

MEMORANDUM OF UNDERSTANDING BETWEEN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT, PALM BEACH COUNTY, LAKE WORTH DRAINAGE DISTRICT, AND CITY OF FORT LAUDERDALE, REGARDING C-51 WATER SUPPLY & WATER QUALITY RESERVOIR PLANNING AND DEVELOPMENT

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into by and between the SOUTH FLORIDA WATER MANAGEMENT DISTRICT (“DISTRICT”), PALM BEACH COUNTY (“PALM BEACH COUNTY”), LAKE WORTH DRAINAGE DISTRICT (“LWDD”), and the CITY OF FORT LAUDERDALE (“FORT LAUDERDALE”), collectively referred to as the “PARTIES,” when including all entities signing this Agreement; “UTILITY PARTIES,” when referring to all of the local governments which provide water, wastewater, and/or reclaimed water services to their citizens and customers and not the DISTRICT or LWDD; and, “UTILITY PARTY,” when referring to one of the parties that is not DISTRICT or LWDD .

WITNESSETH:

WHEREAS, the DISTRICT is a public corporation of the State of Florida existing by virtue of Chapter 25270, Laws of Florida, 1949, and operating pursuant to Chapter 373, Florida Statutes, and Chapter 40E, Florida Administrative Code, as a multipurpose water management district, and whose mailing address is PO Box 24680, West Palm Beach, Florida 33416-4680.

WHEREAS, PALM BEACH COUNTY is a political subdivision of the State of Florida that owns and operates water, wastewater, and reclaimed water systems within incorporated and unincorporated areas of Palm Beach County; and whose mailing address for the purpose of this MOU is P.O. Box 24740, West Palm Beach, FL 33416;

WHEREAS, LWDD is a special district existing by virtue of Chapter 09-1063, Laws of Florida, and operating pursuant to Chapter 298, Florida Statutes, as a water control district, and whose mailing address is 13081 Military Trail, Delray Beach, Florida 33484;

WHEREAS, FORT LAUDERDALE is a municipality located in eastern Broward County, Florida that owns and operates a water and wastewater system within its jurisdictional boundary and unincorporated areas of Broward County and whose mailing address for the purpose of this MOU is Public Works Department, 100 N. Andrews, 4th Floor, Fort Lauderdale, FL 33301;

WHEREAS, the DISTRICT’s 2000 Lower East Coast Regional Water Supply Plan (“LEC RWSP”) and the 2005-2006 Update to the LEC RWSP concluded that traditional fresh groundwater and surface water were becoming increasingly limited to satisfy the region’s water demands, resulting in the need to develop alternative water sources;

WHEREAS, Section 373.707, Fla. Stat., provides that it is in the public interest that county, municipal, industrial, agricultural, and other public and private water users, the Department of Environmental Protection, and the water management districts cooperate and work together in the development of alternative water supplies;

WHEREAS, each UTILITY PARTY and LWDD is a provider of water pursuant to water use permits issued pursuant to Chapter 373, Florida Statutes;

WHEREAS, the UTILITY PARTIES have been working individually to develop alternative water supply projects authorized by water use permits issued by the DISTRICT;

WHEREAS, Section 373.703, Florida Statutes, authorizes the DISTRICT to assist counties, municipalities, special districts, publicly and privately owned water utilities, multi-jurisdictional water supply entities, or regional water supply authorities in meeting water supply needs in such a manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper excessive withdrawals of water from concentrated areas;

WHEREAS, Section 373.703, Florida Statutes, further provides that the DISTRICT may join with one or more other water management districts, counties, municipalities, special districts, publicly and privately owned water utilities, multi-jurisdictional water supply entities, or regional water supply authorities for the purpose of carrying out its powers, and may contract with such other entities to finance acquisitions, construction, operation, and maintenance, and may enter into contracts providing contributions to be made by each party thereto, for the division and apportionment of the expenses of acquisitions, construction, operation, and maintenance, and for the division and apportionment of the benefits, services, and products therefrom;

WHEREAS, the LWDD and UTILITY PARTIES are equipped to construct and operate alternative water supply projects in the South Florida region;

WHEREAS, it is the policy of the State of Florida to promote the availability of sufficient water for all existing and future reasonable-beneficial uses and the natural systems;

WHEREAS, it is in the public interest to promote a cooperative relationship between the PARTIES and other consumptive water users for the purpose of exploring opportunities to jointly develop alternative water supplies and/or water resource development projects in South Florida;

WHEREAS, the DISTRICT has multiple ongoing initiatives in South Florida, including, but not limited to, providing flood protection, Everglades restoration projects, meeting water quality targets, and ensuring a sufficient supply of water for all existing and future reasonable-beneficial water uses;

WHEREAS, the Lake Worth Lagoon (“Lagoon”) has experienced low salinity levels at various times. The central zone of the Lagoon occupies the area between the two inlets and is characterized by intermittent but fairly frequent low salinity events occurring for time periods ranging from days to weeks. Salinity levels during these events, corresponding to major discharge operations from the C-51 Canal through the S-155 structure, drop to values of 5 to 15 practical salinity units (“psu”), with post discharge recovery to levels between 15 and 25 psu typically observed. Salinity variation of all zones of the Lagoon occur over a period of a few days to approximately one month, and

prolonged periods of low salinity can occur, especially during periods of prolonged discharge. Minimizing perturbation from large-scale C-51 Canal discharges and releasing freshwater to the estuary in a manner that more closely approaches natural volume and timing in relation to rainfall, may help stabilize salinity regimes to be better aligned with those that are more supportive of healthier, more productive estuarine flora and fauna;

WHEREAS, LWDD and the UTILITY PARTIES desire to explore opportunities to jointly develop a regional reservoir that will meet the water supply objectives of the LWDD, UTILITY PARTIES, and other potential water users; and,

WHEREAS, the DISTRICT desires to explore opportunities to jointly develop a reservoir that will meet the environmental and water supply objectives of the DISTRICT;

WHEREAS, the PARTIES encourage and desire other potentially affected utilities and stakeholders to participate in this MOU; and,

WHEREAS, the PARTIES agree that nothing in this MOU shall affect the UTILITY PARTIES' or LWDD's service areas, rights to provide service within those areas or any right obligation pursuant to their enabling laws, or the DISTRICT's consumptive use permitting authority;

NOW THEREFORE, in consideration of the foregoing premises, and the mutual covenants, terms, and conditions contained herein, the PARTIES agree to the following:

- I. RECITALS AND AUTHORITY: The recitals set forth in the WHEREAS clauses above are incorporated herein. This MOU is entered into by the DISTRICT, the LWDD, and the UTILITY PARTIES.
 - A. The DISTRICT enters into this MOU under the authority of Section 373.083, Florida Statutes, which authorizes each water management district governing board to enter into agreements with other public agencies and private corporations to accomplish the directives and goals of Chapter 373, Florida Statutes.
 - B. PALM BEACH COUNTY enters into this MOU under the authority of Sections 125.01 and 153.03, Florida Statutes, which authorizes counties to enter into agreements with other public agencies and private corporations to accomplish goals for providing water to their customers.
 - C. FORT LAUDERDALE enters into this MOU under the authority of Section 166.021, Florida Statutes, which, as provided by s. 2(b), Art. VIII of the Florida Constitution, grants municipal corporations the governmental, corporate, and proprietary powers necessary to enable it to conduct municipal government, perform municipal functions, and render municipal services.
 - D. LWDD enters into this MOU under the authority of Chapter 298, Fla. Stat.

E. Other parties may participate in this MOU pursuant to their legal authority. Such participation shall occur by execution of a Joinder Agreement in substantially the same form attached hereto as Exhibit A.

II. PROJECT DEFINED: The PROJECT is the construction of a reservoir on property located in the Water Conservation Area No. 1/C-51 Water Use Basin and conveyance improvements. The PROJECT will be supplied with available surface water from the C-51 east basin, C-51 west basin, and other potential sources of water above and beyond the surface and groundwater required to achieve restoration benefits pursuant to the Comprehensive Everglades Restoration Plan ("CERP"). The PROJECT will have environmental and water supply components.

III. PUBLIC INPUT: The PARTIES shall jointly undertake outreach to the public and local governments to engage the public, stakeholders, and other interested groups in the planning, development, design, engineering, and implementation of the PROJECT.

IV. PLANNING:

A. Water Availability: As part of the DISTRICT's ongoing efforts, the DISTRICT shall identify the sustainable surface water yield from the C-51 east and west basins. In determining the sustainable yield, the DISTRICT will: 1) perform regional water resource and hydrologic modeling; 2) assess the potential of the proposed Lake Point project in Martin County to contribute to project objective; and, 3) identify other potential sources of surface water that may contribute to the project consistent with the DISTRICT's regulatory programs; restoration programs, in particular the CERP Assurances of Project Benefits Agreement dated January 9, 2000, and DISTRICT objectives. The DISTRICT shall use reasonable efforts to complete this study by June 30, 2011.

B. Potential Users:

- i. The PARTIES shall determine the aerial extent of potential water supply users of water from the PROJECT.
- ii. For each public water supply entity determined to be a potential user of water from the PROJECT, the UTILITY PARTIES shall identify the quantity and timing, including average day and peak month, water needed in 10-year increments up to the year 2060 to: 1) meet each public water supply entity's total raw water demands; 2) be supplied from the PROJECT; and, 3) be met from water sources other than the PROJECT.
- iii. The PARTIES may identify other potential water users, including industrial, agricultural, landscape irrigation, and water control districts established under Chapter 298, Florida Statutes. For each other

potential water user, the PARTIES shall identify the quantity of water needed from the PROJECT and the timing of the potential user's water needs.

- iv. The PARTIES shall use reasonable efforts to complete the actions identified in Paragraph IV.B by June 30, 2011.

C. Natural System Needs:

- i. The DISTRICT shall identify the quantity and timing of water needed from the Project in 10-year increments up to the year 2060 for the Lake Worth Lagoon, Water Conservation Area #1, and other natural systems.
- ii. When identifying the amount of water needed for the natural system, the DISTRICT shall consider water quality treatment requirements that may be imposed, including the Southeast Florida Total Maximum Daily Loads, Federal Everglades settlement; water quantity commitments pursuant to CERP, and any other state or federal law, rule, regulation, agreement or order related to water quantity or water quality for natural systems.
- iii. When identifying the amount of water needed for the natural system, the DISTRICT may take into account the anticipated impacts of climate change and sea level rise.
- iv. The DISTRICT shall use reasonable efforts to complete this quantification by June 30, 2011.

D. Initial Feasibility Determination: Upon completion of items set forth in Paragraphs IV.A – IV.C, the PARTIES shall assess the PROJECT's feasibility in meeting the PARTIES' objectives.

E. Preliminary Project Design and Cost Estimate:

- i. If the PARTIES determine that the PROJECT continues to be a viable mechanism to meet the PARTIES' objectives based on the Initial Feasibility Determination, the PARTIES may enter into an agreement to undertake the actions set forth in this section. The PARTIES anticipate the agreement would be completed by July 30, 2011.
- ii. Upon execution of an agreement, the PARTIES shall work together, using the information gathered pursuant to this Section IV and any other relevant documents and reports agreed to by the PARTIES, to design the PROJECT, identify any infrastructure and operational changes that may be necessary for the success of the PROJECT, and estimate the cost of the PROJECT.

iii. Conveyance Route:

1. The LWDD and UTILITY PARTIES shall identify routes through the aerial extent identified in Paragraph IV.B.i, which may include LWDD, Broward County, and Miami-Dade County, to convey water from the PROJECT to the potential users of water identified in Subparagraphs IV.B.ii and IV.B.iii. The LWDD and UTILITY PARTIES shall identify any necessary and recommended infrastructure improvements to convey water through the routes, cost of said infrastructure improvements, and the quantity of water capable of being conveyed for each conveyance route identified.
2. The DISTRICT shall identify routes to convey water to meet the environmental and water supply objectives of the DISTRICT and shall include an analysis of the risks associated with each identified route. The DISTRICT shall also identify any necessary and recommended infrastructure improvements necessary to convey water, cost of said infrastructure improvements, and the quantity of water capable of being conveyed.
3. A report detailing the results of Paragraphs IV.E.iii.1 and 2 shall be compiled and provided to the PARTIES. The PARTIES anticipate the report will be completed by September 30, 2011. The PARTIES shall have the opportunity to review and provide comment on the report. The report shall be revised, if necessary, based on comments received from the PARTIES, any interested stakeholders, and the public.
4. The PARTIES shall choose the preferred conveyance route within 90 days of issuance of a report which all PARTIES deem acceptable.

iv. Storage and Treatment:

1. The PARTIES shall determine the size of the PROJECT and identify any storage sites and investigate the availability and water capacity of the preferred sites.
2. The DISTRICT shall identify the water quality necessary to meet state and federal water quality standards.

v. Preliminary Design and Cost Estimate Report

1. Upon completion of the tasks identified in Subparagraphs IV.E.iii and IV.E.iv, the PARTIES shall prepare a Preliminary Design

and Cost Estimate Report (“PDCR”) based on the results of said tasks.

2. The PARTIES shall have the opportunity to review and comment on the PDCR prior to its finalization.

- V. SECOND FEASIBILITY EVALUATION: After completion of the planning tasks identified in Section IV and consideration of the PDCR, the PARTIES shall reassess the PROJECT’s feasibility in meeting the PARTIES’ objectives.
- VI. DESIGN, CONSTRUCTION, AND OPERATION: If the PARTIES determine that the PROJECT is appropriate and feasible to meet the PARTIES’ objectives, the DISTRICT, LWDD, UTILITY PARTIES, and/or any other interested party shall execute a separate agreement which shall address funding, site acquisition, any additional design and engineering, construction, operation, permitting and regulatory considerations, and governance of the PROJECT.
- VII. TERM: The term of this MOU shall commence upon its complete execution by all PARTIES and shall remain in effect until March 30, 2012, or until execution of the separate agreement contemplated by Section VI, whichever occurs first.
- VIII. ENTIRE AGREEMENT: This MOU constitutes the entire agreement between the PARTIES and may not be amended or modified unless agreed to and approved in writing by all PARTIES.
- IX. ASSIGNMENT: No assignment, delegation, transfer, or novation of this AGREEMENT, or any part hereof, shall be made unless approved in writing by all PARTIES.
- X. DISCLAIMER OF THIRD PARTY BENEFICIARIES: This MOU is solely for the benefit of the PARTIES and no right or cause of action shall accrue to the benefit of any third party.
- XI. MISCELLANEOUS PROVISIONS:
 - A. Nothing in this MOU is intended to constitute a binding agreement to plan, design, finance, construct, and operate the PROJECT.
 - B. A consultant may be retained by the PARTIES, an individual party, or several parties, to perform any portion of the party’s/parties’ tasks or obligations under this MOU.
 - C. Additional parties wishing to participate in these objectives and activities outlined in this MOU shall sign the Joinder to the MOU which is attached hereto as Exhibit A. Upon execution, the Joinder shall bind the additional party to the terms of this MOU but said execution does not relieve the PARTIES identified in Paragraph I of such obligations. The joining entity shall provide each party with a copy of the executed Joinder.

- D. This MOU and the rights and obligation of the PARTIES are to be governed by, construed, and interpreted in accordance with the laws of the State of Florida.
- E. In the event of any legal proceedings arising from this MOU, venue for such proceedings shall be in the Fifteenth Judicial Circuit of Florida if filed in state court and the Southern District of Florida – West Palm Beach if filed in federal court.
- F. In such legal proceedings, the PARTIES hereby consent to trial by the court and waive the right to seek a jury trial as to any issues so triable.
- G. Each PARTY shall be responsible for its own attorney’s fees and other court costs related to enforcement of the terms of this MOU.
- H. The parties acknowledge that this MOU is a negotiated agreement, and that in no event shall the terms be construed against any party on the basis that such party, or their counsel, drafted this MOU.
- I. Notice of any determination or termination under this MOU shall be made to the PARTIES at the addresses listed above for each PARTY.
- J. Nothing in this MOU is intended to constitute issuance of a consumptive use permit.

XII. EXECUTION IN COUNTERPARTS: This MOU may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute the same instrument.

XIII. FILING: This MOU shall be filed pursuant to Section 163.01(11), Florida statutes.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board

Eric Buermann, Chairman

Attested:

Legal Form Approved:

District Clerk/Assistant Secretary
Date: _____, 2011

Jennifer Bokankowitz, Esq.

LAKE WORTH DRAINAGE
DISTRICT

C. David Goodlett, President

Legal Form Approved:

Mark A. Perry, Legal Counsel
Perry & Kern, P.A.

Attested:

Ronald L. Crone, Manager/Secretary

Date: _____

PALM BEACH COUNTY
By its Board of County
Commissioners

_____, Chair

Legal Form Approved:

_____, Esq.

Attested:

Sharon R. Bock, County Clerk
Date: _____, 2011

CITY OF FORT LAUDERDALE
By its City Commission

Print Name: _____
Print Title: _____

Legal Form Approved:

_____, Esq.

Attested:

Print Name: _____
Date: _____, 2011

JOINDER BY _____

THIS JOINDER is executed on this ___ day of _____, 2011, by _____, a _____ (insert legal entity status, e.g. political subdivision, Florida corporation, municipality). Terms not defined herein shall have the meaning ascribed to them in the Memorandum of Understanding ("MOU") between the South Florida Water Management District, Palm Beach County, Lake Worth Drainage District, and City of Fort Lauderdale regarding C-51 Water Supply & Water Quality Reservoir Planning and Development, which is attached hereto and incorporated herein.

WHEREAS, _____ wishes to join the MOU to participate in the actions and obligations identified as the responsibility of the PARTIES and UTILITY PARTIES.

NOW, THEREFORE, _____ hereby agrees as follows:

1. The foregoing recital and those contained in the MOU are true and correct and incorporated herein by reference.
2. _____ hereby joins in the MOU to undertake all or part of the obligations of the PARTIES and UTILITY PARTIES but such joinder shall not be construed as assumption of such obligations by _____.
3. This joinder shall be effective as of the date first written above and shall be binding upon _____ and its successors and assigns.

IN WITNESS WHEREOF, this has been executed.

By its _____

Print Name: _____

Print Title: _____

Legal Form Approved:

_____, Esq.

Attested:

Print Name: _____

Date: _____