Memorandum

MIAMI-DADE COUNTY

Date: April 25, 2006

Amended
Agenda Item No. 8(R)(1)(B)

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Interim Water Use Agreement between Miami-Dade County and the South Florida Water Management District

R#449-06

This item was amended at the April 17, 2006 Special Infrastructure and Land Use Committee to correct minor scrivener's errors and to make the following modifications to the above referenced agreement.

1. **Article 12 – Clarifies when the COUNTY is able to use water from the regional system for its public water supply.**
2. **Article 14 - Deleted language suggesting that the water allocated could only be used for current existing demand.**
3. **Table 1 – Section IV – Clarifies that an amendment to the four party agreement is only necessary if the COUNTY is increasing allocation in the West Wellfield.**
4. **Article 31 – Same as revision for Article 12.**
5. **Article 32 - Clarifies how the COUNTY reports its water usage for compliance purposes.**
6. **Article 43 – Clarifies that the only resource impact over which the District can exercise regulatory authority are water resources.**

RECOMMENDATION

It is recommended that the Board of County Commissioners adopt the attached resolution authorizing the execution of an interim water use agreement (agreement) with the South Florida Water Management District (District). The terms of this agreement will require Miami-Dade County to expend approximately $200,000 towards studies to complete the requirements of a 20-year consumptive use permit (CUP) and $13 million for design and construction of two pilot projects to demonstrate the feasibility of using treated wastewater to re-hydrate coastal wetlands and for aquifer recharge.

BACKGROUND

The Miami-Dade Water and Sewer Department (MDWASD) operates the Hialeah-Preston Water Treatment Plants, the Alexander Orr Water Treatment Plant and the South-Miami Dade Water Supply System, which consists of 5 smaller auxiliary water treatment plants. The plants are supplied with raw water by a total of 88 water supply wells grouped into 14 wellfields. These water supply wells withdraw water from the Biscayne Aquifer. Under Florida law, the District allows the withdrawal of groundwater through the issuance of CUPs.

In 1995, 1999, and 2003, the District issued three separate CUP's to MDWASD. In 2004, prior to the expiration of two of the CUPs for the Hialeah-Preston and the Alexander Orr Water Treatment Plant, MDWASD applied for renewal permits that extended the permits administratively until new permits could be issued. The application also requested the consolidation of all three CUPs and an average day allocation of 466.7 million gallons per day (MGD) to meet the projected demands until the year 2025.

In May 2004, MDWASD applied for the renewal permits. Subsequently the District issued several "Requests for Additional Information." In the most recent request dated December 22, 2005, the District identified numerous water resources issues that needed to be addressed before the District would issue a long term water use permit. These issues include the reduction of unaccounted for water, raw water metering at each well or wellfield, the development of a 20-year water conservation plan, a 20-year alternative water supply implementation plan, approval from the Department of Interior regarding increased seepage levels from Everglades National Park as a result of an increase in the withdrawal allocation from the West Wellfield, demonstration that wetlands will not be impacted by the operation of the wellfields and, finally, revised water demand projections based on proposed water conservation measures and alternative water supplies. Some level of modeling will be required to address many of these issues.

The agreement authorizes the system-wide water demand of 349.76 MGD for an eighteen month period. During the term of the agreement, MDWASD must complete a number of tasks in order to respond to the issues raised in the December 22, 2005, Request for Additional Information. The agreement includes a specific completion date for each task. In addition, MDWASD will initiate the design and construction of two wastewater reuse pilot projects. The first pilot project consists of constructing a 1-MGD plant to treat wastewater from the South District Wastewater Treatment Plant to a very high level of treatment and utilize the treated water to re-hydrate adjacent coastal wetlands near Biscayne Bay. The second pilot project consists of constructing a smaller satellite wastewater treatment plant to discharge reuse water in areas outside and up gradient to the wellfields to provide a similar level of treatment for the purpose of aquifer recharge.

On April 12, 2006, MDWASD Director John W. Renfrow addressed the District's Governing Board at their regular monthly meeting to reaffirm MDWASD's commitment to a long range plan to meet the County's projected water demands through the implementation of alternative water supplies.

Deputy County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: April 25, 2006

FROM: Murray A. Greenberg
County Attorney

Amended

SUBJECT: Agenda Item No. 8(R)(1)(B)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 8(R)(1)(B)
04-25-06

RESOLUTION NO. 449-06

RESOLUTION AUTHORIZING THE COUNTY MANAGER TO EXECUTE AN INTERIM CONSUMPTIVE USE AUTHORIZATION AND AGREEMENT WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the County Manager is hereby authorized, for and on behalf of Miami-Dade County, to execute the Interim Consumptive Use Authorization and Agreement with the South Florida Water Management District, in substantially the form attached hereto, and to exercise the provisions thereof.

The foregoing resolution was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman
Dennis C. Moss, Vice-Chairman

Bruno A. Barreiro	Jose "Pepe" Diaz
Audrey M. Edmonson	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 25th day of April, 2006. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency: DM

David M. Murray

R-449-06

RECEIVED
SOUTH FLORIDA WATER MANAGEMENT DISTRICT CLERK'S OFFICE
3301 Gun Club Road
West Palm Beach, FL 33406 MAY 18 2006 5:31 PM

SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

ORDER NO. 2006-072-CO-WU

IN RE: MIAMI-DADE COUNTY INTERIM CONSUMPTIVE USE AUTHORIZATION AND AGREEMENT

AGREEMENT

Pursuant to Chapter 373, Florida Statutes, and the rules promulgated there under, this MIAMI-DADE COUNTY INTERIM CONSUMPTIVE USE AUTHORIZATION AND AGREEMENT ("Agreement") is entered into between the SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD) and MIAMI-DADE COUNTY (the COUNTY), by mutual agreement.

FINDINGS OF FACT

The SFWMD makes the following Findings of Fact:

1. The SFWMD is a public corporation of the State of Florida existing by virtue of Chapter 25270, Laws of Florida, 1949, and operating pursuant to Chapter 373, Florida Statutes, and Title 40E, Fla. Admin. Code, as a multipurpose water management SFWMD with its principal office at P.O. Box 24680, 3301 Gun Club Road, West Palm Beach, FL 33416-4680.

2. Miami-Dade County (COUNTY) is a political subdivision of the State of Florida and is a person within the meaning of Section 373.016(15), Florida Statutes. Miami-Dade County, through the Miami-Dade Water and Sewer Department (MDWASD) is responsible for the operation of public water supply

systems, including Hialeah/Preston (CUP No. 13-00037W), Alexander Orr (CUP No. 13-00017-W), and the South Dade Water Supply System (CUP No. 13-00040-W), which consists of five water treatment plant facilities. In addition MDWASD operates and three regional wastewater treatment facilities (North District Wastewater Treatment Plant, Central District Wastewater Treatment Plant, and South District Wastewater Treatment Plant).

3. The Hialeah/Preston public water supply treatment facility, including Hialeah, Preston, Miami Springs, and the Northwest wellfields, was last permitted on February 11, 1999, with an annual allocation of 72,703 MGY (199 MGD). The volume of water produced from this system in 2005 was 59,354 MGY (163 MGD).

4. The Alexander Orr public water supply treatment facility, including Alexander Orr, Snapper Creek, Southwest, and West wellfields, was last permitted on May 11, 1995, with an annual allocation of an allocation of 74,136 MGY (203 MGD). The volume of water produced from this system in 2005 was 64,587 MGY (177 MGD).

5. The South Dade Water Supply System public water supply treatment facility, which includes the Everglades Labor Camp Elevated Tank, Leisure City, Newton, and Naranja, Water Treatment Plans, their associated wellfields, and the future South Miami Heights Water Treatment Plant (SMHWTP), which includes the Former SMHWTP, Caribbean Park, Roberta Hunter Park, and Rock Pit Park wellfields, was last permitted on March 13, 2003, with an annual allocation of 3,997 MGY (11 MGD). The volume of water produced from this system in 2005 was 2570 MGY (7 MGD).

6. In total, approximately 347 million gallons per day were withdrawn from the Biscayne aquifer by MDWASD for public water supply in 2005. In turn, MDWASD treated approximately 295 million gallons per day (MGD) of wastewater during the same year which included wastewater produced by municipalities with their own public water supply systems (North Miami, North Miami Beach, Florida City and emergency flows from Homestead). MDWASD reclaimed 16 MGD of treated wastewater for beneficial reuse.

7. MDWASD's wellfields are located between the Everglades National Park on the west and Biscayne National Park on the east. The Biscayne Aquifer is recharged primarily by rainfall and water from the Central and Southern Florida Project, including the Everglades regional system. During those dry seasons when rainfall levels cannot keep the aquifer recharged, COUNTY's water supply, as well as the water supply for other industrial, agricultural, and municipal users, is dependent upon water supply deliveries from the regional system to prevent saltwater intrusion and to recharge wells and wellfields. These deliveries affect the amount of water available to the Everglades natural systems, including fish and wildlife. In addition, during dry periods the COUNTY's pumpage from the Biscayne aquifer intercepts flows to Biscayne Bay.

CURRENT STATUS OF MDWASD'S PENDING WATER USE PERMIT

APPLICATIONS

8. On May 7, 2004, MDWASD submitted a preliminary application to request the consolidation of its three existing consumptive use permits ("consolidated permit application"), including the February 9, 2004 Hialeah/Preston application to renew CUP No. 13-00037W; the January 2001 outstanding permit modification for the Alexander Orr CUP No. 13-00017-W; and an existing consumptive use permit for the South Dade Water System CUP No. 13-00040-W. This consolidated permit application requested sufficient water from the Biscayne Aquifer and associated Floridan Aquifer Storage and Recovery (ASR) wells, to meet its existing and projected demands for the next 20 years, until 2025. Specifically, MDWASD requested 450 million gallons per day (MGD) to meet its demands for a projected 2.7 million residents in 2025.

9. Since filing the consolidated permit application, the SFWMD and MDWASD have exchanged several requests for additional information and responses to such requests. The most recent request for additional information from SFWMD was dated on December 22, 2005 and received by MDWASD on December 29, 2005. On January 13, 2006, the MDWASD requested a meeting with the SFWMD to discuss the modeling requirements and alternative water supply options. On January 31, 2006, MDWASD and its consultant met with SFWMD to discuss the requirements for a 20 year permit and to discuss potential alternative water supply projects, including potential reuse projects. Included in these discussions was the opportunity for a short term authorization to use water during which time MDWASD would complete the development of responses to

the December, 22, 2005 Request for Additional Information including a long range water supply plan. On February 1, 2006, the MDWASD sent a letter to the SFWMD summarizing its understanding of the meeting. On February 9, 2006, the SFWMD responded to this letter with additional clarifications on the meeting and the requirements for a long term permit. As a result of the meeting, an extension was requested until March 2, 2006 to respond to the third request for additional information. On March 2, 2006 MDWASD submitted a letter outlining a schedule for completing the December 22, 2005 Request for Additional Information questions. This information was needed to complete the timelines and milestone to be included in the short term authorization for water use.

INTERIM CONSUMPTIVE USE AUTHORIZATION

10. MDWASD currently has pending an application for a consolidated consumptive use permit. Through the SFWMD's requests for additional information on the pending consolidated permit and other communications, the SFWMD has identified several issues, which must be addressed before a recommendation for permit issuance can be made by SFWMD Staff. The most significant issues are summarized in the outstanding requests for additional information, referenced above. To date the SFWMD has made no findings regarding the permittability of the requested withdrawals from MDWASD and assurances that the conditions for issuance will be met have not been provided.

11. As a result, the SFWMD and MDWASD have identified specific

actions considered necessary to complete the pending permit application, to enable the Governing Board to make a determination whether the proposed consumptive use is permittable. These actions are set forth below in Table 1.

12. As a significant portion of this effort, SFWMD requested MDWASD to submit a plan for the development of alternative sources to meet increased demands over the next 20 years which will be developed over the next five year period and beyond, prior to or concurrent with such increasing demands. SFWMD requested that such evaluation of alternative sources include the use of reclaimed wastewater to offset dependence on regional system recharge. Such plan must include specific timelines for completion of permitting, construction, and testing of proposed alternative source(s) prior to or concurrent with increasing demands over the next twenty years. The COUNTY and SFWMD recognize that if and when additional regional system water becomes available for consumptive use as certified by the Governing Board, including through implementation of the Comprehensive Everglades Restoration Project or other resource development project, or if the Governing Board takes formal agency action identifying any existing water from the regional system to be available for public water supplies, the COUNTY may request to meet a portion of its future demands from such sources at such time..

13. Several studies and evaluations are needed to address the outstanding permit application review questions, which will take an additional time to complete. Considering the complexity of these issues, it is projected that additional time will also be needed to analyze such evaluations and to determine

whether the COUNTY has provided reasonable assurances that the conditions for permit issuance will be met for the requested 20 year duration.

14. As a result, in the interim time period prior to final agency action on the pending permit application or termination of this Agreement, whichever occurs first, the SFWMD intends to authorize the COUNTY to withdrawal and use water from its existing Biscayne Aquifer wells pursuant to the existing permits as limited in the ORDER section below. It is SFWMD's determination that the continued withdrawal of water from these wells within the designated amounts in the ORDER section is necessary to continue to meet the public water supply demands of the COUNTY, and otherwise preserve the public health and welfare during completion of the permitting process.

15. Except as specifically stated otherwise in the Order Section of this Agreement, the Limiting and special Conditions contained in the existing permits shall remain in full force and effect, until final agency action is taken on the pending permit application. The allocation amounts in the existing permits are superseded to the extent necessary to comply with the limitation on total withdrawals set forth in the Order Section. Where this Agreement conflicts with any provision of the existing permits, the terms of this Agreement shall govern, and the County shall comply with the terms of this Agreement in such case.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. The Governing Board may issue orders pursuant to section 373.171, Florida Statutes: "...to obtain the most beneficial use of water resources of the state and to protect the public health, safety, and welfare and interests of the water users

affected...." Such orders may affect the use of water or modify any existing uses, including apportioning, limiting or rotating uses of water or preventing those uses that the governing board determines have ceased to be reasonable or beneficial. S. 373.171(1), F.S. The SFWMD is also authorized to enter into agreements pursuant to Section 373.083, Florida Statutes, to implement or enforce any of the provisions of Chapter 373, Florida Statutes, including Section 373.171, F.S.

17. Pursuant to Sections 373.044 and 373.219, Florida Statutes, and the implementing regulations found in Title 40E, Fla. Admin. Code, the SFWMD is authorized to require permits for the use of water. In order to obtain a consumptive use permit the permit applicant must demonstrate that the conditions for permit issuance, including those set forth in Section 373.223, Florida Statutes, will be met for the permit duration. Section 373.236, F.S. Pursuant to Sections 373.044 and 373.219, Florida Statutes, and the implementing regulations found in Title 40E, Fla. Admin. Code, the SFWMD is authorized to require permits for the use of water. In the issuance of these permits, the SFWMD is authorized to impose reasonable conditions necessary to assure that such use complies with applicable statutory and rule criteria.

18. The COUNTY currently has pending an application for a consolidated consumptive use permit. Through the SFWMD's requests for additional information on the pending consolidated permit and other communications, the SFWMD has identified issues which must be addressed before a recommendation on the pending application, as amended herein, can be

made by SFWMD Staff. The most significant issues are summarized in the outstanding requests for additional information referenced above.

19. The SFWMD and the COUNTY have identified specific actions considered necessary to complete the pending permit application, to enable the Governing Board to make a determination whether the proposed consumptive use is permittable. These actions are set forth below in Table 1.

20. As one of these actions, the COUNTY agrees to develop a plan, in compliance with specific action items identified in the ORDER section below, for the development of alternative sources to meet the COUNTY's increased demands over the next 20 years, prior to or concurrent with such increasing demands. Such plan must include specific timelines for completion of permitting, design, construction, and testing of proposed alternative source(s) to be implemented over five year increments with the volumes of water being developed during each increment being equal to or greater than the concurrent increases in demand, subject to the terms of Paragraphs 12 and 31 of this Agreement. Such alternatives shall include the ASR systems designed and constructed under the requirements of the 2000 Lower East Coast Regional Water Supply Plan. Identified actions are necessary to complete the pending consolidated permit application as amended herein and to enable the Governing Board to make a determination whether the proposed consumptive use is permittable.

21. It is SFWMD's determination that the continued withdrawal of water from the existing COUNTY's Biscayne aquifer wellfields during the interim period

prior to resolution of the outstanding permit application is necessary. Such interim use shall be limited to the designated amounts necessary to continue to meet the public water supply demands of the COUNTY which are projected to occur over the duration of this Agreement. The SFWMD finds that continued interim use of the Biscayne Aquifer wellfields, as indicated in the ORDER section below, is necessary to protect the public health, safety, and welfare and interests of the affected water users, consistent with Sections 373.171 and 373.083, Florida Statutes.

22. Except as specifically stated otherwise in the Order Section of this Agreement, the Limiting and special Conditions contained in the existing permits shall remain in full force and effect, until final agency action is taken on the pending permit application. The allocation amounts in the existing permits are superseded to the extent necessary to comply with the limitation on total withdrawals set forth in the Order Section. Where this Agreement conflicts with any provision of the existing permits, the terms of this Agreement shall govern, and the County shall comply with the terms of this Agreement in such case.

23. Miami-Dade County has the authority to enter into the Agreement pursuant to the Miami-Dade County Home Rule Charter.

ORDER

THEREFORE, having reached a resolution of this matter, the SFWMD and the COUNTY mutually agree and it is ordered that:

24. The COUNTY is authorized to withdraw up to 349.76 million gallons of water per day in total with a maximum month of 11,140 million gallons, from the existing wellfields for a duration of 18 months from the execution date of this

Agreement or until this Agreement is rendered ineffective through the issuance of the consolidated permit or is otherwise terminated consistent with the provisions contained herein, whichever occurs first.

25. In operating the existing wellfields under this Agreement, the COUNTY shall comply with all limiting conditions as described in Hialeah/Preston CUP No. 13-00037W (issue date: February 11, 1999), Alexander Orr CUP No. 13-00017-W (issue date May 11, 1995), and the South Dade Water Supply System CUP No. 13-00040-W (issue date March 13, 2003). The allocation amounts in the existing permits are superseded to the extent necessary to comply with the limitation on total withdrawals set forth in the ORDER section of this Agreement.

26. The Limiting and Special Conditions contained in the existing permits shall remain in full force and effect, except as specifically stated otherwise by the terms of this Agreement, until final agency action is taken on the pending permit application.

27. During this Agreement, the COUNTY shall complete the following list of tasks set out in Table 1, that are necessary for responding to the outstanding December, 22, 2005 letter and for completing the COUNTY's pending water use permit application as amended herein.

28. In executing this Agreement, the District grants an extension to the time allowed for response to the District's December 22, 2005 Request for Additional Information consistent with Rule, 40E-1.603, F.A.C. for the duration this Agreement.

TABLE 1

Item Number	Completion Date	Description of deliverables
I. Unaccounted for water losses		
I a.	270 days from the execution of this Agreement	Submit unaccounted water loss reduction plan for review and approval. The plan will include a proposed target for acceptable loss less than 10 percent of the total water system output, specific actions that will be taken to achieve the goal, and a schedule to achieve the goal including specific milestone dates
I b.	30 days thereafter	District review and comment
I c.	30 days thereafter	Revise plan if needed
I d.	30 days thereafter	District approves/rejects plan. Approved milestone dates in the plan will be incorporated into limiting conditions of the 20 year permit
II. Water Use Accounting		
II a.	90 days from the execution of this Agreement	Submit a water use accounting plan for review and approval. The plan will include the proposed method to measure flow from each withdrawal facility per District rules and the proposed method for calibrating each water use accounting device.
II b.	30 days thereafter	District review and comment
II c.	450 days from the execution of this Agreement	Implement the water use accounting plan.

III. Water Conservation Plan

III a.	270 days from the execution of this Agreement	Submit a 20 year water conservation plan for review and approval. The plan will include the proposed water demand reduction goals in five year increments, the proposed actions to achieve the goals including funding requirements, and a schedule that identifies milestone dates when the specific actions will be implemented
III b.	30 days thereafter	District review and comment
III c.	30 days thereafter	Revise plan if needed
III d.	30 days thereafter	District approves/rejects plan. Approved milestone dates in the plan will be incorporated into limiting conditions of the 20 year permit

IV. Four Party Agreement for Requested Increase at the West Wellfield

IV a.	90 days from the execution of this Agreement	Provide a letter of concurrence from the Superintendent of Everglades National Park, that the requested allocation from the West Wellfield will not cause adverse impacts to Everglades National Park. Should MDWASD withdraw their request for an increased allocation from the West Wellfield, said documentation is not necessary.
IV b.	450 days from the execution of this Agreement	Execute an amendment to the Four Party Agreement if necessary. Should the COUNTY withdraw their request for an increase in the west wellfield, an amendment to the Four Party Agreement is not necessary.

V. Isolated Wetland Identification and Impact Evaluation

V a.	270 days from the execution of this Agreement	Submit map(s) identifying all jurisdictional wetlands that exist within the Cone of Influence of the proposed wellfield operating program associated the requested permit allocation pursuant to District rules.
V b.	365 days from the execution of this Agreement	In addition to the wetland location, the type of wetland and demonstration that all wetlands will not be harmed by the proposed wellfield operations consistent with district rules.
V c.	30 days thereafter	District review and comment
V d.	30 days thereafter	Revise plan if needed
V e.	30 days thereafter	District approves/rejects plan.

VI. Revised Water Demand Numbers

VI a.	270 days from the execution of this Agreement	Identify demands for raw water as necessary to develop the wellfield operational program.
VI b.	450 days from the execution of	Complete revisions of large user contract to address service area demands through 20 years. Allocations in the permit will be based on the duration of the

	this Agreement	agreements.

VII. Wellfield Operational Plan

VII a.	400 days from the execution of this Agreement	Identify a wellfield operational plan that identifies by wellfield and source the amount of raw water to be produced to meet demands in five year increments over 20 year duration. This operational plan will drive the magnitude and timing of alternative water supply development as described in XI below.

VIII. Monitoring Network Design

VIII a.	365 days from the execution of this Agreement	Submit a comprehensive water quality/water level monitor network that is capable of assessing the impact of pumpage on the saltwater interface, flows from regional canals and the everglades and Biscayne Bay for District review and approval
VIII b.	30 days thereafter	District review and comment
VIII c.	30 days thereafter	Revise plan if needed
VIII d.	30 days thereafter	District approves/rejects plan. The approved monitor plan will be incorporated into limiting conditions of the 20 year permit

IX. Alternative Water Supply Plan

The COUNTY shall develop a plan, in compliance with specific action items identified herein, for the development of alternative sources to meet 100% of the COUNTY's 20 year increased demands from the Biscayne Aquifer over historic use that occurred when the permit application was filed in 2003. Such alternative sources must be developed and available prior to or concurrent with projected increasing demands, subject to the terms of Paragraphs 12 and 31 of this Agreement. Such plan must include specific timelines for completion of permitting, design, construction, and testing of proposed alternative source(s) to be implemented over five year increments with the volumes of water being developed during each increment being equal to or greater than the concurrent increases in demand to be met. The pending consolidated permit application is amended by this Agreement consistent with the above.

The identified actions are necessary to complete the pending consolidated permit application and to enable the Governing Board to make a determination whether the proposed consumptive use is permittable. The following specific actions are required:

IX a.	365 days from the execution of this Agreement	Submit proposed long range alternative water supply plan to District for review and approval. The plan will include the proposed alternative water supply projects to be completed in five year increments commensurate with the projected rate of growth during each five year period. The plan shall demonstrate that the proposed projects, by their location, volume of water produced, and timing of implementation, will be sufficient to offset the

		corresponding increase in demands for raw water. The plan shall also include cost estimates which when approved will be incorporated into the Utility's capital improvement plan and a schedule which identifies specific milestones for the completion of each project.
IX b.	30 days thereafter	District review and comment
IX c.	60 days thereafter	Revise plan if needed and resubmit to District
IX d.	30 days thereafter	District approves/rejects plan. Approved milestone dates in the plan will be incorporated into limiting conditions of the 20 year permit
IX e.	30 days from execution of this Agreement	Submit the design Scope of Work for the two pilot reuse projects to the District.
IX f.	90 days from Execution of this Agreement	Initiate design contract for two pilot reuse projects
IX g.	90 days from execution of this Agreement	Initiate design contract for Floridan aquifer reverse osmosis treatment at the new South Miami Heights Water Treatment Plant
IXh.	360 days from the execution of this Agreement	Complete 90% design and apply for all applicable permits for the construction of two pilot reuse projects
IXi.	360 days from the execution of this Agreement	Complete 90% design and apply for all applicable permits for the construction of the Floridan aquifer reverse osmosis treatment at the new South Miami Heights Water Treatment Plant

IX j.	60 days after issuance of all applicable permits	Advertise for construction contract for two pilot reuse projects
IX k.	60 days after issuance of all applicable permits	Advertise for construction contract for Floridan aquifer reverse osmosis treatment at the new South Miami Heights Water Treatment Plant

X. Quarterly status reports

X a.	Every 90 days from the execution of this Agreement	Submit to the District a letter report detailing the work completed during the prior 90 days, the anticipated work for the next 90 days, any setbacks or schedule problems

XI. Response to December 1, 2005 Request for Additional Information

XI a.	400 days from the execution of this Agreement	Submit a revised Table G summarizing the service area populations, raw water demands by source which reflect the results of the water conservation and unaccounted for water programs that will be put in place by the COUNTY over the life of the permit. The raw water demands shall reflect the seasonality of demand as well as treatment losses as appropriate (e.g. reverse osmosis reject water)
XI b.	420 days from the execution of this Agreement	Submit a draft response to the Request for Additional Information and conduct a meeting with SFWMD staff to insure completeness and accuracy
XI c	450 days from the execution of this Agreement	Submit a formal complete response to the 12/22/05 RAI incorporating all of the above information. The response associated with this deliverable alone shall restart the 40E-1.603 administrative time clock. Deliverables associated with individual items listed above are not

considered as RAI responses

29. The COUNTY and District Staff shall meet at least every 90 days to discuss outstanding issues and coordinate the timely completion of the above tasks. The COUNTY shall submit to the District a letter report detailing the work completed during the prior 90 days, the anticipated work for the next 90 days, any setbacks or schedule problems. Prior to initiating action under each item in Table 1, the COUNTY and SFWMD shall timely meet to agree on the scope of issues and evaluations to be conducted. This agreed upon scope shall be the basis for determining whether the submittal is non-responsive and in good faith for purposes of imposing liquidated damages under Part III of this Order section. The period in which the SFWMD reviews a scope submitted by the COUNTY shall not count against any compliance deadline required in this Agreement.

30. References to 'District Rules' or 'District Criteria' means District consumptive use permit rules that are in place at the time the permit application is deemed complete. It should be noted that during this Agreement, it is expected that some of these rules will be undergoing revisions that may affect the response to the Request for Additional Information. The District will conduct formal rule development and rule making workshops. The COUNTY is encouraged to participate in this process and adjust it's response to the Request for Additional Information accordingly.

31. The COUNTY and SFWMD recognize that if and when additional regional system water becomes available for consumptive use allocation as

determined by the Governing Board, including through implementation of the Comprehensive Everglades Restoration Project or other resource development project, or if the Governing Board takes formal agency action identifying any existing water from the regional system to be available for public water supplies, the COUNTY may request to meet a portion of its future demands from such source at such time.

32. The COUNTY shall retain the right to request to modify or alter its existing or pending, or future permits request, as permitted by law, or to submit a new permit request, including but not limited to alterations to proposed withdrawals, permit duration, and permit conditions. The COUNTY understands that any alterations or modifications to such permits may require the COUNTY to provide additional or supplemental information beyond the submittals specified herein. Nothing contained herein shall limit the ability of the COUNTY, as may be allowed by law, to relinquish or terminate any current or future permit. Nothing contained herein shall limit the right of the COUNTY to conduct independent studies of its facilities, the regional system, any impacts thereto, or any constituent parts thereof. Nothing contained herein shall limit the ability of the COUNTY to challenge via administrative proceeding any action of the District which the COUNTY has legal standing to contest, except as expressly limited in Paragraph 48 of this Agreement. It is recognized that by equipping each withdrawal facility with a calibrated water use accounting device, the resulting measured volume of raw water withdrawn may differ substantially from the volume measured using the accounting methods that were in place at the

beginning of this Agreement. Therefore, for the purposes of monitoring compliance with the allocations authorized herein, the COUNTY shall measure and report the water withdrawn using the methods in place at the beginning of this Agreement. The projected demands for the 20-year permit shall reflect the use of water considering the revised data that will result from the calibrated water use accounting measurements.

III. COMPLIANCE TERMS and LIQUIDATED DAMAGES

33. In the event the COUNTY does not comply with the terms of this Agreement, the SFWMD may pursue its rights to administratively or judicially enforce the terms of the Agreement through any alternative means available. The SFWMD may utilize the terms of the Agreement, including the liquidated damages clause and authorities recognized in Chapter 373, Florida Statutes, as a means of proving civil penalty amounts in such a proceeding. The COUNTY may defend such actions to the fullest extent allowed by law, and nothing contained herein shall limit or constitute a waiver of any defense which the COUNTY may have or could have to such action.

34. The COUNTY is fully aware that a violation of the terms of this Agreement may subject the COUNTY to a civil court proceeding in which the SFWMD may request the judicial imposition of damages, and civil penalties up to ten thousand dollars ($10,000.00) per offense, (except to the extent the SFWMD has waived such damages and civil penalties as specified in the Agreement) and criminal penalties.

35. If the SFWMD successfully petitions or sues for enforcement of the

Agreement, the SFWMD reserves the right to request assessment of attorney's costs and fees against the COUNTY or successors and assigns. However, except for the stipulated fines set forth below, a suit to enforce this Agreement does not automatically entitle the SFWMD to the recovery of fines, penalties, attorney's fees, or costs the award of which, if any, shall depend upon the applicable law and facts. The SFWMD expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violation of applicable statutes or the rules promulgated there under, or to alleviate an immediate serious danger to the public health, safety or welfare.

36. Liquidated Damages—The failure to submit a responsive deliverable identified in Table 1 within the identified timelines is considered a violation of this Agreement and shall invoke a stipulated penalty of $1,000.00 for each day until the deliverable is received by the District. Deliverables are specifically required in subparagraphs I. a. and c., II a. and c., III a. and c., IV a. and b.,V a., b. and d., VI a. and b., VII a., VIII a. and c., IX a. c., e., f., g., h., i., j., and k., X a. and XI a., b., and c.

i. In such an event, the District will deliver a letter identifying the submittal as non-responsive and identifying specific deficiencies that need to be addressed. The stipulated penalties will begin the day following the delivery of the District's notice of non-response. In the event that the District takes longer to respond to a submittal than the time agreed to in the schedule, the number of days beyond the due date shall be added onto the due date of the next COUNTY deliverable for that task.

ii. Non-responsive submittals are those that do not constitute a good faith effort to address the scope of issues and actions agreed appropriate, pursuant to the process described under Paragraph 29. In the event of a submittal which the District finds non-responsive, the District will deliver a letter identifying the submittal as non-responsive and identifying specific deficiencies that need to be addressed, along with a revised timeline for curing the deficiencies, as appropriate.

iii. Liquidated damages will not be imposed for violations of the Agreement that occur due to circumstances beyond the control of the COUNTY after it has exercised due diligence. If any event occurs which causes delay or reasonable likelihood of delay, in complying with the requirements or deadlines of this Agreement, the COUNTY shall have the burden of proving that the delay was or will be caused by circumstances beyond the reasonable control of the COUNTY and could not have been or cannot be overcome by the COUNTY's due diligence. Liquidated damages will not be imposed if a delay is caused by contractors or consultants due to circumstances beyond the reasonable control of the COUNTY after exercising due diligence to prevent such delay.

iv. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, the COUNTY shall notify the District in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which the COUNTY intends to implement these measures. If liquidated damages are to be assessed, within 30 days of written demand from the District, the COUNTY shall make payment of the appropriate stipulated penalties to the "South Florida Water Management District" by cashier's

check or money order.

v. Nothing in this paragraph shall prevent the District from filing suit to specifically enforce any of the terms of this Agreement. Because the parties desire to avoid the burdens of litigation, they have agreed in good faith upon this provision for liquidated damages. Upon payment of liquidated damages by the COUNTY, the District shall waive its rights to maintain an action for civil penalties for the breach.

vi. Upon occurrence of a delay or anticipated delay which has been or will be caused by circumstances beyond the reasonable control of the COUNTY after exercising due diligence, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances without the need to amend this Agreement. The COUNTY shall adopt all reasonable measures necessary to avoid or minimize delay.

MISCELLANEOUS TERMS OF AGREEMENT

37. The Agreement is final agency action pursuant to Section 120.69, Florida Statutes, and shall take effect after adoption by and execution on behalf of the Governing Board of the SFWMD, on the date it is filed with the Clerk of the SFWMD unless a petition for administrative hearing is filed, pursuant to Chapter 120, Florida Statutes, by a third party.

38. This Agreement will terminate 18 months from the date of execution, or upon issuance of a consolidated water use permit, whichever occurs first.

39. Entry of this Agreement does not relieve the COUNTY of the need to comply with all applicable federal, state or local laws, rules or ordinances, including the conditions and deadlines in the Permit, except as provided herein.

40. Nothing herein relieves the COUNTY from the legal requirement to

prevent harm to the water resources as required by Chapter 373 and the SFWMD's implementing rules in Title 40E, Fla. Admin. Code, or to mitigate for the occurrence of harm to the water resources, resulting from its consumptive use activities under this Agreement. Mitigation for harm to the water resources shall be required pursuant to SFWMD order.

41. The SFWMD reserves the right to curtail pumpage in the event of a declared water shortage pursuant to Chapter 40E-21, Fla. Admin. Code, or at any other time when the water resources of the SFWMD are threatened with harm, as defined in the terms specified above.

42. The Agreement does not convey any property right to the COUNTY, nor any rights and privileges other than those specified in the Agreement.

43. This Agreement shall not be construed as providing a basis or commitment that water supplies from the Biscayne Aquifer will continue to be available for meeting long-term demands beyond the Agreement's duration. The SFWMD does not, by entering into the Agreement, agree or guarantee that the COUNTY's future water use permit renewal application will be approved. The COUNTY agrees that the Agreement will not be admissible in any subsequent permit proceedings as evidence supporting an allocation of water from the Biscayne Aquifer. This Agreement shall also not be used in any subsequent permit proceedings as evidence that the COUNTY has failed to provide reasonable assurances that the applicable permitting criteria have been met, or to require the COUNTY to undertake additional measures to provide reasonable assurances of satisfying permitting criteria. Further, the Agreement may not be considered a permitted right to use water. If resource impacts over which the SFMWD has regulatory authority occur as a result of the Agreement, the COUNTY has no right or expectation to continue such impacts in any future

permit and such impacts which occur during this Agreement will be mitigated or otherwise addressed for as required by SFWMD statutes and rules. Finally, the COUNTY's existing water use permit renewal application will be evaluated based on criteria in effect at the time the application becomes complete.

44. The COUNTY shall, upon reasonable notice and during regular working hours, grant SFWMD representatives, who present appropriate credentials, access to the subject premises for the purpose of inspection.

45. All notices required by this Agreement shall be sent to the appropriate party designated as follows: South Florida Water Management District, Water Use Division Director, P.O. Box 24680, West Palm Beach, FL 33416-4680 and headquarters of the COUNTY's Water and Sewer Department is located at 3071 SW 38 Avenue, Miami, Florida 33416.

46. The Agreement incorporates, embodies and expresses all agreements and understandings between and among the SFWMD and the COUNTY, and may not be altered except as authorized herein.

47. Persons who are not parties to this Agreement, but whose substantial interests are affected by this Agreement, have a right pursuant to Section 120.57, Florida Statutes, to petition for an administrative hearing. The Petition must contain the information set forth in Rule 40E-1.521, Fla. Admin. Code, and be filed with the SFWMD Clerk during normal business hours, at SFWMD headquarters in West Palm Beach, Florida, within 21 days of receipt of this Agreement. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, Florida Statutes The administrative hearing process, initiated by filing a petition, is designed to formulate agency action. Accordingly, the SFWMD's final action taken pursuant to this hearing may be different from the position taken by the SFWMD in this Agreement.

48. The COUNTY waives the right to an administrative hearing on the terms of the Agreement under Section 120.57, Florida Statutes, and its right to appeal the Agreement pursuant to Section 120.68, Florida Statutes. However, the COUNTY expressly reserves any and all rights to request an administrative hearing or judicial action involving any attempt by the SFWMD to enforce this Agreement. Additionally, notwithstanding any provision herein, this Agreement specifically does not bind or prohibit in any way either the COUNTY or the SFWMD from raising or arguing their interpretation of requirements of law in any subsequent administrative or judicial proceeding.

49. The COUNTY shall, subject to the limitations of Chapter 768.28, Fla. Stat., defend, indemnify, save, and hold the SFWMD, its agents, assigns, and employees, harmless from any and all claims or causes of action, including without limitation, all damages, loses, liabilities, expenses, costs, and attorney's fees related to such claims that may arise in connection with the Agreement. The COUNTY further acknowledges that it is solely responsible for ensuring its compliance, and the compliance of its subcontractors, agents, assigns, invitees and employees with the terms of the Agreement. This provision shall survive the expiration or termination of the Agreement.

50. In the event of change in law, including District Rule, either party, may request that this Agreement be modified or terminated, as appropriate. . Upon receipt of such request, both parties shall meet and determine the appropriate action, and this Agreement shall be modified or terminated as appropriate. In the event that the parties cannot agree on the appropriate action, the District may issue an order stating the action the District believes is appropriate, which may include no modification or termination.

51. The terms of this Agreement shall not be construed as, and are not intended by the County to be an admission of any violation of Florida law or

Federal Law or regulations or policies or of any liability in connection therewith.

ORDERED at West Palm Beach, Palm Beach County, Florida, this 10 day of May, 2006.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

BY ITS GOVERNING BOARD:

By: _____
Deputy Executive Director

ATTEST: BOARD OF GOVERNING DISTRICT • SOUTH FLORIDA WATER MANAGEMENT DISTRICT • STATE OF FLORIDA SEAL Established 1949

By: _____
Assistant Secretary

MIAMI-DADE COUNTY

BY: _____

Its: County Manager

COUNTY COMMISSIONERS COUNTY FLORIDA

Deputy Clerk

FILED WITH THE CLERK OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

ON: _____

BY: _____

Approved as to form and legal sufficiency:

_____
Assistant County Attorney

Approved as to form and legal sufficiency:

_____
SFWMD Attorney