

FIRST AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND BROWARD COUNTY RELATED TO THE CONSTRUCTION, OWNERSHIP, OPERATION, AND MAINTENANCE OF A REGIONAL RECLAIMED WATER SYSTEM

THIS FIRST AMENDMENT is made and entered into this _____ day of _____, _____, by and between **PALM BEACH COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter “Palm Beach”), and **BROWARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter “Broward”). Palm Beach and Broward are hereinafter sometimes referred to as the “Parties” or individually referred to as a “Party”.

WITNESSETH

WHEREAS, Palm Beach and Broward entered into an Interlocal Agreement Related to the Construction, Ownership, Operation, and Maintenance of a Regional Reclaimed Water System dated April 5, 2016 (Palm Beach County Resolution No. R2016-0470)(the “Agreement”); and

WHEREAS, Palm Beach and Broward wish to amend the Agreement to incorporate a second Regional Point of Connection, to modify certain elements of the Reclaimed Water Quality Parameters and associated testing, and to make other changes.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Palm Beach and Broward hereby covenant and agree as follows:

1. Recitals. The foregoing statements are true and correct and are incorporated herein by reference.
2. Defined Terms. Capitalized terms herein shall have the same meaning ascribed to them in the Agreement.
3. Article 4, “Definitions”, is amended as follows:

“Annual Average Daily Flow” means the average daily flow through the Master Meters, calculated on an annual basis. For example, the Annual Average Daily Flow for a year in which 3,836,150,000 gallons of Reclaimed Water passed through the Master Meters would be 10.51 MGD (3,836,150,000 gallons/365 days = 10.51 MGD).

“Broward’s Reclaimed Water System” means the system owned and operated by Broward for the production and distribution of Reclaimed Water to all retail, wholesale, and bulk customers of Broward, said system being located on Broward’s side of the Regional Points of Connection.

“Master Meter” or, collectively, “Master Meters” means the meters located at the Regional Points of Connection utilized to measure the amount of Reclaimed Water provided by Broward to the RRWS. The Master Meters and meter boxes are not a part of the RRWS Facilities and shall be paid for, supplied by, installed by, owned, operated, and maintained by Broward at Broward’s cost. There are two Master Meters, one located at each Regional Point of Connection, as depicted in **Exhibit “C”**, which is attached hereto and incorporated herein.

“Palm Beach’s Reclaimed Water System” means the system operated by Palm Beach for the distribution of Reclaimed Water to Palm Beach’s Customers, said system being located on Palm Beach’s side of the Regional Points of Connection.

“Regional Points of Connection” means the locations where Broward’s Reclaimed Water System is connected to the RRWS. The Regional Points of Connection, which represent the points of delineation between Broward’s Reclaimed Water System and Palm Beach’s Reclaimed Water System, are as depicted in **Exhibit “C”**. Broward shall attempt and make every good faith effort necessary to provide the minimum pressure of **45 psi** at the Eastern Regional Point of Connection and **42 psi** at the Western Regional Point of Connection.

“Regional Reclaimed Water System” or “RRWS” means Palm Beach’s construction, operation, and maintenance of a Reclaimed Water transmission system designed to deliver Reclaimed Water from the Regional Points of Connection to Customers located in southern Palm Beach County.

“Service Initiation Date” means the date that Reclaimed Water service from Broward to Palm Beach is initiated in accordance with this Agreement (excepting any testing procedures as set forth in Section 6.1.) Unless otherwise agreed to by the parties, the Service Initiation Date shall occur five (5) years after the Effective Date, provided that Broward is able to provide Reclaimed Water at the Regional Points of Connection in accordance with this Agreement. Should Broward not be able to provide Reclaimed Water within five (5) years, the Service Initiation Date shall be the date that Broward is able to provide Reclaimed Water at the Regional Points of Connection in accordance with this Agreement, which shall occur no later than seven (7) years following the Effective Date. Palm Beach’s obligation to pay the Bulk Reclaimed Water Minimum Charge shall begin on the Service Initiation Date, regardless of whether the System Completion Date has occurred.

4. Article 5.6, “Construction Milestones”, is amended as follows:

5.6 Construction Milestones. This Agreement is contingent upon the construction of (a) the RRWS Facilities by Palm Beach and (b) certain facilities on Broward’s side of each Regional Point of Connection by Broward, including modifications to the Plant and a transmission pipeline from the Plant to each Regional Point of Connection. In order for the Parties to provide good faith assurances that said construction is being completed in a timely manner, and in order to enhance the ability to coordinate

timing of financial and project development activities outside the scope of the RRWS, Broward and Palm Beach agree to provide each other with written notice of the completion of the construction milestones set forth in **Exhibit “K”**, which is attached hereto and incorporated herein.

5. Article 6.1, “Minimum Reserve Capacity” is amended as follows:

6.1 Minimum Reserve Capacity. Broward agrees to provide Reclaimed Water to Palm Beach at the Regional Points of Connection in accordance with the following table:

Table 1 – Minimum Reserve Capacity Schedule

YEAR	Minimum Reserve Capacity
Years 1 through 7 following Service Initiation Date	2 MGD
Year 8 until full reimbursement of Actual Project Costs	10.51 MGD

Broward shall provide the Minimum Reserve Capacity set forth above, and Palm Beach shall pay the Bulk Reclaimed Water Minimum Charge for that year, which shall be reduced only in accordance with Section 6.2 below. Palm Beach may also elect to pay for the Minimum Reserve Capacity but not to accept the Reclaimed Water. The parties acknowledge that the Minimum Reserve Capacity is defined on an Annual Average Daily Flow basis, and that, based on climatic conditions and other demand factors, that daily flow rates may be significantly higher or lower throughout the year. In order to meet the peak needs of Palm Beach, Broward shall provide Reclaimed Water to Palm Beach at a rate of up to 1.5 times the Minimum Reserve Capacity on any given day during the Term of this Agreement (the “Peak Flow Rate”). While Broward cannot guarantee the availability of effluent, Broward reasonably believes that it shall have sufficient effluent to meet the Peak Flow Rate, and agrees that it shall: (a) design and construct the Plant in order to meet the Peak Flow Rate; and (b) not enter into any agreements for the sale of Reclaimed Water which will jeopardize its ability to meet the Peak Flow Rate. Broward shall prioritize the delivery of Reclaimed Water to Palm Beach, up to the Peak Flow Rate, over any other customers receiving Reclaimed Water from the Plant. Broward’s agreement to meet the Peak Flow Rate does not modify the Minimum Reserve Capacity reserved under this Agreement. Broward shall make all reasonable efforts to make Reclaimed Water in excess of the Minimum Reserve Capacity available to Palm Beach. The Minimum Reserve Capacity may be modified by letter agreement signed by the Directors of the Broward Water & Wastewater Services and the Palm Beach Water Utilities Department. Broward agrees that testing of the RRWS Facilities will need to occur prior to the System Completion Date, and that, to the extent that Broward is able to do so, Broward will

provide Reclaimed Water to Palm Beach at flow rates lower than the Minimum Reserve Capacity to assist with this testing, to be paid for by Palm Beach at the Bulk Reclaimed Water Rate.

6. Article 6.2 “Reclaimed Water Quality Requirements”, is amended as follows:

6.2 Reclaimed Water Quality Requirements. Broward shall use its best efforts to ensure that the Reclaimed Water supplied to Palm Beach at each Regional Point of Connection meets the Reclaimed Water Quality Parameters set forth in **Exhibit “F,”** which is attached hereto and incorporated herein. Broward shall be responsible for having the Reclaimed Water sampled and tested daily at the Plant or any facility which produces Reclaimed Water which is then provided to Palm Beach through each Regional Point of Connection for the constituents identified in **Exhibit “F”** and as required by Ch. 62-610, Part III, F.A.C. Nothing herein shall preclude Palm Beach from conducting testing for any of the Reclaimed Water Quality Parameters at each Regional Point of Connection. Broward and Palm Beach shall only use State Certified Laboratories. Broward’s daily samples shall be based on a composite sample obtained over a 24-hour period. Broward shall construct, operate, and maintain conventional sample ports and electronic probes for chlorine residual and turbidity monitoring at the Plant, any other facility which produces Reclaimed Water for delivery to Palm Beach in accordance with this Agreement, and each Regional Point of Connection. Palm Beach shall be responsible for any required sampling or testing on the Palm Beach side of each Regional Point of Connection. Palm Beach shall have no obligation to accept or pay for any Reclaimed Water if: (a) the average of the daily samples for any consecutive period of five (5) days at the Plant, any other facility which produces Reclaimed Water for delivery to Palm Beach in accordance with this Agreement, or any Regional Point of Connection fails to meet any of the Reclaimed Water Quality Parameters; (b) any two consecutive daily samples are more than 20% in excess of, or below, as applicable, the Reclaimed Water Quality Parameters; or (c) the Reclaimed Water fails to meet the chlorine residual or turbidity parameters in any individual sample, regardless of whether said sample was taken at the Plant, any other facility which produces Reclaimed Water, or any Regional Point of Connection. The Bulk Reclaimed Water Minimum Charge shall be reduced based on the number of days that Broward is unable to meet the Reclaimed Water Quality Parameters, as set forth in the prior sentence. Broward shall notify Palm Beach of any failure to meet the Reclaimed Water Quality Parameters in a timely manner upon notice of such failure.

7. Article 6.3, “Bulk Reclaimed Water Rate”, is amended as follows:

6.3 Bulk Reclaimed Water Rate. On the Service Initiation Date, the Bulk Reclaimed Water Rate for Reclaimed Water delivered through the Master Meters up to the Minimum Reserve Capacity shall be **\$.05 per one thousand (1,000) gallons.** This rate shall also apply to Reclaimed Water in excess of the Minimum Reserve Capacity, except that, if any Reclaimed Water provided in excess of the

Minimum Reserve Capacity is produced at a treatment facility other than that facility located at the Plant or requires a material expansion to the Plant, then Broward may base the rate for Reclaimed Water greater than the Minimum Reserve Capacity on those rates that Broward charges to other similarly situated large users of the other facility or the expanded Plant, with adjustments based on generally accepted cost of service ratemaking methods accounting for the operating costs incurred by Broward County. The Bulk Reclaimed Water Rate shall remain effective until the Actual Project Costs are fully reimbursed, at which time the Parties shall negotiate a new mutually agreed Bulk Reclaimed Water Rate, which shall be based on the rate that Broward charges to other similarly situated large users of Reclaimed Water, with adjustments based on generally accepted cost of service ratemaking methods to reflect those operating costs incurred by Broward exclusive of Palm Beach's operating costs for the RRWS.

8. Article 6.5, "Determination of Annual Average Daily Flow/True-up", is amended as follows:

6.5 Determination of Annual Average Daily Flow/True-up. Following October 1 of each year, Broward will determine the prior year's Annual Average Daily Flow through each Master Meter, and will true up the prior year's billing, including whether an additional charge is required based on whether the Annual Average Daily Flow exceeds the Minimum Reserve Capacity. An example of the annual true-up calculation is attached hereto and incorporated herein as **Exhibit "G"**. The true-up calculation will then be utilized in the distribution of System Revenues as set forth in Article 8.1 and will be included in November billings.

8. Article 6.6, "Meter Accuracy", is amended as follows:

6.6 Meter Accuracy. Broward shall be responsible for an annual inspection and report prepared regarding the condition and accuracy of each Master Meter. A copy of the annual report on meter inspection shall be furnished to Palm Beach. Palm Beach shall have the right to make its own meter inspection, or to have an independent company inspect the metering equipment at any time; provided, however, no such inspection shall be made unless Palm Beach provides written notice to Broward of the date and time of its intent to have the inspection made, nor shall any such inspection be made prior to twenty-four (24) hours subsequent to the receipt of said notice by Broward. "Receipt" by Broward under the prior sentence may only occur Monday-Friday during business hours, excluding all Broward County holidays. All costs and expenses of Palm Beach's interim inspection shall be borne by Palm Beach. If the meter is found not to be in reasonably good working order, Broward shall reimburse Palm Beach the cost incurred as a result of the interim inspection.

9. Article 6.7, "Time Period Limitation In Case of Master Meter Inaccuracy", is amended as follows:

6.7 Time Period Limitation In Case of Master Meter Inaccuracy. Should a Master Meter be found to be inaccurate beyond applicable industry standards, the

Master Meter will be assumed to have been inaccurate since the time of the meter accuracy failure or since the last meter inspection or for a period of three months, whichever time should be less, and the next monthly billing shall be adjusted accordingly, with either an additional charge or a credit.

10. Article 6.8, “Presumed Flow and Required Payment In Case of Master Meter Inaccuracy”, is amended as follows:

6.8 Presumed Flow and Required Payment In Case of Master Meter Inaccuracy. If at any time a Master Meter is inaccurate with respect to the quantity of Reclaimed Water flow as provided in Section 6.7, the Parties will agree to an appropriate amount of flow to be utilized for determining the additional charge or credit, and shall consider all appropriate factors in determining the approximate flow through the Master Meter, including, but not limited to, flow through the Master Meter during the same period of time in prior years.

11. Article 6.9, “Security”, is amended as follows:

6.9 Security. The Parties shall be responsible jointly and severally for security of the Regional Points of Connection, including provision of access locking features so that each Party can have keyed access to the valve vaults. Each Master Meter will be controlled by valves which can only be operated by representatives of either Broward or Palm Beach County’s respective utilities. Only authorized employees of either Broward or Palm Beach will operate the valves at a Master Meter. Broward and Palm Beach shall provide 1 hour prior notice, except in emergency situations, to each other prior to operating valves at a Master Meter or any valve in the RRWS, or on Broward’s transmission main, that would stop flow through the meter.

12. Article 8, “System Revenues/Payment Hierarchy”, is amended as follows:

8. System Revenues/Payment Hierarchy. On or after October 1 of each year, the Parties will calculate the annual System Revenues for the previous fiscal year (October 1-September 30). For purposes of this Agreement, System Revenues shall be calculated by multiplying the annual amount of Reclaimed Water measured at each Master Meter by the Effective Retail Rate in effect at the time the Reclaimed Water flows through the meter. For example, if the Master Meter registers 4,000,000,000 gallons for the prior year, and the Effective Retail Rate for that year is \$.60 per thousand gallons, the System Revenues for said year are 2,400,000. The calculation of System Revenues is unrelated to the Minimum Reserve Capacity. The yearly System Revenues shall be distributed in accordance with the hierarchy set forth in sections 8.1, 8.2, 8.3 and 8.4 below. This payment hierarchy shall terminate following full reimbursement of the Actual Project Costs and conveyance of the RRWS Facilities to Palm Beach in accordance with Section 9, and will be replaced by a payment by Palm Beach to Broward of the negotiated Bulk Reclaimed Water Rate multiplied by the annual amount of Reclaimed Water measured at the Master Meter in accordance with Section 6.3.

13. Article 8.1, "Bulk Reclaimed Water Rate Payments", is amended as follows:

8.1 Bulk Reclaimed Water Rate Payments. Payment for Reclaimed Water delivered and recorded at a Master Meter, at the applicable Bulk Reclaimed Water Rate as represented in Article 6.3, shall have first priority for payment from the System Revenues. True-up costs for flow below the Minimum Reserve Capacity shall also have a first priority of payment. Palm Beach will receive a credit for monthly payments made during the prior year in accordance with Section 6.4 above. Palm Beach shall be responsible for the payment of the Bulk Reclaimed Water Minimum Charge following the Service Initiation Date, regardless of whether there are sufficient System Revenues.

14. **Exhibit "C"** and **Exhibit "D"** to the Agreement are replaced with **Revised Exhibit "C"** and **Revised Exhibit "D"**, both of which are attached hereto and incorporated herein.

15. All other provisions of the Agreement, dated April 5, 2016, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

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IN WITNESS WHEREOF, Broward and Palm Beach have executed or have caused this First Amendment, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

PALM BEACH

ATTEST:

**SHARON R. BOCK
CLERK AND COMPTROLLER**

**PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
_____, Mayor

(SEAL)

**APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
County Attorney

By: _____
Director of Water Utilities

BROWARD

ATTEST:


**BROWARD COUNTY, by and through its
BOARD OF COUNTY COMMISSIONERS**

County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

By: _____
Barbara Sharief, Mayor

Date: _____

**Approved as to form by
Office of the County Attorney
for Broward County, Florida**
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County Attorney
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Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By  _____
Michael J. Kerr
Deputy County Attorney

Date: 5/10/17