

ITEM #26

**Exhibit 2 – Amendment to Capacity Allocation Agreement
(Changes include the updated deadline and signature pages)**

ADDITIONAL MATERIAL

Regular Meeting

MARCH 28, 2019

SUBMITTED AT THE REQUEST OF

OFFICE OF THE COUNTY ATTORNEY

**FIRST AMENDMENT TO
AGREEMENT FOR CAPACITY ALLOCATION
IN PHASE 1 OF THE C-51 RESERVOIR
BROWARD COUNTY, FLORIDA**

This First Amendment ("First Amendment") to the Agreement for Capacity Allocation in Phase 1 of the C-51 Reservoir (the "Agreement") by and between Palm Beach Aggregates, LLC ("Company"), a Florida limited liability company, with its principal offices at 20125 State Road 80, P.O. Box 700, Loxahatchee, Florida 33470, and Broward County, Florida ("Participant"), a political subdivision of the State of Florida, whose address is 2555 W. Copans Road, Pompano Beach, Florida 33069 (collectively, the "Parties"), is entered into and effective as of the date the First Amendment is fully executed by the Parties ("Effective Date").

Recitals

A. The Parties entered into the Agreement on May 2, 2017 to provide for surface water storage capacity in the proposed collaborative development project known as the C-51 Reservoir, as further described in the Agreement ("C-51 Reservoir"), which is intended to be constructed in two phases.

B. The Agreement provides for an allocation to Participant of six (6) million gallons per day of storage in Phase 1 of the C-51 Reservoir, as further described in the Agreement ("Phase 1 Reservoir").

C. Despite the best efforts of the Parties, it has taken longer than anticipated to satisfy certain conditions precedent set forth in the Agreement, and the Parties desire to amend the Agreement to extend the relevant time periods thereunder and to continue working together towards completion of the Phase 1 Reservoir project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are true and correct, and are incorporated herein by reference.
2. Unless otherwise stated, for paragraphs 3 – 4 below, words in ~~struck through~~ type are deletions from existing text and words in underline type (aside from previously included headings) are additions to existing text.

3. Section 3.2 of the Agreement is hereby amended, in part, as follows:

3.2 **Termination.** Upon delivery of written notice to Company, as defined by Article 15 below, Participant may terminate this Agreement:

3.2.1 If Company fails to notify Participant, on or before ~~June 30, 2018~~

November 30, 2019, that it has sufficient permits, commitments, and financing to commence the construction of the Phase 1 Reservoir; or

....

4. Section 11.1 of the Agreement is hereby amended, in part, as follows:

11.1 All of Company's obligations under this Agreement are expressly made subject to all of the following conditions, which Company agrees to use its reasonable efforts to promptly pursue and satisfy, time being of the essence:

....

11.1.2 Company's securing full Construction Financing for the Phase 1 Reservoir ~~within ninety (90) days after the Minimum Reserved Capacity Date on or before November 30, 2019~~, with a closing date within ninety (90) days thereafter (the "Phase 1 Construction Finance Date"). On or before the tenth (10th) day after the Phase 1 Construction Finance Date, and at least ~~forty five (45)~~ sixty (60) days before the closing date for Construction Financing, Company shall notify Participant in writing of the Phase 1 Construction Finance Date, as well as the anticipated closing date for Construction Financing.

....

5. The Agreement is hereby amended to include an Appendix D (C-51 Reservoir – Phase 1 Project Completion Schedule), attached hereto and incorporated herein. Company shall use its best efforts to achieve the project milestones listed in Appendix D within the time periods specified. If Company anticipates a delay in achieving any of the project milestones listed in Appendix D, Company shall promptly notify Participant in writing of such anticipated delay.

6. Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict or ambiguity between this First Amendment and the Agreement, this First Amendment shall control.

7. This First Amendment is effective on the Effective Date, and may be executed by the Parties in counterparts which, when taken together, shall have the force and effect of an original binding document.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have made and executed this First Amendment on the respective dates under each signature: Broward County, signing by and through its Mayor or Vice-Mayor, duly authorized to execute same by Board action on the _____ day of _____, 2019, and Palm Beach Aggregates, LLC, signing by and through its _____, duly authorized to execute same.

PARTICIPANT

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

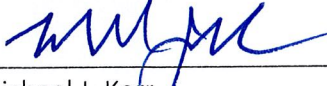
Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____, 2019

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By  03/18/19

Keoki M. Baron (Date)
Assistant County Attorney


By  3/18/19

Michael J. Kerr (Date)
Deputy County Attorney

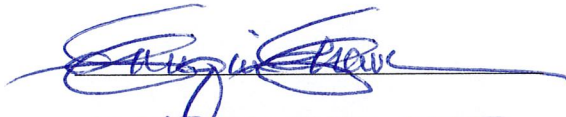
COMPANY

PALM BEACH AGGREGATES, LLC,
a Florida limited liability company


WITNESSES:



Christopher B. Cortez
Print Name



ENRIQUE ECHAIS
Print Name


By: _____
Name: Enrique Tomeu
Its: President
Date: 3/15/19

Appendix D

**C-51 Reservoir – Phase 1
Project Completion Schedule**
Revised November 26, 2018

Description	Milestone Dates
Construction Financing Commitment	June 30, 2019
Notice of Construction Financing Commitment	July 10, 2019
Closing on Construction Financing	September 30, 2019
Commencement of Construction	October 2019
Construction Substantial Completion	August 2021
Operational Testing	September 2021
Final Cleanup and Demobilization	September 2021
Closing and Turnover to C-51 Reservoir, Inc.	October 2021
Commencement of Operations	October 2021