agency, the state's Chief Financial Officer and the state's Auditor General and/or federal awarding agency shall have the right to examine the **Recipient's** financial and non-financial records to the extent necessary to monitor the **Recipient's** use of state or federal financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations which may include onsite visits and limited scope audits.

ARTICLE 8 – STANDARDS OF COMPLIANCE

- 8.1 The **Recipient**, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws and regulations relating to the performance of this **Agreement**. The **District** undertakes no duty to ensure such compliance, but will attempt to advise the **Recipient**, upon request, as to any such laws of which it has present knowledge.

- 8.2 The laws of the State of Florida shall govern all aspects of this **Agreement**. In the event it is necessary for either party to initiate legal action regarding this **Agreement**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims, which are justifiable in federal court.
- 8.3 The **Recipient** shall allow public access to all Project documents and materials in accordance with the provisions of Chapter 119 of the Florida Statutes. Should the **Recipient** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **Recipient**.
- 8.4 Pursuant to Section 216.347 of the Florida Statutes, the **Recipient** is prohibited from the expenditure of any funds under this **Agreement** to lobby the Legislature, the judicial branch or another state agency.
- 8.5. The **Recipient** has obtained, at its sole expense, all necessary licenses, authorizations and permits from the appropriate private party or federal, state, municipal or local agency, and other governmental approvals, prior to commencing performance of this **Agreement**. A delay in obtaining permits shall not give rise to a claim by the **Recipient** for additional compensation. If the **Recipient** is unable to obtain all necessary permits in a timely manner, either party may elect to terminate this **Agreement**, each party to bear its own costs, notwithstanding other provisions of this **Agreement** to the contrary. The **Recipient** agrees to comply with the terms and conditions of all permits.
- 8.6 The **Recipient** hereby assures that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or is otherwise subjected to discrimination in any activity under this **Agreement**. The **Recipient** shall take all measures necessary to effectuate these assurances.
- 8.7 Pursuant to Section 287.133 of the Florida Statutes, a person or affiliate who has been placed on the convicted vendor list may not submit a bid, proposal, or reply to a request to provide any goods or services related to the construction of the Project contemplated herein. **Recipient** also assures that it is not on the **District's** Suspension of Contractors List. **Recipient** agrees to include a provision to this effect in all requests for proposals and subcontracts related to construction of this Project.
- 8.8 A **Recipient** who operates a public water supply utility shall, by June 1, 2012 adopt a rate structure that will promote the conservation of water and promote the use of water from alternative water supplies and shall provide the **District** with a copy of such adopted rate structure on or before August 15, 2012.
- 8.9 **Recipient** of funds for a reuse project shall provide a status report by August 15, 2012 addressing the following issues: (1) accounting of reclaimed water usage and method used (meters, etc.); (2) all rates and charges for reclaimed water; (3) the status of implementing public education programs to inform the public about water issues, water conservation and

the importance and proper use of reclaimed water; and (4) providing the **District** with the location of each reuse facility owned by the **Recipient**.

- 8.10 This paragraph shall remain in full force and effect for twenty (20) years from the date of contract execution. After construction is completed on the Project, the **Recipient** shall continuously operate the Project as described in the Project proposal and consistent with the application water use permit(s). In the event the Project is not operated or completed in accordance with these requirements, the **Recipient**, if requested by the **District**, agrees to reimburse the amount of funding the **District** provided to this project. This amount may be prorated based on the number of years the completed project is operated using an assumed project life of 20 years. Furthermore, the **District** may cease funding for this Project and any future Projects proposed by the **Recipient**. All other provisions of this contract shall terminate on August 15, 2012.
- 8.11 **Recipient** shall implement a public education program to inform the public about the environmental and other public benefits of the Alternative Water Supply project and shall provide the **District** with a copy of such public education program on or before August 15, 2012.

ARTICLE 9 – INDEMNIFICATION AND INSURANCE

- 9.1 For value received, which is hereby acknowledged, the **Recipient** shall, subject to the limits permitted in Florida Statute 768.28, defend, indemnify, save, and hold the **District**, its officers, directors, board members, agents, assigns, and employees harmless from liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the **Recipient** and other persons employed or utilized by the **Recipient** in the performance of the **Agreement**. The **District** shall have the right to approve counsel selected by the **Recipient** to defend the **District** in the event the **District** is named in any legal action. Pursuant to section 768.28, Florida Statutes, nothing herein shall require the **Recipient** to be liable for intentional or reckless acts or for actions committed in bad faith or malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, nothing contained here shall constitute a waiver by the **Recipient** of its sovereign immunity or the provisions of F.S. 768.28.

The **Recipient** further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this **Agreement**. This paragraph shall survive the expiration or termination of this **Agreement**.

ARTICLE 10 – RELATIONSHIP BETWEEN THE PARTIES

- 10.1 The **Recipient** shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this **Agreement** shall be interpreted to establish any relationship other than that of an independent contractor

between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance of this **Agreement**. Both parties are free to enter into contracts with other parties for similar services.

- 10.2 The **Recipient** shall not assign, delegate or otherwise transfer its rights and obligations as set forth in this **Agreement** without the prior written consent of the **District**. Any attempted assignment in violation of this provision shall be null and void.
- 10.3 It is the intent and understanding of the Parties that this **Agreement** is solely for the benefit of the **Recipient** and the **District**. No person or entity other than the **Recipient** or the **District** shall have any rights or privileges under this **Agreement** in any capacity whatsoever, either as third party beneficiary or otherwise.

ARTICLE 11 – GENERAL PROVISIONS

- 11.1 Notwithstanding any provisions of this **Agreement** to the contrary, the Parties shall not be held liable for any failure or delay in the performance of this **Agreement** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God or for any other cause of the same character, which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but this **Agreement** shall otherwise remain in effect. This provision shall not apply if the Statement of Work, Exhibit “A” of this **Agreement** specifies that performance by the **Recipient** is specifically required during the occurrence of any of the events herein mentioned.
- 11.2 Any inconsistency in this **Agreement** shall be resolved by giving precedence in the following order:
- (a) Terms and Conditions outlined in Articles 1-11
 - (b) Exhibit “A” Statement of Work
 - (c) All other exhibits, attachments and documents specifically incorporated herein by reference
- 11.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **Agreement** by the Parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other Party from performing any subsequent obligations strictly in accordance with the terms of this **Agreement**. No waiver shall be effective unless in writing and signed by the Party against whom enforcement is sought. Such waiver shall be limited to provisions of this **Agreement** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
- 11.4 Should any term or provision of this **Agreement** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by

force of any statute, law or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **Agreement**, to the extent the **Agreement** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

- 11.5 This **Agreement** may be amended only with the written approval of the Parties.
- 11.6 This **Agreement** states that all publicity/outreach media will be jointly planned by the **Recipient** and the **District** and any and all materials, events, or endorsements arising out of this award will require prior **District** approval.
- 11.7 This **Agreement** states the entire understanding and **Agreement** between the Parties and supersedes any and all written or oral representations, statements, negotiations or **Agreements** previously existing between the Parties with respect to the subject matter of this **Agreement**. The **Recipient** recognizes that any representations, statements or negotiations made by **District** staff do not suffice to legally bind the **District** in a contractual relationship unless they have been reduced to writing and signed by an authorized **District** representative. This **Agreement** shall insure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this **Agreement** on the date written below.

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT,
BY ITS GOVERNING BOARD**

By: _____
Dorothy A. Bradshaw, Procurement Bureau Chief

Date: _____

SFWMD Procurement Approved:

By: Se Rove Date: 10/24/11

Recipient's Legal Name: _____

By Authorized Official: _____

Printed Name: _____

Title: _____

Date: _____

PALM BEACH COUNTY
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA

BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA

Signed: _____, Chair

Date: _____

ATTEST:

Sharon R. Bock,
Clerk & Comptroller

By: _____
(Deputy Clerk)

Approved as to Terms and
and Conditions:

By: 
Bevin A. Beaudet, Director
PBC Water Utilities Department

Approved as to Form
Legal Sufficiency:

Date: 11/16/11

By: _____
(County Attorney)

EXHIBIT "A"
STATEMENT OF WORK

1.3 MGD Lake Region WTP Floridan Wellfield Improvements
Palm Beach County Utilities

A. INTRODUCTION/BACKGROUND

Palm Beach County Utilities (PBC Utilities or Recipient) will be conducting wellfield improvements at the Lake Region Water Treatment Plant (LRWTP). The LRWTP was funded in cooperation with the South Florida Water Management District (SFWMD) and placed into service in May 2008.

The plant is supplied by raw water from seven existing Upper Floridan Wells, all designed to pump 1,500 gpm. Over the last three years of operation, a significant decline in the raw water quality from these wells has occurred. Detailed evaluation in coordination with the SFWMD has revealed that the pumping levels in the wellfield must be immediately reduced or the sustainability of the water to meet drinking water standards will be comprised. Presently, one well is no longer usable and the water plant is experiencing operational problems. Modeling has concluded that the flow from the existing wells needs to be reduced to 900 gpm to prevent further decline in the raw water quality. In order to supplement this reduction in flow, four new wells need to be drilled; one well will be installed during FY12 to ensure the continued operation of the LRWTP.

B. OBJECTIVES

The objective of the project is to construct one Floridan Aquifer well at the LRWTP and convert the pumps at the existing Floridan wells to ensure safe yield.

C. SCOPE OF WORK

PBC Utilities will construct one Floridan Aquifer well, including wellhead mechanical, electrical, and instrumentation control systems, raw water main, and startup services during FY12. PBC Utilities will also complete the conversion of seven existing Floridan wells from 150 hp pumps to 60 hp pumps to ensure a safe yield.

D. WORK BREAKDOWN STRUCTURE

The work breakdown structure associated with this project is described below.

Task 1: Recipient shall submit to the project manager an electronic submittal of final project bid amount and/or vendor estimates for tasks to be completed in FY12.

Due Date: Upon Contract Execution

Task 2: Exhibit "C" – Status Report: **Recipient** shall submit to the project manager a status report summarizing progress made to date, issues of concern potentially affecting project performance, and any other information pertinent to the project.

Due Date: December 31, 2011

Task 3: Exhibit "C" – Status Report: **Recipient** shall submit to the project manager a status report summarizing progress made to date, issues of concern potentially affecting project performance, and any other information pertinent to the project.

Due Date: March 31, 2012

Task 4: Exhibit "C" – Status Report: **Recipient** shall submit to the project manager a status report summarizing progress made to date, issues of concern potentially affecting project performance, and any other information pertinent to the project.

Due Date: June 30, 2012

Task 5: **Recipient** shall purchase and install Floridan Aquifer Well #8 to approximately 1,150 feet / Reimbursement Request Package.

Due Date: Upon Task Completion

Task 6: **Recipient** shall purchase and install 80 linear feet of 12-inch raw water main / Reimbursement Request Package.

Due Date: Upon Task Completion

Task 7: **Recipient** shall purchase and install Floridan Aquifer Well #8 wellhead, all mechanical, electrical and instrumentation controls / Reimbursement Request Package.

Due Date: Upon Task Completion

Task 8: **Recipient** shall purchase seven 60 hp pumps and all associated hardware and equipment / Reimbursement Request Package.

Due Date: Upon Task Completion

Task 9: **Recipient** shall install seven 60 hp pumps / Reimbursement Request Package.

Due Date: Upon Task Completion

Task 10: Final Reimbursement Request and Project Summary Report (Exhibit "D"): **Recipient** shall submit to the project manager the final reimbursement request package and Project Summary Report (Exhibit "D").

Due Date: August 15, 2012

EXHIBIT "B"
SUMMARY SCHEDULE OF TASKS AND DELIVERABLES

1.3 MGD Lake Region WTP Floridan Wellfield Improvements
Palm Beach County Utilities

- The schedule set forth below is October 1, 2011 to August 15, 2012 for completed work.
- All deliverables submitted hereunder are subject to review and acceptance by the **District** Project Manager. Acceptability of all work will be based on the judgment of the **District** that the work is technically complete and accurate.
- Payment shall be made following receipt and acceptance by the **District** of the Reimbursement Request Package(s) in accordance with the schedule set forth below. The **Recipient** shall submit a reimbursement request upon completion of each Task noted below. If applicable, the **Recipient** shall submit a final reimbursement request for payment and Exhibit "D" on or before August 15, 2012 for reimbursement, *no exceptions or extensions*. All reimbursement requests shall be accompanied by adequate documentation to demonstrate completion of each Task in accordance with Exhibit "A" the Statement of Work (SOW).
- Reimbursement Request Packages shall include, but not be limited to, a copy of the **Recipient's** invoice, signed certification letter for partial payment that the Task(s) is (are) complete per the SOW or that the project is complete per the SOW, copies of vendor invoices, and any other documentation supporting payment. Reimbursement Request Packages shall adequately demonstrate completion of each Task in accordance with Exhibit "A" the SOW.
- The **District** shall only be obligated to pay for documented actual FY2012 construction⁴ costs within the not-to-exceed amounts specified below. In the event actual construction costs by the **Recipient** are less than the not-to-exceed amount for a particular Task, the **Recipient** shall have the right to apply the unexpended balance toward another Task, unless the total current fiscal year construction cost has decreased. The **Recipient** shall provide prior written notice of its decision to exercise this right to the **District** Project Manager. If the **Recipient** does not exercise this right, the **Recipient** agrees to amend the contract to revise the approved funding consistent with the original percentage to the lower construction cost. In *no event* shall the **District's** total obligation exceed the amount specified below for this **Agreement**; however, an actual construction cost less than the estimated construction cost may result in a reduced final payment. The **Recipient** is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.
- Total payment by the **District** for all work completed herein *shall not exceed* the amount of \$500,000.00. If the total consideration for this **Agreement** is subject to multi-year funding allocations, funding for each applicable fiscal year will be subject to Governing Board budgetary appropriation. In the event the **District** does not approve funding for any subsequent fiscal year, this **Agreement** shall terminate upon expenditure of the current funding, notwithstanding other provisions in this **Agreement** to the contrary.

Task No.	Deliverable(s)	Invoice Date ¹	Report Due Date	District Not-To-Exceed Payment
1	Electronic submittal of final project bid amount and/or vendor estimates for tasks to be completed in FY12	N/A	Upon Contract Execution ²	N/A
2	Exhibit "C" – Status Report ³	N/A	December 31, 2011	N/A
3	Exhibit "C" – Status Report ³	N/A	March 31, 2012	N/A
4	Exhibit "C" – Status Report ³	N/A	June 30, 2012	N/A
5	Purchase and install Floridan Aquifer Well #8 to approximately 1,150 feet / Reimbursement Request Package	Upon Task Completion	N/A	\$198,000
6	Purchase and install 80 linear feet of 12-inch raw water main / Reimbursement Request Package	Upon Task Completion	N/A	\$9,000
7	Purchase and install Floridan Well #8, wellhead, all mechanical, electrical, and instrumentation controls / Reimbursement Request Package	Upon Task Completion	N/A	\$179,900
8	Purchase seven 60 hp pumps / Reimbursement Request Package	Upon Task Completion	N/A	\$37,800
9	Install seven 60 hp pumps / Reimbursement Request Package	Upon Task Completion	N/A	\$75,300
10	a) Final Reimbursement Request Package (if applicable) b) Project Summary Report (Exhibit "D")	August 15, 2012	August 15, 2012	N/A
Total District Funding				\$500,000
Current Fiscal Year Construction Cost				\$1,583,140
Total Project Construction Cost				\$1,583,140

¹ If applicable, interim Reimbursement Request Packages shall be submitted upon completion of the task(s) noted above. Reimbursement Request Packages must be submitted on or before August 15, 2012 for reimbursement, *no exceptions or extensions*.

² If construction bids and vendor estimates have not been completed upon execution of the **Agreement**, the **Recipient** shall submit this information as soon as it is available to the **District** Project Manager.

³ Exhibit "C" Status Reports are due within ten (10) business days of the due date.

⁴ Ineligible costs include, but are not limited to, permits, as-builts, videos, early completion bonus, bonds and insurance, etc.

Note: If the project includes well drilling and testing, deliverables must include copies of all hydrogeologic data collected in the course of drilling and testing, in the **District** specified format. An electronic copy of the **District** specified format is available via email. Contact the appropriate **District** Project Manager to request one.

Exhibit "C"

Alternative Water Supply Program Status Report

To comply with the AWS Status Report requirements specified in your contract, this form shall be completed and submitted via e-mail to your South Florida Water Management District project manager. Please attach backup documentation (e.g., pictures, drawings, etc.) that will provide an understanding of project construction to date.

Status Report - Quarter 1 2 3 _____ Date: _____
 Name of Person _____
 Completing Form _____

Contract Number 4600002550 Purchase Order Number 950000

Entity Name: _____
LEC-116 – 1.5 MGD Lake Region Floridan Wellfield

Project Title: Improvements

1. Provide a brief description of project status.

2. What is the overall status of your project (check one)?

On Schedule

Behind Schedule? Explain why. Do you expect the project to be completed on time?

3. Actual Project Construction Cost Information –

	Date	Amount
Bid Document		
Final Contract (with Vendor)		
Total Expended to Date		
Change Order(s)		



Exhibit "D"

**FY2011-2012 Alternative Water Supply
Final Project Summary Report**

LEC-116 – 1.5 MGD Lake Region Floridan
Wellfield Improvements
Project Title

Entity Project Manager

4600002550 / 950000

SFWMD Contract / Purchase Order Number

Entity Project Owner

Describe Project constructed: _____

Type of Alternative Water Supply	Quantity of Water Made Available (MGD) Upon Completion of This Phase		Construction Duration	
	Proposed	Actual	Start	Finish
Brackish				

Cost for this Phase (Phase refers to the current FY work)		
	Proposed (this FY)	Actual (this FY)
Total Construction Cost – This Phase	\$ 1,583,140	\$
Funding Breakdown for this Phase		
District funding this phase	\$ 500,000	\$
Local funds	\$ 1,083,140	\$
Other funding source		
From:	\$	\$
TOTAL	\$ 1,583,140	

Attach map and photo(s) of project on CD, if available. The District will make funding payments only to reimburse for work completed between October 1, 2011 and August 15, 2012.

To the best of my knowledge, the above information is correct.

Chief Financial Officer

Project Manager

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET: AMENDMENT
FUND 4011: Water Utilities Department Capital Improvement Fund

Use this form for items not anticipated in the budget

Account		Original Budget	Current Budget	Increase	Decrease	Adjusted Budget	Encumbered As of 11/21/11	Remaining Balance
Number	Name							
Revenues								
4011721W026-3739	Grants Other Physical Environment	0	0	500,000	0	500,000		
Total receipts and revenues		<u>144,945,866</u>	<u>140,962,753</u>	<u>500,000</u>	<u>0</u>	<u>141,462,753</u>		
Expenditures								
40117219900-9909	Reserves	55,417,445	55,417,445	500,000	0	55,917,445	0	55,917,445
Total expenditures and reserves		<u>144,945,866</u>	<u>140,962,753</u>	<u>500,000</u>	<u>0</u>	<u>141,462,753</u>	<u>0</u>	<u>141,462,753</u>

Attachment 3

Water Utilities Department
Initiating Department/Division
Administration/Budget Department Approval
OFMB and Budget Department - Posted

Signatures	Date
<i>[Signature]</i>	11/22/11
<i>[Signature]</i>	11/23/11

By Board of County Commissioners
At Meeting of 12-6-2011

Deputy Clerk to the
Board of County Commissioners

ad 11/24/11