







**Palm Beach County  
Water Utilities  
Department  
Service Area (SA) and  
Major Facilities**

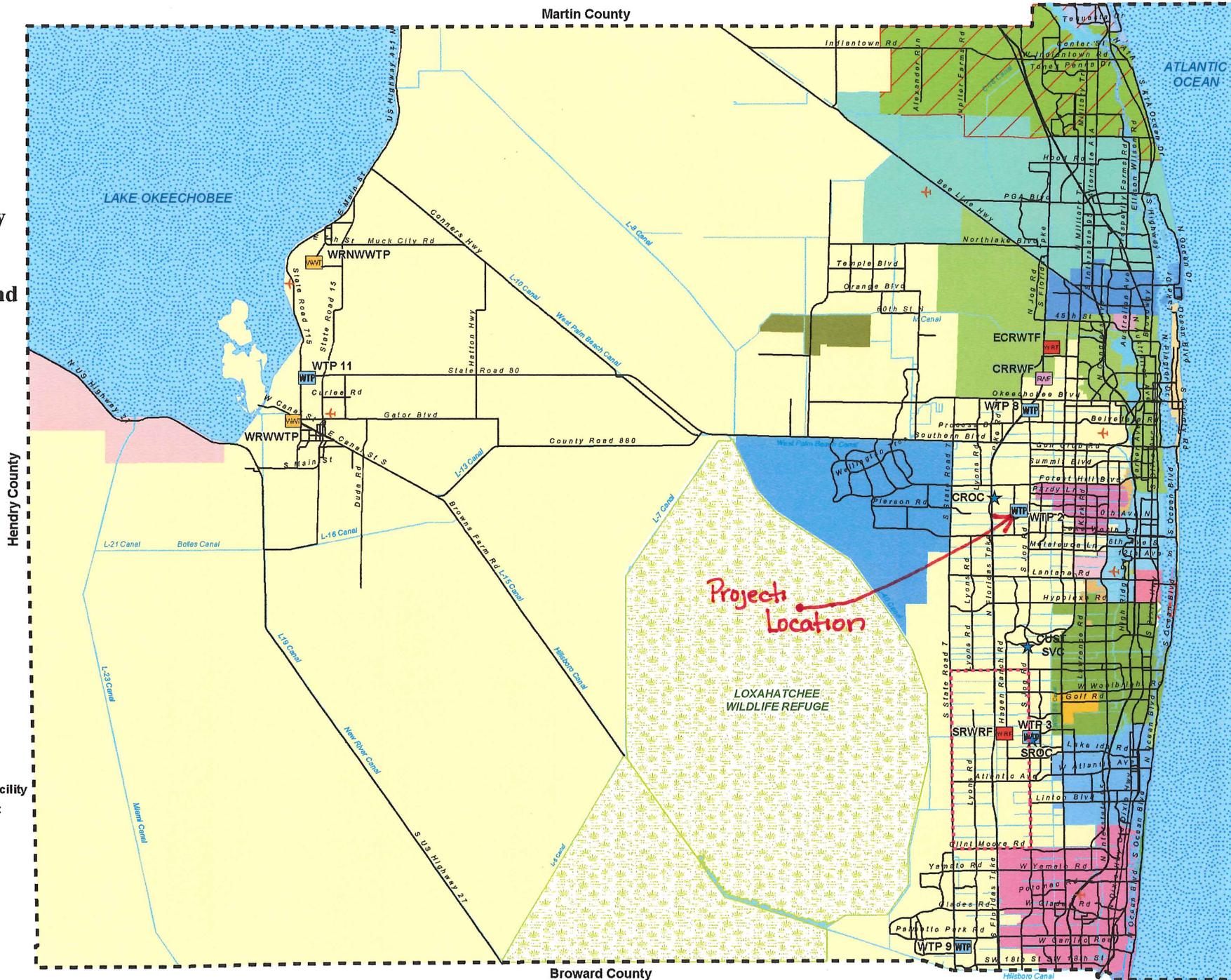
Attachment 1

**Legend**

- ★ Administration
- WTP Water Treatment Plant
- RF Reclamation Facility
- WRF Wastewater Reclamation Facility
- WWTP Wastewater Treatment Plant
- Mandatory Reclaimed SA
- - - Palm Beach County Limits
- P.B.C.W.U.D. Service Area



NOT TO SCALE



## FIRST AMENDMENT TO MIEX® DOC RESIN SUPPLY AGREEMENT

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida, hereinafter referred to as “Buyer,” and **ORICA WATERCARE, INC.**, a Delaware corporation registered to do business in the State of Florida, hereinafter referred to as “Seller”.

### WITNESSETH

**WHEREAS**, Buyer and Seller entered into a Miex® Doc Resin Supply Agreement (“Agreement”) on July 20, 2010 (Palm Beach County Resolution No. R2010-1128); and

**WHEREAS**, the Agreement set forth the terms of the Buyer’s purchase of Miex® Doc Resin from Seller, for use as part of the Miex® Treatment System at Buyer’s Water Treatment Plant No. 2; and

**WHEREAS**, Buyer has experienced a loss of Miex® Doc Resin inventory in the Miex® Treatment System located at Water Treatment Plant No. 2; and

**WHEREAS**, Buyer and Seller have met and determined that the best course of action is for Buyer to provide discounted pricing on the Miex® Doc Resin for a period of three (3) years beginning October 1, 2014; and

**WHEREAS**, Buyer and Seller wish to amend the Agreement to account for the discounted pricing and to extend the expiration date to September 30, 2017.

**NOW, THEREFORE**, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Buyer and Seller hereby covenant and agree as follows:

1. **Recitals.** The foregoing statements are true and correct and are incorporated herein by specific reference.
2. The following is added to the Paragraph entitled “TERM” on page 1 of the Agreement:

Following the expiration of the last Renewal Period on July 19, 2015, the Agreement shall be extended through September 30, 2017.

3. The following is added to the Paragraph entitled “PRICES; QUANTITIES” on page 1 of the Agreement:

For those purchases made between October 1, 2014 and September 30, 2015, the following terms will apply: Seller provides one (1) 650/L tote of Miex® DOC Resin at no charge to Buyer for every one (1) 650/L tote of Miex® DOC Resin that Buyer purchases up to a total of 15 totes at no charge.

For those purchases made between October 1, 2015 and September 30, 2016, the following terms will apply: Seller provides one (1) 650/L tote of Miex® DOC Resin at no charge to Buyer for every two (2) 650/L tote of Miex® DOC Resin that Buyer purchases up to a total of 15 totes at no charge.

For those purchases made between October 1, 2016 and September 30, 2017, the following terms will apply: Seller provides one (1) 650/L tote of Miex® DOC Resin at no charge to Buyer for every two (2) 650/L tote of Miex® DOC Resin that Buyer purchases up to a total of 13 totes at no charge.

4. All other provisions of the Agreement, dated July 20, 2010, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

IN WITNESS WHEREOF, Buyer and Seller have executed or have caused this Agreement to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:

SHARON R. BOCK, CLERK  
AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

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

By: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

[SEAL]

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY

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

APPROVED AS TO TERMS AND CONDITIONS

By: \_\_\_\_\_  
Department Director

WITNESSES:

SELLER, ORICA WATERCARE,  
INC.

\_\_\_\_\_  
Type or Print Name

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Type or Print Name

Corporate  
Seal

## **AGREEMENT FOR OPERATIONAL SUPPORT SERVICES**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida, hereinafter referred to as "COUNTY," and **ORICA WATERCARE, INC.**, a Delaware corporation registered to do business in the State of Florida, hereinafter referred to as "ORICA".

In consideration of the mutual promises contained herein, COUNTY and ORICA agree as follows:

### **ARTICLE 1 - SERVICES**

ORICA'S responsibility under this Agreement is to provide operational support services in accordance with the Scope of Work detailed in Exhibit "A", which is attached hereto and incorporated herein.

### **ARTICLE 2 - SCHEDULE**

ORICA shall commence services on October 1, 2014 and complete all services by September 30, 2017.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

### **ARTICLE 3 - PAYMENTS TO ORICA**

- A. COUNTY shall pay ORICA \$10,000/month for the term of this Agreement for the operational support services set forth in the Scope of Work. Said payments shall be made monthly and shall begin following the first month of the term of this Agreement. Additional services, as set forth in Section 4 of the Scope of Work, shall not be included in this monthly payment and shall, where necessary, be billed separately at the appropriate hourly rate.
  - B. Invoices received from ORICA pursuant to this Agreement will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Agreement. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
  - C. "Out-of-pocket" expenses will be reimbursed in accordance with Section 4 of the Scope of Work. All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement. Any travel, per diem, mileage, meals, or
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lodging expenses which may be reimbursable under the terms of this Agreement will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

- D. **Final Invoice:** In order for both parties herein to close their books and records, ORICA will clearly state "final invoice" on the ORICA'S final/last billing to the COUNTY. This shall constitute ORICA'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by ORICA.

#### **ARTICLE 4 – TERMS AND CONDITIONS**

COUNTY and ORICA agree that the terms and conditions attached hereto and incorporated herein as Exhibit "B" shall govern this Agreement.

#### **ARTICLE 5 – INSURANCE REQUIREMENTS**

ORICA shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of the Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by ORICA, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by ORICA under the Agreement.

- A. **Commercial General Liability:** ORICA shall maintain Commercial General Liability, occurrence form, with minimum limits of **\$1,000,000** per occurrence combined single limit for bodily injury, personal injury, and property damage liability. Coverage shall include, but not be limited to, Premises and Operations, Independent Consultants, Products and Completed Operations, Contractual Liability, Personal Injury & Advertising Injury, Medical Payments, and Broad Form Property Damage coverage parts. When applicable, coverage for the hazards of explosion, collapse and underground property damage (X-C-U) must also be included.
- B. **Business Auto Liability:** ORICA shall maintain Business Auto Liability with minimum limits of **\$500,000** per occurrence combined single limit for bodily injury, personal injury, and property damage liability. Coverage shall include all owned autos, hired autos, and non-owned auto liability. If ORICA does not have any owned or specifically insured autos, then ORICA shall maintain only the hired-auto and non-owned auto liability coverage under a separate policy or endorsed to the Commercial General Liability policy.
- C. **Workers' Compensation Insurance & Employer's Liability:** ORICA shall maintain Workers' Compensation & Employer's Liability applying to ALL
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employees for statutory limits in compliance with Florida Statute Chapter 440 and applicable Federal Laws. Coverage must include Employers Liability with minimum limits of \$100,000 Each Accident, \$500,000 Disease-Policy Limit, and \$100,000 Disease-Each Employee. If ORICA has NO employees, and is NOT in the construction industry, a Certificate of Exemption from the Worker's Compensation Law along with an Affidavit of Independent Contractor status shall satisfy this requirement when provided to and approved by COUNTY's Risk Management Department.

D. **Professional Liability.** ORICA shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Per Occurrence. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of ORICA most recent annual report or audited financial statement. For policies written on a Claims-Made basis, ORICA warrants the Retroactive Date equals or precedes the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, ORICA shall agree to purchase a SERP with a minimum reporting period not less than three (3) years. ORICA shall agree this coverage shall be provided on a primary basis.

E. **Additional Insured Clause:** Except as to Workers' Compensation and Employer's Liability and Professional Liability, said the Certificate(s) of Insurance shall clearly confirm that the coverages required by this Agreement have been endorsed to include a CG 2026 Additional Insured - Designated Person or Organization, or similar endorsement, in favor of the COUNTY with the following clause:

Palm Beach County, Board of County Commissioners  
A Political Subdivision of the State of Florida,  
its Officers, Agents, and Employees  
c/o Purchasing Department

F. **Waiver of Subrogation:** ORICA hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then ORICA shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should ORICA enter into such an agreement on a pre-loss basis.

- G. **Certificates of Insurance:** Within forty-eight (48) hours of the COUNTY's request to do so, ORICA shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. During the term of the Agreement and prior to each subsequent renewal thereof, ORICA shall provide this evidence to the COUNTY prior to the expiration date of each and every insurance required herein. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage.
- H. **Umbrella or Excess Liability:** If necessary, ORICA may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- I. **Right to Revise or Reject:** COUNTY, by and through its Risk Management Department in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

**THE REST OF THIS PAGE LEFT BLANK INTENTIONALLY**

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IN WITNESS WHEREOF, the Director of Purchasing of Palm Beach County, Florida has made and executed this Agreement on behalf of the COUNTY and ORICA has hereunto set its hand the day and year above written.

ATTEST:

Sharon R. Bock, Clerk and Comptroller

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

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

By: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

(SEAL)

APPROVED AS TO FORM AND TO  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

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

By: *[Signature]*  
Director of Water Utilities

WITNESS:  
*[Signature]*  
Signature

ORICA:  
ORICA WATERCARE, INC.  
Company Name

Michael Crossett  
Name (type or print)

BY:

*[Signature]*  
Signature

*[Signature]*  
Signature

Randy A. Cable  
Typed Name

President, N.A.  
Title

RICHARD F MURPHY  
Name (type or print)

**EXHIBIT A**  
**SCOPE OF WORK/SERVICES**



Orica Watercare  
33101 E. Quincy Ave.  
Watkins, CO 80137  
(303) 268-5165

## Palm Beach County #2 Operational Support Proposal

REVISION

### REVISION HISTORY

REV	STATUS	DATE	PREPARED	CHECKED	APPROVED
04	Section 3.2 changed to reference PBC terms and conditions of sale	Sept 4, 2014	R. Cable	K. McCurry	RC

<sup>1</sup> MIEX is a registered trademark with the U.S. Patent office and owned by Orica Australia Pty Ltd.

## **1 INTRODUCTION.**

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PBC#2 has been operating the MIEX® WTP since hand over in 2011. Over this period there has been no formal arrangement in place for Orica to support plant operations. After Orica's visit July 2, 2014, it was agreed that a more formal process should be in place for Orica to assist the County with monitoring plant performance, providing advice and sharing learning's from other MIEX® installations worldwide. This process could include regular plant performance reviews, resin condition monitoring, email exchanges, remote support and scheduled site visits.

The benefits of this approach to the County would be to:

- Minimize the risk of failures occurring in the future.
- Improve operator awareness
- Optimize plant performance

This proposal has been prepared to provide this support via a series of:

## **2 BASIS OF SERVICE & RECOMMENDED FREQUENCY.**

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### **2.1 REMOTE PLANT PERFORMANCE MONITORING (MONTHLY):**

PBC#2 shall weekly send Orica a copy of MIEX® plant log sheets, including data on:

- DOC Color and UVA performance data
- Water treatment historical trends (resin loss rates, service information, MIEX® flow rate, resin concentrations in contactor, resin additions, etc).
- Regeneration historical trends (regeneration set points and actual values and other overview parameters).

An experienced MIEX® engineer will review this data when received and then discuss their findings with PBC#2 via a monthly teleconference or sooner if abnormal trends are discovered . The output from the teleconference will be a brief assessment of the findings as well as recommended actions to be undertaken by PBC#2 as applicable.

### **2.2 RESIN CONDITION MONITORING (EVERY 3 MONTHS)**

A sample of loaded and fresh resin from the plant shall be sent to Orica every 3 months to enable the resin condition to be analyzed and reported on. The objective of these tests is to monitor the resin condition for decline in quality, performance, fouling (organic and in organic). The findings may prompt further actions and/or investigations;

The resin condition monitoring typically covers the following;

- Microscopy (view condition of resin)
- Bulk settled density (BSD) testing
- Settling rate
- IX activity (relative to laboratory resin)
- Particle size distribution for attrition rate monitoring as needed.

### **2.3 SITE VISITS (EVERY 3 MONTHS)**

A MIEX<sup>®</sup> engineer will visit the site over a 5 day period once every 3 months. The visit will have the following objectives;

- Face to face meetings with supervision and plant operators, maintenance personnel.

On the ground assessment of performance and investigation into plant incidents or process failures (including mechanical faults)

- Recommend and assist with development and implementation of software upgrades for process improvements and increased reliability (site specific or recommendations from other global MIEX<sup>®</sup> operations)
- Regeneration Curve Profiling (if required) – UVA, level and Conductivity
- Additional informal operator training / up skilling where requested or recommended by Orica or PBC#2 in response to incidents or as identified.
- Provide additional specific training at no additional cost as long as it can be completed within the 5 day visit allowance.

## **3 ORICA SERVICE SUPPORT SUPPLY COST**

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Orica is pleased to offer these services in a number of different configurations as detailed below.

### **3.1 Comprehensive Support at Annual Fee**

This option includes the following;

- Resin condition monitoring: (RCM) A total of 4 sample sets per annum
- Site visits: Up to four site visits per annum with five full working days per trip at PBC#2 site or offices. Each working day is up to 10 hrs long. All expenses are included in the price.
- Routine remote performance monitoring and support. A total of up to 240 hrs per annum has been included in the price. Orica shall prioritize the performance data review and where operational support requests from PBC#2 require considerable additional time it is Orica's responsibility to alert PBC#2 to this and seek approval for additional costs prior to incurring the additional engineering time.
- The yearly cost has been split into a monthly value to smooth operational spending for PBC#2 and is based these services being purchased in 12 month blocks.

*This comprehensive support option would cost \$120,000 per annum, invoiced as 12 equal monthly installments. Any additional engineering time, travel and expenses shall be charged in accordance with the schedule of rates detailed in section 4.*

### **3.2 LIMITATION OF LIABILITY**

See Palm Beach County terms and conditions of sale

### **3.3 CATASTROPHIC LOSS EVENTS**

For the purposes of this clause, a Catastrophic Loss is defined as losing more than 50% of the system inventory over a period of less than 30 days.

The support provided in this agreement will advise the plant in maximizing operational efficiency and will notify WTP operations of trends that would suggest that resin loss rates are increasing. Quarterly checks of operational parameters by Orica will reinforce best practices. With this additional layer of supervisory protection, the chances of a Catastrophic Loss is considerably mitigated; however, it cannot remove the chance altogether.

Should a Catastrophic Loss occur during the period when Orica is engaged to provide the Comprehensive Support package, Orica would contribute 40% of the resin required to restore the plant to acceptable inventory.

This limited warranty would only be applicable if all of the following apply:

- Plant operations and routine maintenance are undertaken in accordance with the O&M manual and Orica instructions
- All non-routine maintenance that is undertaken is reported to Orica within 1 week.
- Performance data is communicated weekly to Orica in accordance with Section 2.1
- Replacement (top-up) resin is added at the rate recommended by Orica
- The Catastrophic Loss is directly and solely attributable to advice and direction given by Orica, and not due to any act, omission or negligence of PBC or a third party (excluding an act or omission in accordance with advice or direction given by Orica)
- Within 3 days of having found and reported a resin loss event, a visual audit is undertaken to identify the quantity of resin that has been lost (based on deficit from acceptable inventory of 42,450 litres of MIEX<sup>®</sup> DOC resin).

The warranty contained herein shall terminate if the MIEX plant failure giving rise to a claim under warranty results from (a) unauthorized modification, repair or alteration (b) improper or abnormal operation, application, maintenance or installation, or (c) operation, handling or other dealings with the equipment in a negligent manner. The warranty also does not cover resin loss arising from mechanical failure (eg valve failure, line break, etc).

### **3.4 Resin Loss Rate**

For the purposes of this clause, Resin Loss Rate is defined as the monthly average loss rate, measured as gallons resin per million gallons of water treated. This calculation excludes the impact of any catastrophic loss event. Measurement of loss rate will take place at a frequency and using a testing method to be agreed between the parties and incorporated into the MIEX<sup>®</sup> Operation and Maintenance Manual.

The support provided in this agreement will advise the plant in maximizing operational efficiency and will notify WTP operations of trends that would suggest that resin loss rates are increasing. Quarterly checks of operational parameters by Orica will reinforce best practices. With this additional layer of supervisory protection, the chances of increased resin loss is considerably mitigated; however, it cannot remove the chance altogether.

Should the observed Resin Loss Rate exceed 3 gallons resin per million gallons of water treated during the period when Orica is engaged to provide the Comprehensive Support package, Orica would contribute the resin required to restore the inventory at the plant to the extent of such loss and provide advice to PBC as to how to rectify the loss rates. For avoidance of doubt, if the loss rate was 4 gallons resin per million gallons of water treated, Orica would contribute 1 gallons resin per million gallons of water treated, and PBC would contribute 3 gallons resin per million gallons of water treated.

This limited warranty would only be applicable if all of the following apply:

- Plant operations and routine maintenance are undertaken in accordance with the O&M manual and Orica instructions
- All non-routine maintenance that is undertaken under the guidance of is reported to Orica within 1 week
- Performance data is communicated weekly to Orica in accordance with Section 2.1
- Replacement (top-up) resin is added at the rate recommended by Orica
- The Resin Loss is not due to any act, omission or negligence of PBC or a third party (excluding an act or omission in accordance with advice or direction given by Orica)
- Within 14 days of having found and reported that resin loss appears to be above 3 gallons resin/million gallons, a visual audit is undertaken to identify the quantity of resin that has been lost (based on deficit from acceptable inventory of 42,450 litres of MIEX<sup>®</sup> DOC resin).

The warranty contained herein shall terminate if the MIEX plant failure giving rise to a claim under warranty results from (a) unauthorized modification, repair or alteration (b) improper or abnormal operation, application, maintenance or installation, or (c) operation, handling or other dealings with the equipment in a negligent manner. The warranty also does not cover resin loss arising from mechanical failure (eg valve failure, line break, etc).

**4 SCHEDULE OF RATES**

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MIX Engineer (normal hours)      \$100 / hr  
MIX Engineer (overtime)            \$130 / hr  
Travel, Expenses & other services    Cost + 25%

**5 VALIDITY & PRICE ADJUSTMENT**

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This proposal is valid for 30 days from the submission date.

The schedule of rates and annual fee are firm for (3) three years.

Accepted By: \_\_\_\_\_  
                  Title: \_\_\_\_\_  
                  Date: \_\_\_\_\_

Accepted By: \_\_\_\_\_  
                  Title: \_\_\_\_\_  
                  Date: \_\_\_\_\_

**EXHIBIT B –TERMS AND CONDITIONS**

Palm Beach County  
Purchase Order/Term Contract Standard 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 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.

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.

DEFAULT

The County may, by written notice of default to the successful bidder, terminate the contract in whole or in part if the successful bidder 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, or does not remedy such failure within a period of 10 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 successful bidder 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 five (5) 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.

NO THIRD PARTY BENEFICIARY

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or successful bidder.

FOB

The F.O.B. point shall be destination. If Buyer agrees, freight charges may 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.

PAYMENT TERMS

The Seller agrees that payment terms shall be Net 30. Interest penalties will only be paid in accordance with the Florida Prompt Payment Act, Florida Statute 218.70.

Note: Palm Beach County Vendors can now be paid by Credit Card via the County's voluntary Payment Manager Program. For vendors who don't have a merchant account, one is needed to utilize the Program. For vendors with a merchant account, you will need to enroll with Wells Fargo. For information, contact the Wells Fargo Supplier Onboarding Team at (866) 377-9533 or [supplieronboardingteam@wellsfargo.com](mailto:supplieronboardingteam@wellsfargo.com) or the Palm Beach County Clerk & Comptroller at [pbcpaymentmgr@mypalmbeachclerk.com](mailto:pbcpaymentmgr@mypalmbeachclerk.com).

INVOICING

Seller must render original invoice to the Palm Beach County Finance Department, P.O. Box 4036, West Palm Beach, Florida 334024036.

TAXES

The Buyer is exempt from Federal and State taxes.

#### 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

- (1) Unless specifically requested in the specifications, any response containing modifying or escalation clauses shall be rejected.
- (2) The price offered must be in accordance with the unit of measure provided on the response page(s). One (1) space or line requires only one (1) single, fixed unit price. Anything other than a single, fixed unit price shall result in the rejection of your response.
- (3) Seller warrants by virtue of submitting an offer that prices shall remain firm for a period of ninety (90) days from the date of opening to allow for evaluation and award.
- (4) Prices shall remain firm for the initial and any subsequent term unless modified by a special condition.
- (5) All unit prices bid should be within two (2) decimal points. If bidder's pricing exceeds two (2) decimal points, Purchasing reserves the right to round up or down accordingly.

#### 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.

#### 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, familial status, sexual orientation, gender identity and expression, or genetic information.

#### 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 will 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 with 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 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.

#### ENDORSEMENTS

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 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 successful bidder 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 the County. Additionally, anytime after award, the bidder may offer a reduced price which shall remain in effect for the duration of the contract.

#### PERFORMANCE DURING EMERGENCY

By submitting a bid, bidder agrees and promises that, during and after a public emergency, disaster, hurricane, flood, or acts of God, the County shall be given "first priority" for all goods and services under this contract. Bidder agrees to provide all goods and services to the County during and after the emergency at the terms, conditions, and prices as provided in this solicitation on a "first priority" basis. Bidder shall furnish a 24-hour phone number to the County in the event of such an emergency. Failure to provide the stated priority during and after an emergency shall constitute breach of contract and make the bidder subject to sanctions from doing further business with the County.

#### PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL AUDIT REQUIREMENTS

Pursuant to Palm Beach County Code, Section 2-421 - 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

#### GLADES UTILITY AUTHORITY "GUA" PURCHASES

Pursuant to Section 2-54(f)(11), Palm Beach County Code, purchases made for the "GUA" may be awarded only to those vendors located in the Glades, as defined in the Palm Beach County Code. However, if no response is received from a vendor located in Glades, the good or service shall be re-solicited to all vendors and awarded to the lowest, responsive, responsible bidder.

#### LIMITATION OF LIABILITY

IN NO EVENT SHALL SELLER OR BUYER 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 OR BUYER'S LIABILITY EXCEED THE SALE PRICE OF THE GOODS GIVING RISE TO THE LIABILITY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO SELLER'S DUTY TO INDEMNIFY BUYER, NOR SHALL IT APPLY TO THIRD-PARTY CLAIMS OF DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE.

#### 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.

Effective from 08/19/14

ORICA WATERCARE

Randy A Cable  
Signature

Randy A CABLE  
Print Name

President N.A.  
Title

8-20-2014  
Date

PALM BEACH COUNTY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

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Title

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Date