

**Operation and Maintenance Agreement  
for  
Phase 1 of the C-51 Reservoir Project  
Between  
The South Florida Water Management District  
And  
Palm Beach Aggregates, LLC.**

**February 10, 2017**

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**OPERATION AND MAINTENANCE AGREEMENT FOR  
PHASE 1 OF THE C-51 RESERVOIR PROJECT**

**THIS OPERATION AND MAINTENANCE AGREEMENT** (hereinafter, the “Agreement”) is made and entered into this 10<sup>th</sup> day of February, 2017 (“Agreement Date”), by and between the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, a governmental entity created by Chapter 373, Florida Statutes, whose mailing address is P.O. Box 24680, West Palm Beach, Florida 33416-4680 (“DISTRICT”); and **PALM BEACH AGGREGATES, LLC**, a Florida limited liability corporation, whose mailing address is 20125 State Road 80, Loxahatchee, Florida 33470 (“PBA”). The DISTRICT and PBA are collectively referred to herein as the “Parties.”

**WHEREAS**, since 2006, Broward County, Palm Beach County and other lower east coast area water providers (LEC Utilities) have been collaborating in the development of the C-51 Reservoir, to serve as a regional alternative water supply by storing excess wet-season storm water runoff for later distribution and use during the dry season; and

**WHEREAS**, after extensive study and public discussion, the C-51 Reservoir has been advanced as an innovative public-private partnership whereby interested LEC Utilities and PBA would jointly develop the project with clearly defined roles for each party including the pro rata contribution of capital costs by participating LEC Utilities and following construction of pro rata contribution of O&M costs based upon their respective storage allocations and consumptive use permits; and

**WHEREAS**, the DISTRICT and PBA entered into a Memorandum of Understanding, executed May 22, 2013 (“MOU”), furthering the planning and development of the C-51 Reservoir Project (“C-51 RES”); and

**WHEREAS**, the C-51 RES will consist of a reservoir and conveyance structures to provide water supply and water management benefits to participating water supply utilities and other water users, along with environmental benefits; and

**WHEREAS**, the C-51 RES is located on lands owned by PBA in western Palm Beach County, Florida, and PBA will develop it in multiple phases. Phase 1 consists of a reservoir with 14,000 acre-feet of storage capacity and appurtenant facilities and works located within the yellow boundary as identified in the attached Exhibit “A,” made a part hereof (“Phase 1 Project”). A future phase or phases consists of an additional 46,000 acre-feet of reservoir storage capacity and appurtenant facilities and works as identified within the green boundary in Exhibit “A” (“Future Phase(s) Project”); and

**WHEREAS**, the Phase 1 Project will hydraulically connect to the DISTRICT’s L-8 Flow Equalization Basin (“L-8 FEB”) as identified within blue boundary in Exhibit “A;” and

**WHEREAS**, under the MOU, PBA assumes and bears all risks and costs related to the design, permitting, construction financing, construction, operation, maintenance, repair, replacement and rehabilitation of the C-51 RES; and

**WHEREAS**, as set forth in the MOU, it is the intention of PBA that upon PBA's completion of the Phase 1 Project, as more particularly identified in the plans titled, "C-51 Reservoir Hydraulic Facilities," dated August 12, 2016, and "The Palm Beach Aggregates, LLC; C-51 Reservoir Phase 1 Final Plans and Specification Documents," dated September 11, 2015, which are incorporated herein by reference ("Phase 1 Project"), PBA will transfer ownership of the Phase 1 Project to C-51 Reservoir, Inc., a Florida not-for-profit corporation ("C-51 NFP"), and assign its rights and obligations under this Agreement to the C-51 NFP (accordingly, all references in this Agreement to PBA shall mean the C-51 NFP after transfer of ownership from PBA to the C-51 NFP); and

**WHEREAS**, as set forth in the MOU, it is the intent of PBA that C-51 NFP will be governed by the water supply utilities and other water users who have contracted for capacity in the Phase 1 Project and who have financially participated in its development by paying the capital costs for an allocation of the Phase 1 Project's water storage capacity; and

**WHEREAS**, because the Phase 1 Project will hydraulically connect to the L-8 FEB and is dependent upon the DISTRICT's regional system, the DISTRICT is agreeable to operating, maintaining, repairing, replacing, and rehabilitating the Phase 1 Project and DISTRICT facilities that benefit the Phase 1 Project provided PBA pays the DISTRICT for such operation, maintenance, repair, replacement, and rehabilitation.

**NOW, THEREFORE**, in consideration of the covenants contained herein, other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and subject to the terms and conditions herein stated, the Parties agree as follows:

1. **RECITALS.** The above recitals are true and correct and incorporated herein.
2. **CONDITIONS PRECEDENT.** PBA must satisfy the following conditions precedent with respect to the Phase 1 Project no later than December 31, 2020, before the DISTRICT is obligated to perform under the terms of this Agreement:

2.1 PBA has completed construction of the Phase 1 Project and the water control structure and pump station within the L-8 FEB in accordance with Section 5.2. The "Phase 1 Project" is defined to include the water control structure and pump station within the L-8 FEB.

2.2 PBA has accepted the final delivery of the Phase 1 Project from its contractor(s) after receipt of certificate of final completion from its contractor(s).

2.3 PBA has obtained all permits, consents, and other approvals required from third parties, including governmental and non-governmental entities ("Approvals"), for the operation of the Phase 1 Project. PBA shall be named on all Approvals as the permittee or applicant, including the transfer of environmental resource permits to the perpetual operation entity. The DISTRICT shall not be named as a permittee, co-permittee, or applicant on any Approvals for construction or operation of the Phase 1 Project.

**2.4** PBA has developed a draft final operating plan in coordination with the DISTRICT for the Phase 1 Project, and a final operating plan has been approved by the DISTRICT at least one hundred and twenty (120) days prior to the DISTRICT's commencement of operation, maintenance, repair, replacement, and rehabilitation services under the this Agreement, which approval shall not be unreasonably or untimely withheld.

**2.5** The Phase I Project must be Operational as defined in this Section 2.5. "Operational" means the Project has completed an operational testing and monitoring period after construction is completed. During this period, the Phase 1 Project must be operated, tested, and monitored to verify that: a) the constructed features meet the applicable design and construction standards for the Project, including the Phase 1 Project Plans, Approvals, and the final, District-approved operating plan referred to in Section 2.4; b) any adjustments or modifications to the constructed features are made to meet such standards, Approvals, and operating plan; and c) the Phase 1 Project can be operated for its intended, useful purpose.

The DISTRICT may send representative(s) during the operational testing and monitoring period for observation purposes. In the alternative, the DISTRICT may elect, by providing PBA thirty (30) days advance written notice, to undertake operational testing and monitoring on behalf of PBA based on an operational testing and monitoring plan to be approved by the Parties in writing. PBA shall pay the DISTRICT's actual direct, indirect, administrative, and overhead costs incurred in performing such operational testing and monitoring no later than fourteen (14) days after receipt of a DISTRICT invoice. Payment not made when due shall accrue interest at the lesser of the rate of one percent (1%) per month or the maximum rate permitted under law from the original due date until payment is received.

**2.6** PBA delivers to the DISTRICT construction contracts with price information redacted and final as-built drawings and copies of all contractor, equipment, and supplier warranties.

**2.7** PBA and the DISTRICT complete a vehicular access plan as set forth in Section 10.

**2.8** PBA provides the DISTRICT at least ninety (90) days advance written notice of the date the PBA would like the DISTRICT to commence operation, maintenance, repair, replacement and rehabilitation services under this Agreement. The notice shall include as an attachment a written certification signed by a Florida licensed engineer issued to the DISTRICT certifying that that the Project is Operational.

**2.9** PBA has paid to the DISTRICT the first advance payment for Operations Services and Maintenance, Repair, Replacement, and Rehabilitation Services in accordance with Section 8.

**2.10** PBA has provided to the DISTRICT insurance coverages in accordance with Section 14.2.

**2.11** PBA has assigned the Agreement to the C-51 NFP, in accordance with Section 15.15.

If PBA fails to satisfy the conditions precedent on or before December 31, 2020, either party may thereafter terminate this Agreement by providing written notice of termination to the other party. The termination shall be effective upon receipt of such notice. The Parties are thereafter relieved of all rights and obligations under this Agreement. The Parties may extend the deadline for meeting the conditions precedent by written notice executed by the Parties.

**3. OPERATION SERVICES FOR EXISTING FACILITIES.** The operation services to be provided by the DISTRICT under this Section 3 and Section 5 are collectively referred to as “Operation Services.” The DISTRICT will commence Operation Services for the Phase 1 Project after PBA has met all conditions precedent in Section 2 and no later than ninety (90) days after receipt of PBA notice under Subsection 2.8.

**3.1 Limitations On Operation Services.** PBA acknowledges that the Phase 1 Project is not a DISTRICT facility and will not be incorporated by the DISTRICT as a part of the water management system owned or operated by the DISTRICT (“Regional System”). However, because the Phase 1 Project as proposed will connect to the DISTRICT’s L-8 FEB and benefits from DISTRICT facilities for delivery of water into and out of the Phase 1 Project, the DISTRICT will operate the Phase 1 Project to avoid any conflicts with the DISTRICT’s operation of the Regional System. With respect to the DISTRICT performing Operation Services for existing facilities under Section 3 and for future facilities under Section 5, PBA further acknowledges and agrees that 1) the DISTRICT has absolute and sole discretion in managing water with respect to the Phase 1 Project in accordance with applicable Approvals, the DISTRICT approved operating plan, DISTRICT policies and procedures, and any amendments thereto, 2) the DISTRICT has absolute and sole discretion in managing water within the Regional System in accordance with applicable water control plans and DISTRICT policies and procedures, and any amendments thereto, and 3) the operation of the Phase 1 Project may be subordinated to the operation of the Regional System. PBA disclaims any right under this Agreement to (x) direct the DISTRICT in its operation of the Regional System or the Phase 1 Project, or (y) challenge or contest in any forum or administrative or judicial proceeding, the DISTRICT’s operation of the Regional System or the Phase 1 Project. The DISTRICT will provide the Operation Services subject to these limitations.

**3.2 Operation Services Within The Phase 1 Project.** The DISTRICT will operate the Phase 1 Project constructed facilities and manage water within the Phase 1 Project. The DISTRICT is not responsible for operating the Phase 1 Project on-site stormwater management system. PBA, as permittee, shall be responsible, at its expense, for obtaining and maintaining all Approvals for the construction and operation of the Phase 1 Project.

**3.3 Operation Services For The Regional System Benefitting The Phase 1 Project.** The DISTRICT will manage water within the Regional System, which includes but is not limited, to water deliveries from and into the L-8 FEB and use of DISTRICT facilities. The present configuration of the Phase 1 Project benefits from the following existing DISTRICT facilities, including but not limited to: L-8 FEB, S-5A, S-5AS, S5AE, S-319, G-301, G-302, G-311, S-155A, S-38A, S-38B, S-38C, S-39A and S-125 and conveyance canals C-51, Hillsboro, L-36, C-42, C-14, and C-13; as updated annually under Section 8.1. The DISTRICT also will manage water with respect to any future facilities within the Regional System which benefit the

Phase 1 Project as provided in Section 5. The DISTRICT in its sole and absolute discretion may make capital modifications or improvements to District facilities provided, however, that no modifications or improvements may be made to the L-8 FEB that materially affect the operation of the Phase 1 Project without the written approval of PBA, not to be unreasonably or untimely withheld.

#### **4. MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION SERVICES FOR EXISTING FACILITIES**

**4.1 Limitations On Maintenance, Repair, Replacement and Rehabilitation Services.** The DISTRICT has agreed to undertake maintenance, repair, replacement, and rehabilitation services (“MRR&R Services”) as set forth in Sections 4 and 5. The DISTRICT has sole and absolute discretion in determining the work required for MRR&R Services. PBA disclaims any right under this Agreement to (x) direct the DISTRICT in providing such services, or (y) challenge or contest in any forum or administrative or judicial proceeding the level of the service provided. PBA may only contest the charge for services rendered.

**4.2 Facilities Within The Phase 1 Project.** The DISTRICT will commence MRR&R Services for the Phase 1 Project facilities at the same time that it commences Operation Services. DISTRICT MRR&R Services are limited to those services as set forth in the Scope of Work attached as Exhibit “B” and made a part hereof (“Scope of Work”). Sometimes in this Agreement the term “Operations Services” and the term “MRR&R Services” are collectively referred to as “Operations and MRR&R Services” or “OMRR&R Services” or simply “OMRR&R”.

The DISTRICT will also provide MRR&R Services for future facilities within the Phase 1 Project as updated annually under Section 8.1. The MRR&R Services are presumed adequate to properly maintain, repair, replace and rehabilitate the Phase 1 Project features and will satisfy applicable standards contained in Approvals. If not, the DISTRICT will notify PBA in writing and provide PBA with suggested written revisions to the Scope of Work, subject to the written approval of PBA, not to be unreasonably withheld. PBA shall review and approve the revisions no later than twenty-one (21) days after receipt.

**4.3 Facilities Within The Regional System Benefitting The Phase 1 Project.** The DISTRICT will provide MRR&R Services for existing DISTRICT facilities (referred to in Section 3.3) in accordance with the Scope of Work.

#### **5. OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION OF FUTURE FACILITIES**

**5.1 Facilities Within The Phase 1 Project.** After the DISTRICT commences OMRR&R Services, the DISTRICT will be responsible for OMRR&R Services for future facilities constructed by PBA within the Phase 1 Project. If the DISTRICT determines that the Scope of Work is not adequate to address the MRR&R Services required for such new facilities or if MRR&R Services are not adequate to meet applicable standards contained in Approvals, the DISTRICT will revise the Scope of Work accordingly and provide the revisions to PBA for

review and written approval, not to be unreasonably withheld. PBA shall review and approve the revisions within seven (7) business days after receipt of the revisions.

At least ninety (90) days prior to PBA commencing construction of any future facilities within the Phase 1 Project, PBA shall submit the plans and specifications for such construction to the DISTRICT for review and comment.

**5.2 Facilities Connecting To The L-8 FEB.** The Parties acknowledge that PBA intends to construct a water control structure and pump station within the L-8 FEB, at PBA's expense. The water control structure is shown in the plan titled, "C-51 Reservoir Hydraulic Facilities" ("Water Control Structure"). PBA has not yet designed the pump station within the L-8 FEB ("Pump Station"). In order for the Water Control Structure and Pump Station to be constructed, the parties will at the time of execution of this Agreement also execute and record an easement to be conveyed by the DISTRICT to PBA in the form of attached Exhibit "C," made a part hereof ("Easement"). The DISTRICT will provide OMRR&R Services for the Water Control Structure and Pump Station as part of its OMRR&R of the Phase 1 Project. The following additional conditions precedent must be met before the DISTRICT commences OMRR&R of the Water Control Structure and Pump Station:

**5.2.1** The DISTRICT approves in writing 1) PBA's plans and specifications for the Water Control Structure and Pump Station and 2) PBA's construction schedule. The construction schedule must be compatible with the DISTRICT's L-8 FEB project construction and operations as determined by the DISTRICT in its sole and absolute discretion, and

**5.2.2** PBA completes the installation of Water Control Structure and Pump Station in accordance with the approved plans, specifications, and construction schedule, and

**5.2.3** PBA satisfies the conditions precedent in Subsections 2.1 through 2.6 and 2.8, regarding the Water Control Structure and Pump Station. The Parties have agreed to apply these conditions precedent to the proposed Water Control Structure and Pump Station.

If the DISTRICT determines that the Scope of Work is not adequate to address the MRR&R Services required for such new facilities, or if MRR&R Services are not adequate to meet applicable standards contained in Approvals, the DISTRICT will revise the Scope of Work accordingly and provide the revisions to PBA for review and written approval, not to be unreasonably withheld. PBA shall review and approve such revisions no later than twenty-one (21) days after receipt of the revisions.

**5.3 Facilities Within the Regional System Benefitting The Phase 1 Project.** With respect to any future facilities constructed by the DISTRICT that the DISTRICT determines benefit the Phase 1 Project ("Future DISTRICT Facilities"), the DISTRICT will operate such facilities and manage water with respect thereto and will provide MRR&R Services for these facilities in accordance with the Scope of Work. Such facilities may include, but are not limited to, the L-8 Divide (G-541), L-8 FEB pump station (G-539), and L-8 FEB inflow structure (G-538).



**6. EMERGENCY SERVICES.** In the case of an emergency threatening i) the immediate shutdown of, or the substantial reduction in the operational capacity of the Phase 1 Project; or ii) the life, health, safety, or property of PBA or the DISTRICT, as determined by the DISTRICT in its sole and absolute discretion, the DISTRICT may take all appropriate action, including extraordinary measures and suspension of all DISTRICT services without PBA's prior approval and at PBA's expense. Such actions shall be referred to as "Emergency Services." After the DISTRICT determines that the emergency has ended, any subsequent work undertaken by the DISTRICT beyond Emergency Services requires the prior written approval of PBA, not to be unreasonably or untimely withheld.

**7. OTHER SERVICES FOR THE PHASE 1 PROJECT.**

The DISTRICT is only responsible for Operation Services under Section 3 and Section 5 and those MRR&R Services under Section 4 and Section 5. The DISTRICT is not responsible for providing any other services with respect to the Phase 1 Project, including, but not limited to (i) undertaking additional improvements, (ii) warranty management or servicing, or (iii) operation, maintenance, repair, replacement, or rehabilitation of the Phase 1 Project on-site stormwater management system. On an annual basis, the DISTRICT may provide PBA with a written list of recommended other services and a cost estimate for such services.

PBA may request in writing that the DISTRICT perform other services to be paid by PBA. If the DISTRICT elects to perform such services, the services to be provided and the payment for such services shall be agreed to by the Parties in writing prior to the commencement of the services and may be included in the DISTRICT's Annual Costs Estimate for payment by PBA in accordance with Section 8 below.

**8. COMPENSATION TO THE DISTRICT.** PBA shall pay the DISTRICT in advance the DISTRICT's estimated yearly direct, indirect, administrative, and overhead costs for performing operations, maintenance and repair services under Sections 3 through 7 in accordance with the procedure set forth in this Section ("Estimated Yearly Costs"). PBA shall also pay the DISTRICT in advance a yearly reserve payment for the DISTRICT's estimated yearly amortized direct, indirect, administrative, and overhead costs for future replacement and rehabilitation services under Section 4 and Section 5 in accordance with the procedure set forth in this Section ("Estimated Amortized Costs"). The yearly reserve payments received by the DISTRICT shall be kept in a separate DISTRICT account to fund the future replacement and rehabilitation services. Payments not made when due shall accrue interest at the lesser of the rate of one percent (1%) per month or the maximum rate permitted under law from the original due date until payment is received.

**8.1 PBA Payments For OMRR&R Services.** The estimated annual DISTRICT direct, indirect, administrative, and overhead costs for Operation, Maintenance, Repair, Replacement and Rehabilitation Services ("Annual Cost Estimate") for the fiscal year 2017, commencing October 1, 2016 and ending September 30, 2017, is **One Million Eighty Six Thousand Four Hundred and Twenty Six Dollars and Thirty One Cents (\$1,086,426.31)**.

**8.1.1** PBA acknowledges that the Fiscal Year 2017 Annual Cost Estimate is based on an annual budget report of Estimated Yearly Costs and Estimated Amortized Costs

prepared by the DISTRICT and reviewed and approved by PBA. The Annual Cost Estimate includes a surcharge of 1/12<sup>th</sup> of the estimate for financial assurance as set forth in Section 8.6. The Annual Cost Estimate assumes that the period of pumping from the L-8 FEB is three hundred sixty-five (365) days at thirty-five million (35,000,000) gallons per day. The actual costs for operation, maintenance, and repair may vary from year to year depending on the pumpage rate, the structures utilized and other operational considerations. The Parties acknowledge that the FY 2017 Annual Cost Estimate includes an estimate for OMRR&R Services for the future Water Control Structure and Pump Station referred to in Subsection 5.2.

**8.1.2** The DISTRICT will provide PBA an updated Annual Cost Estimate at least sixty (60) days prior to the date the DISTRICT commences OMRR&R Services. PBA shall review and approve in writing the updated estimate no later than twenty-one (21) days after receipt. PBA's approval shall not be unreasonably withheld.

**8.1.3** PBA shall pay the DISTRICT in advance the full amount of the updated Annual Cost Estimate (or pro-rated amount if the DISTRICT has not commenced OMRR&R Services on October 1 of the year, which is the beginning of the DISTRICT's fiscal year) no later than thirty (30) days after receipt.

**8.1.4** No later than July 1st of each year after the DISTRICT commences OMRR&R Services, the DISTRICT shall prepare an updated Annual Cost Estimate for the upcoming fiscal year based on an updated annual budget report of estimated costs prepared by the DISTRICT and to be reviewed and approved by PBA in writing no later than twenty-one (21) days after receipt. PBA's approval shall not be unreasonably withheld. PBA shall pay the DISTRICT the full amount of the updated Annual Cost Estimate in advance no later than October 1 of each year.

**8.1.5** The DISTRICT may update the Annual Cost Estimate at any time during its fiscal year if it determines in its sole and absolute discretion that the prior updated Annual Cost Estimate does not accurately reflect the DISTRICT's full cost for the services under this Agreement. The updated Annual Cost Estimate will be based on an updated annual budget report of estimated costs prepared by the DISTRICT. It will be reviewed and approved by PBA in writing no later than twenty-one (21) days after receipt. PBA's approval shall not be unreasonably withheld. PBA shall pay the full amount of any increase in the updated Annual Cost Estimate no later than thirty (30) days after receipt of the updated Annual Cost Estimate.

**8.1.6** At any time when future facilities are constructed as set forth in Section 5, the DISTRICT may update its Annual Cost Estimate to include the estimated cost of OMRR&R Services for such new facilities, including Estimated Yearly Costs and Estimated Amortized Costs. The updated Estimated Annual Costs will be based on an updated annual budget report of the projected costs prepared by the DISTRICT and reviewed and approved by PBA no later than twenty-one (21) days after receipt. PBA's approval shall not be unreasonably withheld. PBA shall pay the full amount of any increase in the updated Annual Cost Estimate in full no later than fourteen (14) days prior to the DISTRICT's commencement of OMRR&R Services for such facilities.

**8.1.7** Upon expiration or termination of this Agreement, the DISTRICT shall promptly refund to PBA any payments received by the DISTRICT for which services were not rendered by the DISTRICT. This paragraph shall survive the expiration or termination of the Agreement.

**8.2 PBA Payments For Emergency Services.** The DISTRICT shall prepare a written invoice of the DISTRICT's actual direct, indirect, administrative, and overhead costs incurred for Emergency Services for PBA under Section 6. PBA shall review and approve the invoice no later than twenty-one (21) days after receipt. PBA's approval shall not be unreasonably withheld. No later than thirty (30) after receipt of the invoice, PBA shall pay the DISTRICT the invoiced amount, unless otherwise notified in writing by the DISTRICT.

**8.3 Annual Reporting Of Actual Yearly Costs.** No later than November 1st of each year, the DISTRICT shall provide PBA with an annual report of the DISTRICT's actual direct, indirect, administrative, and overhead costs incurred for operation, maintenance, and repair services for the prior fiscal year. Any PBA payment discrepancy between PBA's payments made based on the Estimated Yearly Costs in the Annual Cost Estimate compared to the DISTRICT's actual costs as set forth in the annual report of actual yearly costs will be promptly reconciled by DISTRICT refund or PBA payment, as applicable, no later than thirty (30) days after PBA's receipt of DISTRICT invoice. This Section 8.3 shall survive termination or expiration of this Agreement.

**8.4. Reporting Of Actual Amortized Costs.** No later than November 1<sup>st</sup> of each year, the DISTRICT shall provide PBA with an annual report of the actual direct, indirect, administrative, and overhead costs, if any, incurred in the prior fiscal year for replacement and rehabilitation services. Any PBA payment discrepancy between PBA payments made based on the Estimated Amortized Costs in the Annual Cost Estimate compared to the DISTRICT's actual costs as set forth in the annual report of actual amortized costs will be promptly reconciled by DISTRICT refund or PBA payment, as applicable, no later than thirty (30) days after PBA's receipt of DISTRICT invoice. This Section 8.4 shall survive termination or expiration of this Agreement.

**8.5 PBA Obligation To Make Payments.** If PBA does not approve a DISTRICT written budget analysis of estimated costs within the applicable deadline as set forth in this Agreement, or objects to the DISTRICT's Annual Cost Estimate or updated Annual Cost Estimate, or otherwise does not agree with any financial reporting provided by the DISTRICT or DISTRICT invoices submitted to PBA for payment under this Agreement, PBA nonetheless shall pay the required payments as determined by the DISTRICT. Pending resolution by the Parties of the objected amount, the DISTRICT shall hold the disputed amount aside. Failure to make such payment shall constitute a default in accordance with Section 11. However, PBA by making such payment does not waive any claim or right to challenge such payment or determination made by the DISTRICT in accordance with Section 11. Upon resolution of a disputed amount in favor of PBA, the District shall promptly refund the resolved disputed amount to PBA. This Section 8.5 shall survive termination or expiration of this Agreement.

**8.6 Financial Assurances.** PBA acknowledges that the Annual Cost Estimate under Sections 8.1 and 8.2 and any updated Annual Cost Estimate will include an additional amount

equal to one-twelfth of the annual cost estimate as a contingency fund (“Contingency Fund”) for use by the DISTRICT in the event the DISTRICT’s actual costs exceed the estimate or PBA fails to make a required payment under this Agreement. Any part of the Contingency Fund not used by the District during the fiscal year will be included in the Annual Report of actual yearly costs and refunded to PBA as provided in Section 8.3.

**8.7 Taxes and Other Revenues.** The DISTRICT is authorized under Chapter 373, Florida Statutes, to levy taxes ad valorem taxes and collect other revenues and fees within the jurisdictional boundaries of the District. This Agreement does not in any way interfere with, supersede, or otherwise affect the authority of the DISTRICT to collect such taxes and revenues nor does such authority interfere with, supersede, or otherwise affect the rights of the DISTRICT to compensation under this Agreement,

**9. TERM.** This Agreement becomes effective on the Agreement Date and remains in effect for a period equal to the earliest expiration of any of the Approvals for the Phase 1 Project, unless (1) terminated early in accordance with the terms of this Agreement.

**10. RIGHT OF ENTRY.** PBA agrees that from the Agreement Date through the date of expiration or termination, all officers, employees, contractors and agents of the DISTRICT shall have an unlimited right to enter upon the Phase 1 Project at any time for all proper and lawful purposes, including to monitor and review construction progress and to perform services under Sections 3 through 7. PBA and the DISTRICT shall develop an access plan that provides proper vehicular access to and through the Phase 1 Project to enable the DISTRICT to provide the services under this Agreement.

**11. REMEDY FOR DEFAULT.** Except with respect to the DISTRICT’s remedies with respect financial assurances under Section 8.6, removal of facilities and restoration in accordance with the Easement under Section 5.2, and the DISTRICT’s rights under Section 14, the remedies set forth in this section shall be the exclusive remedies for the Parties and all other remedies are waived. For any default of the terms, conditions, covenants or provisions of this Agreement, the non-defaulting Party may seek specific performance of such other Party’s obligations, without thereby waiving any action for damages as limited by the next sentence. For any default of the terms, conditions, covenants or provisions of this Agreement, the non-defaulting Party may seek damages except that the Parties’ waive any claims, rights, or remedies, with respect to special, consequential, and punitive damages, including lost profits or revenue, for any default. For any PBA’s claims not released under Section 14, PBA may seek damages subject to the limitations set forth in Section 768.28, F.S. and other applicable Florida law.

Prior to exercising any remedy for a default hereunder, each Party shall give the defaulting Party advance written notice of the acts or omissions alleged to have constituted a default. Except for payments due by PBA under this Agreement, which constitute an automatic default if not paid when due, and the remedies and timeframes with respect to removal of facilities and restoration in the Easement under Section 5.2, the Party receiving such default notice shall have a period of thirty (30) days after receipt of such notice to cure the default. If the default cannot be cured within thirty (30) days and the defaulting party is diligently pursuing a cure of the default, the defaulting party may give written notice of extension of the cure period for additional periods of fifteen (15) days. However, if any default, regardless of diligence, is

not cured within the cure periods provided above, the non-defaulting party may exercise the remedies for default in this Section 11.

**12. DISTRICT ELECTION NOT TO PERFORM OMRR&R OR EMERGENCY SERVICES.** Subject to the notice requirements set forth in the next paragraph, the DISTRICT may at any time, in its sole discretion, and without payment or consideration of any kind to PBA whatsoever, elect not to perform either in whole or in part the OMRR&R and/or Emergency Services with respect to all or any portion of the Phase 1 Project and may terminate this Agreement.

In order for such election to be effective, the DISTRICT shall provide written notice of its decision at least ninety (90) days prior to the date notice is to be effective, whereupon the DISTRICT may cease performing the services as identified in the notice upon the effective date in the notice. PBA shall remain responsible to the DISTRICT for all applicable compensation for such discontinued services owed under this Agreement up to the effective date as set forth in the notice. SFWMD shall promptly refund to PBA any payments received related to the discontinued, unperformed services after the effective date as set forth in the notice. PBA shall be solely obligated to perform such services after the effective date as set forth in the notice.

A determination by the District not to perform OMRR&R or Emergency Services does not act as a termination of the Easement, provided PBA is not in default under the Easement.

**13. RECORDS AND REPORTING.**

**13.1 DISTRICT Recordkeeping.** The DISTRICT shall maintain necessary records on Operations Services, MRR&R Services, Emergency Services, inspections, and permit-related matters in accordance with DISTRICT records retention practices, including copies of all reports and correspondence made by the DISTRICT with respect to the Phase 1 Project. The DISTRICT may collect data for all Approvals, permit monitoring, and Operations as required by the DISTRICT or applicable law and shall provide such data to PBA upon written request. PBA shall have the right to examine all DISTRICT records related to this Agreement in accordance with generally accepted governmental auditing standards.

**13.2 PBA Recordkeeping.** PBA shall maintain during the term of this Agreement all financial and non-financial records and reports directly or indirectly related to performance under this Agreement. The DISTRICT shall have the right to examine all records related to this Agreement in accordance with generally accepted governmental auditing standards. In the event the DISTRICT becomes involved in a legal dispute with a third party arising from performance under this Agreement, PBA shall extend the period of maintenance for all records relating to this Agreement until the final disposition of the legal dispute, even if such extension goes beyond the expiration or termination date under this Agreement. All such records shall be made readily available to the DISTRICT.

**13.3 Quarterly Report.** The DISTRICT shall provide PBA with a written quarterly report on the OMRR&R Services, Emergency Services, inspections, and permit-related matters.

**13.4 Annual Budget Report Of Projected Costs.** On or before September 1st of each year, the DISTRICT shall prepare and submit to PBA a proposed annual budget report for projected DISTRICT Costs for OMRR&R Services for the upcoming fiscal year. The report will utilize the DISTRICT's internal accounting system (SAP).

**13.5 Annual Actual Costs Report.** The DISTRICT shall prepare and submit to PBA an annual report no later than November 1st of each year that contains a narrative and itemized summary of OMRR&R Services, and a summary of the actual DISTRICT Costs incurred for the prior fiscal year, which the DISTRICT shall track by utilizing the DISTRICT's internal accounting system (SAP). PBA may review and comment on the annual report no later than twenty-one (21) days after receipt.

**13.6 Public Records.**

**13.6.1 Compliance With Florida Laws.** The DISTRICT and PBA must provide public access to all records concerning this Agreement according to applicable Florida laws, including Chapter 119, Florida Statutes. If either party asserts any exemptions to Florida's public records laws, such party has the burden of establishing and defending the exemption. A party's failure to comply with this section constitutes a default under this Agreement.

**13.6.2 Recordkeeping And Public Access.** If PBA receives a request from any member of the public for record associated with this Agreement, PBA must promptly provide the requested records to the person requesting them and provide written notice to the DISTRICT of what was requested and what it provided to the requestor. In addition, PBA must: 1) keep and maintain public records that ordinarily and necessarily would be required by the DISTRICT in order for PBA to perform under this Agreement; 2) provide the public with access to public records on the same terms and conditions that the DISTRICT 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 DISTRICT for all public records in possession of PBA upon termination of the Agreement 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 District in a format that is compatible with the information technology systems of the DISTRICT. At the conclusion of the Agreement with the DISTRICT, PBA shall provide to the DISTRICT all applicable records associated with this Agreement on electronic media (CDE-ROM or USB flash drive).

**13.6.3 IF PBA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PBA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE NUMBER (561) 682-2729, EMAIL ADDRESS PUBLICRECORDS@SFWMD.GOV AND MAILING ADDRESS: 3301 GUN CLUB ROAD, WEST PALM BEACH, FL 33406.**

**13.7 Confidentiality Of Plans And Specifications.** Under Chapter 119, Florida Statutes, any plans and specifications created or received by the DISTRICT under this Agreement 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 Florida public records laws and must be maintained in a confidential manner by PBA. PBA shall complete, comply with, and furnish to the DISTRICT a signed copy of a Plan and Specification Request Form, attached as Exhibit “C,” and made a part hereof. PBA is solely responsible for ensuring its compliance and the compliance of its staff, contractors, and subcontractors with the terms of Exhibit “C” and Chapter 119, Florida Statutes. This paragraph survives the expiration or termination of this Agreement.

#### **14. DISCLAIMER, RELEASE, INDEMNIFICATION, FINANCIAL ASSURANCE, AND INSURANCE.**

**14.1 Disclaimer/Release.** PBA acknowledges that the DISTRICT makes no representation or warranty with the respect to 1) the C-51 Reservoir Project or the DISTRICT’s existing or future facilities that are or may be the subject of this Agreement, including but not limited to, their design, engineering, construction, physical condition, operational status, suitability for use, permitability, eligibility for or status of applicable Approvals, availability of water, or water quality; or 2) the services to be provided by DISTRICT under this Agreement. Furthermore, PBA acknowledges that there are or may be third parties, including but not limited to, governmental entities, water control districts, utilities, and private entities or persons, that manage water and maintain water management facilities or systems within their jurisdictions or control that are not part of the Regional System (“Non-District Water Management Systems”) and for which the DISTRICT is not responsible. PBA is responsible for entering into agreements with third parties for construction, operation, and maintenance of facilities within the Non-District Water Management Systems required for the benefit of the Phase 1 Project and enforcing such agreements.

Except for the specific contractual obligations or activities undertaken by the DISTRICT in Sections 3 through 7 and damages or personal injury caused solely by the gross negligence or intentional acts of the DISTRICT or its agents (including, but not limited to, its contractors, subcontractors, agents, representatives, and invitees) (collectively “Agents”) for which PBA has the exclusive remedy provided under Section 11, PBA accepts the DISTRICT providing services under this Agreement at PBA’s sole risk and liability. Except for gross negligence or intentional acts, and subject to the DISTRICT’s sovereign immunity which is not waived by the DISTRICT, PBA hereby releases the DISTRICT and its employees and Governing Board members (collectively the “District”) from and against any and all claims, suits, enforcement of Approvals or permits, or loss for bodily injury, death, and property damage and all other damage, direct or indirect, of whatsoever nature, arising out of or in any way related to, or resulting from (x) the District’s obligations or activities undertaken under this Agreement; (y) the operation or performance of the C-51 Reservoir Project, the Regional System, or Non-District Water Management Systems; or (z) the timing, availability, quantity, or the quality of water for or within the C-51 Reservoir Project, the Regional System, or Non-District Water Management Systems.

**14.2 Indemnification.** PBA hereby defends, indemnifies, saves and holds harmless, the DISTRICT and its Agents from and against any and all claims, suits, enforcement of Approvals or permits, or loss for bodily injury, death, and property damage and all other damage, direct or indirect, of whatsoever nature, arising out of or in any way related to, or resulting from: 1) the acts or omissions of PBA or its Agents; 2) PBA or its Agents use of DISTRICT property or property interests; 3) PBA or its Agents performance or non-performance under this Agreement; or 4) only for the period prior to PBA's transfer of this Agreement to the C-51 NFP, the DISTRICT or its Agents' performance or non-performance under this Agreement except to the extent caused solely by the gross negligence or intentional acts of the DISTRICT or its Agents.

After PBA transfers this Agreement to C-51 NFP, to the extent permitted by law and subject to and conditional upon the limitations set forth in Section 768.28, Florida Statutes, C-51 NFP, its successors and assigns, shall indemnify and hold the DISTRICT and its Agents harmless from and against any and all loss, suit, action, legal or administrative proceeding, claim, demand, damage, liability, interest, costs and/or expense of whatsoever kind or nature due to personal injury, property damage and/or environmental damage arising in any manner directly or indirectly related to, or resulting from 1) the acts or omissions of C-51 NFP or its Agents; 2) C-51 NFP or its Agents use of DISTRICT property or property interests; or 3) C-51 NFP or its Agents performance or non-performance under this Agreement; except to the extent caused solely by the negligence or intentional acts of the DISTRICT or its Agents.

The DISTRICT shall have the absolute right to choose its own legal counsel in connection with all matters indemnified for and defended against herein. To the extent that PBA or C-51 NFP is providing such defense, PBA or C-51 NFP shall have the right, to the fullest extent permitted by law, to assert any defenses that are available to the DISTRICT and its Agents in such matter. This provision is not intended to be an exclusive or exhaustive remedy and does not preclude the exercise of any other rights and remedies available to the DISTRICT or its Agents under the terms of this Agreement.

**14.3 Insurance.** The DISTRICT shall be responsible for workers compensation insurance covering all persons employed by the DISTRICT or its contractor in accordance with statutory benefits. The DISTRICT shall require its contractors to maintain ordinary and customary commercial general property and liability insurance, as determined by the DISTRICT in its sole discretion. PBA shall obtain and maintain in full force during the term of this Agreement the following minimum insurance coverages:

**14.3.1 Contractual and Commercial General Liability Insurance** against claims for bodily injury, death, or property damage arising out of or in any way related to or resulting from PBA or its Agents 1) access over or use of DISTRICT property or property interests; 2) acts or omissions; and 3) indemnification obligations in Subsection 14.2, endorsed to include premises-operations, completed operations-products, independent contractors, engineering and design defects, pollution, explosion, collapse and underground property damage hazards, contractual liability (including the indemnification obligations), broad form property damage, and fire liability coverage with a combined single limit of \$2,000,000 per occurrence and \$5,000,000 in the aggregate. This obligation to defend DISTRICT and its Agents shall begin



immediately upon the filing of any lawsuit or claim that would be defended by the insurance required hereunder and continue until such time as the self-insured retention has been met or the insurance required hereunder provides a defense to DISTRICT and its Agents.

**14.3.2** Workers compensation insurance covering all persons employed by PBA or its contractors in accordance with statutory benefits.

**14.3.3** Insurance shall be written by companies reasonably acceptable to DISTRICT. All insurance policies, name DISTRICT and its Agents as additional insureds and shall include a waiver of subrogation in favor of DISTRICT and its Agents. All insurance shall be primary to any liability or property insurance or self-insurance carried by the DISTRICT or its Agents and shall also provide that any loss otherwise payable shall be payable notwithstanding any act or omission of DISTRICT or its Agents which might, absent such provision, result in a forfeiture of all or a part of such insurance payment. PBA shall furnish to DISTRICT Certificates of Insurance certificates (or certified copies of all insurance coverage, if requested) for such coverage to the DISTRICT 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 the DISTRICT and its Agents as additional named insureds.

**14.3.4** All insurance coverage required by or provided to PBA by its agents engaged by PBA under this Agreement shall be extended to the DISTRICT and its Agents with the same protection and insurance coverages required by and afforded to PBA. PBA shall require that its agents include DISTRICT and its Agents as additional insureds on all such insurance and shall include a waiver of subrogation in favor of DISTRICT and its Agents. PBA shall furnish to the DISTRICT Certificates of Insurance certificates (or certified copies of all insurance coverage, if requested).

**14.3.5** In the event that any policy furnished by PBA and its Agents provides for coverage on a "claims made" basis, the retroactive date of the policy shall be the same as the effective date of this Agreement, or such other date, as to protect the interest of Indemnified Parties. Furthermore, for all policies furnished on a "claims made" basis, PBA and its Agents' providing of such coverage, shall be obligated to maintain such coverage beyond the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. If coverage is on "occurrence" basis, PBA and its Agents shall maintain such insurance during the entire term of this Agreement.

**14.3.6** It is the express intent of the Parties that any insurance provided by PBA and its Agents naming the DISTRICT and its Agents as an additional insured shall respond first and defend and indemnify the DISTRICT and its Agents with respect to any and all claims or suits arising out of PBA or its Agents obligations under this Agreement, including indemnification. If and only if such insurance does not apply or is otherwise not available with respect to a particular matter, the indemnity provisions in the first paragraph of this section will apply.

**14.4. Survival.** This Section 14 shall survive the expiration or termination of this Agreement.

**15. MISCELLANEOUS PROVISIONS**

**15.1. Notices.** All notices, requests, consents and other communications seeking consent or approval under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, emailed with confirmed receipt or requested delivery receipt, or mailed by registered or certified mail (postage prepaid), return receipt requested, or sent by any form of overnight mail, addressed to:

TO SFWMD:

Division Director  
Operations, Engineering and Construction  
South Florida Water Management District  
3301 Gun Club Rd., MSC 1410  
West Palm Beach, FL 33406  
Email:

With a copy to:  
General Counsel  
South Florida Water Management District  
3301 Gun Club Rd., MSC 1410  
West Palm Beach, FL 33406  
Email:

TO PBA:

Enrique A. Tomeu  
Palm Beach Aggregates, LLC  
20125 State Road 80  
Loxahatchee, Florida 33470  
Email: eatomeu@siboneycc.com

With a copy to:

Phillip C. Gildan, Esq.  
Greenberg Traurig, P.A.  
777 So. Flagler Drive  
Suite 300 East  
West Palm Beach, Florida 33408  
Email: gildanp@gtlaw.com

or to such other address as any party may designate by notice complying with the terms of this Subparagraph. Each such notice shall be deemed delivered: 1) on the date delivered if by personal delivery; 2) on the date of transmission by email, 3) on the date of transmission with confirmed

receipt if fax or other telegraphic method; 4) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed; and 5) one day after mailing by any form of overnight mail service.

**15.2 Severability.** If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid. However, the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

**15.3 Third Parties.** This Agreement does not confer any rights or remedies to any persons other than the Parties hereto and their respective legal representatives, successors, and authorized assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

**15.4 Jurisdiction And Venue.** The Parties acknowledge that a substantial portion of negotiations and anticipated performance and execution of this Agreement occurred or shall occur in Palm Beach County, Florida. Therefore, each of the Parties irrevocably and unconditionally agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Florida in Palm Beach County or the court of the United States, Southern District of Florida. Each of the Parties irrevocably and unconditionally consents to the jurisdiction of each such court in any suit, action or proceeding. Each of the Parties irrevocably and unconditionally waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of afore-mentioned courts.

**15.5 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or email copy of this Agreement and any signatures hereon shall be considered as originals for all purposes.

**15.6 Governing Law.** This Agreement and all transactions contemplated by this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida without regard to principles of conflicts of laws.

**15.7 Interpretation.** This Agreement shall be interpreted without regard to any presumption or other rule requiring interpretation against the party causing this Agreement or any part thereof to be drafted. Any reference "days" unless otherwise stated means calendar days.

**15.8 Handwritten Provisions.** Handwritten provisions inserted in this Agreement and initialed by the SFWMD and the PBA shall control all printed provisions in conflict therewith.

**15.9 Entire Agreement.** This Agreement contains the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the Parties. With the exception of the MOU and the Easement, no agreements or representations, unless incorporated in this Agreement, shall be binding upon any of the Parties. In the event of any conflicts or inconsistencies between the terms of this Agreement and the MOU and Easement, this Agreement shall control. No modification or change in this Agreement shall be valid or binding upon the Parties unless in writing and executed by the party or Parties intended to be bound by it.

**15.10 Force Majeure.** If a Force Majeure Event, as defined below, occurs that prevents the DISTRICT's performance under this Agreement, the DISTRICT is excused from whatever performance is prevented by the Force Majeure Event. If the DISTRICT anticipates a delay in performing its services under Sections 3 through 7 due to a Force Majeure Event, the DISTRICT shall notify PBA in writing of the anticipated length and cause of the delay as promptly as reasonably practicable after becoming aware of such event. The writing shall demonstrate that such delays are due to a Force Majeure Event and identify the probable impact on the DISTRICT's performance, the measures taken or to be taken to prevent or minimize the delay, and the time table by which the DISTRICT intends to implement these measures. The DISTRICT shall notify PBA when it is able to resume performance of its obligations under this Agreement and shall resume performance under this Agreement after the notice is delivered.

"Force Majeure Event" means any event that cannot be reasonably avoided or overcome, including but not limited to: an act of God; war; flood; lightning; drought; earthquake; fire; volcanic eruption; landslide; hurricane; cyclone; typhoon; tornado; explosion; civil disturbance or the public enemy; terrorist act; military action; epidemic; work-to-rule action; go-slow or similar labor difficulty, each on an industry-wide, region-wide or nationwide basis; legal or regulatory barriers or limitations; acts of third parties, including but not limited to, political subdivisions, districts, governmental or non-governmental entities, or individuals; or judicial or administrative proceedings.

**15.11 Waiver.** Failure of a party to insist upon strict performance of any covenant or condition of this Agreement or to exercise any right herein contained shall not be construed as a waiver or relinquishment for the future enforcement of any such covenant, condition, or right; the covenant or condition shall remain in full force and effect.

**15.12 Time.** Time is of the essence with regard to every term, condition, and provision set forth in this Agreement. The computation of time periods herein of less than six (6) days shall exclude Saturdays, Sundays, and state or national legal holidays. Any time period provided for herein which ends on Saturday, Sundays or a legal holiday shall extend to 5:00 p.m. of the next business day.

**15.13 Waiver Of Jury Trial.** As inducement to DISTRICT agreeing to enter into this Agreement, the DISTRICT and PBA hereby waive trial by jury in any action or proceeding brought by either party against the other party pertaining to any matter whatsoever arising out of or in any way connected with this Agreement.

**15.14 Attorney's Fees And Costs.** In the event a lawsuit or other proceeding is filed by a Party, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

**15.15 Successors In Interest/Assignment.** This Agreement shall not be assigned by, or benefit a successor-in-interest to, PBA except for PBA's assignment of this Agreement to C-51 NFP, or as authorized in the next paragraph. PBA shall provide the DISTRICT with thirty (30) days advance written notice of the form of the proposed assignment to C-51 NFP for review and approval. Upon the DISTRICT approval of the form of the proposed assignment, PBA shall promptly provide the DISTRICT with a copy of the executed assignment.

**15.16 Financing.** The DISTRICT acknowledges that PBA intends to enter into financing and refinancing transactions with one or more lender, security holder, credit agency, multilateral institution, equity provider, bond holder, underwriter and others providing financing or refinancing to or on behalf of PBA or any affiliate thereof, or any trustee or agent acting on behalf of any of the foregoing, and their successors and assigns (the "Financing Parties") to fund the acquisition, construction, renewal, and replacement of Phase 1 Project, in which financing(s), PBA intends to assign this Agreement. In connection therewith, the DISTRICT agrees to consent to the assignment of this Agreement and to furnish to the Financing Parties, such written information, certificates, copies of invoices and receipts, consents to assignment of the Agreement and other like documents as the Financing Parties may reasonably request, all in form and content acceptable to the DISTRICT. Anything in this Agreement to the contrary notwithstanding, in the event of a foreclosure under any Financing Documents, the DISTRICT shall consent to the Financing Party or purchaser at a foreclosure sale that accedes to the interest of PBA under this Agreement, and this Agreement shall continue in full force and effect and binding on the Financing Party or purchaser at a foreclosure sale and the DISTRICT, and so long as the DISTRICT is not in default beyond all applicable notice and cure periods, the DISTRICT's rights under the Agreement shall not be terminated or interfered with.

**15.17 Availability Of DISTRICT Funding.** The DISTRICT obligations under this Agreement are subject to future fiscal year appropriations by DISTRICT's Governing Board, in its sole and absolute discretion. Nothing in this Agreement shall be deemed to constitute an indebtedness of the District within the meaning of any constitutional or statutory limitations of indebtedness.

**15.18 Mediation.** In the event a dispute arises which the Parties cannot resolve, the Parties may submit to non-binding mediation. The mediator shall be selected by the Parties and the cost of mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law.

**15.19 Relationship Of The Parties.** Nothing contained in this Agreement shall be construed to create the relationship of principal and agent, partnership, joint venture or any other business or financial relationship between the Parties hereto other than as independent contractors. The DISTRICT and its Agents will not supervise have authority over, or be liable or responsible for the performance of PBA and its Agents.

**15.20 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 apply following such termination or expiration.

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

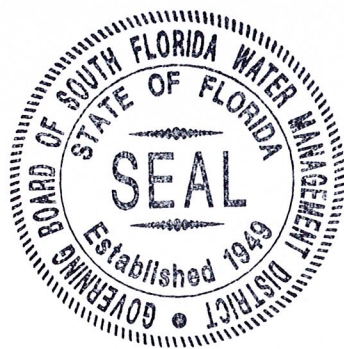
**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, a governmental entity created by Chapter 373, Florida Statutes

Date: 2/10/17

By: \_\_\_\_\_  
Peter Antonacci  
Executive Director

Attest:  
Brenda Low  
District Clerk/Assistant Secretary

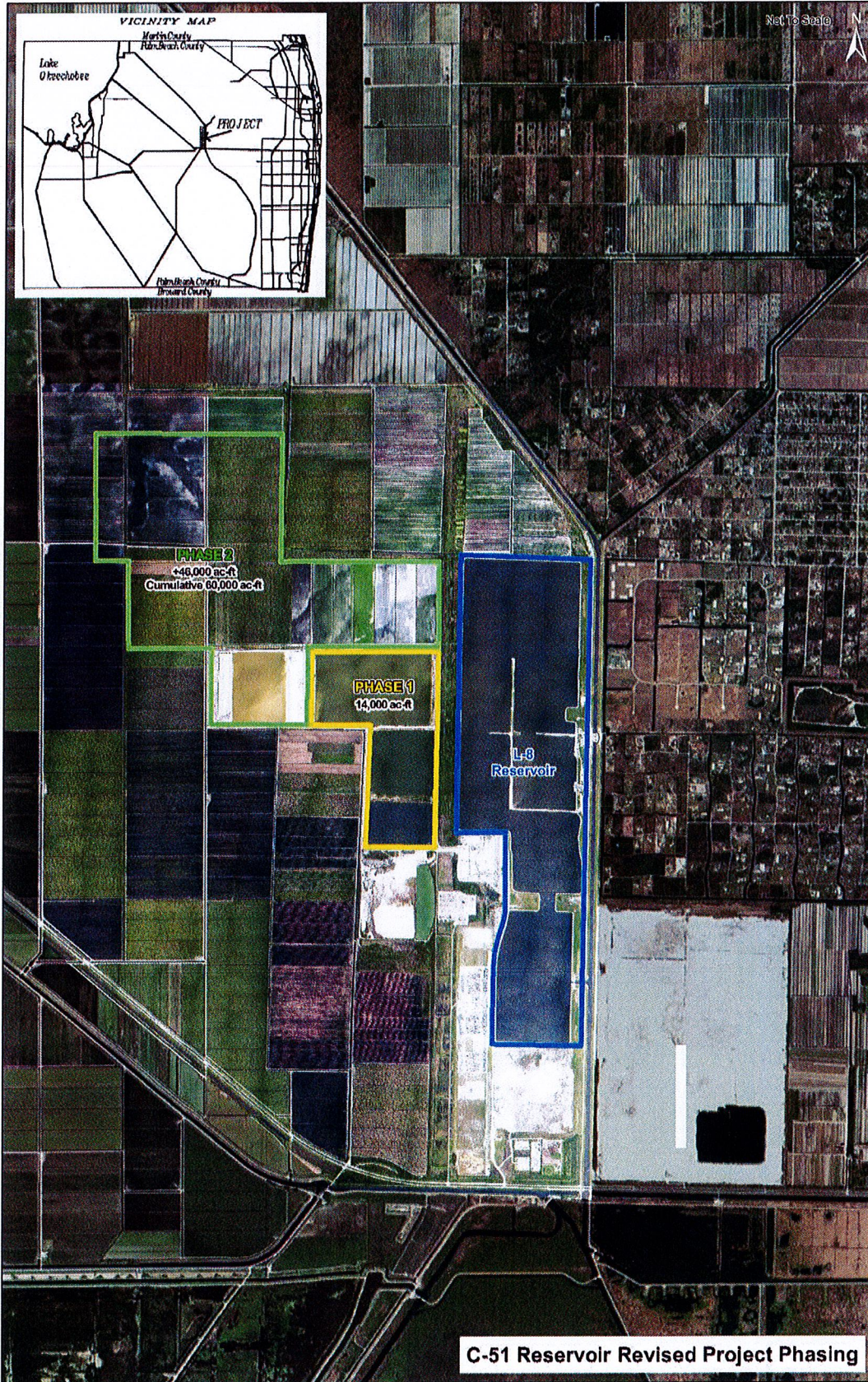
General Counsel Concurrence  
Brian J. Accardo  
Brian J. Accardo  
General Counsel



**PALM BEACH AGGREGATES, LLC**  
Enrique A. Tomeu  
Enrique A. Tomeu, President  
Date: 2-9-17



# Exhibit A - Project Map





**Exhibit B**  
**Scope of Work For MRR&R Services**

**I. PHASE 1 PROJECT.**

The work to be performed for the Phase 1 Project consists of the following activities.

**Maintenance and Repair.** Maintenance and repair are limited to routine, ordinary, and foreseeable maintenance and repair services and routine inspections as set forth below. Any single maintenance or repair activity for which the unit cost exceeds ten thousand dollars (\$10,000.00) requires the prior written approval of PBA before performing. Maintenance and repair services do not include the maintenance of the on-site stormwater management system.

The DISTRICT shall, in accordance with the DISTRICT'S standard practice, (i) perform routine preventative and corrective maintenance for project and equipment; (ii) repair and/or replace equipment; (iii) routinely clean and lubricate equipment; iv) routinely make equipment inspections and needed adjustments; and (v) perform grounds services for the reservoir.

**1. Maintenance and Repair Standards**

The reservoir embankments and hydraulic facilities shall be maintained to insure serviceability and operability to the following standards:

a. Maintenance of Grass. Maintenance of a sturdy grass growth on embankments is highly important, as grass is one of the most effective means of protecting the embankment against erosion from rain, current and/or wave wash. A good growth of grass shall be maintained where feasible with grass height from 4" to 8", substantially free of weeds and will be mowed as necessary to maintain this standard of care.

b. Grass Mowing. Periodic mowing is essential to maintaining a good grass growth. Mowing is required a minimum of four (4) times a year to keep down weeds and other noxious growth and to prevent the grass height from exceeding 8". The grass shall be mowed to a height of 4". The last mowing of the season (November) shall be accomplished under conditions that will allow the grass to obtain a maximum height of approximately 8" to 10" going into the winter season. Mowing will be performed to a distance of at least ten (10) feet beyond the toe of the embankment on the dry side. Mowing records detailing when and where mowing occurs will be kept and submitted in the Quarterly Report.

c. Grass Fertilizing. Fertilizing grass on embankments is required at a minimum annually. Fertilizer content shall be determined by soil tests, but must have a low phosphorous content.

d. Maintaining Earth Embankments. Embankments shall be maintained to at least the net grade and section by replacing any loss of material from the crown or slopes. Ruts, washes, slides, settlements, and subsidence shall be promptly repaired and the entire embankment maintained sufficiently smooth for power mowing. Embankment crowns



shall be graded as necessary to drain freely and prevent impoundment of rainwater. Trees, other undesirable wild growth, and debris will be removed. Embankment facilities and appurtenances shall be maintained in a good state of repair and, where applicable, in good operating condition. Particular attention will be given to the following:

1. Roller Compacted Concrete (RCC) embankments/levees.
2. Drainage structures through the levee.
3. Toe drainage systems.
4. Embankment slope protection RCC and protection on ends.

e. Animal Burrows. Embankments and adjacent landward areas shall be maintained free of animal burrows to maintain their integrity. Animal burrows, when found, shall be backfilled with compacted material. To prevent reoccurrences, efforts shall be made to rid the area of burrowing animals.

f. Roads and Ramps. Access roads to and on embankments, including ramps, shall be graded as necessary to keep the roadway shaped properly and free of ruts, pockets and washes and in good serviceable condition. Ramp embankments, including the boat ramp, shall be maintained to their net section and design grade.

g. Invasive Plants. Reservoir shall be maintained in accordance with best management practices and within the project's Operation Plan. All chemical control methods shall be within approved label directions.

h. Gates/Water Control Structure(s) and Pump Station. The gate mechanisms and pumps shall be oiled or greased, examined, and trial operated once every six (6) months or at a frequency determined by the manufacturer, and on dates upon which other maintenance work is performed. The steel culvert connection and gates shall be maintained free from obstructions and debris. Annual pressure cleaning water control structures, gates and grating.

i. Equipment. Electrical and other mechanical systems including SCADA systems and their associated remote telemetry equipment, shall be maintained every six (6) months or at a frequency determined by the manufacturer's recommendation.

j. Riprap. Riprap around the Hydraulic Flow Structure shall be checked for displacement.

k. Seepage. Evidence of seepage, saturated areas or boils shall be assessed and brought to PBA's attention.

l. Vandalism. to structures shall be repaired and measures shall be taken to prevent vandalism including welding anti-theft rebar collars to the pipe.

m. Painting. Buildings and the Structure require painting on at least a five year basis.

n. Gearbox overhaul on five (5) year basis. On at least a five (5) year basis the bearings and sacrificial bronze nut are replaced.

o. Gate overhaul on 15 year basis. On at least a fifteen (15) year basis, the slide gate seals and slide HDPE replacement for two (2), 9 ft. x 9 ft. gates.

## **2. Inspections**

a. Semi-annual inspections. Semi-annual inspections will occur for (1) preventable maintenance of equipment and oilers to check for excessive wear, (2) electrical inspection of the gravity inflow structure and pump station, and (3) cables for the suspended power swing stages.

b. Annual inspection of the reservoir, embankment, levee, and roads. Inspections of the reservoir, embankments and levees will occur annually. The inspection will cover unwanted vegetation growth, sod cover, slope stability, flanking erosion/bank caving, shoaling, settlement, depressions/rutting, seepage, saturated areas, piping, toe scouring, cracking of revetment, loss of materials such as stones or armor units, animal control, encroachments, concrete surfaces and banks, and drainage systems. Annual road and pavement and sign inspection.

c. Annual inspection of the Water Control Structure, Pump Station and Control Buildings. Inspections of the Structure, Pump Station and Control Buildings will occur annually and cover electrical components, control structure, gates, seals, condition of concrete, apron, concrete joints, unwanted vegetation growth, obstructions, inlets/discharge area, and concrete surfaces, davits and securing anchors inspected for mechanical or concrete failures around the anchor points.

d. Five (5) year Inspection. Every five (5) years, an in-depth inspection of the facilities and structures including the gates, culverts, anodes, pump station, and other parts of the structures.

## **II. REPLACEMENT, AND REHABILITATION OF EXISTING AND FUTURE FACILITIES LOCATED WITHIN THE PHASE 1 PROJECT OR THE REGIONAL SYSTEM BENEFITTING THE PHASE 1 PROJECT.**

The DISTRICT will replace and rehabilitate existing and future facilities which are the subject of this Agreement in accordance with DISTRICT practices and procedures. The decisions with respect thereto are vested in the sole and absolute discretion of the DISTRICT.

**Exhibit C**  
**Easement**

THIS INSTRUMENT PREPARED BY  
AND RETURN TO:

This Instrument prepared by and return to:  
South Florida Water Management District  
3301 Gun Club Road, P. O. Box 24680  
West Palm Beach, FL 33416-4680

Tax Folio # \_\_\_\_\_  
Tract No. \_\_\_\_\_  
L-8 Reservoir - West Side of Cell 4

**EASEMENT FOR C-51 RESERVOIR PUMP STATION**  
**AND WATER CONTROL FACILITIES**

This EASEMENT FOR C-51 RESERVOIR PUMP AND WATER CONTROL FACILITIES (hereinafter "Easement") made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (hereinafter "Easement Date"), from the SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a governmental entity of the State of Florida created by Chapter 373, Florida Statutes, with its principal office at 3301 Gun Club Road, West Palm Beach, Florida 33406 (hereinafter "Grantor") to PALM BEACH AGGREGATES, LLC, a Florida limited liability company, with a mailing address at 20125 State Road 80, Loxahatchee, Florida 33470 (hereinafter "Grantee").

**RECITAL:**

**WHEREAS**, Grantor and Grantee have entered into an Operations and Maintenance Agreement For Phase 1 of the C-51 Reservoir Project, dated \_\_\_\_\_ 20\_\_, incorporated herein by reference ("O&M Agreement"); and

**WHEREAS**, under the O&M Agreement, and in consideration of rights obtained by the Grantor with respect to the C-51 Reservoir Project, Grantor has agreed to grant to Grantee an easement (hereinafter the "Easement") within certain land of Grantor in Palm Beach County, Florida, as described in attached Exhibit "C-1," made a part hereof, (hereinafter the "Easement Area") for the benefit of certain land of Grantee in Palm Beach County, Florida, as described in attached Exhibit "C-2," made a part hereof (hereinafter the "Benefitted Property"); and

**WHEREAS**, the Easement will be for the purpose of Grantee's construction, and, under certain circumstances as set forth herein, Grantee's operation, maintenance, repair, replacement, and rehabilitation of a pump station and water control structures, which includes the eastern end of two (2) one hundred inch parallel steel pipes to convey water between the lands owned by Grantee and Grantor and rip rap at the eastern end where such pipes enter Grantor's land, and installation of rip rap leading from an elevation of twenty (20) feet NAVD to forty two (42) feet NAVD running from west to east (hereinafter collectively the "Facilities"), for consideration including Grantor's acquisition of certain rights to operate, at Grantee's expense, Grantee's facilities located on the Benefitted Property.

NOW, THEREFORE, in consideration of the covenants, agreements and undertakings of the parties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

1. The Grantor and Grantee agree that the foregoing recitals are true and correct and incorporated herein by reference.

2. Grantor does hereby grant to Grantee, its successors and assigns, a non-exclusive Easement over the Easement Area for (i) construction of the Facilities, (ii) operation, maintenance, repair, replacement, and rehabilitation of such Facilities but only under the limited circumstances as provided in Section 3, and (iii) access within the Easement Area for such purposes, Grantor does hereby further grant Grantee a temporary right of access not to exceed \_\_\_\_\_ days for the purpose of Grantee's construction of Grantee's Facilities across other lands of the GRANTOR adjacent to the Easement Area to be identified in a temporary access plan as agreed to by the Parties in writing (hereinafter "Temporary Access Area").

Prior to commencing construction, Grantee shall prepare at its expense for Grantor's written approval, not to be unreasonably withheld, (a) plans and specifications for the construction of the pump station that meet Grantor's design standards and (b) a schedule for construction of the Facilities which must not conflict with Grantor's implementation of Grantor's Flow Equalization Basin Project (hereinafter "Grantor's Project) as determined by the Grantor in its sole and absolute discretion. .

Grantee shall construct the Facilities at its expense, and in accordance with (x) the plans and specifications, titled, C-51 Hydraulic Facilities, dated August 12, 2014, already submitted by Grantee to Grantor, (y) the plans and specifications for the construction of the pump station as approved in writing by the Grantor, and (z) the schedule for construction of the Facilities as approved in writing by the Grantor.

Grantee acknowledges and understands that Grantor's Project will require Grantor's use of the Easement Area and Temporary Easement Area for operational testing and monitoring of the Grantor's Project, including the withdrawal of water from and discharge of water into Easement Area. If Grantee fails to comply with the approved schedule for its construction of Facilities, Grantor may upon delivering Grantee written notice suspend Grantee's construction

activities and access to the Easement Area to avoid any disruption to Grantor's implementation of Grantor's Project.

3. Grantor shall have the superior, exclusive right, at Grantee's expense, to operate, maintain, repair, replace and rehabilitate the Facilities within the Easement Area. To the extent that Grantor relinquishes either in whole or in part its exclusive right to operate, maintain, repair, replace, or rehabilitate either all or part of the Facilities within the Easement Area by delivering written notice of its decision at least ninety (90) days prior to the date notice is to be effective, and provided that Grantee is not in default under this Easement or the O&M Agreement, the DISTRICT may cease performing the services as identified in the notice upon the effective date in the notice. Thereafter, Grantee shall be obligated at Grantee's expense to take on those operation, maintenance, repair, replacement, and rehabilitation responsibilities relinquished by the Grantor. Grantee shall not otherwise have any right or obligation operate, maintain, repair, replace or rehabilitate the Facilities within the Easement Area.

4. Grantee and its agents, directors, employees, officers, contractors, successors, assigns, licensees or invitees (hereinafter collectively "Agents") access to and within the Easement Area is at the sole risk of Grantee and its Agents for any loss for property damage and injury to and death of persons arising out of the use of the Easement Area and Temporary Easement Area except if caused by the sole negligence or intentional act of Grantor or its Agents. This Section 4 shall survive the termination of this Easement.

5. Grantee hereby defends, indemnifies, saves and holds harmless, the Grantor and its Agents from and against any and all claims, suits, enforcement of Approvals or permits, or loss for bodily injury, death, and property damage and all other damage, direct or indirect, of whatsoever nature, arising out of or in any way related to, or resulting from: 1) the acts or omissions of PBA or its Agents; 2) Grantee or its Agents use of Grantor property or property interests, including the Easement Area; 3) Grantee or its Agents performance or non-performance under this Easement; or 4) the Grantor's or its Agents' performance or non-performance under this Easement except to the extent caused solely by the gross negligence or intentional acts of the Grantor or its Agents.

The Grantor shall have the absolute right to choose its own legal counsel in connection with all matters indemnified for and defended against herein. To the extent that Grantee is providing such defense, Grantee shall have the right, to the fullest extent permitted by law, to assert any defenses that are available to the Grantor and its Agents in such matter. This provision is not intended to be an exclusive or exhaustive remedy and does not preclude the exercise of any other rights and remedies available to the DISTRICT or its Agents under the terms of this Easement.

This Section 5 shall survive the termination of this Easement.

6. PBA shall obtain and maintain in full force during the term of this Easement the following minimum insurance coverages:

(1) Contractual and Commercial General Liability Insurance against claims for bodily injury, death, or property damage arising out of or in any way related to or resulting from Grantee or its Agents (i) access over or use of Grantor's property, including the Easement Area, or other property interests; (ii) acts or omissions; and (3) indemnification obligations under this Easement endorsed to include premises-operations, completed operations-products, independent contractors, engineering and design defects, pollution, explosion, collapse and underground property damage hazards, contractual liability (including the indemnification obligations), broad form property damage, and fire liability coverage with a combined single limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. This obligation to defend DISTRICT and its Agents shall begin immediately upon the filing of any lawsuit or claim that would be defended by the insurance required hereunder and continue until such time as the self-insured retention has been met or the insurance required hereunder provides a defense to DISTRICT and its Agents.

(2) Workers compensation insurance covering all persons employed by PBA or its contractors in accordance with statutory benefits.

Insurance shall be written by companies reasonably acceptable to Grantor. All insurance policies shall name Grantor and its Agents as additional insureds and shall include a waiver of subrogation in favor of Grantor and its Agents. All insurance shall be primary to any liability or property insurance or self-insurance carried by the Grantor or its Agents and shall also provide that any loss otherwise payable shall be payable notwithstanding any act or omission of Grantor or its Agents which might, absent such provision, result in a forfeiture of all or a part of such insurance payment. Grantee shall furnish to Grantor Certificates of Insurance certificates (or certified copies of all insurance coverage, if requested) for such coverage to the Grantor 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 the Grantor and its Agents as additional named insureds.

All insurance coverage required by or provided to Grantee by its agents engaged by Grantee under this Easement shall be extended to the Grantor and its Agents with the same protection and insurance coverages required by and afforded to Grantee. Grantor shall require that its agents include Grantor and its Agents as additional insureds on all such insurance and shall include a waiver of subrogation in favor of Grantor and its Agents. Grantee shall furnish to the Grantor Certificates of Insurance certificates (or certified copies of all insurance coverage, if requested).

In the event that any policy furnished by Grantee and its Agents provides for coverage on a "claims made" basis, the retroactive date of the policy shall be the same as the effective date of this Easement, or such other date, as to protect the interest of Indemnified Parties. Furthermore, for all policies furnished on a "claims made" basis, Grantee and its Agents' providing of such coverage, shall be obligated to maintain such coverage beyond the termination of this Easement until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. If coverage is on "occurrence" basis, Grantee and its Agents shall maintain such insurance during the entire term of this Easement.

It is the express intent of the Parties that any insurance provided by Grantee and its Agents naming the Grantor and its Agents as an additional insured shall respond first and defend and indemnify the Grantor and its Agents with respect to any and all claims or suits arising out of Grantee or its Agents obligations under this Easement, including indemnification. If and only if such insurance does not apply or is otherwise not available with respect to a particular matter, the indemnity provisions in the Easement will apply.

This Section 6 shall survive the termination of the Easement.

7. This Easement terminates upon the expiration of the Grantee's water use permit for the C-51 Reservoir Project or Grantee's abandonment of the C-51 Reservoir Project, or as otherwise provided in this Easement. Upon the termination of this Easement, after consultation with Grantee, Grantor may require Grantee to promptly remove, at its expense, all Facilities and any other improvements installed by Grantee within the Easement Area, and promptly restore the Easement Area to the condition existing on the Easement Date. Alternatively, the Grantor in its sole and absolute discretion may by providing at least thirty (30) days advance written notice to Grantee undertake the removal of such Facilities and restoration of the Easement Area. No later than thirty (30) after Grantee's receipt of Grantor's invoice, Grantee shall reimburse the Grantor all its costs and expenses incurred in undertaking such activities. Grantor shall be entitled to a lien on the Grantee's Benefitted Property to enforce specific performance the above stated remedies, together with reasonable attorney's fees and costs, with interest at the maximum rate allowed by law. The lien shall be recorded in the public records of Palm Beach County, Florida, and shall relate back to the recording date of this Easement. The Grantor may foreclose its lien on the Benefitted Property in the manner provided for mortgages or real property.

In the event of Grantee's default under the O&M Agreement, or under this Easement, except for payments due by Grantee to Grantor which constitute an automatic default and termination and for the removal of Facilities and restoration of the Easement upon termination in accordance with the timeframes as provided in the previous paragraph, the non-defaulting party shall provide the defaulting party advance written notice of the acts or omissions alleged to have constituted a default. The defaulting party shall have a period of thirty (30) days after receipt of such notice to cure the default. If the default cannot be cured within thirty (30) days and the defaulting party is diligently pursuing a cure of the default, the defaulting party may give written notice of extension of the cure period for an additional thirty (30) day period. However, if any default, regardless of diligence, is not cured within sixty (60) days, the non-defaulting party may in addition to pursuing any remedies at law or in equity may terminate the Easement by recording a written notice of termination. This Section 6 shall survive the termination of the Easement.

8. Nothing contained in this Easement shall be deemed to be a gift or dedication to the general public or for any public use or purpose whatsoever, it being the intention of the Parties hereto that this Easement is for the exclusive benefit of the Grantee, its successors and assigns, and that nothing in this Easement, express or implied, shall confer upon any person, other than the Grantor and Grantee, and their successors and assigns, any rights or remedies under or by reason of this Easement. Grantee may only assign this Easement to a not-for-profit entity that has acquired the Benefitted Property.

9. Grantee shall comply with all applicable permits, statutes, ordinances, laws, rules and/or regulations of applicable governmental authorities, including but not limited to South Florida Water Management District permits, rules and regulations (“Approvals”). Grantee shall maintain the water quality of water discharging into the Easement Area from the Benefitted Property in accordance with the Approvals.

10. If any litigation is commenced for the enforcement of this Easement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Easement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys’ fees and other costs incurred in such litigation.

11. This Easement contains the entire agreement of the parties hereto with respect to the subject matter hereof. In the event of any conflict or inconsistency between the terms of this Easement and the O&M Agreement, this Easement shall control.

12. This Easement shall be construed and enforced in accordance with the laws of the State of Florida. The provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13. The Grantor makes no representation or warranty with respect to its title or the condition of the Easement Area and Grantee accepts the Easement Area in its “AS-IS”, “WHERE-IS”, and “WITH ALL FAULTS” condition.

14. Time is of the essence with respect to all obligations under this Easement.

TO HAVE AND TO HOLD this Easement to the use and benefit of the Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the parties hereto have executed this Easement as of the date first set forth above.

[signature page follows]



(Corporate Seal)

GRANTOR:

ATTEST:

SOUTH FLORIDA WATER  
MANAGEMENT  
DISTRICT, a governmental entity of the  
State of Florida created by Chapter 373,  
Florida Statutes

\_\_\_\_\_  
Brenda Low, District Clerk/Secretary

By: \_\_\_\_\_  
Dan O'Keefe, Chairman

Legal Form Approved  
Office of Counsel

By: \_\_\_\_\_  
Abner Cooper

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by Dan O'Keefe and Brenda Low, Governing Board Chairman and District Clerk/Secretary,  
respectively, of the South Florida Water Management District, a governmental entity of the State  
of Florida created by Chapter 373, Florida Statutes, on behalf of the entity, who are personally  
known to me.

\_\_\_\_\_  
Notary Public  
Print: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Witnesses:

GRANTEE:

\_\_\_\_\_  
Signature

PALM BEACH AGGREGATES, LLC, a Florida limited liability company

\_\_\_\_\_  
Printed Name

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

Printed Name: Enrique Tomeu

Title: President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF FLORIDA  
COUNTY OF PALM BEACH

Sworn to and subscribed before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, 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)*

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Notary Printed Name

My Commission Expires: \_\_\_\_\_

**Exhibit C-1**  
**Easement Area Legal Description**

**[Legal description to be finalized prior to Closing]**

**Exhibit C-2**

**Benefitted Property Legal Description**

**[Legal description to be finalized prior to Closing]**

