

AMENDMENT TO
C-51 RESERVOIR
LWDD CONVEYANCE SYSTEM AGREEMENT
(PHASE 1)

THIS AMENDMENT TO C-51 RESERVOIR CONVEYANCE SYSTEM AGREEMENT (PHASE 1) (this “**Agreement**”) is made and entered into as of the date last signed by the Parties below, by and between Lake Worth Drainage District, a special taxing district of the State of Florida existing by virtue of Chapter 2009-258, Laws of Florida, as amended, and operating pursuant to Chapter 298, Florida Statutes, as a water control district, and whose mailing address is 13081 Military Trail, Delray Beach, FL 33484 (the “**LWDD**”) and Palm Beach Aggregates, LLC, a Florida limited liability company, whose mailing address is P.O. Box 700, Loxahatchee, FL 33470, and its successors and assigns (“**Reservoir Owner**”), each a “**Party**,” and collectively, the “**Parties**.”

A. WHEREAS, due to circumstances outside the control of the Parties, the Construction Sanction Date, as defined in the Agreement has been delayed, and the Parties wish to extend the time for the Construction Sanction Date to occur.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the Parties agree as follows (additions underlined/~~deletions crossed through~~):

1. **Section 2.2 Term**, is amended to read:

The term of this Agreement (the “**Term**”) will commence on the Effective Date and end on the earliest of the following (the “**Termination Date**”: (i) the date that either Party terminates this Agreement in accordance with Article VII below; (ii) the useful life of Phase 1 of the C-51 Reservoir, or (iii) the term of the Reservoir Permit, as renewed from time to time. In addition, either party may terminate this Agreement in the event the Construction Sanction Date has not occurred on or before ~~three (3) years from the Effective Date of this Agreement~~ December 31, 2024.

2. Except as amended above, the terms and conditions of the Agreement remain in full force and effect.

[Remainder of Page Intentionally Blank - Signature Pages to Follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective as of the date first set forth above.

LAKE WORTH DRAINAGE DISTRICT
By Its Board of Supervisors

By: _____
Name: _____
Title: Chairman


Attested:

By: _____
Name: _____
Title: _____
Date: _____, 2020

Legal Form Approved:

By: _____
Name: _____, Esq.
Title: _____

PALM BEACH AGGREGATES, LLC

By: 

Enrique A. Tomeu
Its: President and Authorized
Representative

Date: ~~November~~ 8, 2020
Oct 8

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

Sworn to and subscribed before me this ___ day of _____, 2020, by _____, as President of the Board of Supervisors of Lake Worth Drainage District, a special taxing district of the State of Florida, who is personally known to me or produced _____, as identification, and who acknowledged that he executed the same on behalf of said corporation and that he was duly authorized to do so.

In Witness Whereof, I hereunto set my hand and official seal.

(notary seal)

Notary Public, State of Florida

Notary Printed Name
My Commission Expires: _____

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

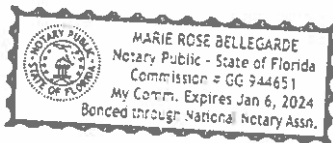
Sworn to and subscribed before me this 8th day of October, 2020, by Enrique Tomeu, as President of Palm Beach Aggregates, LLC, a Florida limited liability company, who is personally known to me or produced _____, as identification, and who acknowledged that he executed the same on behalf of said corporation and that he was duly authorized to do so.

In Witness Whereof, I hereunto set my hand and official seal.

(notary seal)

[Signature]
Notary Public, State of Florida

Marie Bellegarde
Notary Printed Name
My Commission Expires: 1-06-2024



**C-51 RESERVOIR
LWDD CONVEYANCE SYSTEM AGREEMENT
(PHASE 1)**

Between

LAKE WORTH DRAINAGE DISTRICT

and

PALM BEACH AGGREGATES, LLC

C-51 RESERVOIR

LWDD CONVEYANCE SYSTEM AGREEMENT

(PHASE 1)

THIS C-51 RESERVOIR CONVEYANCE SYSTEM AGREEMENT (PHASE 1) (this “**Agreement**”) is made and entered into as of the ____ day of January, 2015, by and between Lake Worth Drainage District, a special taxing district of the State of Florida existing by virtue of Chapter 2009-258, Laws of Florida, as amended, and operating pursuant to Chapter 298, Florida Statutes, as a water control district, and whose mailing address is 13081 Military Trail, Delray Beach, FL 33484 (the “**LWDD**”) and Palm Beach Aggregates, LLC, a Florida limited liability company, whose mailing address is P.O. Box 700, Loxahatchee, FL 33470, and its successors and assigns (“**Reservoir Owner**”), each a “**Party**,” and collectively, the “**Parties**.”

A. WHEREAS, Reservoir Owner has entered into that certain C-51 Reservoir Memorandum of Understanding (the “**Project Protocol Agreement**”) with the South Florida Water Management District, 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 Chapter 40E, Florida Administrative Code, as a multipurpose water management district (“**SFWMD**”), dated as of May 22, 2013, providing for the development, construction, financing and completion of a certain reservoir located in Palm Beach County, Florida, capable of storing sixty thousand (60,000) acre-feet of water, if phase 1 and phase 2 are both constructed (the “**C-51 Reservoir**”).

B. WHEREAS, Reservoir Owner intends to construct the first phase of the C-51 Reservoir during calendar year 2015, which is intended to be capable of storing approximately fourteen thousand (14,000) acre-feet of water at a control elevation of sixteen and one half (16.5) feet, producing approximately thirty-five (35) million gallons per day (“**Phase 1**”).

C. WHEREAS, upon completion of Phase 1, Phase 1 of the C-51 Reservoir will be connected through the SFWMD L-8 Reservoir to the Region (defined below), and provide for the flow of water in and out of the C-51 Reservoir and through the Region.

D. WHEREAS, the LWDD is a water control district within Palm Beach County, Florida charged with the responsibility of effecting drainage, water supply and water management within its Territorial Boundaries (defined below), and the LWDD manages the flow of water through the LWDD Conveyance System (defined below) to and from various points in the Region.

E. WHEREAS, the Parties have determined, in conjunction with SFWMD, that the operation of Phase 1 of the C-51 Reservoir by the SFWMD and movement of water to and from the Region will not require capital improvements to the LWDD Conveyance System.

F. WHEREAS, the purpose of this Agreement is to (i) set forth the operational protocols that the LWDD will follow in conveying water through the Conveyance System for the implementation of the C-51 CUPs for Phase 1, and (ii) provide for payment for use of the LWDD Conveyance System and reimbursement of LWDD’s costs relating to (i).

G. WHEREAS, this Agreement addresses only Phase 1 of the C-51 Reservoir, and does not address any potential additional phases, as additional demands on the Conveyance System associated with additional phases may necessitate changes to the terms of service for any such additional phases.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the Parties agree as follows:

ARTICLE I DEFINITIONS

In addition to the defined terms found elsewhere in this Agreement, as used in this Agreement, the following terms will have the following meanings:

1.1. **“Agreement”** will mean this C-51 Reservoir Conveyance System Agreement (Phase 1), by and between the LWDD and Reservoir Owner, dated as of the Effective Date.

1.2. **“Affiliate”** will mean, when used to indicate a relationship with a specific Person (defined below), another Person that directly, or indirectly through one or more intermediaries or otherwise, controls, is controlled by, or is under common control with, such specific Person. A company will be deemed to be an Affiliate of another company if one directly or indirectly controls the other or if each of them is directly or indirectly controlled by the same Person.

1.3. **“Applicable Law”** will mean any act, statute, law, regulation, permit, license, Government Approval (defined below), ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any written interpretation or administration of, any of the foregoing by any Governmental Authority (defined below) with jurisdiction over LWDD, the Conveyance System, the performance of a Party or any Services (defined below) to be performed under the Agreement.

1.4. **“Applicant’s Handbook”** will mean the SFWMD Applicant’s Handbook for Water User Permit Applications, as amended from time to time.

1.5. **“Authorized Expenses”** will have the meaning set forth in Section 4.2 of this Agreement.

1.6. **“C-51 CUP”** will mean a consumptive use permit from the SFWMD granting a Participant (defined below) an allocation of water from the Region based upon the Participant’s ISU Allocation (defined below) from the C-51 Reservoir.

1.7. **“C-51 Reservoir CUP Permit”** will mean the Consumptive Use Permit(s) or other approvals or mechanism providing for the allocation of water for Phase 1 of the C-51 Reservoir.

1.8. **“C-51 Reservoir ERP Permit”** will mean the Environmental Resource Permit(s) or other approvals or mechanism providing for the construction and operation of Phase 1 of the C-51 Reservoir.

1.9. **“C-51 Reservoir”** will have the meaning set forth in the Recitals.

1.10. **“Conditions Precedent”** will have the meaning set forth in Section 6.1 of this Agreement.

1.11. **“Construction Financing”** will have the meaning set forth in Section 5.5.

1.12. **“Construction Plans”** will have the meaning set forth in Section 4.1.

1.13. **“Construction Sanction Date”** will mean the date on which all of the Conditions Precedent are met or waived, and Reservoir Owner provides Notice thereof to the LWDD.

1.14. **“Control Structures”** will mean all of the pumps, pumping stations, dams, floodgates and other waterworks and controls, currently owned or operated by the LWDD.

1.15. **“Daily” or “Day”** will mean a period beginning 12.00 a.m. Eastern Time on a calendar day and ending at 11:59 p.m. Eastern Time on the same calendar day, unless otherwise agreed to in writing by the Parties.

1.16. **“Effective Date”** will be the date on which the later of Reservoir Owner and LWDD has signed this Agreement and so notified the other in writing.

1.17. **“Event of Default”** will mean any of those occurrences specified in Article VII.

1.18. **“Existing Water Management Agreements”** will mean all existing agreements and permits between the LWDD and the SFWMD.

1.19. **“Force Majeure”** will mean any act, event, or condition to the extent that it adversely affects the ability of, either Party to perform any obligation under this Agreement (except for payment obligations) if such act, event or condition, in light of any circumstances that should have been known or reasonably believed to have existed at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error, omission or failure to exercise reasonable diligence on the part of the Party relying thereon, including the Party’s Affiliates, employees, agents, officers, sub-contractors and vendors; provided, however, that the contesting Party in good faith or failure in good faith to contest such action or inaction will not be construed as a willful or negligent act, error, omission or lack of reasonable diligence of either Party, and provided further that the Party relying thereon uses due diligence to recommence performance as soon as practicable and to mitigate the impacts on cost of performance.

(a) **Inclusions.** Subject to the foregoing, such acts, events or conditions may include the following:

(i) an act of God, landslide, earthquake, fire, explosion, flood, hurricane, tornado, sabotage, or similar occurrence, acts of a public enemy, terrorism, extortion, war, blockade, insurrection, riot or civil disturbance; or catastrophic failure of the Conveyance System;

(ii) the failure of any appropriate Governmental Authority, other than the LWDD, or private utility to provide and maintain utilities;

(iii) the inability of the LWDD to gain and maintain access to all areas of the Conveyance System where the LWDD is required to provide Services or perform any work hereunder;

(iv) the preemption, confiscation, diversion, destruction, or other interference by, on behalf, or with authority of a Governmental Authority in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action, in the possession of property, equipment or materials located at the C-51 Reservoir or the Conveyance System, or in the performance of the Services to be performed by LWDD hereunder;

(v) strikes, work stoppages, or labor disputes affecting the LWDD and any subcontractor excluding material suppliers and employees of the LWDD;

(vi) damage to the Conveyance System caused by third parties not related to or under the control of the LWDD;

(b) Exclusions. For illustration purposes and not as a limitation, none of the following acts, events or conditions will constitute an event of Force Majeure:

(i) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in process, or currency or exchange rate fluctuations;

(ii) changes in the financial condition of Reservoir Owner, the LWDD, or any of their Affiliates or subcontractors;

(iii) union work rules which increase the LWDD's operating cost for the Conveyance System;

(iv) any impact of prevailing wage laws on the LWDD's costs;

(v) the consequence of LWDD error or omission, including any errors or omissions of LWDD Affiliates or subcontractors; and/or

(vi) litigation against Reservoir Owner and/or LWDD.

1.20. "Governmental Approvals" will mean any and all permits, approvals, and licenses from each Governmental Authority with jurisdiction over the LWDD and/or the Conveyance System that are required in order for the LWDD to provide the Services to Reservoir Owner.

1.21. "Governmental Authority" will mean any and all national, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality, division, district or other political subdivision thereof, including the SFWMD and the LWDD.

1.22. **“ISU”** means an Independent secondary user, as defined in Section 2.7.3 (B) of the BOR, or its equivalent as determined by the SFWMD.

1.23. **“LWDD”** will have the meaning set forth in the Recitals.

1.24. **“LWDD Assessments”** will have the meaning set forth in Section 5.8.

1.25. **“LWDD Conveyance System”** will mean the network of canals, waterways, or other water bodies and all Control Structures located within the Territorial Boundaries, capable of conveying water originating from the C-51 Reservoir from one part of the Region to another part of the Region, including such parts of the Region necessary for a Participant to obtain its water withdrawal right as specified in the Participant’s C-51 CUP.

1.26. **“LWDD Permit”** will mean SFWMD Permit No. 50-00793-W issued to the LWDD by the SFWMD for the operation of the LWDD Conveyance System and as renewed periodically.

1.27. **“Month”** or **“Monthly”** will mean a period extending from 9:00 a.m. Eastern Time on the first Day of a calendar month and ending at 8:59 a.m. Eastern Time on the first Day of the succeeding calendar month, unless otherwise agreed to by the Parties.

1.28. **“Monthly Capital Charge”** will be the sum of the Base Capital Charge and the Authorized Expenses.

1.29. **“NFP”** will have the meaning set forth in Section 11.5(c).

1.30. **“Notice”** will have the meaning set forth in Section 8.1.

1.31. **“O&M Agreement”** will mean that certain Operations and Maintenance Agreement, by and between the SFWMD and Reservoir Owner, as provided in the Project Protocol Agreement.

1.32. **“Operational Protocols”** will mean the LWDD’s operations protocols and manuals, including, but not limited to, the Lake Worth Drainage District Operating Policies, as they may be amended.

1.33. **“Participant”** will mean a utility water supply utility or other water user that enters into a Capacity Allocation Agreement with Reservoir Owner for Phase 1.

1.34. **“Party”** or **“Parties”** will have the meanings set forth in the Recitals.

1.35. **“Person”** will mean an individual, partnership, limited partnership, limited liability company, joint venture, sole proprietorship, corporation, company, unincorporated association, trust, trustee, executor, administrator, or other legal personal representative, regulatory body or agency, government, governmental or quasi-governmental body, agency or authority, or any other entity however designated or constituted.

1.36. **“Phase 1”** will have the meaning set forth in the Recitals.

- 1.37. **“Project Protocol Agreement”** will have the meaning set forth in the Recitals.
- 1.38. **“Region”** will mean the areas in South Florida under the jurisdiction of the SFWMD.
- 1.39. **“Reservoir Owner”** will have the meaning set forth in the Recitals.
- 1.40. **“Service Commencement Date”** will mean the date on which the SFWMD determines that the Phase 1 of the C-51 Reservoir can be placed into service, after Phase 1 has completed an operational testing.
- 1.41. **“Services”** will have the meaning set forth in Section 3.1.
- 1.42. **“SFWMD”** will have the meaning set forth in the Recitals.
- 1.43. **“Standard of Care”** will mean set forth in Section 3.3.
- 1.44. **“Term”** will mean the term of this Agreement as defined in Section 2.2.
- 1.45. **Termination Date”** will have the meaning set forth in Section 2.2.
- 1.46. **“Territorial Boundaries”** will mean the geographical boundaries of the LWDD described in Section 3 of Chapter 2009-258, Laws of Florida, as such boundaries may be amended or otherwise modified by the Florida Legislature.
- 1.47. **“Useful Life”** will mean, for each Authorized Capital Improvement, a reasonable estimate, typical for assets of that kind, of how long the Authorized Capital Improvement will last, in months.

Abbreviations:

CUP	Consumptive Use Permit
ISU	Independent secondary user of water from a diversion and impoundment system
LWDD	Lake Worth Drainage District
NFP	C-51 Reservoir, Inc., a Florida Not-For-Profit Corporation
O&M	Operations and Maintenance
SFWMD	South Florida Water Management District

Any term used but not defined herein will have the meaning set forth in the Project Protocol Agreement.

**ARTICLE II
RECITALS/TERM**

2.1. **Recitals.** The foregoing recitals are true and correct and hereby made a part of this Agreement.

2.2. **Term.** The term of this Agreement (the “**Term**”) will commence on the Effective Date and end on the earliest of the following (the “**Termination Date**”): (i) the date that either Party terminates this Agreement in accordance with Article VII below; (ii) the useful life of Phase 1 of the C-51 Reservoir, or (iii) the term of the Reservoir Permit, as renewed from time to time. In addition, either party may terminate this Agreement in the event the Construction Sanction Date has not occurred on or before three (3) years from the Effective Date of this Agreement.

ARTICLE III SCOPE OF LWDD SERVICES

3.1. **General.** Commencing on the Service Commencement Date and continuing through the remainder of the Term, the LWDD will operate, maintain and manage the Conveyance System in such a manner, subject to the terms of the Agreement, to (i) accommodate any additional water taken from or introduced into the Conveyance System by the SFWMD as a result of operation of Phase 1 of the C-51 Reservoir and (ii) convey water originating in the C-51 Reservoir from various parts of the Region to other parts of the Region, as the SFWMD may request for the implementation of the C-51 CUPs, (collectively, (i) and (ii) referred to as the “**Services**”).

3.2. **Standard of Care.** The Services provided under this Agreement by the LWDD will be the same level of service and standard of care that the LWDD exercises for its regular operation and maintenance of the Conveyance System as of the Effective Date of this Agreement, as may be amended by the LWDD from time to time (“**Standard of Care**”).

3.3. **Operational Control.** LWDD will continue to operate the Conveyance System using the Standard of Care in accordance with the LWDD’s operations protocols and manuals, ~~including, but not limited to, the Lake Worth Drainage District Operating Policies, as they may be~~ amended by LWDD from time to time (“**Operational Protocols**”). This Agreement will not be construed to require the LWDD to abide by any operating protocols other than its own Operational Protocols. Reservoir Owner expressly disclaims any responsibility to operate or manage or direct the operation or management of the Conveyance System, and will not be required to do so.

3.4. **Maintenance.** The LWDD will perform routine preventative and corrective maintenance to the Conveyance System in accordance with the Operational Protocols, which, for illustrative purposes, may include (i) repairing and/or replacing Control Structures as needed, (ii) mechanical cleaning of the canals by draglines to remove silt and sandbars, (iii) maintaining the canal banks and installing rip-rapping and other revetment materials, (iv) controlling aquatic growth in the canals, (v) inspecting the Conveyance System regularly to discover anything that might hinder the LWDD’s ability to provide the Services and (vi) performing all other maintenance as may be necessary or helpful in providing the Services. Reservoir Owner will not require the LWDD to perform any specific maintenance or repairs, except for construction of the Authorized Capital Improvements as set forth in Article IV. Reservoir Owner expressly disclaims any responsibility to maintain or direct the maintenance of the Conveyance System, and will not be required to do so.

**ARTICLE IV
PAYMENT FOR AUTHORIZED EXPENSES**

4.1. License Fee. Reservoir Owner shall pay LWDD a one-time License Fee in the amount of \$380,161, for the non-exclusive privilege of conveying water through the LWDD Conveyance System. The one-time License Fee shall be payable to LWDD within thirty (30) days of the Service Commencement Date.

4.2. Authorized Expenses.

(a) To the extent that there are any ongoing incremental expenses incurred by the LWDD to operate the LWDD Conveyance System for the benefit of Phase 1 of the C-51 Reservoir, Reservoir Owner will collect such expenses from the Participants and will pay such collected amounts to the LWDD. The expenses listed in Schedule 1 will be the Authorized Expenses chargeable to Reservoir Owner for operating expenses (the "**Authorized Expenses**").

(b) The LWDD will provide qualified personnel for the operation and maintenance of the Authorized Capital Improvements. If the LWDD determines additional employees are required to operate the Authorized Capital Improvements, the salaries and benefits for such employees will be made a part of the Authorized Expenses.

(c) The Parties acknowledge that some of the Authorized Expenses might benefit the Conveyance System as a whole, and that Reservoir Owner will only be required to pay for and pass-through the portion of the cost of the Authorized Expenses that are applicable to the C-51 Reservoir. The LWDD will only charge Reservoir Owner and the Participants for the ~~proportionate share of the Authorized Expenses which the LWDD incurs as a result of Phase 1 of~~ the C-51 Reservoir being in service.

(d) Within thirty (30) days after the last day of each month, LWDD will submit to Reservoir Owner an invoice of the amount of Authorized Expenses for the previous month. Reservoir Owner will pay for such Authorized Expenses in accordance with Section 4.3 below.

4.3. Authorized Expenses Payment. Subject to the other terms and conditions of this Article IV, Reservoir Owner will pay LWDD Monthly Authorized Expenses on the first (1st) day of each month, commencing on the first (1st) month after the Construction Completion Date and continuing throughout the Term. Payment shall be made by Reservoir Owner within thirty (30) days of the due date, and all past due payments shall bear interest after the due date at the rate of one percent (1%) per month on the unpaid balance.

4.4. Financing. Reservoir Owner intends to obtain construction financing to pay for completing the construction of the C-51 Reservoir Phase 1 ("**Construction Financing**"). The LWDD agrees that Reservoir Owner may assign or otherwise pledge this Agreement as security for such financing.

4.5. Budget. At least ninety (90) days prior to the last day of each year, the LWDD will submit a budget of its Authorized Expenses for the upcoming year, in the absence of which the prior fiscal year's budget shall apply for the next fiscal year.

4.6. **Assessments.** The LWDD is currently authorized by the Florida Legislature, pursuant to 2009-258, Laws of Florida, to levy assessments against owners of property within the Territorial Boundaries, including but not limited to, an annual maintenance assessment, irrigation assessment, and various other special assessments (“**LWDD Assessments**”). This Agreement will in no way interfere with, supersede, or in any way affect the LWDD’s revenue from the LWDD Assessments.

4.7. **Accounting Records.** The LWDD will maintain up-to-date financial and accounting records as they apply to the Authorized Expenses. The records must be kept in accordance with the LWDD’s standard accounting practices and made available to Reservoir Owner within ten (10) business days of Reservoir Owner’s written request.

ARTICLE V CONVEYANCE SYSTEM COORDINATION

5.1. **Existing LWDD Permit.** The LWDD currently holds the LWDD Permit, which allows it to drain water and provide water supply to ISUs, among other things. LWDD shall not be required to take any action which would negatively impact its existing rights under the LWDD Permit. The LWDD will apply for and reasonably pursue a letter modification to its operational protocols with SFWMD related to the provision of Services, as LWDD may deem necessary to enable it to provide the Services, the cost of which shall be included within the Cost Estimate for the Authorized Expenses. Notwithstanding anything that may be contrary in this Agreement, this Section 5.1 will not interfere with or supersede the LWDD Permits or any existing agreements between the LWDD and the SFWMD (“Existing Water Management Agreements”). In the event of any conflict between the terms of this Agreement and the terms of the LWDD Permits or ~~Existing Water Management Agreement~~, as such terms relate to collaboration and coordination between LWDD and SFWMD, the terms of the LWDD Permits and Existing Water Management Agreements will control.

5.2. **Placement into Service.** As soon as reasonably practicable, Reservoir Owner will provide Notice to the LWDD of the reasonably anticipated Service Commencement Date. Prior to the Service Commencement Date, the LWDD will make all necessary preparations to ensure a seamless integration of Phase 1 into the Conveyance System. Beginning on the commencement of the SFWMD operational testing period for Phase 1 prior to the Service Commencement Date and continuing through the Term, the LWDD will allow the permitted flow of water to and from the C-51 Reservoir through the Region and in and out of the LWDD Conveyance System, subject to the terms of this Agreement.

ARTICLE VI CONDITIONS PRECEDENT

6.1. **Conditions Precedent.** Reservoir Owner’s obligation to pay the LWDD in accordance with Article IV of this Agreement will be expressly conditioned upon the following conditions precedent (“**Conditions Precedent**”):

- (a) Issuance of the C-51 ERP Permit;
- (b) Issuance of the C-51 CUP Permit;

(c) Reservoir Owner issuing a Notice of Project Sanction Date (as defined in the Project Protocol Agreement) to the SFWMD, in accordance with the Project Protocol Agreement;

(d) Receipt by the LWDD of the letter modification to its operational protocols with SFWMD to provide the Services to Reservoir Owner;

(e) Receipt by Reservoir Owner of the Construction Financing described in Section 4.3 on such terms and conditions satisfactory to Reservoir Owner to fully fund the commencement and complete construction of Phase 1; and

(f) The Project Protocol Agreement shall be in full force and effect and shall not have been terminated by the SFWMD.

(g) Receipt by Reservoir Owner of Capacity Allocation Agreements from Participants allocating the storage capacity of Phase 1.

(h) Issuance of all other Government Approvals necessary for the construction and operation of Phase 1.

(i) Approval by the SFWMD Governing Board and execution by the SFWMD and the Reservoir Owner of an O&M Agreement for the SFWMD to operate and maintain Phase 1.

(j) Reservoir Owner securing acceptable Conveyance Systems Agreements from non-LWDD 298 Districts, as applicable for Phase 1.

(k) Non-LWDD 298 Districts securing letter modifications to current SFWMD operational protocols, if determined necessary by the SFWMD for conveying water for Phase 1.

6.2. Notice of Construction Sanction Date. Reservoir Owner will determine whether each of the Conditions Precedent have been attained, or if not attained, whether to modify or waive such Conditions Precedent. Once Reservoir Owner has determined that the Conditions Precedent have been attained or waived, Reservoir Owner will provide the LWDD with a Notice of Construction Sanction Date.

ARTICLE VII DEFAULT

7.1. Events of Default.

(a) The failure to comply with or perform in any material respect any of the covenants, agreements or obligations to be performed under this Agreement will constitute an “**Event of Default**” hereunder, which will include, but not be limited to, the following:

(i) Failure to comply with the requirements of all Governmental Approvals or failure to obtain any amendments to such Governmental Approvals to enable Reservoir Owner to place Phase 1 of the C-51 Reservoir into service;

(ii) An interruption in the Services that causes the SFWMD to revoke or alter the C-51 CUPs and/or has a material adverse effect on the C-51 Reservoir.

(iii) Failure to timely make any payment due the LWDD from Reservoir Owner.

(b) If an Event of Default occurs, the non-defaulting Party will give Notice thereof to the defaulting Party within thirty (30) days of becoming aware of such Event of Default. The defaulting Party will have an additional thirty (30) days after receipt of such Notice to cure the Event of Default. If the defaulting Party does not or is unable to cure such Event of Default, then the non-defaulting Party may terminate this Agreement and will be entitled to all remedies available at law or in equity, except that the non-defaulting Party will not be entitled to recover lost profits or punitive damages.

ARTICLE VIII NOTICES

8.1. Notice. Notices are required to be in writing under this Agreement and will be delivered in person, sent by certified mail, return receipt requested, sent by overnight delivery services, return receipt requested, or sent by electronic delivery system with receipt acknowledgement, to the parties listed below (“Notice”).

To Reservoir Owner: Palm Beach Aggregates, LLC
20125 State Road 80
P.O. Box 700
~~Loxahatchee, Florida 33470~~
Attn: Enrique A. Tomeu, President
etomeu@siboneycc.com
(561) 832-3110

Copy to: Greenberg Traurig, P.A.
777 So. Flagler Drive, Suite 300 East
Attn: Phillip C. Gildan
West Palm Beach, FL 33401
gildanp@gtlaw.com
(561) 650-7967

To LWDD: Lake Worth Drainage District
13081 Military Trail
Delray Beach, FL 33484
Attn: Patrick A. Martin, P.E.
patrickmartin@lwdd.net
(561) 737-3858 ext 5580

Copy to:

Mark A. Perry, P.A.
50 SE 4th Ave
Delray Beach, FL 33483
Attn: Mark A. Perry
mperry@perrykern.com
(561) 737-3835

8.2. Effectiveness of Notice. Notices will be effective upon receipt. Either Party, at any time, by Notice to the other Party, may designate any different Person(s) or different addresses for receipt of Notices and correspondence.

ARTICLE IX MISCELLANEOUS

9.1. Relationship. The relationship of the LWDD to Reservoir Owner is that of independent contractor for all purposes under this Agreement, including for the purposes of applicable wage, tax, fringe benefit and worker compensation laws. This Agreement is not intended to create, and will not be construed as creating, between LWDD and Reservoir Owner, the relationship of principal and agent, joint venturers, co-partners or any other similar relationship, the existence of which is hereby expressly denied.

9.2. Construction. In construing this Agreement, the following principles will be followed: (i) no consideration will be given to the captions of the articles, sections, subsections or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in construction; ~~(ii) no consideration will be given to the fact or presumption that any of~~ the Parties, or their counsel, had a greater or lesser hand in drafting this Agreement; (iii) examples will not be construed to limit, expressly or by implication, the matter they illustrate; (iv) the word "includes" and its syntactic variants mean "includes, but is not limited to" and corresponding syntactic variant expressions; (v) the plural will be deemed to include the singular, and vice versa; (vi) each gender will be deemed to include the other genders; (vii) each exhibit, appendix, attachment and schedule to this Agreement is a part of this Agreement; and (viii) any reference herein or in any schedule hereto to any agreements entered into prior to the date hereof will include any amendments or supplements made thereto.

9.3. Entire Agreement; Amendments. This Agreement contains the entire agreement between Reservoir Owner and the LWDD and supersedes all prior or contemporaneous communications, representations, understandings or agreements made in connection with the subject matter. No modification or amendment of this Agreement will be binding upon the Parties unless the same is in writing and signed with the same authorization originally given by the Party to be bound.

9.4. Waiver. The failure on the part of either Party to enforce its rights as to any provision of this Agreement will not be construed as a waiver of its rights to enforce such provisions in the future.

9.5. Assignment.

(a) This Agreement will be binding upon the successors and assigns of each of the Parties, but neither Party will assign this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld.

(b) The LWDD acknowledges that Reservoir Owner or its Affiliates intends to enter into financing and refinancing transactions with the Financing Parties (as defined in the Project Protocol Agreement) to fund the construction, renewal and replacement of the C-51 Reservoir, in which financing(s), the Reservoir Owner intends to assign this Agreement as security to the Financing Parties. In connection therewith, the LWDD agrees to furnish to the Financing Parties, such written information, certificates, copies of invoices and receipts, affidavits, consents to assignment of the Agreement and other like documents as the Financing Parties may reasonably request. Anything in this Agreement to the contrary notwithstanding, in the event of a foreclosure under any Financing Documents, the LWDD will attorn to the Financing Party or purchaser at a foreclosure sale that accedes to the interest of Reservoir Owner under this Agreement, and this Agreement will continue in full force and effect

(c) Reservoir Owner intends to assign this Agreement to C-51 Reservoir, Inc., a Florida Not-For-Profit Corporation ("NFP") formed for the purpose of owning Phase 1 of the C-51 Reservoir, which assignment shall not require the consent of the LWDD provided Reservoir Owner is not in default under this Agreement at the time of the assignment and provided the NFP assumes the Reservoir Owner's obligations under this Agreement in writing. In the event this Agreement is transferred to the NFP, LWDD will have the right, but not the obligation, during the term of this Agreement to appoint a member to the Board of Directors of the NFP.

9.6. Third Party Vendors. Any Party may retain a third party vendor or vendors to perform any portion of the Party's duties or obligations under this Agreement, without the approval of the other Party.

9.7. Force Majeure. A Party's performance of any obligation under this Agreement will be excused if, and to the extent that, the Party is unable to perform because of any event of Force Majeure. In any such event, the Party unable to perform will be required to resume performance of its obligations under this Agreement upon the termination of the event or cause that excused performance hereunder or as soon as practicable notwithstanding the event of Force Majeure.

9.8. Governing Law and Venue. The Agreement will be governed by and construed in accordance with the laws of the State of Florida. In the event it is necessary for either Party to initiate legal action regarding this Agreement, venue will be exclusively in Palm Beach County, Florida, for claims under state law and the Southern District of Florida for any claims which are justifiable in federal court.

9.9. Severability. Should any part of this Agreement for any reason be declared invalid or void, such declaration will not affect the remaining parts of this Agreement, which will remain in full force and effect as if the Agreement had been executed with the invalid portion eliminated.

9.10. Attorneys' Fees. In the event of any litigation arising from this Agreement, the prevailing Party will be entitled to an award of its court costs and reasonable attorneys' fees at trial and all appellate levels of judicial proceedings.

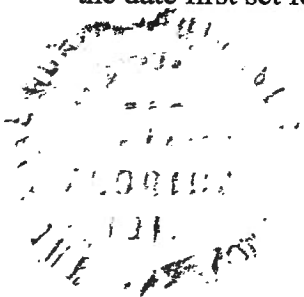
9.11. Counterparts. This Agreement may be executed in more than one counterpart, each of which will be deemed an original.

9.12. Modification of Agreement. No change in or modification, termination or discharge of this Agreement, in any form whatsoever, will be valid or enforceable unless it is in writing and signed by the Party to be charged therewith or its duly Authorized Representative, provided, however, that any change in or modification, termination or discharge of this Agreement expressly provided for in this Agreement will be effective as so provided.

9.13. Survival. Termination or expiration of this Agreement will not release either Party from any liabilities or obligations set forth in this Agreement which (i) the Parties have expressly agreed will survive any such termination or expiration; or (ii) remain to be performed or by their nature would be intended to be applicable following such termination or expiration.

[Remainder of Page Intentionally Blank - Signature Pages to Follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective as of the date first set forth above.



LAKE WORTH DRAINAGE DISTRICT
By Its Board of Supervisors

By: Harry Raucher
Name: Harry Raucher
Title: President

Attested:

By: Robert M. Brown
Name: Robert M. Brown
Title: Executive Director
Date: January 14, 2015

Legal Form Approved:

By: Mark A. Perry, Esq.
Name: Mark A. Perry, Esq.
Title: General Counsel

PALM BEACH AGGREGATES, LLC

By: Enrique A. Tomeu
Its: President and Authorized Representative

Date: January 26, 2015

Schedule 1

Authorized Expenses

LWDD C-51 Reservoir Phase 1 Calculations 2015-2016

Description	Cost	Amount Per MGD
Canal User Fee @ \$3 per lf (one time)	\$380,160	\$10,861.71
Annual Usage Fee (20% of above)*	\$76,032 (starting Yr 2)	
Annual Pumping Costs @ \$.047** per acre foot (SFWMD pumping costs per acre foot)	\$1,842	
Annual Total	\$77,874	\$2,224.98
Calculations for Annual Pumping Costs (maximum usage)		
Million gallons per day	35	
Conversion to acre feet per day	1,120.14	
Acre feet per year	39,204.90	
Pumping cost per acre foot	\$0.047	
Pumping cost per year	\$1,842.64	

*Annual Usage Fee subject to increase every 5 years based on compounded consumer price index.

** Annual Pumping Costs will vary based on actual costs.

**LAKE WORTH DRAINAGE DISTRICT
RESOLUTION NO. 2020-04**

A Resolution of the Board of Supervisors of the Lake Worth Drainage District urging the U.S. Army Corps of Engineers (USACE) and South Florida Water Management District (SFWMD) to support the expedited implementation of Phase 2 of the Fran Reich Preserve / Site 1 Impoundment Project (Including Hillsboro Canal Aquifer Storage & Recovery System (ASR)) in the implementation of the Comprehensive Everglades Restoration Plan (CERP).

WHEREAS, the Lake Worth Drainage District (LWDD) is a public body and political subdivision of the State of Florida, created pursuant to Chapter 298, Florida Statutes and currently operating under Chapter 2009-258 and amendments thereto; and

WHEREAS, LWDD relies on Lake Okeechobee for secondary surface water supply and is responsible for the conveyance of regional water to support numerous municipal water utilities, thousands of acres of prime agricultural land and approximately 800,000 residents; and

WHEREAS, the USACE is continuing its efforts to rehabilitate the aging Herbert Hoover Dike surrounding Lake Okeechobee, protecting the local communities from storm generated flood surges, which would provide a greater opportunity for the safe storage of flood waters, and thereby allow higher stages within the Lake and less regulatory discharge than the current operating schedule requires. This flexibility would greatly increase the availability of water supply for the Lake Okeechobee Service Area and the Lower East Coast of Florida; and

WHEREAS, the USACE is currently evaluating Lake Okeechobee operational alternatives that balance the competing water resource objectives associated with Lake Okeechobee through the development of a new Lake Okeechobee System Operating Manual (LOSOM); and

WHEREAS, the USACE is simultaneously proposing a 'Planned Deviation' to the current Lake Okeechobee Operational Regulation Schedule (LORS08), to be in place until LOSOM is operational, and intended to address the impacts associated with Harmful Algae Blooms (HAB), which is focused to force the Lake to very low dry season stages in an attempt to minimize the magnitude, frequency and duration of regulatory releases to the Caloosahatchee and St. Lucie estuaries; and

WHEREAS, serious concerns exist regarding the potential impacts to existing water users within the Lake Okeechobee Service Area (LOSA) and along the Lower East Coast Service Area (LECSA). Increases in the severity, frequency and duration of water supply shortages are likely to occur if the Planned Deviation is utilized or dependent on the alternative selected, even when the new LOSOM is implemented; and

WHEREAS, the CERP plan carefully considered the effects the restoration effort had on existing legal water users. Section 601 (h)(5) "Savings Clause" of WRDA 2000 requires; "*No Elimination or Transfer – Until a new source of water supply of comparable quantity and quality as that available on the date of enactment of this Act is available to replace water lost as a result of implementation of the Plan, the Secretary and the non-Federal sponsor shall not eliminate or transfer existing legal sources of water...*"; and

WHEREAS, the USACE has stated publicly that it does not consider the CERP Savings Clause applicable to the LORS08 or LOSOM because the rehabilitation of the Herbert Hoover Dike is contained in a congressional authorization that is different from the congressional authorization of CERP; and

WHEREAS, USACE and the SFWMD continue to make progress on the implementation of CERP, through the design and construction of major water storage features throughout the South Florida region; and

WHEREAS, in 1999, the U.S. Congress authorized the implementation of CERP, which included the Hillsboro Canal ASR Pilot Project. The Project included a single ASR well system having a production capacity of 5 MGD. The ASR system withdrew surface water from the Hillsboro Canal through an intake-discharge structure. Surface water would be treated to meet primary drinking water standards via screen filtration with UV disinfection prior to recharge. Treated surface water is stored at depths between 1,015 and 1,225 feet below land surface. It was further recognized that this Pilot project is within close proximity of the CERP Fran Reich / Site 1 Impoundment Project, which was envisioned to involve up to 30 ASR wells that could be integrated into that CERP feature. This co-location of surface water storage and ASR capacity would be one of the few proposed operations in the State of Florida; and

WHEREAS, the Hillsboro Canal ASR Pilot Project was initiated in 1999, construction was completed in 2008 at a cost of \$2,277,598. Subsequent testing was completed by June 2012. After testing was completed in 2012 and the USACE completed its Aquifer Storage and Recovery Regional Study in May, 2015 where it was recommended that projects in the planning phase consider incorporating ASR as an aspect of planning alternatives in conjunction with reservoirs; and

WHEREAS, in July 2018, a 'Cycle Testing Summary Report' was published by the SFWMD for the Hillsboro Canal ASR Pilot Project, and no significant operations or maintenance activities have been carried out since completion of the study; and

WHEREAS, in 2000, the U.S. Congress authorized the implementation of CERP, which included the Fran Reich Preserve / Site 1 Project. The project includes a 1,660-acre above-ground reservoir, an inflow pump station, discharge gated culvert, emergency overflow spillway and a seepage control canal with associated features; and

WHEREAS, the purpose of the CERP Fran Reich Preserve / Site 1 Project is to supplement water deliveries to the Hillsboro Canal by capturing and storing excess water currently discharged to the Intracoastal Waterway. These supplemental deliveries will reduce demands on Lake Okeechobee and the Arthur R. Marshall Loxahatchee National Wildlife Refuge (Refuge). The impoundment pool will provide groundwater recharge, reduce seepage from adjacent natural areas, and prevent saltwater intrusion by releasing impounded water back to the Hillsboro Canal when conditions dictate. Some measure of flood protection may also be provided along with water quality improvements; and

WHEREAS, in November 2007, the Project Implementation Report (PIR) for the Fran Reich Preserve / Site 1 Project was authorized by the U.S. Congress in the Water Resources & Development Act (WRDA) 2007, which was the first WRDA since CERP was authorized in 2000; and

WHEREAS, in October 2010, the USACE split the Fran Reich Preserve / Site 1 Project into two phases in order to utilize construction funding from the American Recovery and Reinvestment Act of 2009. Phase 1 included clearing, grubbing and dewatering activities, demolition work, establishing onsite borrow and disposal areas, earthwork modifications to about 15,000-linear feet (~2.8 miles) of the existing L-40 levee, installing dam monitoring instrumentation, and emplacing turf reinforcement mat and soil cement. The project also includes construction of a six-acre wildlife wetland area and auxiliary spillway. Phase 2 would include construction of inflow and seepage pump stations, associated impoundment structures, canal improvements, embankment, embankment instrumentation, placement of geocells on embankment exterior, placement of smooth flat plate soil cement on embankment interior and other miscellaneous site work such as security fencing, gates, paving, storm structures, site pads, weep holes and a recreational area; and

WHEREAS, Phase 1 was initiated in October 2011, and was completed in December 2016. No dates have been established by the USACE for the implementation of Phase 2 in the latest version of the CERP Interim Delivery Schedule; and

WHEREAS, in 2017, the USACE estimated the total cost for the Project exceeded \$327 million (Phase I: \$77 million, Phase 2: \$250 million). The original congressional authorization for the total Project was \$80 million; and

WHEREAS, on May 11, 2018, SFWMD Executive Director requested that the Assistant Secretary of the Army for Civil Works place the Site 1 Impoundment Project on the Deauthorization List of the next WRDA bill. In order to implement Phase 2 of the Site 1 Impoundment Project, a Post Authorization Change Report (PACR) would be required as well as Congressional authorization for a significantly higher project cost. The USACE & SFWMD decided not to pursue a PACR to seek a higher project cost because, with limited environmental benefits expected, the project was no longer considered cost effective; and

WHEREAS, in 2018 the latest version of the Lower East Coast Regional Water Supply Plan was published. It identified the Fran Reich / Site 1 Project as providing a source for dry season water withdrawals for portions of Palm Beach and Broward counties that would serve to reduce water demands on the Arthur R. Marshall Loxahatchee National Wildlife Refuge (Refuge). This overall reduction in water demands would thereby allow more natural and consistent water levels within the Refuge. In addition, benefits to the downstream estuaries and reduced groundwater seepage from the Refuge would be expected. The Plan further identified that the project provides water supplies identified in the Everglades MFL recovery strategy; and

WHEREAS, to this date it is apparent that the USACE has not yet formally identified the Fran Reich / Site 1 Project for de-authorization; and

WHEREAS, the implementation of the Fran Reich / Site 1 and Hillsboro Canal ASR projects would reduce water demands on the remnant Everglades and Lake Okeechobee, the project could be considered a new water source for the Lower East Coast that could be identified through a Savings Clause analysis of the Lake Okeechobee LOSOM.

NOW THEREFORE, BE IT RESOLVED, that the Lake Worth Drainage District strongly urges the USACE and SFWMD to complete this project with a full and expedited implementation of Phase 2 of the Fran Reich Preserve / Site 1 Impoundment and Hillsboro Canal ASR projects as a potential water source alternative to be considered in a Savings Clause analysis associated with the development of both LOSOM and CERP.

This Resolution **passed** and **adopted** at the regular monthly meeting of the Board of Supervisors of the Lake Worth Drainage District this 14th day of October 2020.

ATTESTED:



Reagan Walker
Recording Secretary

LAKE WORTH DRAINAGE DISTRICT BOARD OF SUPERVISORS

By:



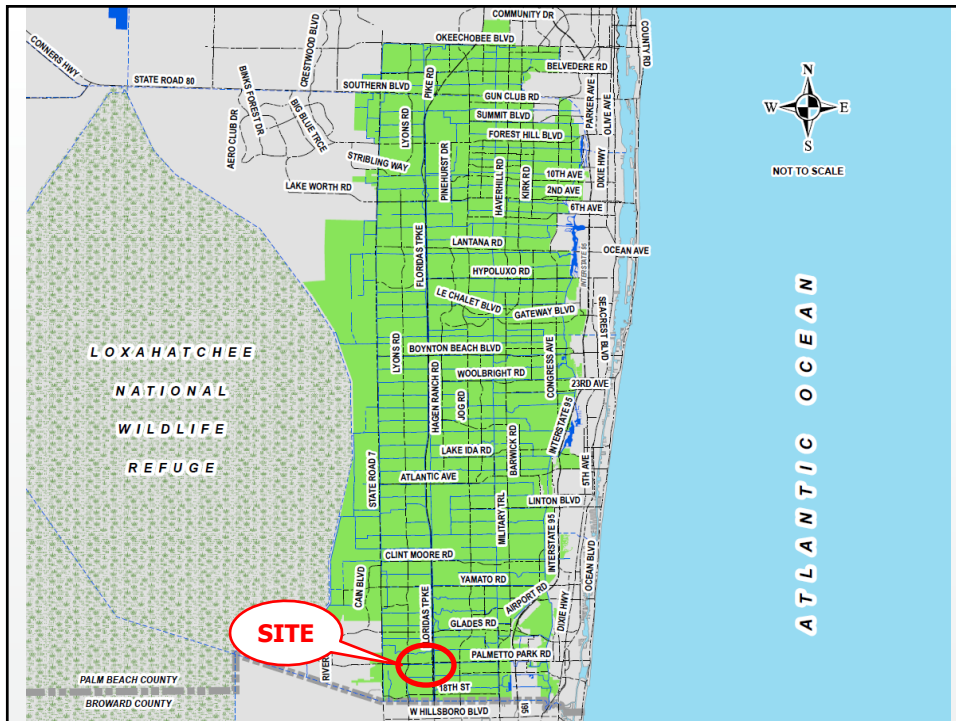
Stephen Bedner, President

Palm Beach County Installation of One Concrete Traffic Signal Strain Pole Within the LWDD E-2W ROW east of the Intersection of WB Palmetto Park Road and Boca Rio Road, RW-20-0264

David C. Varner, Permit Coordinator
Governing Board Meeting – October 14, 2020
Agenda Item #13




1



2

Background




LWDD
LAKE WORTH DRAINAGE DISTRICT

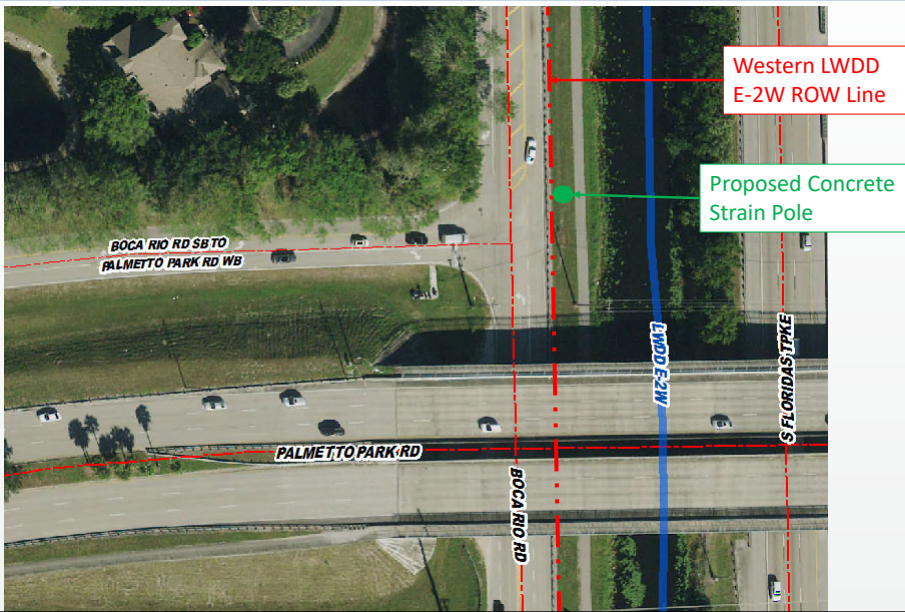
- Palm Beach County is requesting to install a Concrete Traffic Signal Strain Pole to encroach approximately 6 feet within the E-2W Canal right-of-way on the west side of the E-2W Canal
- No poles or above ground appurtenances shall be allowed within LWDD right-of-way unless approved by the Board.
- Existing guardrail on east side of Boca Rio Road does not allow installation within road right-of-way
- LWDD currently has approximately 30' of unencumbered access within the western E-2W R/W

3

Aerial View of Site



LWDD
LAKE WORTH DRAINAGE DISTRICT



BOCA RIO RD SB TO
PALMETTO PARK RD WB

Palmetto Park Rd

Boca Rio Rd

Western LWDD E-2W ROW Line

Proposed Concrete Strain Pole

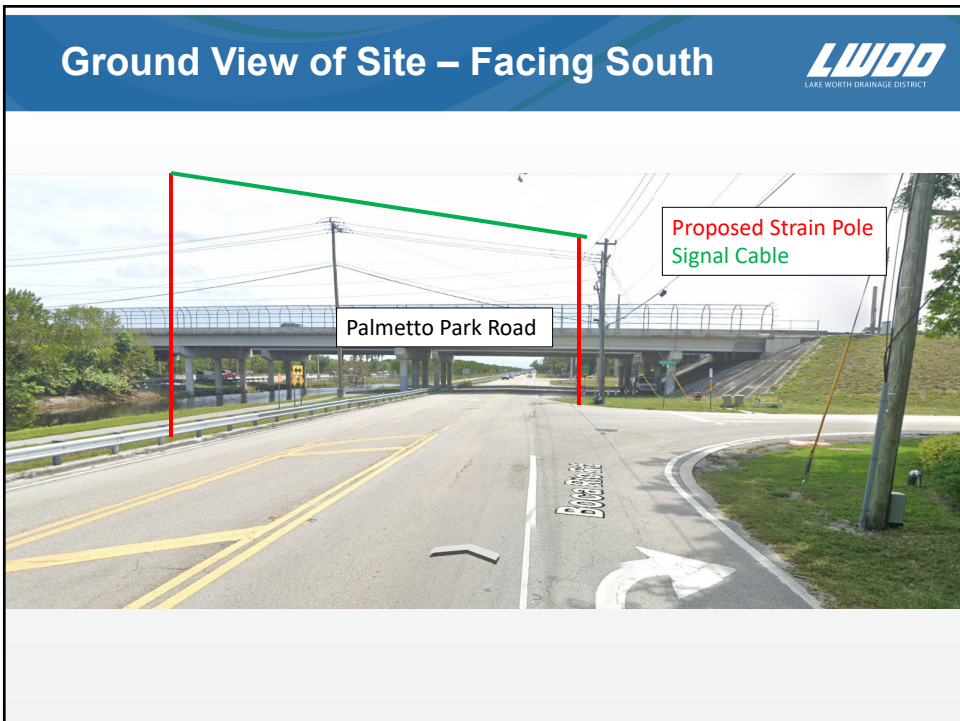
LWDD E-2W

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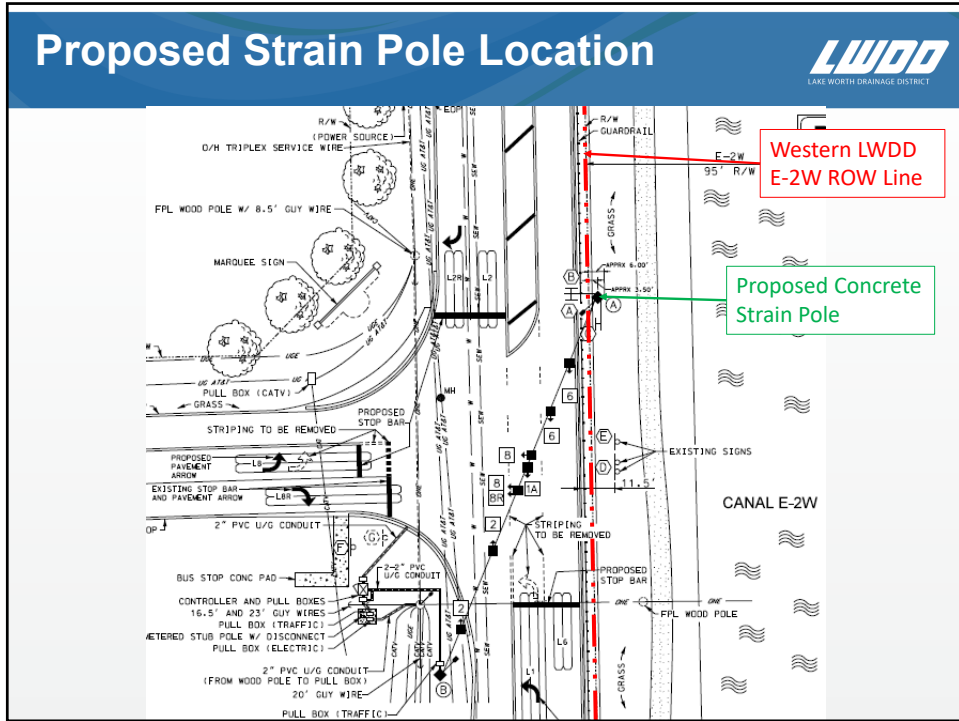
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5



6



7

Staff Recommendation

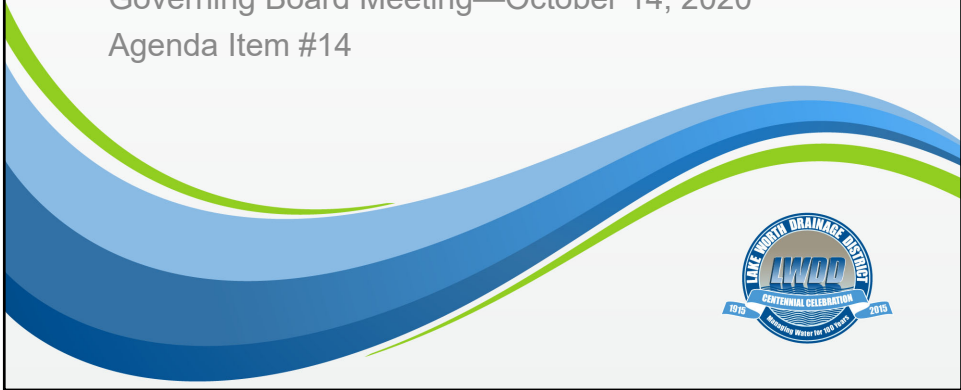

LWDD
LAKE WORTH DRAINAGE DISTRICT

- Approval to issue a right-of-way permit to Palm Beach County for the Installation of One Concrete Traffic Signal Strain Pole Encroaching Approximately 6' Within the LWDD E-2W ROW east of the Intersection of WB Palmetto Park Road and Boca Rio Road
- Subject to:
 - LWDD Operating Policies
 - Permit Fees
 - Application Fee: \$710.00 (PAID)
 - One Time Use Fee: \$1,065.00 (PAID)

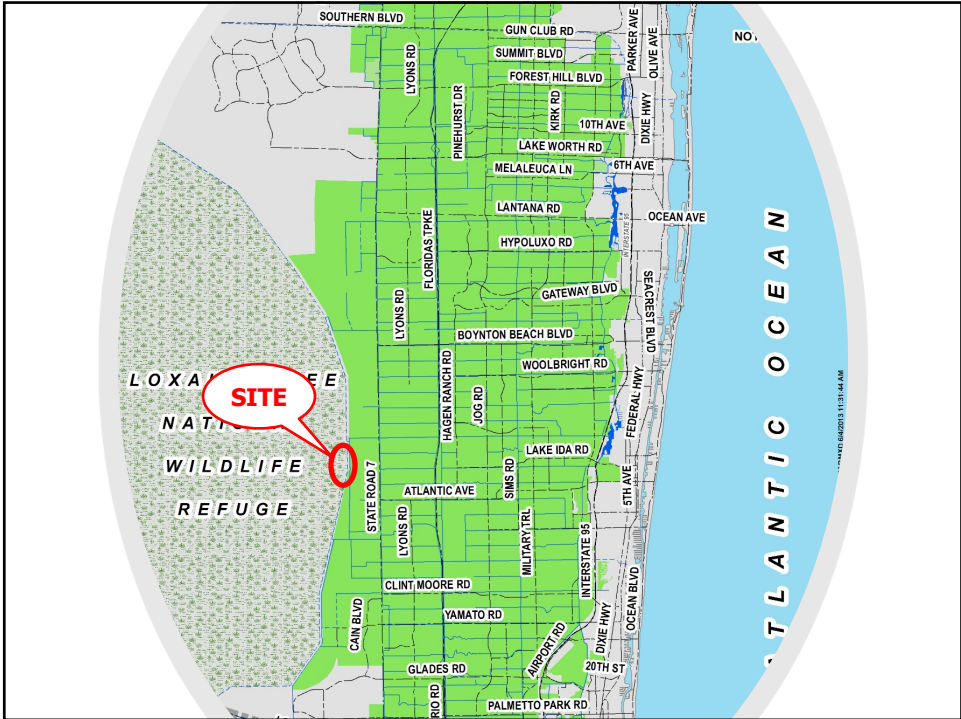
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Release of Interest—Levee 40 Canal R/W SFWMD Loxahatchee Mitigation Bank

David Bends, Project Surveyor
Governing Board Meeting—October 14, 2020
Agenda Item #14




1



2

Background



- In 2006, as part of a previously agreed land swap with SFWMD, LWDD quit-claimed a portion of SFWMD Levee 40 R/W, recorded in ORB 22684, Page 1717; however, Tract 9, Block 66, and a portion of a 25' road reservation was excluded from the deed
- Recently, the same parcel came under review and it was determined LWDD's still holds an interest as stated above containing approximately 0.08 acres

3



4

Staff Recommendation





- Approval to quit-claim LWDD's interest in Tract 9, Block 66, and a portion of the 25' Road Reservation lying within SFWMD Levee 40 Canal right-of-way to SFWMD
- Subject to:
 - Providing legal description
 - \$250 processing fee
 - District Operating Policies

General Engineering Services Request for Qualifications Project # 20-9854L.06

Anthony LasCasas P.E.
Director of Operations & Maintenance

Board Meeting – October 14, 2020
Agenda Item #15



1

Timeline



- ✓ July 2019 – Board approval to solicit bids
- ✓ June 28 & July 5, 2020 – Advertise Request for Qualifications
- ✓ July 30, 2020 – Submittals Required
- ✓ August 27, 2020 – Oral Presentations by Responsive Firms
- ✓ September 1, 2020 – Review Committee meeting
- ✓ September 16, 2020 – Board Consideration of Ranked Firms
- October 14, 2020 – Award of Contract

2

Contract Highlights



- Contract Consistent with RFQ and prior Agreement
- No change in pay rate - 2016 Pay Schedule

3

Staff Recommendations



- Approve Contract for General Engineering Services to Mock Roos & Associates for a term of (3) three years which may be extended annually to a maximum of 5 years.
- Extensions must be approved by the Board Annually.

4



LAKE WORTH DRAINAGE DISTRICT
Contract No. 20-9854L.06

The Lake Worth Drainage District (hereinafter referred to as LWDD) hereby enters into this contract with:

Name: Mock Roos & Associates, Inc.
(Hereinafter referred to as Consultant)
Address: 5720 Corporate Way, West Palm Beach, FL 33414
Phone No.: (561) 683-3113
Project Title: General Engineering Services

The following exhibits are attached hereto and made a part of this Contract:

- Exhibit "A" - General Terms and Conditions
- Exhibit "B" - Scope of Services
- Exhibit "C" - Rate Schedule
- Exhibit "D" - Insurance Requirements

Total Contract Amount: \$ See Florida Statutes Section 287.055 (2)(g), as amended
Contract Type: Continuing contract/ Work Order
Contract Term: 3 years with 2 additional annual extensions as approved by Lake Worth Drainage District Board of Supervisors Effective Date: October 14, 2020
Multi-Year Funding (if applicable):
Fiscal Year 20__ : _____
Fiscal Year 20__ : _____
Fiscal Year 20__ : _____

LWDD Project Manager: Anthony LasCasas, P.E. Title: Director of O&M LWDD
Phone No.: (561) 498-5363 Email: alascasas@lwdd.net

Submit invoices to: Lake Worth Drainage District 13081 S. Military Trail Delray Beach, FL 33484 Attention: Project Manager	Submit notices to Consultant at: <u>Mock Roos and Associates, Inc.</u> <u>5720 Corporate Way</u> <u>West Palm Beach, FL 33407</u> Attn: Alan Wertepney, Vice President
--	--

IN WITNESS WHEREOF, the authorized representative hereby executes this CONTRACT on this date and accepts all Terms and Conditions under which it is issued.

Accepted by: <u>[Signature]</u> (Signature of Authorized Representative) Title: <u>Garry Gruber, P.E. Senior Vice President</u> Date: <u>September 30, 2020</u>	LAKE WORTH DRAINAGE DISTRICT BY ITS BOARD OF SUPERVISORS Accepted by: _____ Date: _____
--	---

Exhibit A
General Terms and Conditions
Contract No. 16-9854L.02

ARTICLE 1 - STATEMENT OF WORK

1.1 The **CONSULTANT** shall, to the satisfaction of the **LWDD**, fully and timely perform all work items described in the "Scope of Services" attached hereto as Exhibit "B", and made a part of this **CONTRACT**, as well as any supplemental "Statement of Work" issued pursuant to any Work Order issued hereunder pursuant to 1.1.1 below. In the event **CONSULTANT** employees or hired workers are authorized to perform services on-site at **LWDD** facilities by either Exhibit "B" or any supplemental Work Order Statement of Work, the **CONSULTANT** hereby agrees to perform all duties in accordance with industry standards of conduct. It is the **CONSULTANT'S** responsibility to advise its employees or hired workers of the nature of the project, as described in Exhibit "B" as well as any supplemental Work Order Statement of Work issued hereunder. The **CONSULTANT** shall determine the method, details and means of performing the services, within the parameters established by Exhibit "B" as well as any supplemental Work Order Statement of Work. The **LWDD** may provide additional guidance and instructions to **CONSULTANT'S** employees or hired workers where necessary or appropriate as determined by **LWDD**.

1.1.1. The actual services required and either fixed price or not-to-exceed consideration for providing such services shall be detailed in individual Work Order(s) to this **CONTRACT**, a sample of which is attached as Exhibit "E", and made a part of this **CONTRACT**. As actual services are identified by the **LWDD**, the **CONSULTANT** shall, upon request, prepare a detailed technical and cost proposal for submission to the **LWDD**. Cost proposals shall include a detailed breakdown adequate to substantiate all **CONSULTANT** costs, including labor and expenses. Cost proposals shall also incorporate any established rates specified in Exhibit "C", attached hereto and made an integral part of this **CONTRACT**. The **LWDD** shall evaluate the technical merit and cost of each proposal submitted and conduct negotiations with the **CONSULTANT** to achieve technical and cost objectives. Such negotiations will result in a total consideration amount to be disbursed under the applicable Work Order on either a fixed price or time and materials basis within a not-to-exceed limitation. In either case, the mutually agreed upon fixed price/not-to-exceed amount for each authorized Work Order issued hereunder shall be the only basis for consideration by **LWDD**. There may also be circumstances under which a Work Order may be issued with a combination of fixed price/lump sum and not-to-exceed deliverables in which case the Work Order will be labeled "Not-to-Exceed". No work shall

commence prior to receipt of an authorized Work Order. The **LWDD** does not guarantee or represent that any minimum number of Work Orders for any dollar amount will be issued as a result of this **CONTRACT**.

1.1.2 In addition to the foregoing, award of Work Orders under this **CONTRACT** shall be subject to the following:

(a) Negotiation of a Statement of Work and a price most advantageous to the **LWDD**.

(b) Availability of qualified personnel within the required time frames; and

(c) Satisfactory performance by the **CONSULTANT** under any previous Work Order(s) issued by the **LWDD**.

1.1.3 The **LWDD** has the right to make unilateral changes to any Work Order without the mutual written consent of the **CONSULTANT** in the event such action is determined to be in the best interest of the **LWDD**. This right shall include the ability to cancel any work order without liability to **CONSULTANT** other than payment for work product accepted by the **LWDD** up through the effective date of cancellation. Any such cancellation which effectively eliminates remaining work order funding and curtails the period of performance shall be accomplished by providing thirty (30) days advance written notice to the **CONSULTANT**. No minimum advance written notice requirement shall apply to any other changes to Work Orders issued hereunder.

1.2 As part of the services to be provided by the **CONSULTANT** under this **CONTRACT**, the **CONSULTANT** shall substantiate, in whatever forum reasonably requested by the **LWDD**, the methodology, lab analytical examinations, scientific theories, data, reference materials, and research notes. The **CONSULTANT** shall also be required to substantiate any and all work completed, including but not limited to, work completed by subcontractors, assistants, models, concepts, analytical theories, computer programs and conclusions utilized as the basis for the final work product required by the **CONTRACT**. This paragraph shall survive the expiration or termination of this **CONTRACT**.

1.3 The parties agree that time is of the essence in the performance of each and every obligation under this **CONTRACT**.

1.4 The **CONSULTANT** shall conduct thorough background checks for all of the **CONSULTANT'S** employees or hired workers who will be working on any **LWDD** site. The background checks shall consist

of education verification, a national criminal check for state and federal felonies and misdemeanors, and a check on immigration status in accordance with Article 9.7. After reviewing the results of the background check, the **CONSULTANT** shall determine whether the **CONSULTANT'S** employee and/or hired worker meets the necessary criteria for the position sought to be filled by the **LWDD**. The **LWDD** will rely on the **CONSULTANT'S** assessment of its employees' or hired workers' suitability to be hired for the position(s) sought to be filled by the **LWDD**, based on the background check conducted by the **CONSULTANT**. Prior to allowing any employees or hired workers to work on-site at the **LWDD** facilities, the **CONSULTANT** will provide written verification to the **LWDD** that a complete background check, as described above, was conducted for any such employee or hired worker. The **CONSULTANT** will place the above language in any contract that it has with its subcontractors and placing the same responsibilities on the subcontractors relating to the subcontractors' employees and/or hired workers.

1.5 Should the services provided by the **CONSULTANT** fail to meet the expectations of the **LWDD's** Project Manager, the **CONSULTANT** shall to correct all deficiencies in the **CONSULTANT'S** services under the Work Order. All corrections shall be made to the satisfaction of the **LWDD** Project Manager. Inability to correct all deficiencies shall be good and sufficient cause to terminate the Work Order without the **LWDD** being liable for any and all future obligations under the Work Order as determined by the **LWDD** at its sole discretion. The **LWDD**, in its judgment, may elect to compensate the **CONSULTANT** for any accepted work product through the date of termination of an authorized Work Order, provided it is in a form that is sufficiently documented and organized to provide for subsequent utilization in completion of the work product.

1.6 Any manuscripts, technical publications, presentation slides or other documents resulting from or related to the **Work** performed under this **CONTRACT** shall be submitted to the **LWDD** for review and approval prior to publication by the **CONSULTANT** in any forum or format. This paragraph shall survive the expiration or termination of this **CONTRACT**.

1.7 Any use of data gathered under this **CONTRACT** that has not been through the quality assurance/quality control validation by the **LWDD** will be at the **CONSULTANT'S** own risk and shall not make reference to the **LWDD**. This paragraph shall survive the expiration or termination of this **CONTRACT**.

ARTICLE 2 - COMPENSATION/CONSIDERATION

2.1 The total consideration for all work required by the **LWDD** pursuant to this **CONTRACT** shall not exceed the amount as indicated on the cover/signature page of this **CONTRACT**. Such amount includes all expenses which the **CONSULTANT** may incur and therefore no additional consideration shall be authorized.

2.2 Notwithstanding the foregoing, any work authorized under this **CONTRACT** shall be paid in accordance with, and subject to the funding allocations for each **LWDD** fiscal year indicated on the authorization. Funding for each applicable fiscal year of this **CONTRACT** is subject to **LWDD** Board of Supervisors' budgetary appropriation. In the event **LWDD** does not approve funding for any subsequent fiscal year, all authorizations shall terminate upon expenditure of the current funding, notwithstanding other provisions in this **CONTRACT** to the contrary. The **LWDD** will notify the **CONSULTANT** in writing after the adoption of the final **LWDD** budget for each subsequent fiscal year if funding is not approved for this **CONTRACT**.

2.3 The **CONSULTANT**, by executing this **CONTRACT**, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The **CONSULTANT** agrees that the **LWDD** may adjust the consideration for this **CONTRACT** to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. The **LWDD** shall make any such adjustment within one (1) year following the expiration or termination of this **CONTRACT**.

2.4 In the event any travel is required by members of the **CONSULTANT'S** staff to fulfill its performance of the terms and conditions of this **CONTRACT**, such travel shall require prior written authorization by the **LWDD**. The **LWDD** shall only reimburse the **CONSULTANT** for travel expenses, including transportation, lodging, food, and incidental expense to the extent provided under Chapter 112, Florida Statutes and the **LWDD's** Travel Policy. A completed "Travel Expense Report" form, together with copies of receipts to support travel expenses must accompany all requests for travel reimbursement.

ARTICLE 3 - INVOICING AND PROMPT PAYMENT

3.1 The **CONSULTANT'S** invoices shall reference the **DISTRICT's** Contract Number, Work Order Number and any other reference numbers provided on

the cover/signature page of the **CONTRACT**. Original invoices shall be sent to the Project Manager at the **address** specified on the cover/signature page of this **CONTRACT**. Invoices submitted to the attention of the Project Manager may also be submitted electronically via e-mail or fax.

3.2 The **CONSULTANT** shall submit the invoices pursuant to the schedule outlined in the Exhibit "B"- Payment and Deliverable Schedule attached to each Work Order. For Work Orders issued on a time and materials basis, all invoices shall be substantiated by adequate supporting documentation to justify hours expended and expenses incurred within the Work Order's not-to-exceed budget including, but not limited to, copies of approved timesheets, payment vouchers, expense reports (included approved travel costs, if applicable), receipts and subcontractor invoices. Work Orders issued on a "Not-to-Exceed" basis where Exhibit "C" specifies a combination of fixed price/lump sum and not-to-exceed amounts associated with deliverables will also be subject to the same supporting documentation requirements described above whenever invoices are submitted for the not-to-exceed line items. Any travel authorized by the **LWDD** shall be reimbursed in accordance with Chapter 112, Florida Statutes and in accordance with Article 2.4 above.

3.3 It is the policy of the **LWDD** that payment for all goods and services shall be made in a timely manner. In accordance with Florida Statutes, Section 218.70, Florida Prompt Payment Act, a "proper" invoice is defined as an invoice that conforms to all statutory requirements and all **LWDD** requirements as specified in the **CONTRACT** for invoice submission. The time at which payment shall be due from the **LWDD** shall be forty-five (45) days from receipt of a proper invoice and acceptance of services and/or deliverables, based on compliance with the statutory requirements set forth in Section 218.70, F.S. and upon satisfaction of **LWDD** conditions as detailed in the **CONTRACT**.

Failure of the **CONSULTANT** to follow the instructions set forth in the **CONTRACT** regarding a proper invoice and acceptable services and/or deliverables may result in an unavoidable delay in payment by the **LWDD**.

Any disputes regarding invoice payments which cannot be resolved by the **LWDD** shall be concluded by final written decision of not later than sixty (60) days after the date on which the proper invoice was received by the **LWDD**.

3.4 The **LWDD** shall not pay for any obligation or expenditure made by the **CONSULTANT** prior to the commencement date of this **CONTRACT** or prior to receipt of authorized Work Order(s), unless the **LWDD** authorizes such payment in writing.

ARTICLE 4- PROJECT MANAGEMENT/NOTICE

4.1 The parties shall direct all technical matters arising in connection with the performance of this **CONTRACT**, other than invoices and notices, to the attention of the Project Manager specified on the cover/signature page of the **CONTRACT** for attempted resolution or action. The Project Manager shall be responsible for overall coordination and oversight relating to the performance of this **CONTRACT**. The **CONSULTANT** shall direct all administrative matters, including invoices and notices, to the attention of the **LWDD's** Project Manager specified on the cover/signature page of the **CONTRACT**.

All formal notices between the parties under this **CONTRACT** shall be in writing and shall be deemed received if sent by certified mail, return receipt requested, to the respective addresses specified on the cover/signature page of the **CONTRACT**. The **CONSULTANT** shall also provide a copy of all notices to the **LWDD's** Project Manager. All notices required by this **CONTRACT** shall be considered delivered *upon receipt*. Should either party change its address, written notice of such new address shall promptly be sent to the other party.

All correspondence to the **LWDD** under this **CONTRACT** shall reference **LWDD's** Contract Number specified on the cover/signature page of the **CONTRACT**.

4.2 The **CONSULTANT** agrees that its employees and hired workers shall provide services under this **CONTRACT**. The services of the **CONSULTANT'S** employees and hired workers are a substantial inducement and material consideration for this **CONTRACT**. In the event such employees and hired workers can no longer provide the services required by this **CONTRACT**, the **CONSULTANT** shall immediately notify the **LWDD** in writing and **LWDD** may elect to terminate this **CONTRACT**, for this reason, without any liability whatsoever to the **CONSULTANT**, including but not limited to liability for unfinished work product. The **CONSULTANT** may propose a replacement for the employees and hired workers, subject to the optional approval of the **LWDD**. The **LWDD**, in its judgment, may elect to compensate the **CONSULTANT** for any unfinished work product, provided it is in a form that is sufficiently documented and organized to provide for subsequent utilization in completion of the work product.

4.3 At its sole discretion, **LWDD** has the right to order the immediate replacement of any individual(s) working on behalf of the **CONSULTANT** as long as the basis for the replacement is not discriminatory or for any other reason contrary to law. The **LWDD** may take this action if **LWDD** determines that it is in its best interest to do so but will not be required to provide a reason for requesting the replacement of any individual(s). In such event, the **CONSULTANT** shall be responsible for carrying out such replacement and for returning the **LWDD** property in accordance with the **LWDD** policies and procedures. The **CONSULTANT** may propose a replacement for the individual(s), subject to the optional approval of the **LWDD**. The **LWDD** may also elect to terminate this **CONTRACT**, for this reason, without any liability whatsoever to the **CONSULTANT** or **LWDD**, including but not limited to liability for unfinished work product.

The **CONSULTANT** will place the above language in any contract that it has with subcontractors. The **CONSULTANT** will enforce the replacement of subcontractor personnel upon request by **LWDD**.

ARTICLE 5 - INDEMNIFICATION & INSURANCE

5.1 For value received, which is hereby acknowledged, the **CONSULTANT** shall indemnify and hold the **LWDD**, its officers, directors, board members, and employees harmless from liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the **CONSULTANT**, **subcontractor(s)**, and other persons employed or utilized by the **CONSULTANT** in the performance of the **CONTRACT**.

The **CONSULTANT** 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 **CONTRACT**. This paragraph shall survive the expiration or termination of this **CONTRACT**.

5.2 The **CONSULTANT** shall procure and maintain, through the term of this **CONTRACT**, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the **LWDD's** Insurance Requirements, attached as Exhibit "D" and made a part of this **CONTRACT**. The coverage required shall extend to all employees and subcontractors of the **CONSULTANT**. Prior to the execution of this **CONTRACT**, the **CONSULTANT** shall provide a Certificate of Insurance for such coverage to the **LWDD** for approval, indicating the producer, insured, carrier's name, and BEST rating, policy numbers and effective and expiration dates of each type of coverage required. The Certificate of

Insurance shall be signed by the insurance carrier's authorized representative and shall identify **LWDD** as added insured as required.

5.3 All insurers must be qualified to lawfully conduct business in the State of Florida. Failure of the **LWDD** to notify the **CONSULTANT** that the certificate of insurance does not meet the **CONTRACT** requirements shall not constitute a waiver of the **CONSULTANT'S** responsibility to meet the stated requirement. In addition, receipt and acceptance of the certificate of insurance by **LWDD** shall not relieve the **CONSULTANT** from responsibility for adhering to the insurance limits and conditions of insurance required within this **CONTRACT**. Misrepresentation of any material fact, whether intentional or not, regarding the **CONSULTANT's** insurance coverage, policies or capabilities, may be grounds for termination of the **CONTRACT** as determined solely by **LWDD**.

ARTICLE 6 - TERMINATION/REMEDIES

6.1 It is the policy of the **LWDD** to encourage good business practices by requiring consultants to perform in accordance with the terms and conditions of the **LWDD CONTRACT**.

If the **CONSULTANT** fails to fulfill its obligations under this **CONTRACT**, **LWDD** will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the breach. The **CONSULTANT** shall have thirty (30) days to cure the breach. If the **CONSULTANT** fails to cure the breach within the thirty (30) day period, the **LWDD** shall issue a Termination for Default Notice. Once **LWDD** has notified the **CONSULTANT** that it has breached its **CONTRACT** with the **LWDD**, by sending a Termination for Default Notice, the **LWDD's** Governing Board shall determine whether the **CONSULTANT** should be suspended from doing future work with the **LWDD**, and if so, for what period of time. Should the **LWDD** terminate for default in accordance with this provision, the **LWDD** shall be entitled to recover re-procurement costs in addition to all other remedies under law and/or equity.

6.2 The **LWDD** may terminate this **CONTRACT**, with or without cause, at any time for convenience upon thirty (30) calendar days prior written notice to the **CONSULTANT**. The performance of work under this **CONTRACT** may be terminated by the **LWDD** in accordance with this clause in whole, or from time to time in part, whenever the **LWDD** shall determine that such termination is in the best interest of the **LWDD**. Any such termination shall be effected by delivery to the **CONSULTANT** of a Notice of Termination specifying the extent to which performance of work under the **CONTRACT** is terminated, and the date upon which such termination becomes effective.

In the event of termination for convenience, **LWDD** shall compensate the **CONSULTANT** for all authorized and accepted deliverables completed through the date of termination in accordance with Work Orders issued hereunder. The **LWDD** shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this **CONTRACT**. The **LWDD** may withhold all payments to the **CONSULTANT** for such work until such time as the **LWDD** determines the exact amount due to the **CONSULTANT**.

6.3 In the event a dispute arises which the project manager cannot resolve, 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 The **LWDD** may order that all or part of the work stop if circumstances dictate that this action is in **LWDD's** best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the **LWDD's** Governing Board, a condition of immediate danger to the **LWDD** employees, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the **CONSULTANT** to the **LWDD**. If this provision is invoked, the **LWDD** shall notify the **CONSULTANT** in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The **CONSULTANT** shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the **LWDD** is received. Upon resumption of work, if deemed appropriate by the **LWDD**, the **LWDD** may amend this **CONTRACT** and/or any Work Order to reflect any changes to Exhibit "B", Statement of Work and/or the project schedule.

ARTICLE 7 - RECORDS RETENTION/ OWNERSHIP

7.1 The **CONSULTANT** shall maintain records and the **DISTRICT** shall have inspection and audit rights as follows:

A. Maintenance of Records: The **CONSULTANT** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **CONTRACT** 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 **CONTRACT**.

B. Examination of Records: The **LWDD** or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **CONTRACT**. Such examination may be made only within five (5) years from the date of final payment under this **CONTRACT** and upon reasonable notice, time and place.

C. Extended Availability of Records for Legal Disputes: In the event that the **LWDD** should become involved in a legal dispute with a third party arising from performance under this **CONTRACT**, the **CONSULTANT** shall extend the period of maintenance for all records relating to the **CONTRACT** until the final disposition of the legal dispute, and all such records shall be made readily available to **LWDD**.

D. Audit Findings: In the event **LWDD** exercises its right hereunder to audit the **CONSULTANT's** financial and accounting records within a period of one (1) year following the completion or termination date of this **CONTRACT** and such audit results in the proper disallowance of costs based on the auditor's finding(s), the **CONSULTANT** shall be obligated to refund the **LWDD** for such disallowance(s) upon demand. At its option, the **LWDD** shall also have the right to reduce payments due to the **CONSULTANT** under this **CONTRACT** by the amount of any disallowance resulting from audits conducted under this **CONTRACT**.

E. Applicability to Authorized Agents: In the event that any of the Work is delegated by the **CONSULTANT**, the **CONSULTANT** hereby agrees to include in any such contract a provision requiring such vendor, consultant, agent and/or subcontractor to agree to the same requirement for records retention, inspection and audit rights as set forth in this Article 7. 7.2 **CONSULTANT'S** Duties Regarding Public Records:

A. Compliance with Florida Laws: **CONSULTANT** must provide public access to all records concerning this **CONTRACT** according to applicable Florida laws including Chapter 119, Florida Statutes. If **CONSULTANT** asserts any exemptions to Florida's public records laws, **CONSULTANT** has the burden of establishing and defending the exemption. **CONSULTANT's** failure to comply with this section is a breach of this **CONTRACT**.

B. Recordkeeping and Public Access: If **CONSULTANT** receives a request from any member of the public for records associated with this **CONTRACT**, the **CONSULTANT** must promptly provide the requested records to the person

requesting them and provide written notice to the **LWDD** of what was requested and what it provided to the requestor. In addition, **CONSULTANT** must: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the **CONSULTANT** upon termination of the **CONTRACT** and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. At the conclusion of the Contract with the **LWDD**, **CONSULTANT** shall provide all applicable records associated with this **CONTRACT** on electronic media (CD-ROM or USB flash drive).

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE

CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT LWDD: Phone No. 561-498-5363, Email: info@lwdd.net, Mailing Address: 13081 S. Military Trail, Delray Beach, FL 33484-1105

7.3 Pursuant to Chapter 119 Florida Statutes, data processing software obtained by an agency under a license agreement which prohibits its disclosure and which software is a trade secret, as defined in Chapter 812.0B(c), Florida Statutes is exempt from the disclosure provisions of the Public Records law. However, the parties hereto agree that if a request is made of the **LWDD**, pursuant to Chapter 119, Florida Statute, for public disclosure of proprietary property being licensed to the **CONSULTANT** (Licensee) hereunder, **LWDD** shall advise the **CONSULTANT** (Licensee) of such request and, as between **LWDD** and the **CONSULTANT** (Licensee), it shall be the **CONSULTANT's** (Licensee's) sole burden and

responsibility to immediately seek and obtain such injunctive or other relief from the Courts and to immediately serve notice of the same upon the Licensor to protect the Licensor's claimed exemption under the Statute.

7.4 Pursuant to Chapter 119, Florida Statutes any plans and specs created or received by the **LWDD** pursuant to this **CONTRACT** which include building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of a building, water treatment facility, or other structure are exempt from the Public Records law and must be maintained in a confidential manner by the **CONSULTANT**.

7.5 The **LWDD** shall retain exclusive title, copyright and other proprietary rights in all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the **CONSULTANT**, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "B", Statement of Work (the "Work"). In consideration for the **LWDD** entering into this **CONTRACT**, and other good and valuable consideration the sufficiency

and receipt in full of which is hereby acknowledged by the **CONSULTANT**, the **CONSULTANT** hereby assigns, transfers, sells and otherwise grants to the **LWDD** any and all rights it now has or may have in the Work (the "Grant"). This Grant shall be self-operative upon execution by the parties hereto,

however, the **CONSULTANT** agrees to execute and deliver to the **LWDD** any further assignments or other instruments necessary to evidence the Grant, without the payment of any additional consideration by **LWDD**. The **CONSULTANT** may not disclose, use, license or sell any work developed, created, or otherwise originated hereunder to any third party whatsoever. This paragraph shall survive the termination or expiration of this **CONTRACT**. **CONSULTANT** is entitled to retain a copy of all such documents for its record purposes.

7.6 The **CONSULTANT** agrees to identify any proprietary data processing software as defined by Chapter 119, Florida Statutes, if applicable, which has been lawfully acquired by the **CONSULTANT** under license from a third party, including the right to sublicense such software, if appropriate, for use by the **LWDD** hereunder. If deemed appropriate, applicable sub-licensing terms and conditions shall be negotiated by the parties and incorporated by reference into this **CONTRACT**. The **CONSULTANT** shall grant to **LWDD** a perpetual, non-transferable, non-exclusive right to use the identified software without an additional fee. Both parties acknowledge that title to the software identified above shall remain with the applicable Licensor.

7.7 The **LWDD** has acquired the right to use certain software under license from third parties. For purposes of this **CONTRACT**, **LWDD** may permit the **CONSULTANT** access to certain third party owned software on **LWDD** computer systems. The **CONSULTANT** acknowledges the proprietary nature of such software and agrees not to reproduce, distribute or disclose such software to any third party. Use of or access to such software shall be restricted to designated **LWDD** owned systems or equipment. Removal of any copy of licensed software is prohibited.

7.8 During the term of this **CONTRACT**, **LWDD** may provide the **CONSULTANT** with the temporary use of computer hardware and software hereafter referred to as "Equipment"). **CONSULTANT** agrees to maintain the Equipment in good working condition while in its possession and will return the Equipment to **LWDD** upon request by **LWDD** or upon termination or expiration of this **CONTRACT** in good working condition, less normal wear and tear. All Equipment is hereby provided to the **CONSULTANT** "as is", "where is" and "with all faults".

The **CONSULTANT** shall assume all responsibility for safeguarding the Equipment including loss or damage and its proper use throughout the term of this **CONTRACT**. In the event of loss or damage, the **CONSULTANT** shall notify **LWDD** in writing within five (5) working days of such occurrence. The **CONSULTANT** shall provide **LWDD** with one hundred percent (100%) of the current market value in the event any of the Equipment is lost, stolen or irreparably damaged. **CONSULTANT** acknowledges the proprietary nature of all applicable third-party software listed in Attachment 2 and agrees not to reproduce, distribute or disclose such software to any third party. Use of all software shall be restricted to the hardware provided by the **LWDD**. Removal of any copy of licensed software is prohibited.

ARTICLE 8 - STANDARDS OF COMPLIANCE

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

8.2 The **CONSULTANT** hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this **CONTRACT**. The **CONSULTANT** shall take all measures necessary to effectuate these assurances.

8.3 The parties hereto agree that all actions or proceedings arising in connection with this **CONTRACT** shall be tried and litigated exclusively in the State and Federal courts of competent jurisdiction located in the State of Florida, Palm Beach County. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this **CONTRACT** in any jurisdiction other than that specified in the paragraph. The parties agree to waive any objections to venue or jurisdiction in Palm Beach County, Florida, for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this **CONTRACT**.

Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this **CONTRACT** and the transactions it contemplates. This waiver applies to an action or legal proceeding, whether sounding in contract, tort or otherwise.

8.4 The **CONSULTANT**, by its execution of this **CONTRACT**, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or contractors who shall perform work which is intended to benefit **LWDD** is a convicted vendor or has been placed on the discriminatory vendor list. If the **CONSULTANT** or any affiliate of the **CONSULTANT** has been convicted of a public entity crime or has been placed on the discriminatory vendor list, a period longer than 36 months must have passed since that person was placed on the convicted vendor or discriminatory vendor list.

8.5 The **CONSULTANT**, by its execution of this **CONTRACT**, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or consultants who shall perform work which is intended to benefit **LWDD** is listed on either the *Scrutinized Companies with Activities in Sudan List* or the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, created pursuant to section 215.473, Florida Statutes. The **CONSULTANT** further understands and accepts that this **CONTRACT** shall be either void by **LWDD** or subject to immediate termination by **LWDD** in the event there is any misrepresentation or false certification on the part of the **CONSULTANT**. The **LWDD**, in the event of such termination, shall not incur any liability to the **CONSULTANT** for any work or materials furnished.

8.6 The **CONSULTANT** may utilize **LWDD's** exemption certificate number issued pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, when purchasing materials used to fulfill its contractual obligations with **LWDD**, **subject to LWDD's written approval, which approval, is at the sole**

discretion of LWDD. The **CONSULTANT** shall be responsible and liable for the payment of all applicable RCA/Social Security and other taxes resulting from this **CONTRACT**. In the event the **CONSULTANT** is a sole proprietor, the **CONSULTANT** is responsible for submitting quarterly returns to the Federal Government.

8.7 The **CONSULTANT** warrants that it has not employed or retained any person, other than a bona fide employee working solely for the **CONSULTANT**, to solicit or secure this **CONTRACT**. Further the **CONSULTANT** warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for the **CONSULTANT**, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this **CONTRACT**. For breach of this provision, **LWDD** may terminate this **CONTRACT** without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

8.8 The **CONSULTANT** shall make reasonable efforts to obtain any necessary federal, state, local, and other governmental approvals, as well as all necessary private authorizations and permits, prior to the commencement of performance of this **CONTRACT**. A delay in obtaining permits shall not give rise to a claim by the **CONSULTANT** for additional compensation. If the **CONSULTANT** is unable to obtain all necessary permits in a timely manner, either party may elect to terminate this **CONTRACT**, notwithstanding other provisions of this **CONTRACT** to the contrary.

8.9 Pursuant to Chapter 216.347, F.S., the **CONSULTANT** is prohibited from the expenditure of any funds under this **CONTRACT** to lobby the Legislature, the judicial branch or another state agency.

8.10 The **LWDD** is a governmental entity responsible for performing a public service and therefore has a legitimate interest in promoting the goals and objectives of the agency. The work under this **CONTRACT** involves a project consistent with these goals and objectives. Consequently, **LWDD** is desirous of satisfactorily completing and successfully promoting this project with the cooperation of its **CONSULTANT**. Therefore, as **LWDD's CONSULTANT** for this project, the **CONSULTANT** assures **LWDD** that the **CONSULTANT**, its employees, subcontractors and assigns will refrain from acting adverse to **LWDD's** legitimate interest in promoting the goals and objectives of this project. The **CONSULTANT** agrees to take all reasonable measures necessary to effectuate these assurances. In the event the **CONSULTANT** determines it is unable to meet or promote the goals and objectives of the

project, it shall have the duty to immediately notify **LWDD**. Upon such notification **LWDD**, in its discretion, may terminate this **CONTRACT**.

8.11 **CONSULTANT** shall not directly or indirectly, or through any other person, agency, company or organization solicit the project manager or any of the evaluation committee members who selected the **CONSULTANT**, to undertake employment with it, its parent company, or any subsidiary company or any affiliated company during the performance of this **CONTRACT**. The **LWDD** is committed to ensuring that its employees abide by the Florida Code of Ethics and, as such, **LWDD** does not condone offers of employment made by Contractors to **LWDD** employees in exchange for the award of **LWDD** work. Further, **LWDD** is committed to avoiding even the appearance of impropriety which could arise when an offer of employment is made after the award of **LWDD** work.

8.12 **CONSULTANT** may use **LWDD's** name in marketing materials for the purpose of publicizing contract awards, however, **CONSULTANT** is prohibited from obtaining affirmations from **LWDD** staff regarding its products or services. Affirmations include any kind of testimonials or endorsements of the **CONSULTANT** as well as the products and/or services offered by the **CONSULTANT**. The **LWDD**, as a government entity, must fairly and equitably compete for goods and services, and therefore the endorsement of any particular firm, product, or service is strictly prohibited. **CONSULTANT is strictly prohibited from releasing any statements to the media regarding work performed under this CONTRACT without the review, and the express prior written approval of LWDD. The LWDD's approval is at its sole discretion, however, such approval will not be unreasonably withheld.**

ARTICLE 9 - RELATIONSHIP BETWEEN THE PARTIES

9.1 **CONSULTANT** shall be considered an independent consultant and neither party shall be considered an employee or agent of the other party. Nothing in this **CONTRACT** shall be interpreted to establish any relationship other than that of the independent consultant between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance on this **CONTRACT**. Both parties are free to enter into contracts with other parties for similar services. In the event the **CONSULTANT** is providing staff who will be working on-site at **LWDD** facilities, **CONSULTANT** and **LWDD** further agree that the **LWDD** shall not pay the **CONSULTANT** staff any direct remuneration, expense reimbursement or compensation of any kind and **CONSULTANT'S** staff shall not be eligible for any benefit programs **LWDD** offers to its employees. All

benefits available to the **CONSULTANT'S** staff shall be exclusively provided by the **CONSULTANT**. The **CONSULTANT** shall provide all billing, collection, payroll services and tax withholding, among other things, for all **CONSULTANT** staff performing services under this **CONTRACT**.

9.2 It is the intent and understanding of the Parties that this **CONTRACT** is solely for the benefit of the **CONSULTANT** and **LWDD**. No person or entity other than the **CONSULTANT** or **LWDD** shall have any rights or privileges under this **CONTRACT** in any capacity whatsoever, either as third-party beneficiary or otherwise.

9.3 The **CONSULTANT** shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this **CONTRACT** without the prior written consent of **LWDD**. Any attempted assignment in violation of this provision shall be null and void.

9.4 The **CONSULTANT** shall not pledge **LWDD's** credit or make **LWDD** a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Pledging **LWDD's** credit shall also be construed to include the use of "factoring agents" or the practice of selling business accounts receivables to a third party at a discount for the purpose of obtaining funding which is also expressly prohibited.

9.5 The **LWDD** assumes no duty with regard to the supervision of the **CONSULTANT** and the **CONSULTANT** shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of **CONTRACT** performance, as it relates to the **CONSULTANT** and not the **CONTRACTOR**. Further, the **CONSULTANT** shall be responsible for compliance with all labor and unemployment laws.

9.6 CONSULTANT EXPRESSLY UNDERSTANDS AND AGREES THAT CONSULTANT, ITS OFFICERS, AGENTS, AND EMPLOYEES, ARE NOT ENTITLED TO ANY EMPLOYMENT BENEFITS FROM LWDD. CONSULTANT EXPRESSLY AND VOLUNTARILY WAIVES AND AGREES NOT TO MAKE ANY CLAIM TO PARTICIPATE IN ANY OF LWDD'S EMPLOYEE BENEFITS OR BENEFIT PLANS SHOULD CONSULTANT OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES BE ADJUDICATED FOR ANY REASON TO BE AN EMPLOYEE OF LWDD. IN THE EVENT CONSULTANT IS SELF EMPLOYED, CONSULTANT EXPRESSLY REPRESENTS THAT CONSULTANT IS AN INDEPENDENT CONSULTANT AND HEREBY WAIVES ANY ENTITLEMENT TO OVERTIME OR OTHER BENEFITS THAT CONSULTANT MAY BE ENTITLED TO RECEIVE SHOULD CONSULTANT BE ADJUDICATED FOR ANY REASON TO BE AN EMPLOYEE OF LWDD.

9.7 The **CONSULTANT** shall be responsible for verifying employee authorization to work in the U.S. and certifying that a good faith effort has been made to properly identify employees by timely reviewing and completing appropriate documentation, including but not limited to the Department of Homeland Security, U.S. Citizenship and Immigration Services Form I-9. In the event the amount of this **CONTRACT** exceeds \$150,000 and for all persons hired by **CONSULTANT** to work in the State of Florida for a period that is equal to or exceeds 120 days, the **CONSULTANT** shall use the United States Department of Homeland Security's E-Verify system ("E-Verify") to verify employment eligibility. Additionally, if **CONSULTANT** uses subcontractors to perform any portion of the Work under this **CONTRACT** valued in excess of \$3,000, **CONSULTANT** must include a requirement in the subcontractor's contract that the subcontractor use E-Verify to verify the employment eligibility of all persons hired by subcontractor to perform any such portion of the Work. Within 30 days of this **CONTRACT'S** effective date, **CONSULTANT** must provide **LWDD** with evidence that **CONSULTANT** is enrolled in the E-Verify system. Answers to questions regarding E-Verify as well as instructions on enrollment may be found at the E-Verify website: www.uscis.gov/e-verify. Written verification shall be kept by the **CONSULTANT** and made available for inspection on demand by **LWDD**.

The hourly rate of pay for each employee shall comply with State law and industry standards for similar work performed under the **CONTRACT**. The **LWDD** shall maintain records verifying the rate of pay for each employee working on this **CONTRACT** and make such records available for inspection on demand by **LWDD**.

Failure to fully comply with these provisions shall be a material breach of the **CONTRACT** and cause for termination of the **CONTRACT**.

ARTICLE 10 - GENERAL PROVISIONS

10.1 Notwithstanding any provisions of this **CONTRACT** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **CONTRACT** 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 **CONTRACT** shall otherwise remain in effect. This provision shall not apply if the "Statement of Work" of this **CONTRACT** specifies that performance by **CONSULTANT** is

specifically required during the occurrence of any of the events herein mentioned.

10.2 Any inconsistency in this **CONTRACT** shall be resolved by giving precedence in the following order:

- (a) Exhibit "A" General Terms and Conditions
- (b) Exhibit "B" Scope of Services/Statement of Work
- (c) All other exhibits, attachments and documents specifically incorporated herein by reference

10.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **CONTRACT** 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 **CONTRACT**. 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 **CONTRACT** specifically referred to herein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

10.4 Should any term or provision of this **CONTRACT** 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 **CONTRACT**, to the extent that the **CONTRACT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

10.5 This **CONTRACT** may be amended only with the written approval of the parties hereto. In the event this **CONTRACT** provides for renewal options as stated on the cover page of the **CONTRACT**, such renewals shall be exercised at the option of **LWDD** and documented with an executed amendment to this **CONTRACT**.

10.6 This **CONTRACT** 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 **CONTRACT**. The **CONSULTANT** recognizes that any representations, statements or negotiations made by **LWDD** staff do not suffice to legally bind **LWDD** in a contractual relationship unless they have been reduced to writing and signed by an authorized **LWDD** representative. This **CONTRACT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

10.7 The **CONSULTANT** shall have no responsibility for **LWDD's** construction **CONTRACTOR's** failure to comply with its construction contract with **LWDD** or for the **CONTRACTOR's** safety programs and procedures or the lack thereof.

ARTICLE 11 - SAFETY REQUIREMENTS

11.1 The **CONSULTANT** and its subcontractors shall be responsible to comply with all applicable Federal, State and local safety standards and regulations applicable to the work performed pursuant to this **CONTRACT**.

Article 12 – Subcontractor Contract

The **CONSULTANT** shall incorporate the terms of this contract into any contract with a subcontractor utilized under this agreement.

EXHIBIT B
PROFESSIONAL ENGINEERING SERVICES
SCOPE OF SERVICES

GENERAL SCOPE OF SERVICES

Consultant shall be registered engineering firm licensed with the State of Florida. All professional services shall be performed under the direction of a professional registered with the State of Florida and qualified in the specific field (e.g. Professional Engineer [PE], Registered Architect).

LWDD has recently initiated a comprehensive evaluation of key components of its water control infrastructure. While many of the recently proposed facility refurbishment improvements were developed and implemented by internal District staff, several issues have been identified that may require engineering expertise in a variety of very specific areas, including but not limited to; civil, structural, mechanical, electrical, control systems, geotechnical engineering and land surveying.

The work may include, but not be limited to the following:

- Evaluation of existing hydrologic and hydraulic conditions (canals, culvert/bridge crossings, water control structures, pumping stations, etc.), using computer modeling and similar techniques. Evaluation may include comparison of original engineering design, LWDD permitted condition and future uses.
- Evaluation of civil, structural, geotechnical, mechanical and electrical elements of subject facilities anticipated for major rehabilitation or replacement
- Engineering design of subject facilities anticipated for major rehabilitation, including an evaluation of a series of optional approaches, to develop and select the most cost-effective rehabilitation or replacement approach
- Acquisition of necessary permits or government authorizations for subject facilities anticipated for major rehabilitation or replacement
- Construction management or engineering services during project construction

STATEMENT OF WORK

Project specific Statement of Work shall be provided with individual Purchase Orders.

**EXHIBIT C
RATE SCHEDULE**

Primary Firm Name: Mock, Roos and Associates, Inc.
Primary Contact: Garry Gruber, P.E. **Phone:** (561) 683-3113

Civil Engineering	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Engineering Assistant	\$60
	Level 2	Engineering Technician	\$110
	Level 3	Engineer	\$135
	Level 4	Lead Engineer	\$165
	Level 5	Chief Consulting Engineer	\$175
	Level 6	Principal Engineer	\$195

Structural Engineering	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Engineering Assistant	\$60
	Level 2	Engineering Technician	\$110
	Level 3	Engineer	\$135
	Level 4	Lead Engineer	\$150
	Level 5	Chief Consulting Engineer	\$175
	Level 6	Principal Engineer	\$195

Mechanical Engineering	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Engineering Assistant	\$60
	Level 2	Engineering Technician	\$110
	Level 3	Engineer	\$125
	Level 4	Lead Engineer	\$135
	Level 5	Chief Consulting Engineer	\$145
	Level 6	Principal Engineer	\$150

Electrical Engineering	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Engineering Assistant	\$60
	Level 2	Engineering Technician	\$110
	Level 3	Engineer	\$125
	Level 4	Lead Engineer	\$135
	Level 5	Chief Consulting Engineer	\$145
	Level 6	Principal Engineer	\$150

Environmental Engineering	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Engineering Assistant	\$60
	Level 2	Engineering Technician	\$90
	Level 3	Engineer	\$110
	Level 4	Lead Engineer	\$135
	Level 5	Chief Consulting Engineer	\$180
	Level 6	Principal Engineer	\$210

Geotechnical Engineering	Professional Level	Position Title	Hourly Rate
	Level 1	Geotechnical Engineering Assistant	\$65
	Level 2	Geotechnical Engineering Technician	\$85
	Level 3	Geotechnical Engineer	\$105
	Level 4	Lead Geotechnical Engineer	\$125
	Level 5	Chief Consulting Geotechnical Engineer	\$175
	Level 6	Principal Engineer	\$180

Construction Administration	Professional Level	Position Title	Hourly Billing Rate
	Level 2	Inspection Technician	\$65
	Level 3	Inspector	\$90
	Level 4	Lead Inspection Representative	\$135
	Level 5	Chief Inspection Representative	\$155
	Level 6	Principal Inspection Representative	\$175

Computer Aided Design	Professional Level	Position Title	Hourly Billing Rate
	Level 1	CADD Assistant	\$60
	Level 2	CADD Technician	\$65
	Level 3	Designer	\$90
	Level 4	Lead Designer	\$115
	Level 5	Chief Consulting Designer	\$140
	Level 6	Principal Designer	\$155

Architectural Services	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Architectural Assistant	\$90
	Level 2	Architectural Technician	\$125
	Level 3	Architect	\$155
	Level 4	Lead Architect	\$175
	Level 5	Chief Consulting Architect	\$195
	Level 6	Principal Architect	\$205

Survey Support	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Surveying Assistant	\$60
	Level 2	Surveying Technician	\$75
	Level 3	Surveyor	\$115
	Level 4	Lead Surveyor	\$125
	Level 5	Chief Surveyor	\$135
	Level 6	Principal Surveyor	\$200

Planning	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Planning Assistant	\$60
	Level 2	Planning Technician	\$90
	Level 3	Planner	\$100
	Level 4	Lead Planner	\$130
	Level 5	Chief Planner	\$150
	Level 6	Principal Planner	\$180

Technical Writing and Editing	Professional Level	Position Title	Hourly Billing Rate
	Level 3	Technical Writer/Editor	\$120
	Level 4	Lead Technical Writer/Editor	\$140
	Level 5	Chief Consulting Technical Writer/Editor	\$150
	Level 6	Principal Technical Writer/Editor	\$165

Quality Assurance/Quality Control	Professional Level	Position Title	Hourly Billing Rate
	Level 2	Quality Assurance Technician	\$90
	Level 3	Quality Assurance Specialist	\$100
	Level 4	Lead Quality Assurance Specialist	\$110
	Level 5	Chief Quality Assurance Specialist	\$125
	Level 6	Principal Quality Assurance Specialist	\$150

Environmental Science and Laboratory	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Scientist/Analyst Assistant	\$60
	Level 2	Scientist/Analyst Technician	\$75
	Level 3	Scientist/Analyst	\$100
	Level 4	Lead Scientist/Analyst	\$120
	Level 5	Chief Scientist/Analyst	\$140
	Level 6	Principal Scientist/Analyst	\$165

Modeling	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Hydrologic Modeling Assistant	\$60
	Level 2	Hydrologic Modeling Technician	\$110
	Level 3	Hydrologic Modeler	\$135
	Level 4	Lead Hydrologic Modeler	\$145
	Level 5	Chief Consulting Hydrologic Modeler	\$150
	Level 6	Principal Hydrologic Modeler	\$165

Hydrogeology	Professional Level	Position Title	Hourly Billing Rate
	Level 1	Hydrogeologic Assistant	\$60
	Level 2	Hydrogeologic Technician	\$80
	Level 3	Hydrogeologist	\$100
	Level 4	Lead Hydrogeologist	\$120
	Level 5	Chief Consulting Hydrogeologist	\$150
	Level 6	Principal Hydrogeologist	\$165

GIS/RS	Professional Level	Position Title	Hourly Billing Rate
	Level 1	GIS/RS Assistant	\$60
	Level 2	GIS/RS Technician	\$90
	Level 3	GIS/RS Analyst	\$110
	Level 4	Lead GIS/RS Analyst	\$130
	Level 5	Chief Consulting GIS/RS Analyst	\$150
	Level 6	Principal GIS/RS Analyst	\$165

Program Controls (includes scheduling and cost estimating)	Professional Level	Position Title	Hourly Billing Rate
	Level 3	Program Controls Specialist	\$135
	Level 4	Lead Controls Specialist	\$190

ADDED:

Administrative Support	Professional Level	Position Title	Hourly Billing Rate
	Level 3	Administrative Associate	\$60
	Level 4	Sr. Admin. Associate	\$75

Qualifications by Professional Level and Position Title

Professional Level	Qualifications	Experience
Level 1	Associates Degree(1)	0-2 Years
Level 2	Associates Degree(1)	0-7 Years
Level 3	BS Degree(1)(2)(3)	4-12 Years
Level 4	BS Degree(1)(2)(3)	>12 Years
Level 5	MS Degree(1)(4)	>12 Years
Level 6	MS Degree(1)(4)	>15 Years

- (1) Valid State of Florida Class-D D.L.
(2) MS Degree Preferred

- (3) Florida PE, PG, Preferred
(4) Florida PE, PG, Required

Request for Qualifications (RFQ)
General Engineering Services
RFQ 20-9854L.06

Exhibit D

Insurance Requirements

Professional Construction Services (Architects/Engineers/ Consultants)

COMMERCIAL GENERAL LIABILITY

General Aggregate	\$1,000,000
Products & Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

AUTOMOBILE LIABILITY

If vehicles on site

Combined Single Limit	\$1,000,000
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WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

A. Workers Compensation Statutory*

B. Employers' Liability

Employer's Liability/Accident \$100,000

Disease Policy Limit \$500,000

Disease Each Employee \$100,000

PROFESSIONAL LIABILITY / ERRORS AND OMISSIONS LIABILITY

Policy Aggregate \$1,000,000

Bodily Injury & Property Damage \$1,000,000

All Insurance carrier(s) must have a minimum financial rating of A-, VII or better. Financial Ratings can be verified at: www.ambest.com

Lake Worth Drainage District must be named as Additional Insured on all policies EXCEPT workers' compensation and professional liability policies.

* Workers Compensation may be excepted for exemption for small employers. Exemptions can be verified at: <https://apps8.fldfs.com/proofofcoverage/Search.aspx>

The above are minimum limit standards and this document is to be utilized as a guide only. Each Scope of Work and estimated cost should be reviewed to determine appropriate limits and/or exceptions. Any questions shall be submitted to Risk Management for discussion/determination.


Annual Canal Mowing & Maintenance Service Contracts
Anthony LasCasas P.E.
Director of Operations & Maintenance
Board Meeting – October 14, 2020
Agenda Item #16



Lake Worth Drainage District logo featuring the letters 'LWDD' in a stylized blue font with 'LAKE WORTH DRAINAGE DISTRICT' written in smaller text below it.

1

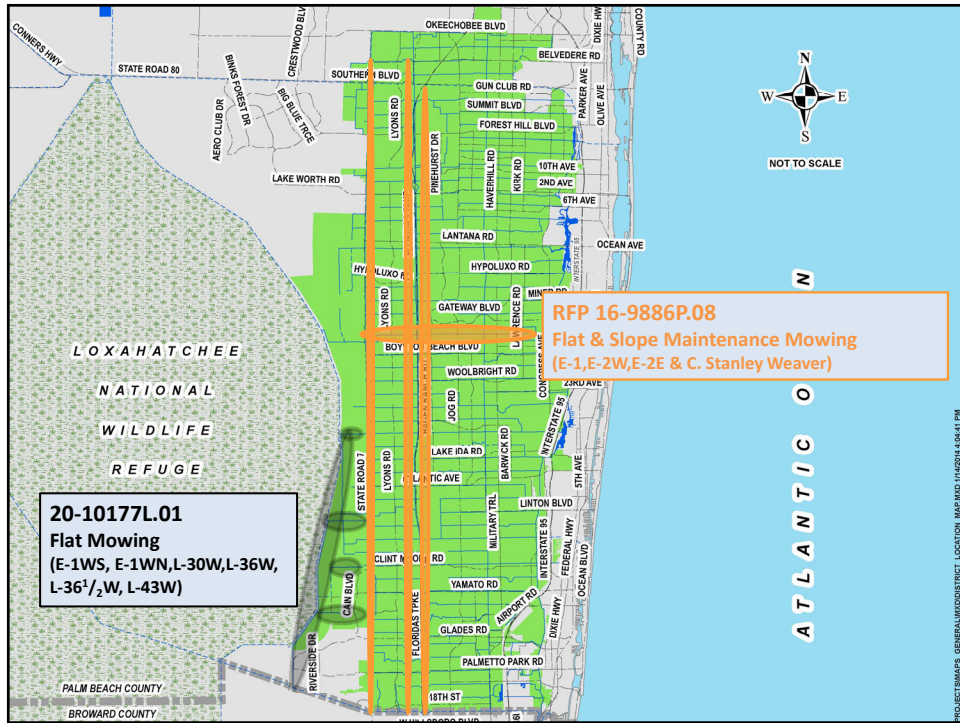
Current Maintenance Contracts



Lake Worth Drainage District logo featuring the letters 'LWDD' in a stylized blue font with 'LAKE WORTH DRAINAGE DISTRICT' written in smaller text below it.

- Flat mowing of District right-of-ways once a quarter (every 3 months) for the E-1WS, E-1WN, L-30W,L-36W, L36 ½W & L-43W
 - Awarded Jan 2020
- Flat & Slope mowing of District right-of-ways once a quarter (every 3 months) for the designated portions of the E-1, E-2W, E-2E & C.Stanley Weaver
 - Awarded Dec 2017
 - Extended 2018 & 2019
- Total miles
 - 92.5 miles Flat Mowing
 - 107 miles Slope Mowing
- Current Costs \$166,900 annually

2




3

Increased Canal Bank Maintenance


- As vegetation is removed from low maintenance rights-of-way, additional resources are required for maintenance
- Right-of-ways access often restricted
- Options for maintenance:
 - Increased herbicide treatment
 - Specialized equipment
 - Contract mowing services

4


Specialized Equipment



LWDD
LAKE WORTH DRAINAGE DISTRICT



Stand-On Skid Steer




Long Reach
w/Mulching Head

5

Remote Operated Mower (Spider)



LWDD
LAKE WORTH DRAINAGE DISTRICT





6



7

Cost Comparison

- The District currently realizes ~\$30,000 in annual savings from contract mowing contract
 - \$157k for contract vs \$190k for LWDD staff (includes 2 FTE's & Equipment)

Mower Type	LWDD*	Contractor
Flat	~\$197/mi/cycle	\$115/mi/cycle
Slope	~\$282/mi/cycle	\$285/mi/cycle
Low Maint. Berm	TBD	TBD

* Includes Equipment, Fuel, Maintenance, Salaries & Benefits

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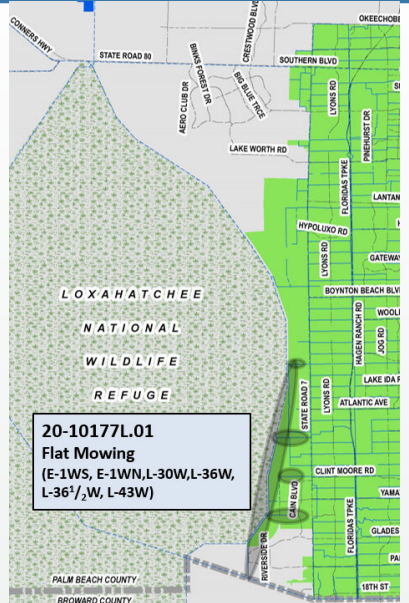
Proposed Maintenance **LWDD** LAKE WORTH DRAINAGE DISTRICT

- Flat mowing District right-of-ways once a quarter (every 3 months) for the E-1WS, E-1WN, L-30W, L-36W, L-36 ½W, L-43W **(RENEWAL ONLY)**
- Flat, Slope & Low Maintenance mowing of District Right-of-Ways once a quarter (every 3 months) for the designated E-1, E-2W, E-2E & C. Stanley Weaver
- Flat, Slope & Low Maintenance mowing District right-of-ways once a quarter (every 3 months) for the designated canal reaches north of C-51 (S-1,S-2,S-3, L-1,L-2,L-3,L-4,E-3 ½-8 and portions of E-1,E-2,E-3 & PBI west canal)
- Flat, Slope & Low Maintenance mowing once a quarter (every 3 months) and Aquatic Weed Maintenance of District right-of-ways for the designated canal reaches within SE Boca (L-40E, and portions of L-46,L-47,L-48,L-49,L-50 & E-3 ½-2)
- Total miles
 - 140 miles Flat Mowing
 - 155 miles Slope Mowing
 - 65 miles Low Mowing
 - SE Boca Aquatic Weed Maintenance
- Estimated Costs \$350,000 Fiscal Year 21
- Estimated Costs \$375,000 annually
- Fiscal Year Budget \$375,000

9


Renew Mowing Contract to E-1W Canal System **LWDD** LAKE WORTH DRAINAGE DISTRICT

- Flat mowing once a quarter (every 3 months) the E-1WS, E-1WN, L-30W, L-36W, L-36 ½W and L-43W
- Referenced canals have been successfully mowed for past year
- In accordance with the RFP and prior Board authorizations, the contract may be extended for 2 additional years from the initial award (3yr total)




10

Re-Bid - E-1, E-2E, E-2W & C. Stanley Weaver Canals



LAKE WORTH DRAINAGE DISTRICT


- Flat, Slope & Low Maintenance mowing once a quarter (every 3 months) the referenced canals and include mowing the low maintenance side (west bank) of the E-1 Canal
- Referenced canals have been successfully mowed for past 3 years
- In accordance with the RFP and prior Board authorization, the Contract must be re-bid after 3 years



ATLANTIC OCEAN

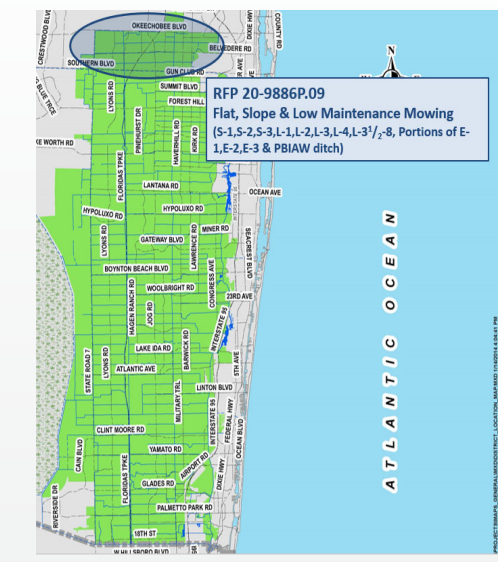
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Expansion of Mowing to North Basin



LAKE WORTH DRAINAGE DISTRICT


- Flat, Slope & Low Maintenance mowing once a quarter (every 3 months) for the Canals North of C-51 (S-1, S-2, S-3, L-1, L-2, L-3, L-4, E-3 1/2-8, Portions of E-1, E-2, E-3 & PBIAW west ditch)
- Site is isolated from the balance of the District
- Site represents one of the farthest reaches
- Site has a mix of land use and canal configurations including open and unrestricted canal to urban, restricted narrow canals




ATLANTIC OCEAN

12

Expansion of Mowing & Maintenance to Boca, SE Basin



- Flat, Slope & Low Maintenance mowing once a quarter (every 3 months) and Aquatic Weed Maintenance of District Right-of-Ways for the designated canal reaches within SE Boca (L-40E, and portions of L-46, L-47, L-48, L-49, L-50 & E-3 1/2-2)
- Area is isolated from the balance of the District
- Area represents one of the farthest reaches
- Transfer of the referenced canals to the City of Boca Raton may be considered in the future

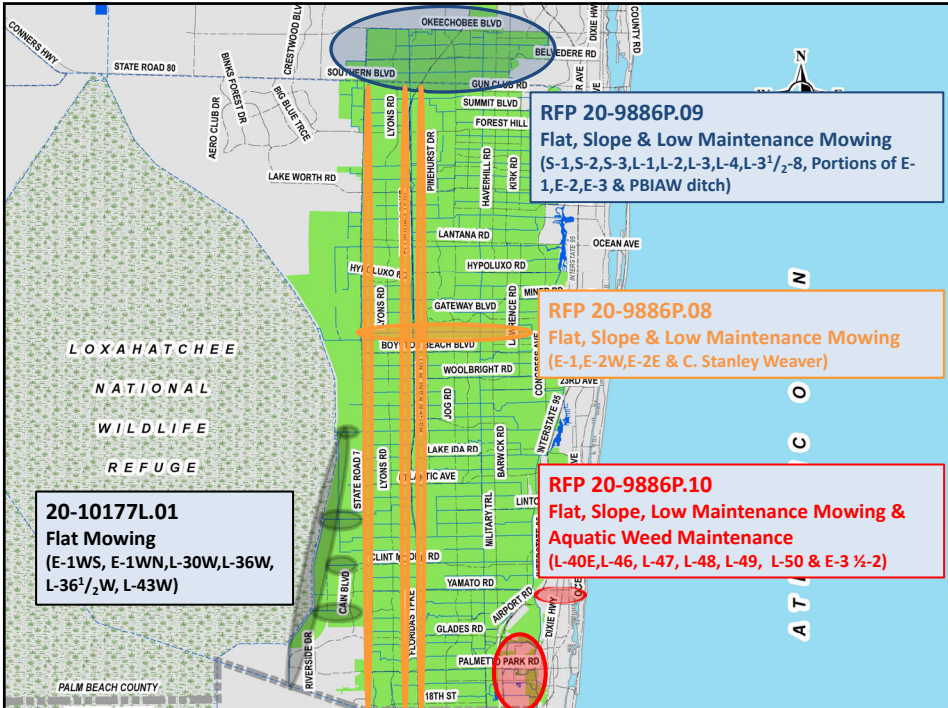


NOT TO SCALE

O C E A N

A T L A N T I C

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RFP 20-9886P.09
Flat, Slope & Low Maintenance Mowing
(S-1,S-2,S-3,L-1,L-2,L-3,L-4,L-3 1/2-8, Portions of E-1,E-2,E-3 & PBIAW ditch)

RFP 20-9886P.08
Flat, Slope & Low Maintenance Mowing
(E-1,E-2W,E-2E & C. Stanley Weaver)

RFP 20-9886P.10
Flat, Slope, Low Maintenance Mowing & Aquatic Weed Maintenance
(L-40E,L-46, L-47, L-48, L-49, L-50 & E-3 1/2-2)

20-10177L.01
Flat Mowing
(E-1WS, E-1WN,L-30W,L-36W, L-36 1/2W, L-43W)

N

O C E A N

A T L A N T I C

PALM BEACH COUNTY
BROWARD COUNTY

PROJECT 514045 - GENERAL DISTRICT LOCATION MAP (ADOBE ILLUSTRATOR)

14

Timeline



- October 14, 2020 – Request authorization to renew the existing Contract and to solicit bids for additional contract mowing
- November 2020 – Advertise Request for Bid for additional services
- January 13, 2020 – Board approval to award Bid
- January 2020 – Notice to Proceed

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Staff Recommendation



- Approval to award Contract Renewal Flat Mowing for the E-1W basin (20-10177L.01) and issue Purchase Order(s) in the amount of \$9,900
- Approval to advertise a Request for Bid for Flat, Slope and Low Maintenance Mowing of the E-1, E-2W, E-2E and C. Stanley Weaver Canals (RFP 20-9886P.08)
- Approval to advertise a Request for Bid for Flat, Slope and Low Maintenance Mowing of those canals north of C-51(RFP 20-9886P.09)
- Approval to advertise a Request for Bid for Flat, Slope, Low Maintenance Mowing and Aquatic Weed Maintenance for those canals south and east of I-95 (RFP- 20-9886P.10)

16

Consolidated Canal Rehabilitation Program (CCRP) - 2021 Projects


Megan Hoffman, Project Manager
Board Meeting - October 14, 2020
Agenda Item #17



The slide features a dark blue background with a decorative wavy pattern in shades of blue and green at the bottom. The Lake Worth Drainage District logo is positioned in the lower right corner of the slide area.

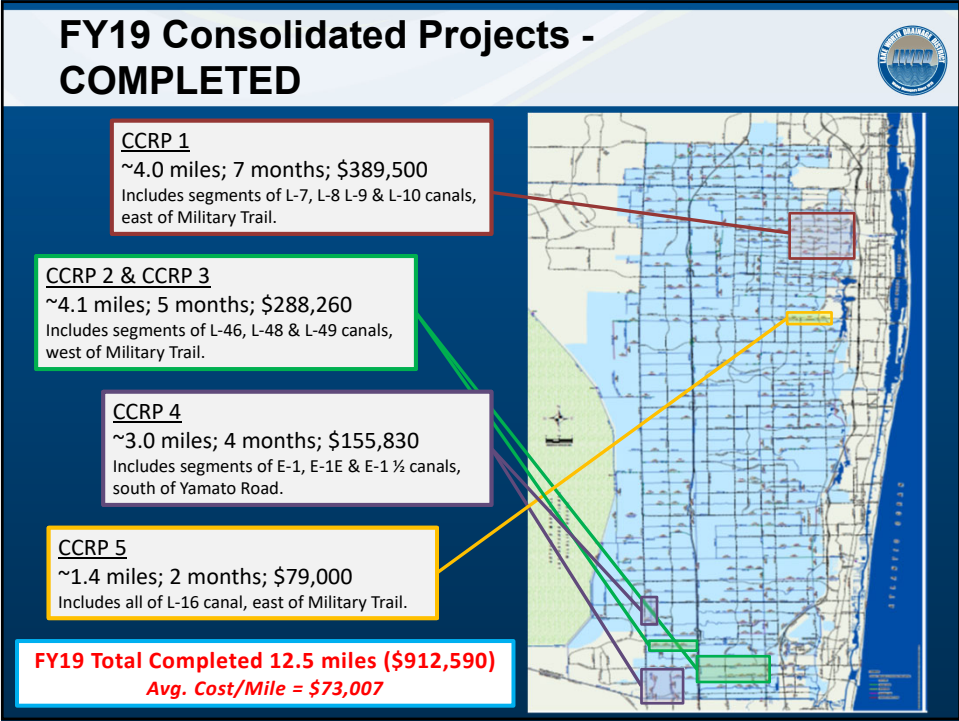
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Program Details

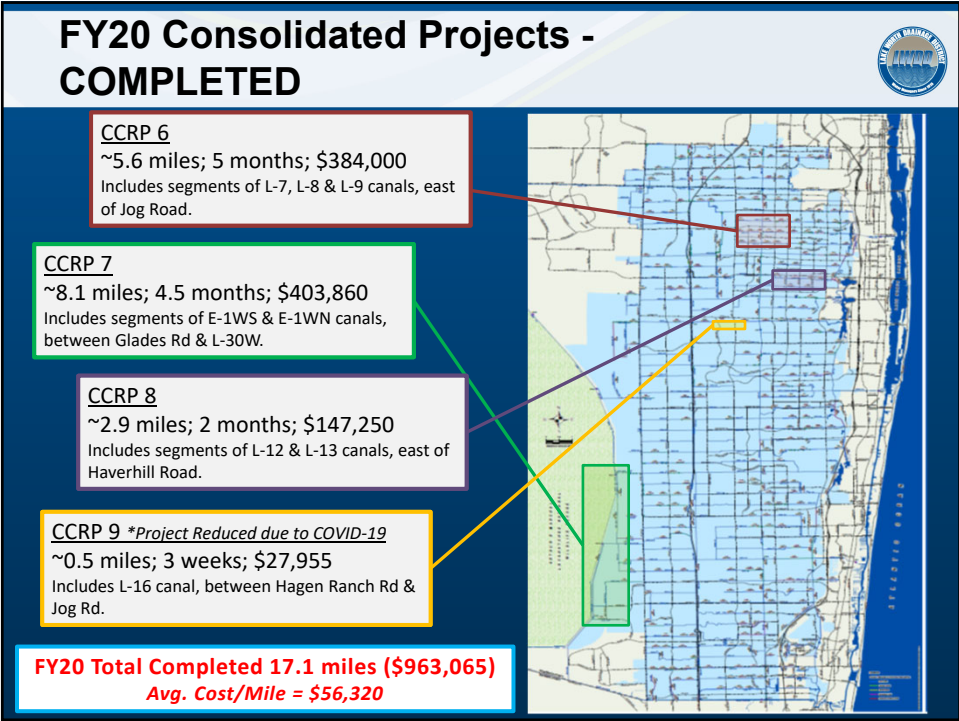


- Projects are bid and awarded separately
- Consolidated projects for economy of scale
- District shall provide right-of-way mapping; however, contractor may provide construction staking in some cases
- Projects include mostly residential areas
- Project order & size dictated by projected time of completion prior to peak Hurricane Season
- Contractors must provide Bid, Performance & Payment Bonds to be considered for award
- Contracts may be paid by reach with 2% retainage held until final completion

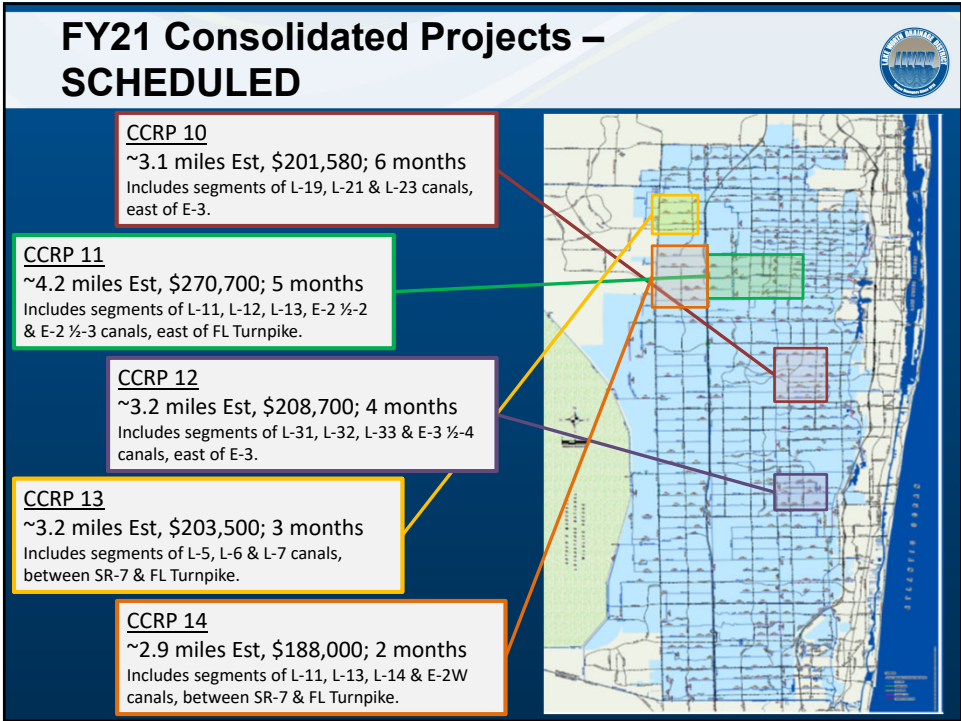
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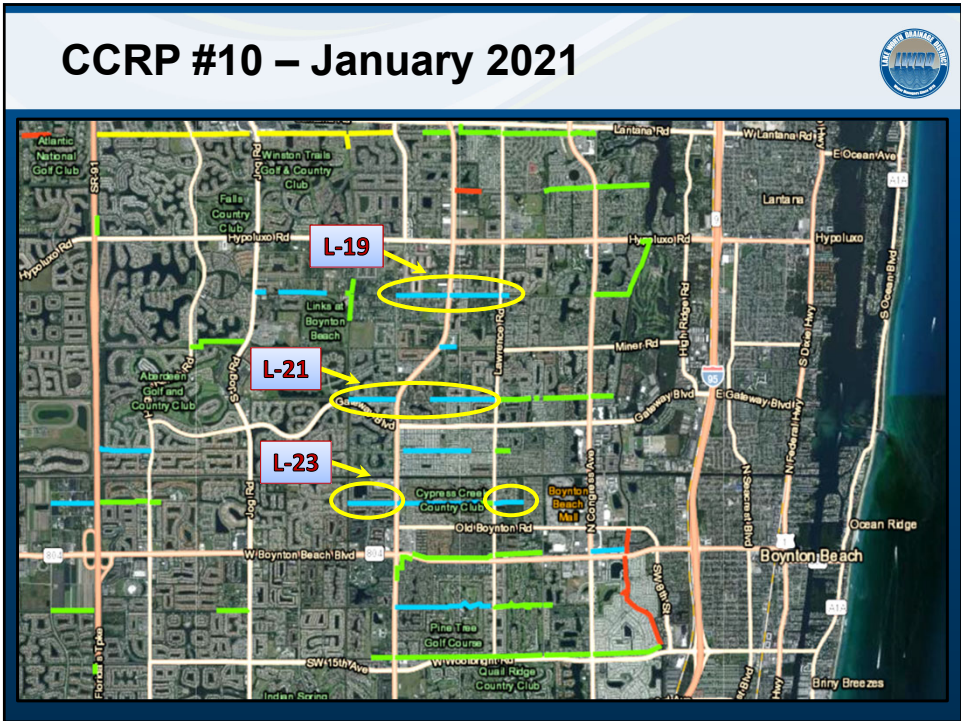
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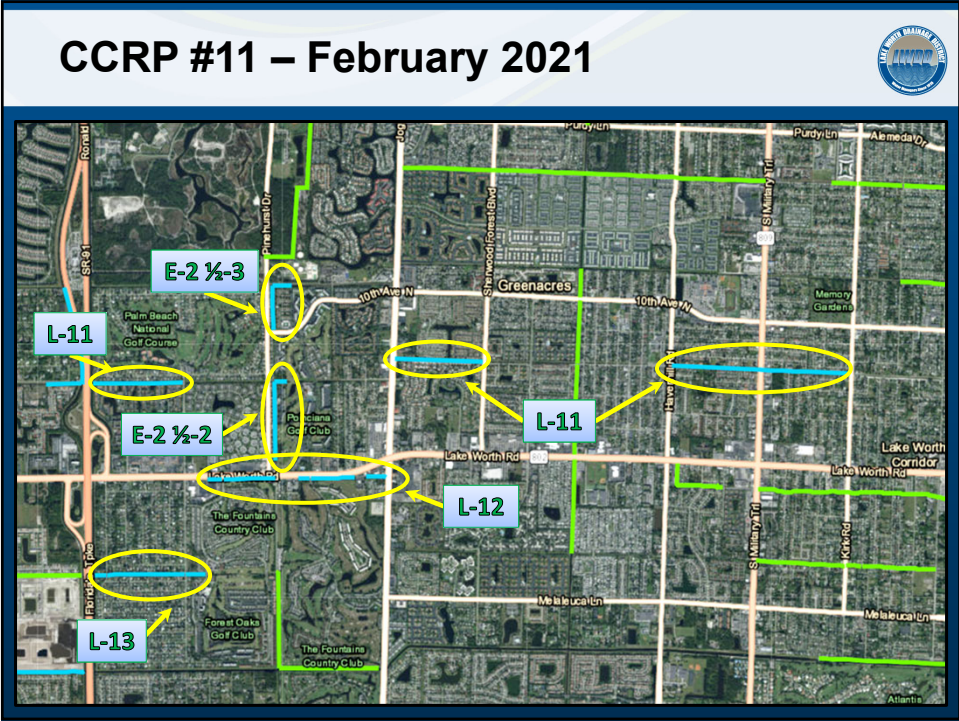
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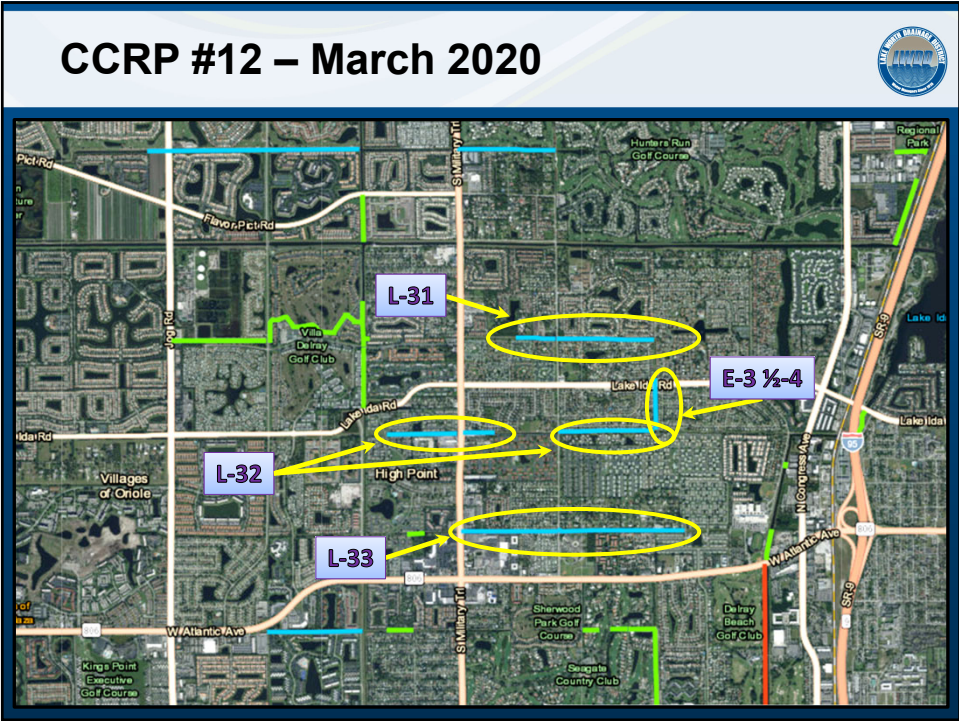
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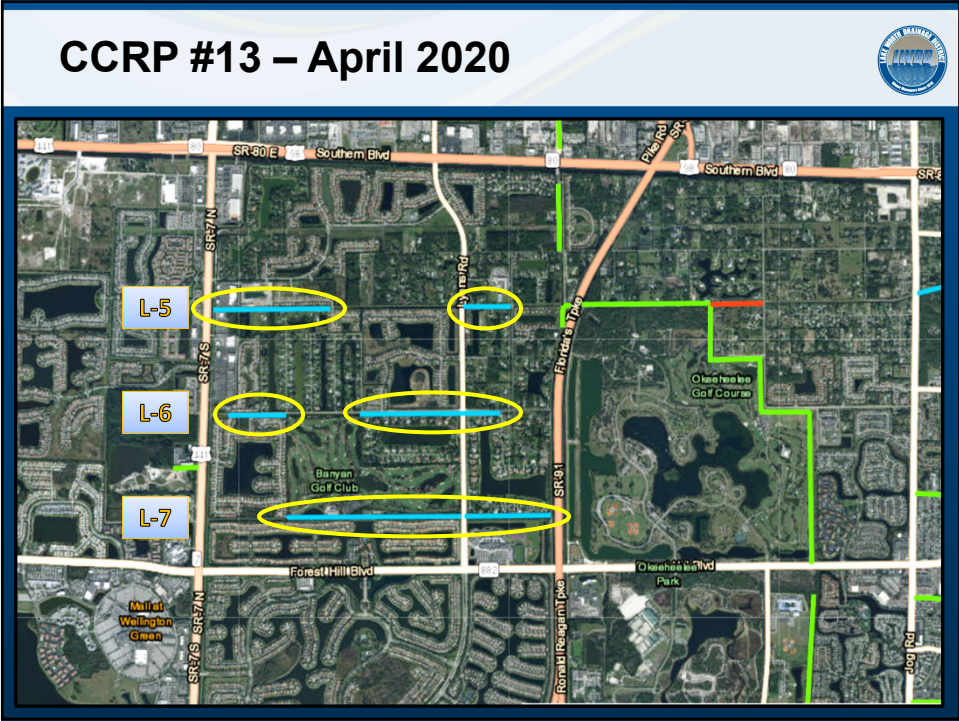
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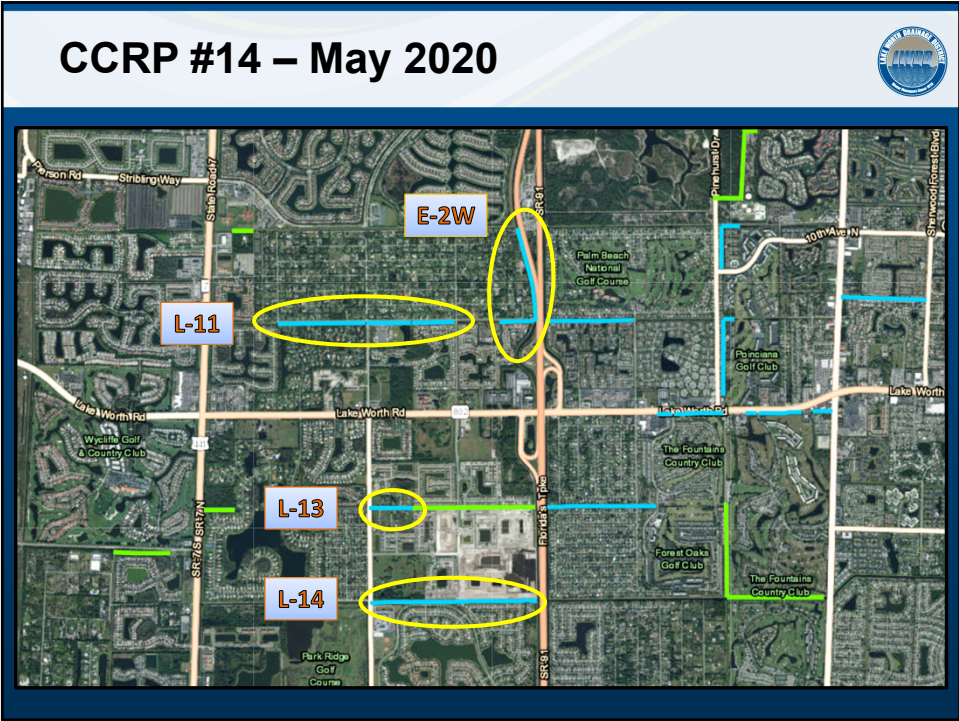
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9



10



11

Staff Recommendation

- Approval to advertise Request for Bids (RFB) for the 2021 Consolidated Canal Rehabilitation Program (CCRP) projects based on the following tentative schedule:
 - CCRP #10 – Advertise RFB in October 2020
 - Board Approval to Award - December 2020 / Work Commences - January 2021
 - CCRP #11 – Advertise RFB in January 2021
 - Board Approval to Award – February 2021 / Work Commences - March 2021
 - CCRP #12 – Advertise RFB in February 2021
 - Board Approval to Award – March 2021 / Work Commences - March 2021
 - CCRP #13 – Advertise RFB in March 2021
 - Board Approval to Award – April 2021 / Work Commences - April 2021
 - CCRP #14 – Advertise RFB in April 2021
 - Board Approval to Award – May 2021 / Work Commences - May 2021
 - HWDS (Vegetation Reduction) – Advertise RFB in June 2021
 - Board Approval to Award – July 2021 / Work Commences – August 2021

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