

Agenda Item #:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

TIME CERTAIN
11:00 A.M.

Meeting Date: August 18, 2015

[] Consent
[] Ordinance

[X] Regular
[] Public Hearing

Department: Facilities Development & Operations
For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A) Interlocal Agreement with the East Central Regional Wastewater Treatment Facilities Operation Board (ECR Board) and the City of West Palm Beach Related to Reclaimed Water Mains for the construction, operation, and maintenance of reclaimed water facilities within the ECR property (the "ECR Agreement"); and
B) Interlocal Agreement with the City of West Palm Beach for the Purchase of Bulk Reclaimed Water by the City from the County (the "Bulk Purchase Agreement"); and
C) Interlocal Agreement with the City of West Palm Beach for the Sale and Purchase of Reclaimed Water ("the Retail Agreement") to provide reclaimed water to serve irrigation needs of the Major League Spring Training Facility.

Summary: The County's Major League Spring Training complex (the "Facility") will require reclaimed water for irrigation. Construction of a pipeline from the East Central Regional Wastewater Treatment Facilities (ECRWTF) will be required in order to provide reclaimed water to the Facility. Pursuant to the Retail Agreement, the County will design and construct a pipeline and metering facilities connecting the ECRWTF to the Facility. The cost of this project will be borne by the County and funded as part of the Facility project budget. The County Water Utilities Department will administer this project. Upon completion of construction, the pipeline and metering facilities will be owned, operated and maintained by the City. The County will design and construct the connecting and metering facilities necessary to connect the pipeline to the ECRWTF pursuant to the ECR Agreement. Those costs will be borne by the County and funded out of the Facility project budget. The County Water Utilities Department will sell reclaimed water to the City pursuant to the Bulk Purchase Agreement. These agreements are only necessary as a result of the development of the Facility and approval is being considered as a companion to the Interlocal Agreement, Developer Agreement and Sports Facility Use Agreement. (PREM) District 7 (MWJ)

Background and Policy Issues: Due to the large volume of water required for irrigation of the ballfields at the Facility and the previous use of the Site as a landfill, the City and regulatory agencies will not allow groundwater wells as a source of water for irrigation. Use of reclaimed water will avoid the potential for irrigation to draw down the groundwater and change the direction of groundwater flows. The planned approach is to discharge reclaimed water into the onsite lake and withdraw irrigation water from the lake.

The County Water Utilities Department (WUD) has excess capacity remaining from its FPL/West County Energy Center reclaimed water project located at the ECRWTF which WUD has agreed to make available to the City pursuant to the Bulk Purchase Agreement, and the City will "re-sell" to the County/Teams for irrigation of the Facility pursuant to the Retail Agreement. The provision of Reclaimed Water under both the Bulk Purchase Agreement and the Retail Agreement shall be on an interruptible basis as required under the Reclaimed Water Agreement with FPL (R2008-0906).

Continued on Page 3

Attachments:

- 1. ECR Agreement
2. Bulk Purchase Agreement
3. Retail Agreement

Recommended By: [Signature] Department Director Date: 8/13/15
Approved By: [Signature] County Administrator Date: 8/18/15

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No direct fiscal impact associated with these 3 agreements. Funding for design and construction will be provided from the Facility project budget. Fiscal impact will be provided at the time WUD enters into contracts for construction of the reclaimed water project.

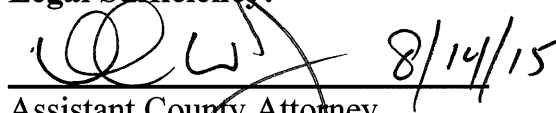
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 _____ OFMB staff 8/14/15	 _____ Contract Development and Control 8/14/15
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B. Legal Sufficiency:



 Assistant County Attorney
 8/14/15

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

Background and Policy Issues Continued:

The provision of reclaimed water to the Facility will require construction of a pipeline and metering facilities connecting the ECRWTF to the Facility. The Retail Agreement provides for the County, through WUD, to administer the design and construction of the pipeline and metering facilities. Exhibit "E" to the Retail Agreement identifies the responsibilities of WUD, the Teams' consultants and the City for various aspects of design and construction. All costs associated with this project will be the responsibility of the County and funded as part of the Facility project budget. The Development Agreement passes these costs through to the Teams.

The ECR Agreement provides the County the right to construct, operate and maintain the connecting and metering facilities on the ECR property which are necessary to connect the pipeline to the ECRWTF.

**INTERLOCAL AGREEMENT AMONG THE
EAST CENTRAL REGIONAL WASTEWATER TREATMENT FACILITIES
OPERATION BOARD
THE CITY OF WEST PALM BEACH
AND
PALM BEACH COUNTY
RELATED TO RECLAIMED WATER MAINS**

WPB Contract No. 16115

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2015, by and among the **EAST CENTRAL REGIONAL WASTEWATER TREATMENT FACILITIES OPERATION BOARD**, a legal entity created under the terms of Chapter 163, Fla. Stat., through its agent, the City of West Palm Beach (hereinafter "ECR"), the **CITY OF WEST PALM BEACH**, a municipality organized under the laws of the State of Florida (hereinafter "WPB"), and **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County")

WITNESSETH:

WHEREAS, Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969, provides a method for governmental entities to cooperate with each other on a basis of mutual advantage to provide services and facilities in a manner that will accord best with the factors influencing the needs and development of local communities; and

WHEREAS, the ECR was organized and operates pursuant to that certain Interlocal Agreement among Palm Beach County, City of West Palm Beach, the Town of Palm Beach, the City of Riviera Beach and the City of Lake Worth, dated September 9, 1992 (hereinafter the "Interlocal Agreement"); and

WHEREAS, pursuant to Section 7 of the Interlocal Agreement, each of the entity members of the ECR has the right to expand the Facilities, as that term is defined in the Interlocal Agreement, subject to, among other conditions, the execution and delivery of an agreement between the ECR and the entity or entities participating in the expansion; and

WHEREAS, the ECR and the City of West Palm Beach entered into an Interlocal Agreement dated January 8, 2001 Concerning the Construction, Operation and Maintenance of Reclaimed Water Production Facilities at the ECR; and

WHEREAS, the ECR and Palm Beach County entered into an Interlocal Agreement dated March 12, 2008 (County Resolution R2008 2087) between Palm Beach County and the ECR Board, and that Interlocal Agreement Among the East Central Regional Wastewater Treatment Facilities Operation Board, City of West Palm Beach and Palm Beach County Related to Construction, Operation and Maintenance of Reclaimed Water Facilities, dated May 20, 2008 (County Resolution R2008 0907)(collectively, the County Reclaimed Water Facility

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Interlocals) regarding the County's construction of a Reclaimed Water Facility at the ECR to provide Reclaimed Water service to Florida Power & Light (FPL); and

WHEREAS, the County and FPL entered into a Reclaimed Water Agreement ("FPL Reclaimed Agreement") dated May 20, 2008 (County Resolution No. R2008-0906), in which the County agreed to provide FPL with Reclaimed Water from the Reclaimed Water Facilities; and

WHEREAS, the County and WPB are in the process of negotiating various agreements relating to the development of a spring training baseball facility (the "Haverhill Ball Park"); and

WHEREAS, South Florida Water Management District is requiring that surface water withdrawals at the Haverhill Ball Park from the 13 acre lake be augmented with Reclaimed Water as a condition of the consumptive use permit to irrigate the 154 acre site; and

WHEREAS, WPB was approached by the County to provide Reclaimed Water for irrigation at the Haverhill Ball Park by May 2016; and

WHEREAS, although the capacity of the County's Reclaimed Water Facility has been committed to FPL, FPL is not currently utilizing all of its committed Reclaimed Water capacity, and FPL is agreeable to the sale by the County, on an Interruptible Reclaimed Service basis, of its Reclaimed Water for the Haverhill Ball Park; and

WHEREAS, pursuant to the County Reclaimed Water Facility Interlocals, the County may utilize Reclaimed Water received from the ECR for any and all purposes allowed under all applicable laws; and

WHEREAS, WPB has been working with the County regarding the alignment of a Reclaimed Water main from the Reclaimed Water Facility to the Haverhill Ball Park site; and

WHEREAS, the ECR, County and WPB desire to enter into an agreement to establish the agreements necessary to install facilities at the ECR plant to allow for the provision of Reclaimed Water service to the Haverhill Ball Park;

NOW THEREFORE, in consideration of the recitals, covenants, agreements and promises herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties, the parties covenant and agree as follows:

SECTION 1. ACKNOWLEDGMENTS.

1.1 The parties acknowledge and agree that the preceding premises of this Agreement are true and correct and are incorporated herein by reference.

1.2 Each of the parties hereto hereby represents and warrants that it has all requisite power and authority to enter into this Agreement and to carry out its obligations hereunder.

1.3 Each of the parties acknowledges and agrees that the use of Reclaimed Water is in the public interest, as it recaptures an otherwise wasted and unused water resource.

1.4 The parties acknowledge that this Agreement is intended to satisfy the requirements of Rule 62-610.320(1)(b) F.A.C., as amended from time to time.

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SECTION 2. DEFINITIONS. The parties agree that in construing this Agreement the following terms shall have the meanings indicated:

2.1 "Agreement" means this Interlocal Agreement between the ECR, WPB and the County related to Reclaimed Water Mains.

2.2 "AWT Treatment Facility" means the ECR advanced water treatment facility installed by WPB pursuant to the WPB AWT Interlocal Agreement.

2.3 "AWT Reclaimed Water Main" means that ECR Reclaimed Water transmission line installed by WPB pursuant to the WPB AWT Interlocal Agreement.

2.4 "Connecting Reclaimed Water Mains" has the meaning set forth in Section 3.1.

2.5 "County Reclaimed Water Facility Interlocals" has the meaning set forth in the Recitals.

2.6 "ECR Property" means that certain real property described in the Interlocal Agreement upon which the ECR treatment plant facilities are located.

2.7 "Facilities" shall have the meaning ascribed to this term in the Interlocal Agreement.

2.8 "FDEP" means the Florida Department of Environmental Protection, and its successors.

2.9 "FDEP Plant Permit" means the FDEP permit for the operation of the Wastewater Treatment Facilities.

2.10 "FPL" has the meaning set forth in the Recitals.

2.11 "FPL Reclaimed Agreement" has the meaning set forth in the Recitals.

2.12 "Haverhill Ball Park" has the meaning set forth in the Recitals.

2.13 "Interlocal Agreement" means that Interlocal Agreement among Palm Beach County, City of West Palm Beach, the Town of Palm Beach, the City of Riviera Beach and the City of Lake Worth, dated September 9, 1992.

2.14 "Interruptible Reclaimed Service" mean Reclaimed Water service from the County to WPB which is subject to curtailment or cessation of delivery by the County at any time in order to only provide Reclaimed Service to FPL in accordance with the FPL Reclaimed Agreement.

2.15 "Meter" means that meter constructed by County in conjunction with the Connecting Reclaimed Water Mains to meter the distribution of Reclaimed Water from County to WPB as shown on Exhibit "A" to this Agreement.

2.16 "Reclaimed Water" means Secondary Treated Effluent that has been further treated in the Reclaimed Water Facility.

2.17 "Reclaimed Water Facility" means the facilities constructed on ECR Property by the County pursuant to the County Reclaimed Water Facility Interlocals.

2.18 "Secondary Treated Effluent" means wastewater which has received secondary treatment in the Wastewater Treatment Facilities.

2.19 "Wastewater Treatment Facilities" means the ECR facilities used in the treatment and disposal of wastewater, not including the Reclaimed Water Facility or the AWT Treatment Facility.

2.20 "WPB AWT Interlocal" means that Interlocal Agreement between the City of West Palm Beach and the ECR Board, dated January 8, 2001 Concerning the Construction, Operation and Maintenance of Reclaimed Water Production Facilities at the ECR.

All other capitalized terms in this Agreement shall have the meaning ascribed to them in the Interlocal Agreement unless otherwise defined in this Section or elsewhere in this Agreement.

SECTION 3. CONSTRUCTION & USE OF RECLAIMED WATER MAINS.

3.1 Construction of Connecting Reclaimed Water Mains. ECR hereby grants to the County the right to construct connecting pipelines for the transmission of Reclaimed Water from the County Reclaimed Water Facility to the AWT Reclaimed Water Main and to the ECR Property line, in two (2) locations, as shown on Exhibit "A" (the "Connecting Reclaimed Water Mains"). The County, for the benefit of WPB, will construct the Connecting Reclaimed Water Mains and the associated Meter. The County will use its best efforts to have the Connecting Reclaimed Water Main designed and constructed within the parameters set forth in Exhibit "A." If the County determines that the parameters set forth in Exhibit "A" will or may not be met, the County shall submit to the ECR a revised Exhibit "A" for approval by the ECR. The ECR agrees to grant a Temporary Construction Easement to the County to enable access to and construction of the Connecting Reclaimed Water Mains. The form of the Temporary Construction Easement shall be the document attached hereto and incorporated herein as Exhibit "B."

3.2 Design, Financing, Contracting and Construction of Connecting Reclaimed Water Main. The County may design, bid, contract for, permit and construct the Connecting Reclaimed Water Mains, or designate other parties to perform those duties, in accordance with the County procurement process. The County shall fund and pay directly all costs and expenses of design, bidding, financing, permitting and construction of the Connecting Reclaimed Water Main. The County shall include in its contract(s) for the construction of the Connecting Reclaimed Water Mains (the "Construction Contract(s)") the requirements regarding insurance and bonds set forth in this Agreement. The County shall be responsible for the cost of any damages or repairs to the ECR Wastewater Treatment Facilities and ECR Property arising out of, related to or resulting from the construction, of the Connecting Reclaimed Water Mains (the "County Damage Costs"). The County may utilize the Dispute Resolution Provisions set forth in Section 6 below to dispute any County Damage Costs. The County shall comply with the County's procurement ordinances, policies, and procedures in the bidding and selection of contractors for the construction of the Connecting Reclaimed Water Mains. The County shall not be subject to the WPB procurement code with respect to the design, bidding or contracting for the Connecting Reclaimed Water Mains.

3.3 Construction Insurance/Bonds.

a) The County shall require that all insurance policies required under the County's Construction Contracts for the Connecting Reclaimed Water Mains name the County, ECR and WPB as insured parties. County shall also require that any payment, performance, or other Connecting Reclaimed Water Main Interlocal ECR/WPB/PBC

bonds provided by County contractors for the Connecting Reclaimed Water Mains name the County, the ECR and WPB as co-obligees of the bonds.

b) During the course of construction, the County or its contractor shall maintain builder's risk insurance on the Connecting Reclaimed Water Mains in an amount equal to the contract value as well as subsequent modifications of that sum. The County shall be solely liable for all property insurance deductible or self-insurance retention.

c) The County shall include a provision in the Construction Contract(s) providing that the ECR and WPB are intended third party beneficiaries of the Construction Contract(s). The County shall include in the Construction Contract(s) a requirement that the contractor(s) and subcontractor(s) shall indemnify and hold harmless the ECR and WPB for the cost of any injuries, damages or repairs to the ECR Wastewater Treatment Facilities and ECR Property arising out of, related to or resulting from the construction of the Connecting Reclaimed Water Mains.

3.4 Permits and Approvals. The County shall be responsible for obtaining all required governmental permits and approvals for the construction of the Connecting Reclaimed Water Mains. In the event that the ECR's FDEP Plant Permit must be amended to accommodate the construction of the Connecting Reclaimed Water Mains, the County shall submit such amendment to the ECR for approval prior to submission to the FDEP, and shall submit any FDEP proposed modifications to the ECR for approval prior to acceptance and final issuance by the FDEP. No amendment to the Plant Permit shall have the effect of revising the permittee and plant operator to an entity other than WPB. The County shall be responsible for the cost of any additional ECR Plant capital or operating obligations imposed by the FDEP in any amended Plant Permit, where amendment of the Plant Permit is caused by the construction or operation of the Connecting Reclaimed Water Mains. The ECR shall cooperate with the County in all applications and other efforts to obtain and maintain such governmental permits and approvals.

3.5 Ownership. County shall deliver or cause to be delivered title to the Connecting Reclaimed Water Mains to ECR upon completion of construction of same, together with all warranties related thereto. The County, WPB and ECR acknowledge that the Connecting Reclaimed Water Mains shall be owned by the ECR as a portion of the ECR Property operated and maintained by WPB. The County, WPB and ECR acknowledge and agree that the Meter constructed by the County shall be owned, operated, maintained and replaced by the County. If the Meter is located on ECR Property, ECR agrees to grant the County a license for such purpose, in the form attached hereto and incorporated herein as **Exhibit "C"**.

3.6 Beneficial Use. The ECR, County and WPB acknowledge and agree that WPB shall have the sole beneficial use and allocated operating and renewal and replacement cost of the Connecting Reclaimed Water Mains.

3.7 Costs for Use. There shall be no direct charge to either the County or WPB for the use of ECR Property for the Connecting Reclaimed Water Mains.

3.8 The parties acknowledge that the Connecting Reclaimed Water Mains are being constructed by the County for the ECR, for the benefit of WPB, to facilitate WPB providing Reclaimed Water to the Haverhill Ball Park, which will require the construction of certain offsite

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transmission lines outside the ECR Property. County and/or City, as they agree between themselves outside of this Agreement, shall be responsible for the bidding, financing, permitting, construction, operation and maintenance of the offsite transmission lines.

SECTION 4. OTHER ACKNOWLEDGEMENTS.

4.1 Allocated Secondary Treated Effluent. The parties acknowledge that the Reclaimed Water to be provided by the County to WPB for the Haverhill Ball Park is Allocated Secondary Treated Effluent, which has been allocated to County pursuant to ECR Resolution 04-97 and the County Reclaimed Water Facility Interlocals.

4.2 Use. The parties acknowledge that pursuant to the County Reclaimed Water Facility Interlocals, the County may utilize the Allocated Secondary Treated Effluent received from the ECR for any and all purposes allowed under all applicable laws.

4.3 No Liability. WPB expressly acknowledges that neither the ECR nor any of the other Entities shall have any contractual relationship or privity with any WPB Reclaimed Water customers and that WPB customers are not intended third party beneficiaries of this Agreement. The ECR shall have no liability or responsibility to either WPB or the County arising out of or related to the failure of the County to deliver Reclaimed Water to WPB or the failure of WPB to deliver Reclaimed Water to WPB Reclaimed Water customers. Neither the County nor any other individual Entities shall have any liability or responsibility to WPB Reclaimed Water customers arising out of or related to this Agreement, including but not limited to, claims based on the failure to deliver Secondary Treated Effluent nor the failure of the County or WPB to deliver Reclaimed Water to the WPB customers.

4.4 Reclaimed Water Use Credits. Any alternative water supply credits, Reclaimed Water use credits, surficial aquifer water supply offsets or like credits, offsets or benefits (collectively "Reclaimed Water Use Credits") that are or may be in the future granted by the South Florida Water Management District or other entity for the Reclaimed Water provided to WPB via the Connecting Reclaimed Water Main and delivered to WPB Reclaimed Water customers shall be allocated to WPB. The parties expressly acknowledge that the final determination as to whether such Reclaimed Water Use Credits are granted and in what proportion such Reclaimed Water Use Credits are granted will be determined by entities that are not parties to this Agreement.

4.5 Right to Terminate. The parties acknowledge that WPB and the County's need for the construction of the Connecting Reclaimed Water Main is contingent upon WPB and the County entering into a separate Reclaimed Water agreement, and the County entering into an agreement(s) with an entity/entities not a party to this Agreement for the acquisition and development of the Haverhill Ball Park. If, for any reason, the WPB and/or the County fails to enter into said agreement(s), or, if said agreement(s) is/are terminated prior to the termination of this Agreement, WPB and the County shall be permitted to terminate this Agreement upon written notice to the ECR. Upon termination of this Agreement pursuant to this section, the County and WPB shall be responsible for all obligations to the ECR under this Agreement accrued as of the date of termination, including, but not limited to, restoration of any ECR Property that may have been disturbed before the termination.

SECTION 5. TERM AND EFFECTIVE DATE. The Effective Date of this Agreement shall be the date the Agreement is approved by the Palm Beach County Board of County Commissioners and filed with the Clerk of the County Court pursuant to 163.01(11), Florida Statutes (the "Effective Date"). The Term of this Agreement shall begin on the Effective Date and remain in effect for a period of thirty (30) years. The Term of this Agreement may be extended for three (3) successive periods of ten (10) years each, upon the same terms and conditions as herein provided, by written agreement of both of the parties to this Agreement prior to expiration of the initial term of this Agreement or any renewal thereof.

SECTION 6. DISPUTE RESOLUTION. Disputes under this Agreement may be resolved by the County's Authorized Representative, WPB's Authorized Representative and ECR's Authorized Representative. If such Authorized Representatives are unable to reach a resolution and either party believes that the issue is of sufficient merit, the parties shall select a mediator mutually acceptable to all parties to conduct a non-binding mediation of the issues involved and make a recommendation to the parties. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that each party shall pay the mediator's fees and costs in equal amounts.

SECTION 7. MISCELLANEOUS PROVISIONS.

7.1 This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior contemporaneous representatives or agreements, whether oral or written.

7.2 This Agreement may be amended only by written agreement of the parties. A party requesting amendment of the Agreement must propose such amendment in writing to the other party at least forty-five (45) days prior to the proposed effective date of the amendment.

7.3 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent be held invalid or unenforceable for the remainder of this Agreement, then the Application of such term or provision to person or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

7.4. Any notice, request, demand, consent approval or other communication required or permitted by this Agreement shall be given or made in writing and shall be served (as elected by the party giving such notice) by one of the following methods: (i) hand delivery to the other party; (ii) delivery by commercial overnight courier service; or (iii) mailed by registered or certified mail (postage prepaid), return receipt requested.

For purposes of notice the addresses are:

COUNTY:

Palm Beach County Water Utilities
Department Director
8100 Forest Hill Boulevard
West Palm Beach, FL 33416

With a copy to:

Palm Beach County Attorney
301 N. Olive Ave., Ste. 601
West Palm Beach, FL 33401

ECR:

East Central Regional Wastewater
Treatment Facility Operations Board
Attn: Executive Manager
4375 Easley Drive
West Palm Beach, FL 33409
Telephone: (561) 835-7400
Fax: (561) 835-7420

With a copy to:

Greenberg Traurig, P.A.
Attn: Phillip Gildan
777 So. Flagler Drive
Suite 300 East
West Palm Beach, FL 33401
Fax: (561) 838-8867

WPB:

City of West Palm Beach
Attn: Public Utilities Director
401 Clematis Street
West Palm Beach, FL 33401

With a copy to

City of West Palm Beach
Attn: City Attorney
City Hall
P.O. Box 3366
West Palm Beach, FL 33402-3366

Notice given in accordance with the provision of this paragraph shall be deemed to be delivered and effective on the date of hand delivery or on the second day after the date of the deposit with an overnight courier or 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 delivered if mailed.

7.5. The Project Manager/Authorized Representative for the ECR is the ECR Executive Manager. The Project Manager/Authorized Representative for the County is the County Water Utilities Department Director. The Authorized Representative for WPB County is the Assistant City Administrator for Public Utilities. Each party retains the right to substitute a new or additional Project Manager/Authorized Representative at any time and from time to time by written notice to the other.

7.6. Should any party to this Agreement determine that any other is in default of any of the terms and conditions of this Agreement, written notice shall be given by a non-defaulting party allowing the defaulting party thirty (30) days from the date of receipt of such written notice to cure the defaults, with copy of such notice to the third party. Prior to the initiation of any legal proceedings among or between the parties, the parties shall comply with any state laws related to resolving disputes between local governments. In the event of default by a party to this Agreement, all parties shall have all remedies available under the laws of the State of Florida including but not limited to injunction to prevent default or specific performance to enforce this

Agreement, subject to state law. The rights of the parties shall be considered cumulative and shall not be waived now or in the future by the exercise of any rights and remedies provided under the terms of this Agreement and authorized by law.

7.7. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

7.8. When the required time for performance of an action under this Agreement falls on a weekend day or holiday, the time for performance shall be extended to the next calendar day not falling on a weekend or holiday.

7.9. Notwithstanding any other provisions of this Agreement, ECR, County and WPB expressly acknowledge that they have no pledge of or lien upon any real property, personal property, or any existing or future revenue source of the other as security for any amounts of money payable under this Agreement.

7.10. In the event that the performance of this Agreement by any party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of such party, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or water plant failures and water main breaks, such party shall not be liable for such non-performance.

7.11. The failure of a party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.

7.12. Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. The governing bodies for the County, WPB and the ECR shall each maintain all legislative authority with regard to their respective political subdivision. All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and pensions and relief, disability, workers compensation and other benefits which apply to the activity of officers, agents or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement.

7.13. The County, WPB and the ECR shall each maintain adequate records pursuant to this Agreement for at least the minimum period required by Chapter 119, Florida Statutes, or final resolution of matters resulting from any litigation or claim, whichever period is longer. Both parties to this Agreement reserve the right, upon reasonable request and during normal business hours, to have access to such books, records, and documents as required in this section for the purpose of inspection.

7.14. This Agreement cannot be assigned by any party without the prior written approval of the other parties.

7.15. The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation,

gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

Pursuant to County Resolution R-2014-1421, as may be amended, WPB and ECR shall be required to submit a copy of their respective non-discrimination policies which shall be consistent with the policy of Palm Beach County stated above, prior to entering into any contract with Palm Beach County. Should WPB or ECR not have a written non-discrimination policy, a signed statement affirming WPB's and ECR's non-discrimination policy is in conformance with Palm Beach County's policy will be required.

7.16 No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to any other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

7.17 Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

7.18 Palm Beach County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.

7.19 No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of WPB, ECR, and/or the County.

7.20 The parties hereto acknowledge that this Agreement is being entered into in relation to the construction, development and operation of the Haverhill Ball Park, which is subject to the approval and continued effectiveness of the following agreements: (1) the Developer Agreement between the County and HW Spring Training Complex, LLC; (2) the Sports Facility and Use Agreement between the County and HW Spring Training Complex, LLC; (3) the Interlocal Agreement between the City and the County related to the exchange of properties; (4) the Interlocal Agreement between Palm Beach County and the City of West Palm Beach for the Purchase of Bulk Reclaimed Water; and (5) the Interlocal Agreement for the Sale and Purchase of Reclaimed Water between the City and County (collectively the "Baseball

Agreements"). To the extent that any of the Baseball Agreements are not approved, not effective, or are terminated, the parties agree that this Agreement may be terminated by any party hereto by providing five (5) days written notice to the other party(s).

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day, month and year aforesaid.

ATTEST:

City Clerk

**EAST CENTRAL REGIONAL
WASTEWATER TREATMENT FACILITIES
OPERATION BOARD**
By its agent: CITY OF WEST PALM BEACH

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: _____

By: _____
Geraldine Muoio, Mayor

Dated: _____, 2015

ATTEST:
SHARON R. BOCK

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

By: _____
Clerk and Comptroller

By: _____
Shelley Vana, Mayor

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Date: _____

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS:

By: Army Wolf
Department Director

ATTEST:

CITY OF WEST PALM

City Clerk

By: _____
Geraldine Muoio, Mayor

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: _____

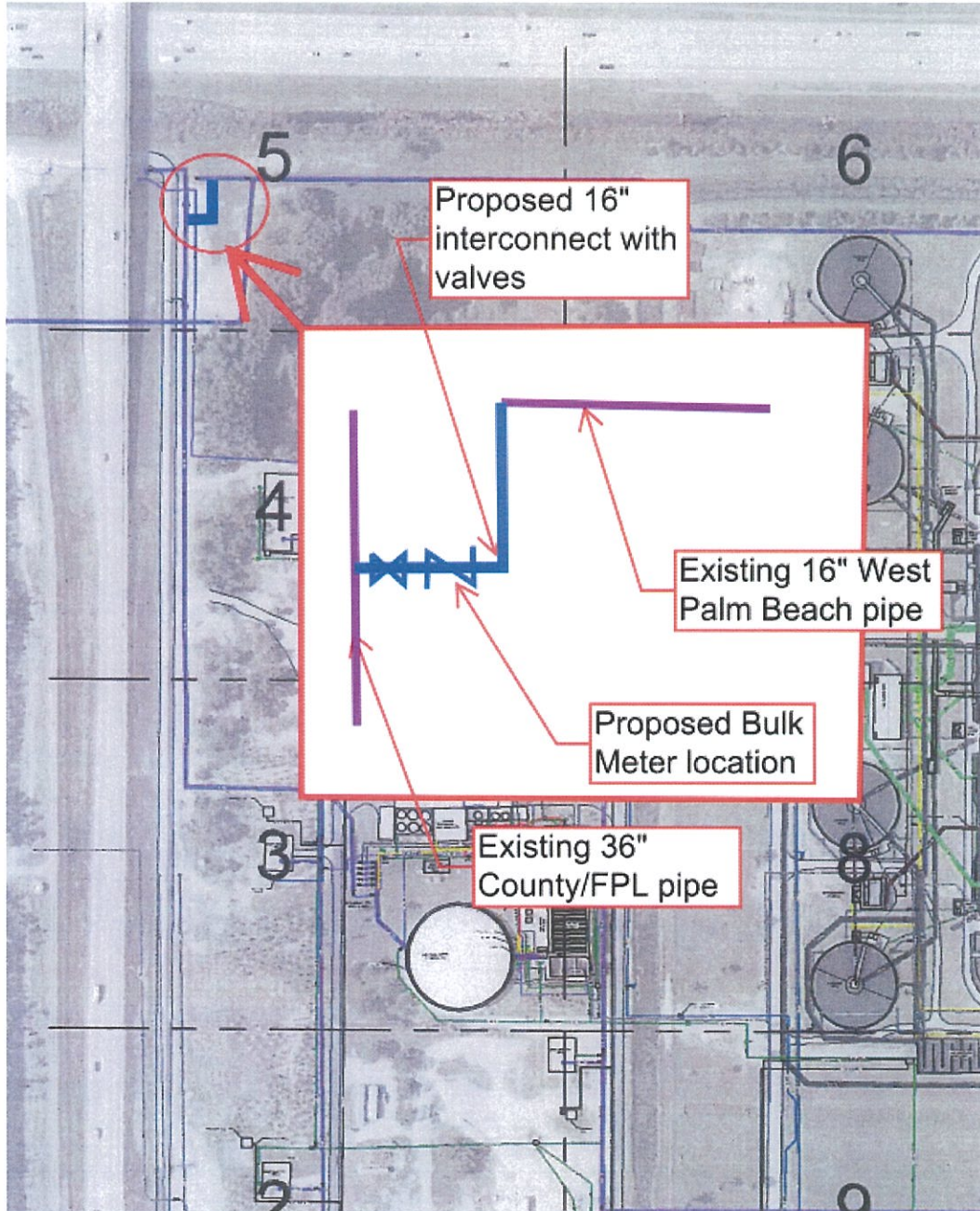
Dated: _____, 2015

EXHIBIT "A"

LOCATION OF CONNECTING RECLAIMED WATER MAINS



S Southwest Corner of ECR - Not to scale



Northwest Corner of ECR



Not to Scale

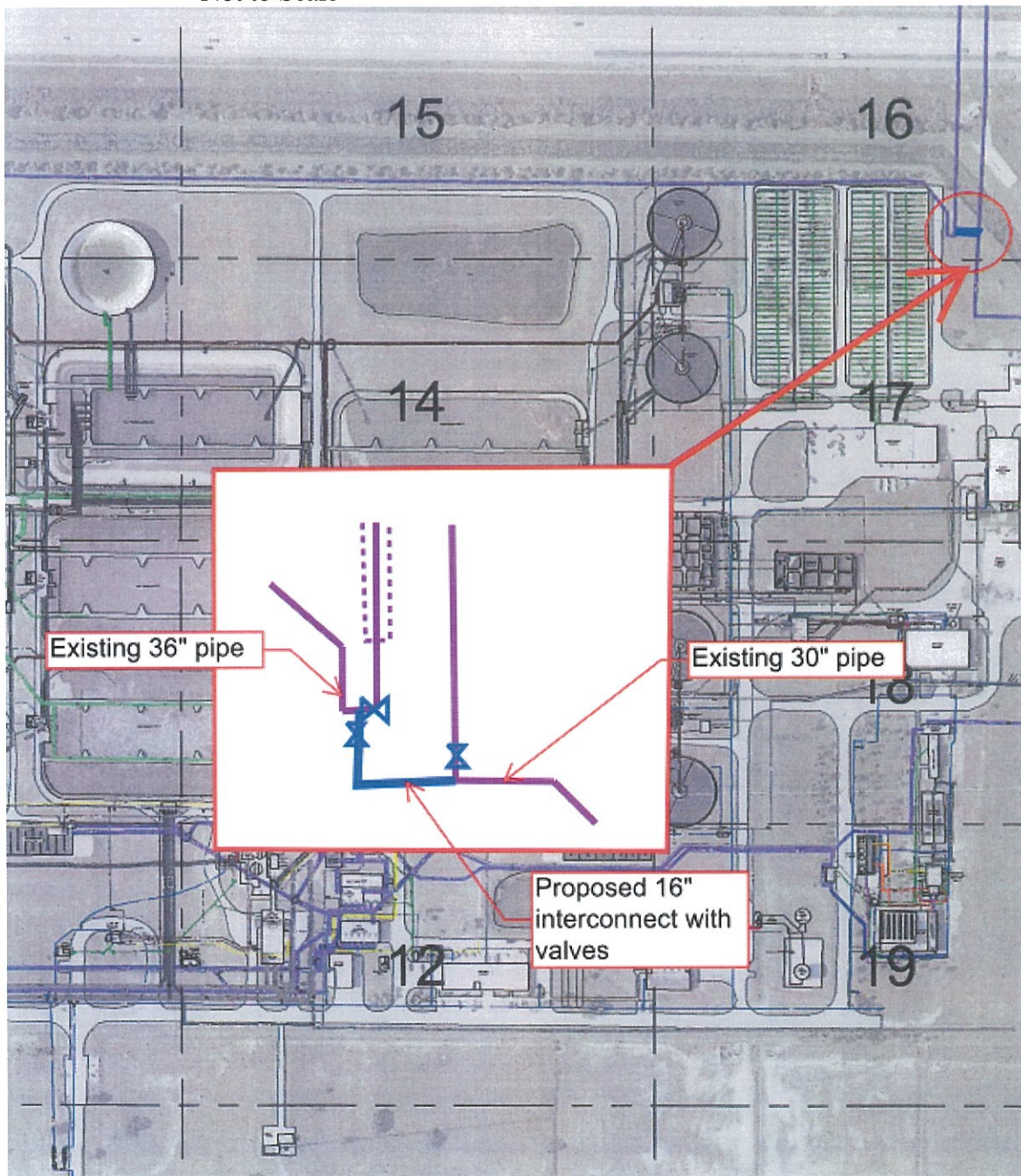


EXHIBIT "B"

TEMPORARY CONSTRUCTION EASEMENT

Prepared by & Return to:
Palm Beach County Water Utilities Department
P.O. Box 16097 Attn: Engineering Div.
West Palm Beach, Florida 33416-6097

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT is made, granted and entered into this ___ day of _____, 2015 by and between the **EAST CENTRAL REGIONAL WASTEWATER TREATMENT FACILITIES OPERATION BOARD**, a legal entity created under the terms of Chapter 163, Fla. Stat., through its agent, the City of West Palm Beach (hereinafter "Grantor") and **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "Grantee".)

RECITALS

WHEREAS, Grantee has requested that the Grantor grant a Temporary Construction Easement enabling the Grantee, its agents, successors, and assigns, to enter upon the East Central Regional Wastewater Treatment Facilities property for the purpose of constructing a reclaimed water transmission pipeline (hereinafter referred to as the "Project.")

NOW, THEREFORE, in consideration of the grants, agreements and covenants contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein.
2. Grant of Temporary Construction Easement. Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) to the Grantor in hand paid by Grantee, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to Grantee, its agents, successors and assigns, a non-exclusive temporary construction easement for the construction of the Project upon the real property shown in Exhibit "1" (hereinafter the "Easement Area.") The rights granted pursuant to this Easement shall be limited to the right to utilize the Easement Area solely for those activities associated with Grantee's construction of the Project.
3. Term of Easement. The rights granted pursuant to this Easement shall expire and this Easement shall automatically terminate upon the Grantee's completion of the Project. Notwithstanding such automatic termination, Grantee shall promptly deliver to Grantor a Release

of Easement, in a form satisfactory to Grantor, upon completion of the Project, if so requested by Grantor.

4. Conditions to Right of Usage. The Grantee's right to use this Easement shall be subject to the terms and conditions of the Interlocal Agreement among the East Central Regional Wastewater Treatment Facilities Operation Board, City of West Palm Beach, and Palm Beach County Related to the Construction, Operation, and Maintenance of Reclaimed Water Facilities, and dated _____ (hereinafter "2015 Reclaimed Water Main Interlocal"), which is incorporated herein by reference.

5. Grantor's Acknowledgement of Nature of Project. Grantor acknowledges and agrees that the Project shall include permanent below-ground reclaimed water transmission facilities, and that said facilities will remain on the Easement Area following the termination of this Easement.

6. Maintenance, Repair, and Restoration. Grantee shall be solely responsible for and shall, at its sole cost and expense, promptly repair any damage, pay any liabilities, damages, and fines, and perform any required environmental clean-up and remediation arising out of Grantee's exercise of the rights granted hereby and restore the Easement Area, any improvements now existing or constructed hereinafter therein, to the condition it was in prior to such damage, using materials of like kind and quality. The permanent below-ground reclaimed water facilities to be located on the Easement Area shall not be considered "damage" as set forth in this paragraph.

7. Grantor's Rights to Use Easement Area. Grantor hereby retains all rights relating to the Easement Area not specifically conveyed by this Easement including the right to use the Easement Area and any improvements now existing or constructed hereinafter therein, and the right to grant to third parties additional easements in the Easement Area or the right to use the improvements therein, provided such uses or grants do not interfere with the rights provided to Grantee in this easement. The rights of Grantor set forth in this paragraph are specifically made subordinate to Grantee's right to utilize the Easement Area for the permanent below-ground reclaimed water facilities.

8. Prohibition Against Liens. Neither the Grantor's nor Grantee's interest in the Easement Area shall be subject to liens arising from Grantee's use of the Easement Area, or exercise of the rights granted hereunder. Grantee shall promptly cause any lien imposed against the Easement Area to be discharged or transferred to bond.

9. Indemnification. To the extent permitted by law and subject to and conditional upon the limitations set forth in Section 768.28, Florida Statutes, Grantee, its successors and assigns shall indemnify, defend and hold the Grantor harmless from and against any damages, liability, actions, claims or expenses for the negligent acts of itself, its officers, agents, and employees, including, without limitation, loss of life, personal injury and/or damage to property arising from or out of any negligent acts in or upon the Easement. The foregoing shall not constitute a waiver of sovereign immunity under Section 768.28, nor a waiver of any defense the Grantee may have under such statute, nor as consent to be sued by third parties.

10. No Dedication. The grant of Easement contained herein is solely for the use and

benefit of Grantee, and Grantee's authorized agents and employees, and is not intended, and shall not be construed as a dedication to the public of any portion of the Easement Area for public use.

11. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not effect the remaining portions of this Easement and the same shall remain in full force and effect.

12. Venue/Construction. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue shall be in Palm Beach County, Florida. This Easement shall not be construed more strongly against any party regardless of who was responsible for its preparation or drafting.

13. Entire Understanding/Amendment. This Easement contains the entire understanding and agreement of the parties with respect to the subject matter hereof. No amendment will be effective except in writing signed by all parties.

14. Abandonment. If the Grantee, its successor or assigns, shall ever abandon the Easement granted hereby or cease to use the same for the purpose for which granted, the Easement described herein shall terminate.

15. Exhibits. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Easement by reference.

Remainder of page intentionally left blank
Signatures on following page.

ATTEST:

City Clerk

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: _____

**EAST CENTRAL REGIONAL
WASTEWATER TREATMENT
FACILITIES OPERATION BOARD**
By its agent: CITY OF WEST PALM
BEACH

By:

Geraldine Muoio, Mayor

Dated: _____

ATTEST:
SHARON R. BOCK

By: _____
Clerk and Comptroller

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS:

By: _____
Department Director

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

By: _____
Shelley Vana, Mayor

Date: _____

Exhibit "1"

Connecting Reclaimed Water Main Interlocal ECR/WPB/PBC
16115
FINAL

EXHIBIT "C"

LICENSE FOR METER MAINTENANCE

Prepared by & Return to:
Palm Beach County Water Utilities Department
P.O. Box 16097 Attn: Engineering Div.
West Palm Beach, Florida 33416-6097

LICENSE FOR MAINTENANCE OF RECLAIMED WATER MAINS

THIS LICENSE is made, granted and entered into this ___ day of _____, 2015 by and between the **EAST CENTRAL REGIONAL WASTEWATER TREATMENT FACILITIES OPERATION BOARD**, a legal entity created under the terms of Chapter 163, Fla. Stat., through its agent, the City of West Palm Beach (hereinafter "Licensor") and **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "Licensee".)

RECITALS

WHEREAS, pursuant to that Interlocal Agreement Related to Reclaimed Water Mains, dated _____, ("2015 Reclaimed Water Mains Interlocal") Licensor granted Licensee the right to construct certain pipelines for the transmission of reclaimed water, along with an associated meter to be owned by Licensee; and

WHEREAS, pursuant to the 2015 Reclaimed Water Mains Interlocal, Licensor agreed to grant a license to Licensee, its agents, successors, and assigns, to enter upon the East Central Regional Wastewater Treatment Facilities property for the purposes of operating, maintaining, repairing and replacing the meter;

NOW, THEREFORE, in consideration of the grants, agreements and covenants contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein.
2. Grant of License. Licensor, for and in consideration of the sum of TEN DOLLARS (\$10.00) to the Licensor in hand paid by Licensee, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to Licensee, its agents, successors and assigns, a non-exclusive license upon the real property shown in Exhibit "1" (hereinafter the "License Area.") The rights granted pursuant to this License shall be limited to the right to utilize the License Area solely for the operation, maintenance, repair and replacement of the reclaimed water meter owned by Licensee and located within the License Area.

3. Term of License. This License shall remain in effect during the term of the 2015 Reclaimed Water Mains Interlocal and shall terminate upon the expiration or termination of said Interlocal, unless otherwise terminated by Licensor.
4. Conditions to Right of Usage. The Licensee's right to use this License shall be subject to the terms and conditions of the Interlocal Agreement among the East Central Regional Wastewater Treatment Facilities Operation Board, City of West Palm Beach, and Palm Beach County Related to the Construction, Operation, and Maintenance of Reclaimed Water Facilities, and dated _____ (hereinafter "2015 Reclaimed Water Main Interlocal"), which is incorporated herein by reference.
5. Maintenance, Repair, and Restoration. Licensee shall be solely responsible for and shall, at its sole cost and expense, promptly repair any damage, pay any liabilities, damages, and fines, and perform any required environmental clean-up and remediation arising out of Licensee's exercise of the rights granted hereby and restore the License Area, any improvements now existing or constructed hereinafter therein, to the condition it was in prior to such damage, using materials of like kind and quality.
6. Licensor's Rights to Use License Area. Licensor hereby retains all rights relating to the License Area not specifically conveyed by this License including the right to use the License Area and any improvements now existing or constructed hereinafter therein, and the right to grant to third parties additional Licenses in the License Area or the right to use the improvements therein, provided such uses or grants do not interfere with the rights provided to Licensee in this License. The rights of Licensor set forth in this paragraph are specifically made subordinate to Licensee's right to utilize the License Area for the permanent below-ground reclaimed water facilities.
7. Prohibition Against Liens. Neither the Licensor's nor Licensee's interest in the License Area shall be subject to liens arising from Licensee's use of the License Area, or exercise of the rights granted hereunder. Licensee shall promptly cause any lien imposed against the License Area to be discharged or transferred to bond.
8. Indemnification. To the extent permitted by law and subject to and conditional upon the limitations set forth in Section 768.28, Florida Statutes, Licensee, its successors and assigns shall indemnify, defend and hold the Licensor harmless from and against any damages, liability, actions, claims or expenses for the negligent acts of itself, its officers, agents, and employees, including, without limitation, loss of life, personal injury and/or damage to property arising from or out of any negligent acts in or upon the License. The foregoing shall not constitute a waiver of sovereign immunity under Section 768.28, nor a waiver of any defense the Licensee may have under such statute, nor as consent to be sued by third parties.
9. No Dedication. The grant of License contained herein is solely for the use and benefit of Licensee, and Licensee's authorized agents and employees, and is not intended, and shall not be construed as a dedication to the public of any portion of the License Area for public use.
10. Severability. In the event that any section, paragraph, sentence, clause, or

provision hereof be held by a court of competent jurisdiction to be invalid, such shall not effect the remaining portions of this License and the same shall remain in full force and effect.

11. Venue/Construction. This License shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue shall be in Palm Beach County, Florida. This License shall not be construed more strongly against any party regardless of who was responsible for its preparation or drafting.

12. Entire Understanding/Amendment. This License contains the entire understanding and agreement of the parties with respect to the subject matter hereof. No amendment will be effective except in writing signed by all parties.

13. Abandonment. If the Licensee, its successor or assigns, shall ever abandon the License granted hereby or cease to use the same for the purpose for which granted, the License described herein shall terminate.

14. Exhibits. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this License by reference.

Remainder of page intentionally left blank
Signatures on following page.

ATTEST:

City Clerk

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: _____

**EAST CENTRAL REGIONAL
WASTEWATER TREATMENT
FACILITIES OPERATION BOARD**
By its agent: CITY OF WEST PALM
BEACH

By:

Geraldine Muoio, Mayor

Dated: _____

ATTEST:
SHARON R. BOCK

By: _____
Clerk and Comptroller

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS:

By: _____
Department Director

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

By: _____
Shelley Vana, Mayor

Date: _____

Exhibit "1"

Connecting Reclaimed Water Main Interlocal ECR/WPB/PBC
16115
FINAL

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND
THE CITY OF WEST PALM BEACH FOR THE
PURCHASE OF BULK RECLAIMED WATER**

WPB Contract No. 16266

THIS AGREEMENT made and entered into this _____ day of _____, 2015, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), and the **CITY OF WEST PALM BEACH, FLORIDA**, a municipal corporation organized under the laws of the State of Florida (hereinafter "WPB").

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969", authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the East Central Regional Wastewater Treatment Facilities ("ECRWTF") is a wastewater treatment facility with a current permitted capacity of 70 million gallons per day ("MGD") by the Florida Department of Environmental Protection ("FDEP"), and is jointly owned by five local governments (collectively referred to as "Member Entities"), including the County and the WPB, and is operated by WPB; and

WHEREAS, pursuant to the 1992 Interlocal Agreement between the Member Entities creating the ECRWTF (County Resolution No. R92-1228D), and the 1999 Participatory Agreement Establishing Duties and Responsibilities Among the City of West Palm Beach, Palm Beach County and the East Central Regional Wastewater Facilities Board for Improvements to the Eastern Central Regional Wastewater Facilities (County Resolution No. R99-1792D), the County has approximately 24.5 MGD of current Wastewater capacity from the ECRWTF; and

WHEREAS, the ECRWTF Operation Board ("ECR Board") entered into an Agreement with the County and WPB ("ECR Reclaimed Agreement") dated May 20, 2008 (County Resolution No. R2008-0907), related to the construction, operation, and maintenance of certain facilities on ECRWTF property for the provision of Reclaimed Water to the Florida Power and Light Company ("FPL") West County Energy Center ("WCEC") and other customers; and

WHEREAS, the County and FPL entered into a Reclaimed Water Agreement ("FPL Reclaimed Agreement") dated May 20, 2008 (County Resolution No. R2008-0906), in which the County agreed to provide the WCEC with Reclaimed Water utilizing certain facilities, including an expansion to the ECRWTF to produce Reclaimed Water, a reclaimed water pipeline and appurtenant facilities located within and outside of ECRWTF property, and a storage tank and

appurtenant facilities located at the WCEC site (said facilities hereinafter collectively referred to as the "Reclaimed Water Project" or "RWP"); and

WHEREAS, under the terms of the ECR Reclaimed Agreement, the ECR Board, and its Member Entities, agreed to allocate certain secondary treated effluent of sufficient quality to the RWP; and

WHEREAS, the ECRWTF is currently generating approximately 45 MGD of secondary treated effluent classified as being available for Reclaimed Water, with approximately 13 MGD reserved for prior contractual commitments of WPB and the County leaving approximately 31 MGD of secondary treated effluent of sufficient quality to be available for the RWP; and

WHEREAS, the total amount of Reclaimed Water that the County is required to make available to FPL as delineated in the FPL Reclaimed Water Agreement is: i) 22.0 MGD annual average daily flow ("AADF") calculated based on a five (5) year rolling average; ii) 4.0 MGD minimum daily flow; and iii) 27.0 MGD peak usage on any day ("FPL Contracted Capacity") during the term of such agreement; and

WHEREAS, actual FPL requirements for firm, Reclaimed Water generated by the RWP ("RWP Reclaimed Water") are expected to vary significantly on an annual cycle with higher cooling water demands occurring at times of higher regional rainfall and consequent lower irrigation needs; and

WHEREAS, the County will make available up to 9 MGD of RWP Reclaimed Water capacity ("Prior Reservation Capacity") to other customers after satisfying FPL's Contracted Capacity, subject to changing conditions and RWP operating experience; and

WHEREAS, the County is making such Prior Reservation Capacity available to other customers on an interruptible, as-available basis, with the consent of FPL; and

WHEREAS, WPB wishes to purchase .70 MGD RWP Reclaimed Water in bulk from County for distribution and sale to the major league baseball spring training facility and the WPB park generally located south of 45th Street between Haverhill Road and Military Trail ("Haverhill Ball Park"), which is in WPB's service area; and

WHEREAS, the County has sufficient excess RWP Reclaimed Water capacity to sell RWP Reclaimed Water to WPB on an interruptible basis and in accordance with this Agreement.

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

1. **Recitals.**

The foregoing statements are true and correct and are incorporated herein by specific reference.

2. **Term.**

The term of this Agreement ("Term") shall commence on the Effective Date and shall continue in full force and effect during the term of the ECR Reclaimed Agreement. The Effective Date shall be the date that this Agreement is ratified by the Palm Beach County Board of County Commissioners and the City of West Palm Beach City Commission. Notwithstanding the foregoing, the parties agree that WPB may terminate this Agreement, with thirty (30) days written notice, upon WPB's re-commission of the AWT Treatment Facility or alternate delivery method, contingent upon WPB being able to meet the Reclaimed Water needs of the Haverhill Ball Park, as determined by the County, which determination shall not be unreasonably withheld.

3. **Definitions.**

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

"AADF" has the meaning set forth in the Recitals to this Agreement.

"Agreement" means this Interlocal Agreement between Palm Beach County and the City of West Palm Beach for the Purchase of Bulk Reclaimed Water.

"AWT Treatment Facility" means the ECR advanced water treatment facility installed by WPB pursuant to the WPB AWT Interlocal Agreement.

"Change in Law" means any change in Federal or state laws, rules, regulations, or requirements or any change in local laws, rules, regulations directly required due to the imposition of Federal or state laws, rules, regulations, or requirements which occurs after the Effective Date and which has a direct material adverse effect upon the cost to the County to produce the Reclaimed Water in accordance with the standards set forth in this Agreement.

"Change in Law Modification" has the meaning set forth in Section 14 of this Agreement.

"County" has the meaning set forth in the preamble to this Agreement.

"ECR Board" has the meaning set forth in the Recitals to this Agreement.

"ECR Reclaimed Agreement" has the meaning set forth in the Recitals to this Agreement.

"ECRWTF" has the meaning set forth in the Recitals to this Agreement.

"Effective Date" has the meaning set forth in Section 2 of this Agreement.

"FDEP" has the meaning set forth in the Recitals to this Agreement.

"Firm Reclaimed Service" means RWP Reclaimed Water service intended to be available at all times during the period covered in accordance with the capacity requirements and commitments and delivery term as delineated in the FPL Reclaimed Agreement and that such service will be fulfilled on a first priority basis before providing Interruptible Reclaimed Service. The County will have only one customer receiving Firm Reclaimed Service during the term of this Agreement which customer is FPL.

"FPL" has the meaning set forth in the Recitals to this Agreement.

"FPL Contracted Capacity" has the meaning set forth in the Recitals to this Agreement.

"FPL Reclaimed Agreement" has the meaning set forth in the Recitals to this Agreement.

"Haverhill Ball Park" has the meaning set forth in the Recitals to this Agreement.

"Interruptible Reclaimed Service" means RWP Reclaimed Water service which is subject to curtailment or cessation of delivery by the County at any time in order to only provide Firm Reclaimed Service to FPL in accordance with the FPL Reclaimed Water Agreement. To the extent the RWP Reclaimed Water is not desired to be used by FPL, such RWP Reclaimed Water shall become available to provide Interruptible Reclaimed Service to any Prior Reservation Capacity Customer, including WPB, in accordance with the PRC Schedule.

"Member Entities" has the meaning set forth in the Recitals to this Agreement.

"MGD" has the meaning set forth in the Recitals to this Agreement.

"Point of Connection" means the location where the RWP is connected to WPB's Reclaimed Water System. The Point of Connection is depicted in Exhibit "A", which is attached hereto and incorporated herein.

"Point of Connection Facilities" means those facilities necessary to connect the RWP to WPB's Reclaimed Water System, including the Reclaimed Water Meter and appurtenant facilities. The Point of Connection Facilities shall include piping, meter vault, meter, SCADA facilities, and appurtenant facilities.

"PRC Schedule" means the priority of delivery schedule for Interruptible Reclaimed Service. The PRC Schedule shall be based upon the ranked effective dates of any Prior Reservation Capacity Agreements entered into by Prior Reservation Capacity Customers, and requests for Interruptible Reclaimed Service will be satisfied on a priority basis. The PRC Schedule, updated to include the Prior Reservation Capacity of WPB as set forth herein, is attached hereto and incorporated herein as Exhibit "B". The PRC Schedule shall be updated by the County upon the purchase of Prior Reservation Capacity by additional Prior Reservation Capacity Customers.

"Prior Reservation Capacity" is the volume of Interruptible Reclaimed Service expressed on an AADF basis reserved by and allocated to an entity by the County pursuant to an executed Prior Reservation Capacity Agreement.

"Prior Reservation Capacity Agreement" means an agreement entered into between the County and a Prior Reservation Capacity Customer for the purchase of Prior Reservation Capacity.

"Prior Reservation Capacity Customer" means any entity that has entered into a Prior Reservation Capacity Agreement with the County for Prior Reservation Capacity.

"Prior Reservation Capacity Date" means the effective date of a Prior Reservation Capacity Agreement.

"Prior Reservation Capacity Fee" means the annual fee expressed on a dollars per 1,000 gallons basis required to reserve each 1,000 gallon/year volume increment of Prior Reservation Capacity in the RWP. This fee shall be charged to each Prior Reservation Capacity Customer regardless of whether any Reclaimed Water is delivered to such Prior Reservation Capacity Customer. This fee shall be based on the County's published Prior Reservation Capacity Fee, and is currently fixed at \$41.17 per each 1,000 gallon/year increment of Prior Reservation Capacity for the Term of this Agreement.

"Reclaimed Water" means Wastewater effluent that has been treated and is permitted by the FDEP.

"Reclaimed Water Project" or **"RWP"** has the meaning set forth in the Recitals to this Agreement.

"RWP Reclaimed Water" means Reclaimed Water that is produced and transmitted to customers utilizing the RWP. The RWP Reclaimed Water shall meet all applicable standards for Wastewater effluent treated to meet non-potable needs as required for discharge on to Public Access Use areas, in accordance with Chapter 62-610, Part III, Florida Administrative Code, as may be amended from time to time.

"RWP Reclaimed Water Fee" means the fee expressed on a dollar per 1,000 gallons basis of RWP Reclaimed Water to be charged for the delivery of RWP Reclaimed Water on an Interruptible Reclaimed Service basis, as measured by metering at the Point of Connection. The RWP Reclaimed Water Fee shall be the County's published rate, which is currently .63/1000 gallons, and which is subject to annual indexing of

"Service Initiation Date" means the date the County notifies WPB that the County can begin to provide RWP Reclaimed Water service for sale to WPB through the Point of Connection, which shall be approximately May 1, 2016.

"Term" has the meaning set forth Section 2 of this Agreement.

"Wastewater" means liquid and water-carried industrial, domestic, medical, food,

superfluous solid, gaseous material, holding tank or other wastes from dwelling units, commercial establishments and manufacturing units, whether treated or untreated.

“WCEC” has the meaning set forth in the Recitals to this Agreement.

“WPB AWT Interlocal” means that Interlocal Agreement between the City of West Palm Beach and the ECR Board, dated January 8, 2001 Concerning the Construction, Operation and Maintenance of Reclaimed Water Production Facilities at the ECR.

“WPB’s Reclaimed Water System” means the system constructed, owned, operated, and maintained by WPB for the distribution of Reclaimed Water within WPB’s Reclaimed Water service area. The WPB’s Reclaimed Water System shall be located downstream of the Point of Connection.

4. **County/Member Entities Commitment to Reclaimed Water Plant.**

As set forth in Exhibit "B" to the ECR Reclaimed Agreement, with the exception of 3 MGD allocated to the County's Reclaimed Water facilities located at Century Village-West Palm Beach, the County has agreed to allocate 100% of its proportionate share of ECR treated effluent to the RWP. As also set forth in Exhibit "B" to the ECR Reclaimed Agreement, The City of Lake Worth, the City of Riviera Beach, and the Town of Palm Beach have agreed to allocate 100% of their proportionate share of ECR treated effluent to the RWP.

5. **Scope of Agreement.**

The County agrees to furnish, and WPB agrees to purchase and accept, up to 0.70 MGD RWP Reclaimed Water on an AADF basis. The RWP Reclaimed Water service shall be Interruptible Reclaimed Service.

6. **Responsibilities of WPB.**

WPB shall comply with all applicable local, State and Federal laws and regulations for the use of Reclaimed Water, including but not limited to Chapter 403, Florida Statutes, Chapter 62-610, Florida Administrative Code. WPB shall be responsible for the securing of any permits or other approvals necessary to provide Reclaimed Water to customers within WPB's service area. WPB agrees to restrict the use of Reclaimed Water by its customers to the purposes allowed by law.

7. **Responsibilities of County.**

County shall construct the Reclaimed Water metering facilities and related appurtenances located at the Point of Connection as depicted in Exhibit "A", and provide a Bill of Sale for said facilities to the ECR Board following completion of construction. County shall provide the meter and any related SCADA facilities at County's expense. County shall use reasonable efforts to cause delivery of RWP Reclaimed Water to the Point of Connection when requested by WPB in accordance with the Prior Reservation Capacity set forth herein. County shall be responsible for the securing of any permits or other approvals necessary to provide RWP Reclaimed Water to WPB at the Point of

Connection. County shall own and maintain the meter pursuant to section 17 of this Agreement. Should County determine that it has additional Reclaimed Water available for sale to WPB in the future, it may provide additional annual average daily flows to WPB, upon written request of WPB, and in accordance with the provisions of this Agreement. However, to the extent that any such requests for additional Reclaimed Water are for WPB customers located outside of the Haverhill Ball Park property, WPB shall be responsible for any design, permitting, and construction necessary for such additional customers, including all costs related thereto.

8. **Prior Reservation Capacity Fee.**

In exchange for the continued payment of the Prior Reservation Capacity Fee, WPB is hereby granted a Prior Reservation Capacity of 0.70 MGD RWP Reclaimed Water. Subject to the terms and conditions of this Agreement, the County will make available to WPB this Prior Reservation Capacity of RWP Reclaimed Water. The Prior Reservation Capacity Date shall be the Effective Date of this Agreement. The Prior Reservation Capacity Fee is subject to change based on changes to the County's published capacity reservation fee for interruptible service.

9. **Additional Prior Reservation Capacity.**

WPB may request additional Prior Reservation Capacity above the .70 MGD at a later date by entering into a new Prior Reservation Capacity Agreement and paying all applicable Prior Reservation Capacity Fees; however, the Prior Reservation Capacity Date of any future requested incremental additional Prior Reservation Capacity shall be the Effective Date of the new Prior Reservation Capacity Agreement. The execution of an additional Prior Reservation Capacity Agreement will not affect the prior status of the Prior Reservation Capacity granted by the County to WPB pursuant to this Agreement; any additional Prior Reservation Capacity will be considered as incremental capacity and will have a priority delivery position as set forth on the then-existing PRC Schedule for all then available Prior Reservation Capacity Customers that have an effective Prior Reservation Capacity Agreement with the County. If the additional Prior Reservation Capacity is not available on a reasonably reliable basis, the County shall notice WPB as to the County's inability to supply the requested incremental Prior Reservation Capacity.

WPB may also elect to reduce the amount of Prior Reservation Capacity by entering into an amendment to this Agreement. The reduction in Prior Reservation capacity shall reduce the Prior Reservation Capacity Fee that WPB is required to pay the County, but will not change the Prior Reservation Capacity Date of the Prior Reservation Capacity reserved in this Agreement. The PRC Schedule shall be amended accordingly to reflect any such reduction in Prior Reservation Capacity.

The County may enter into other Prior Reservation Capacity Agreements with other customers for Interruptible Reclaimed Service from the RWP. The County will not enter into any future Prior Reservation Capacity Agreements that would result in: i) additional Firm Reclaimed Service being provided to any future customer, above the FPL Contracted Capacity as of date of this Agreement; or ii) the inability to provide WPB the Prior Reservation Capacity as contracted by the County pursuant to this Agreement.

At the County's sole discretion and based on the availability of RWP Reclaimed Water, the County may provide RWP Reclaimed Water to WPB in an amount over and above the total of the Prior Reservation Capacity (as determined on an AADF basis). On or after each anniversary date of the Service Initiation Date, the County will calculate WPB's AADF for the prior year. If WPB's AADF is greater than WPB's Prior Reservation Capacity, WPB shall pay the Prior Reservation Capacity Fee for excess RWP Reclaimed Water used above the total Prior Reservation Capacity. For example, if WPB has a Prior Reservation Capacity of 0.70 MGD, and the AADF of RWP Reclaimed Water provided to WPB is 1.0 MGD, WPB shall be required to pay an additional Prior Reservation Capacity Fee of \$12,351.00 ($300,000/1000 \times 41.17 = \$12,351.00$).

10. Priority of RWP Reclaimed Water Service.

The County shall be required to provide Firm Reclaimed Service to FPL in an amount equal to the FPL Contracted Capacity, which shall have priority over the Prior Reservation Capacity of WPB and all other Prior Reservation Capacity Customers. WPB shall have the priority set forth in the PRC Schedule set forth in Exhibit "B". WPB shall have priority over any future Prior Reservation Capacity Customers that contract for Prior Reservation Capacity after the Effective Date of this Agreement.

11. RWP Reclaimed Water Delivery.

Subject to the terms and conditions of this Agreement, WPB shall be entitled to receive the daily RWP Reclaimed Water volume not to exceed the Prior Reservation Capacity, as calculated on an AADF basis. Following the Service Initiation Date, WPB shall provide a weekly, or at such intervals as may be mutually agreed, report to the County forecasting their estimated RWP Reclaimed Water needs for the upcoming week. WPB shall coordinate the timing of these weekly reports with County staff. Delivery of Interruptible Reclaimed Service shall be ranked by the County among all holders of Prior Reservation Capacity based on the PRC Schedule. The ranking schedule shall include the weekly estimate of RWP Reclaimed Water needs (expressed on a volumetric per thousand gallons basis) as provided by each Prior Reservation Capacity Customer and estimated delivery schedules for each 24-hour period in the week. To the extent that WPB does not provide a weekly estimate of RWP Reclaimed Water to the County, then the amount subject to delivery will be set at the prior week's delivery amount. At the sole discretion and expense of WPB, WPB may construct and utilize Reclaimed Water storage, pumping, or holding facilities to optimize the deliveries of Reclaimed Water.

12. RWP Reclaimed Water Fee.

The initial RWP Reclaimed Water Fee shall be \$.63 per 1,000 gallons of RWP Reclaimed Water delivered by the County to the Point of Connection. Said fee is subject to any indexing applied or other changes made to the County's published commodity fee for interruptible service.

13. ECR Board Approval.

County and WPB shall secure the approval of the ECR Board for any modifications or alterations to the Facilities, as required in Section 3.5 of the January 8, 2001 agreement between the ECR Board

and WPB concerning the construction, operation and maintenance of the Reclaimed Water Facilities.

14. Change in Law Procedure.

A. Upon the occurrence of a Change in Law, the County shall assess the technical feasibility of continuing to provide Reclaimed Water from the RWP. If the County determines that it is technically feasible to continue to provide RWP Reclaimed Water in accordance with the Change in Law, the following procedure shall apply. Either prior to or following the occurrence of a Change in Law, the County will notify WPB of the Change in Law, any associated modifications to the RWP required as a result of the Change in Law, the modified RWP Reclaimed Water Fee resulting from the modifications to the RWP, ("Change in Law Modification"), and the schedule for imposition of the Change in Law Modification. Any change in the RWP Reclaimed Water Fee resulting from a Change in Law Modification shall be applied prospectively by the County. All fees billed to WPB will be based on the Interruptible Reclaimed Service as metered at the Point of Connection; in no event will the Prior Reservation Capacity Fee increase as a result of the Change in Law Modification.

B. Upon notice of a Change in Law Modification from the County, WPB may: (1) agree to the imposition of the Change in Law Modification; or (2) elect to terminate this Agreement upon written notice to the County. The County shall have no obligation to provide RWP Reclaimed Water to WPB following a Change in Law unless WPB agrees to the imposition of the Change in Law Modification.

15. Termination

A. Termination by the County upon Permanent Cessation of Operations ECRWTF/RWP.

The parties agree that this Agreement is intended to coincide with the term of the operation of the ECRWTF and the RWP. The parties further agree that the County shall have no obligation to continue the provision of RWP Reclaimed Water under this Agreement following the permanent cessation of the operation of the ECRWTF or the RWP. Therefore, if during the term of this Agreement, and for any reason whatsoever, the ECRWTF and/or the RWP permanently cease operation, then the County shall have the right to immediately terminate this Agreement upon written notice to WPB. WPB hereby releases and holds County harmless from any claims and damages based upon termination under this Section 15.A.

B. Termination – Baseball Agreements.

The parties hereto acknowledge that this Agreement is being entered into in relation to the construction, development and operation of the Haverhill Ball Park, which is subject to the approval and continued effectiveness of the following agreements: (1) the Developer Agreement between the County and HW Spring Training Complex, LLC; (2) the Sports Facility and Use Agreement between the County and HW Spring Training Complex, LLC; (3) the Interlocal Agreement between the City and the County related to the exchange of properties; (4) the Interlocal Agreement For The Sale And Purchase Of Reclaimed Water between the City and

County; and (5) the Interlocal Agreement among the East Central Regional Wastewater Treatment Facilities Operation Board, the City of West Palm Beach, and Palm Beach County Related to Reclaimed Water Mains (collectively the "Baseball Agreements"). To the extent that any of the Baseball Agreements are not approved, not effective, or are terminated, the parties agree that this Agreement may be terminated by any party hereto by providing five (5) days written notice to the other party(s).

16. Payment of Bills.

The County will bill the RWP Reclaimed Water Fee to WPB on a monthly basis. WPB agrees to pay the monthly RWP Reclaimed Water Fee to the County within forty five (45) days from the date the bill is rendered by the County. A past due notice will be mailed the County to WPB after forty five (45) days. Penalties for late payments shall be assessed in accordance with the Local Government Prompt Payment Act, Section 218.70 *et seq.*, Florida Statutes.

17. County to Maintain Meter.

The County agrees to pay to have an annual inspection and report prepared regarding the condition and accuracy of the master Reclaimed Water meter located at the Point of Connection. A copy of the annual meter inspection report shall be furnished to the WPB. WPB 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 WPB shall first give County written notice 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, excluding Saturdays, Sundays, and holidays, subsequent to the receipt of said notice by County. All costs and expenses of the WPB's interim inspection shall be borne by WPB. If the meter is found not to be in good working order as a result of the WPB interim inspection, the County shall reimburse WPB's cost incurred for the interim inspection. Normal maintenance and the replacement of the Reclaimed Water meter shall be performed by the County at its sole cost.

18. Time Period Limitation In Case of Meter Inaccuracy.

Both parties agree that, should the Reclaimed Water meter at the Point of Connection be found to be inaccurate beyond applicable industry standards, the meter will be assumed to have been inaccurate since the time of the event failure or for a period of ninety (90) days, whichever time should be less, and that the following month's billing will be adjusted to show a credit or additional charge to WPB for that period, based upon the method established in Section 19 of this Agreement.

19. Presumed Consumption and Required Payment In Case of Master Meter Inaccuracy.

Both parties agree, that if at any time the Reclaimed Water meter located at the Point of Connection shall be inaccurate with respect to the quantity of consumption by WPB, WPB will pay to the County a daily amount equal to the average Reclaimed Water flowage of the ninety (90) day period prior to the date that the meter became inaccurate multiplied by the RWP Reclaimed Water Fee in effect.

20. Security.

The parties shall be responsible jointly and severally for security of the Point of Connection, including provision of access locking features so that each party can have keyed access to the vaults. The Point of Connection will be controlled by valves which can be operated by authorized representatives of either the County or WPB. Only authorized employees of either the County or WPB will operate the valves controlling the Point of Connection. The County and WPB shall provide prior notice to each other prior to operating the valves at the Point of Connection.

21. No Transfer of Powers.

Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Agreement is solely an Agreement to provide services as authorized in Chapter 163, Florida Statutes. The governing bodies for County and WPB shall each maintain all legislative authority with regard to their respective political subdivision. All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and pensions and relief, disability, workers compensation and other benefits which apply to the activity of officers, agents or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement.

22. Indemnification.

WPB and County acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. WPB and County agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

23. Force Majeure.

In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to, failure or limitations of the reclaimed water production facilities and associated reclaimed water or wetlands surface water pump station and force mains, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, neither party shall be liable for such

non-performance.

24. Remedies.

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.

25. Notice. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to WPB, shall be mailed or delivered to WPB at:

City of West Palm Beach
Attn: City Administrator
401 Clematis Street
West Palm Beach, FL 33401

With a copy not to constitute notice to:

City of West Palm Beach
Attn: City Attorney
PO Box 3366
West Palm Beach, FL 33402-3366

and if to County, shall be mailed or delivered at:

Palm Beach County Water Utilities Department
P.O. Box 16097
West Palm Beach, FL 33416-6097
Attn: Director, Water Utilities

With a copy not to constitute notice to:

County Attorney's Office
Attention: Water Utilities
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401-4791
Fax 561-355-4398

26. Filing.

This Agreement shall be filed with the Clerk and Comptroller of Palm Beach County, Florida.

27. Assignment.

Neither County nor WPB may assign this Agreement or any interest herein without the prior written consent of the other party, which may be granted or withheld at such other party's sole and absolute discretion. Any attempted assignment without such consent shall be null and void, without legal effect and shall constitute a breach of this Agreement. This provision shall be construed to include a prohibition against any assignment by operation of law.

28. Governing Law & Venue.

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida without regard to conflict of laws provisions. Venue in any action, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

29. Time of Essence.

Time is of the essence with respect to the performance of each and every provision of this Agreement where a time is specified for performance.

30. Non-Discrimination.

The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

Pursuant to County Resolution R-2014-1421, as may be amended, WPB shall be required to submit a copy of WPB's non-discrimination policy which shall be consistent with the policy of Palm Beach County stated above, prior to entering into any contract with Palm Beach County. Should WPB not have a written non-discrimination policy, a signed statement affirming WPB's non-discrimination policy is in conformance with Palm Beach County's policy will be required.

31. Construction.

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

32. Third Party Beneficiaries.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of County or employees of County or WPB.

33. Incorporation by Reference.

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

34. Waiver.

The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.

35. Severability.

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of the is Agreement shall be deemed valid and enforceable to the extent permitted by law.

36. Headings.

The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Agreement.

37. Office of the Inspector General.

Palm Beach County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.

38. Amendment and Modification.

This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.

39. Entirety of Agreement.

WPB and the County agree that this Agreement and any Exhibits set forth the entire agreement

between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

[Signatures on following page.]

IN WITNESS WHEREOF, WPB and County have executed or have caused this Agreement, 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.

**SHARON R. BOCK
CLERK & COMPTROLLER**

**PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

(Seal)

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

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
County Attorney

By: _____
Department Director

ATTEST:

CITY OF WEST PALM BEACH, FLORIDA

By: _____
City Clerk

By: _____
Geraldine Muoio, Mayor

Dated: _____, 2015

OFFICE OF THE CITY ATTORNEY
Approved as to form and legality
By: _____

EXHIBIT "A"
POINT OF CONNECTION

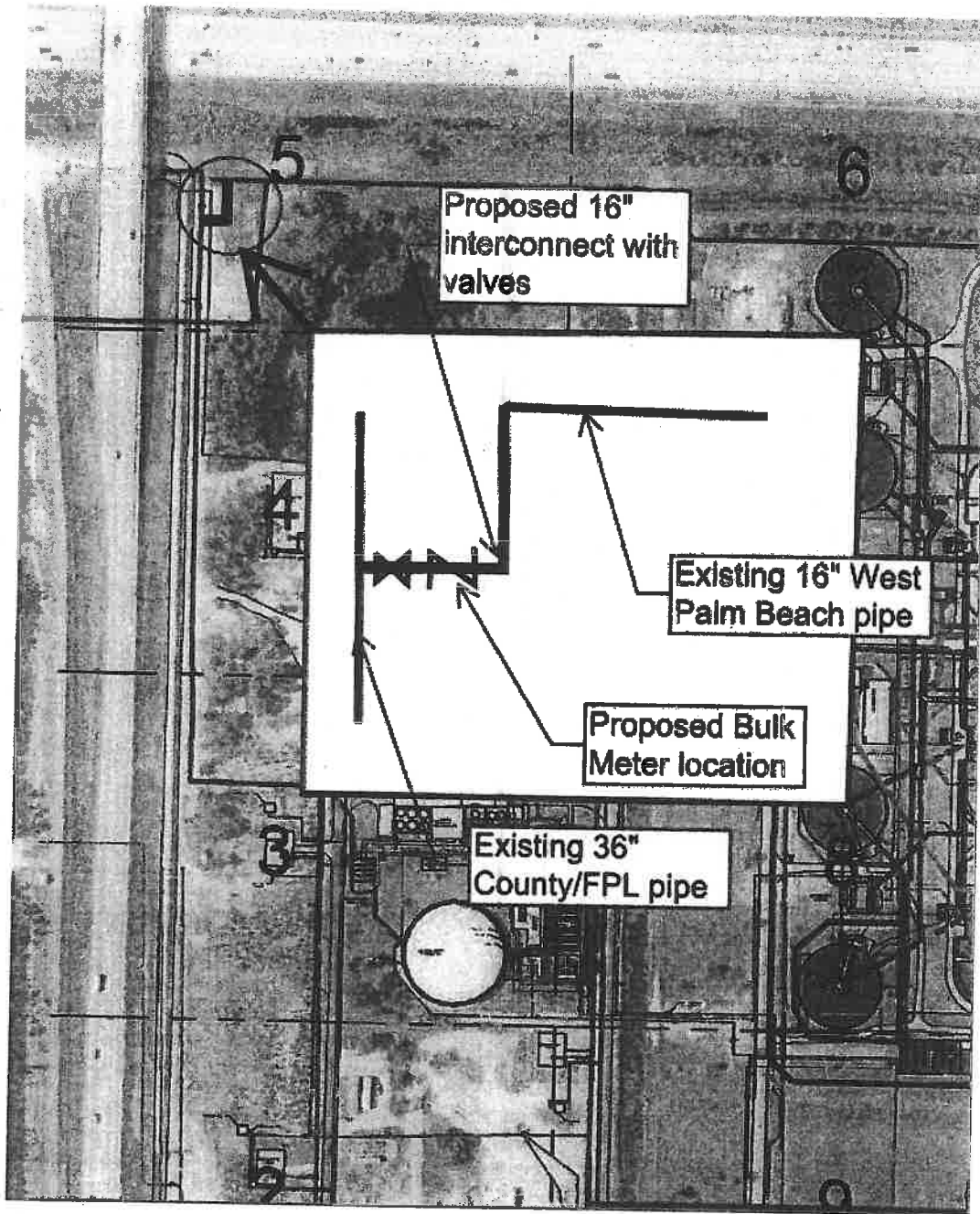


EXHIBIT "B"
PRC SCHEDULE

1. Seminole Improvement District

-Priority Reservation Capacity Date: April 20, 2010

-Priority Reservation Capacity:

-Beginning January 1, 2015 – 1.45 MGD

-Beginning January 1, 2017 – 2.85 MGD

-Beginning January 1, 2025 – 3.85 MGD

2. City of West Palm Beach

-Priority Reservation Capacity Date: Effective Date of this Agreement

-Priority Reservation Capacity: .70 MGD

**INTERLOCAL AGREEMENT
FOR THE SALE AND PURCHASE OF RECLAIMED WATER**

WPB Contract No. 16208

THIS AGREEMENT is hereby made and entered into _____, by the **CITY OF WEST PALM BEACH**, a Florida municipal corporation, , hereinafter referred to as ("City") and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida ("County").

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969", authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the East Central Regional Wastewater Treatment Facilities ("ECRWTF") is a wastewater treatment facility with a current permitted capacity of 70 million gallons per day ("MGD") by the Florida Department of Environmental Protection ("FDEP"), and is jointly owned by five local governments (collectively referred to as "Member Entities"), including the City and the County, and which is operated by the City; and

WHEREAS, the ECRWTF Operation Board ("ECR Board") entered into an Agreement with the County and the City ("ECR Reclaimed Agreement") dated May 20, 2008 (County Resolution No. R2008-0907), related to the construction, operation, and maintenance of certain facilities on ECRWTF property for the provision of Reclaimed Water to the Florida Power and Light Company ("FPL") West County Energy Center ("WCEC") and other customers; and

WHEREAS, County and FPL entered into a Reclaimed Water Agreement ("FPL Reclaimed Agreement") dated May 20, 2008 (County Resolution No. R2008-0906), in which County agreed to provide the WCEC with Reclaimed Water utilizing certain facilities, including an expansion to the ECRWTF to produce Reclaimed Water, a reclaimed water pipeline and appurtenant facilities located within and outside of ECRWTF Property, and a storage tank and appurtenant facilities located at the WCEC site (said facilities hereinafter collectively referred to as the "Reclaimed Water Project" or "RWP"); and

WHEREAS, under the terms of the ECR Reclaimed Agreement, the ECR Board, and its Member Entities, agreed to allocate certain secondary treated effluent of sufficient quality to the RWP; and

WHEREAS, the ECRWTF is currently generating approximately 45 MGD of secondary treated effluent classified as being available for Reclaimed Water, with approximately 13 MGD reserved for prior contractual commitments of the City and County leaving approximately 31 MGD of secondary treated effluent of sufficient quality to be available for the RWP; and

WHEREAS, the total amount of Reclaimed Water that County is required to make available to FPL as delineated in the FPL Reclaimed Agreement is: i) 22.0 MGD annual average daily flow ("AADF") calculated based on a five (5) year rolling average; ii) 4.0 MGD minimum daily flow; and iii) 27.0 MGD peak usage on any day (collectively the "FPL Contracted Capacity") during the term of such agreement; and

WHEREAS, actual FPL requirements for firm, Reclaimed Water generated by the RWP ("RWP Reclaimed Water") are expected to vary significantly on an annual cycle with higher cooling water demands occurring at times of higher regional rainfall and consequent lower irrigation needs; and

WHEREAS, County will make available up to 9 MGD of RWP Reclaimed Water capacity ("Prior Reservation Capacity") to other customers after satisfying FPL's Contracted Capacity, subject to changing conditions and RWP operating experience, with said RWP Reclaimed Water being provided as Interruptible Reclaimed Service, as that term is defined herein; and

WHEREAS, under a separate agreement to be executed simultaneously herewith, the City has entered into an Agreement with County reserving Prior Reservation Capacity and providing for the bulk purchase of up to 0.70 MGD of RWP Reclaimed Water ("Bulk Agreement"); and

WHEREAS, the ECR Board and the City entered into an Interlocal Agreement dated January 8, 2001 Concerning the Construction, Operation and Maintenance of Reclaimed Water Production Facilities at the ECRWTF (the "AWT"); and

WHEREAS, the City intends to re-commission the AWT facility to provide Reclaimed Water Service to various customers within the City's service area; and

WHEREAS, County owns certain property within the Reclaimed Water service area of the City (as further described in **Exhibit "A"** hereto, which is incorporated herein, and hereinafter referred to as the "Property"); and

WHEREAS, County wishes to utilize Reclaimed Water for irrigation of the spring training baseball facility that the County and others are developing on the Property ("Haverhill Ball Park"); and

WHEREAS, construction of certain Offsite Reclaimed Water Facilities and Onsite Reclaimed Water Facilities, as those terms are defined herein, will be required in order to provide Reclaimed Water to the Property; and

WHEREAS, the County is willing, subject to and in accordance with the terms and conditions hereinafter specified in this Agreement, and subject to and in accordance with the terms and conditions related to ownership and operation of the ECRWTF, to design, engineer, permit, finance and procure, the Offsite Reclaimed Water Facilities and Onsite Reclaimed Water Facilities, all as hereinafter more fully described and specified in this Agreement (the "Project", which is more fully described in **Exhibit "D"** attached hereto and incorporated herein); and

WHEREAS, the Project will be, at a minimum, sized to provide Reclaimed Water to the Property; and

WHEREAS, City and County wish to enter into this Agreement for the construction of the Project and the purchase and sale of Reclaimed Water.

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

1. **Recitals.**

The foregoing statements are true and correct and are incorporated herein by specific reference.

2. **Term.**

The term of this Agreement ("Term") shall commence on the Effective Date and shall continue in full force and effect for fifteen (15) years. The Term of this Agreement may be extended for an additional fifteen (15) year term, upon written amendment to this Agreement by the parties.

3. **Effective Date.**

This Agreement shall become effective upon approval by both parties and the approval by both parties of the Bulk Agreement. The Effective Date of this Agreement shall be the date the Agreement is approved by the Palm Beach County Board of County Commissioners and the City of West Palm Beach City Commission.

4. **Definitions.**

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

"AADF" has the meaning set forth in the Recitals to this Agreement.

"AWT Facility" or "AWT" means the ECR advanced water treatment facility installed by City pursuant to the WPB AWT Interlocal Agreement.

"Baseball Agreements" has the meaning set forth in *Section 22* of this Agreement.

"Bulk Agreement" has the meaning set forth in the Recitals to this Agreement.

"ECR Board" has the meaning set forth in the Recitals to this Agreement.

"ECR Reclaimed Agreement" has the meaning set forth in the Recitals to this Agreement.

"ECRWTF" has the meaning set forth in the Recitals to this Agreement.

"ECRWTF Property" shall mean the property where the ECRWTF is located. The ECRWTF Property is depicted on **Exhibit "B"**, which is attached hereto and incorporated herein.

"Effective Date" has the meaning set forth in Section 3 of this Agreement.

"FDEP" has the meaning set forth in the Recitals to this Agreement.

"FPL Contracted Capacity" has the meaning set forth in the Recitals to this Agreement.

"FPL Reclaimed Agreement" has the meaning set forth in the Recitals to this Agreement.

"Haverhill Ball Park" has the meaning set forth in the Recitals to this Agreement.

"Interruptible Reclaimed Service" means RWP Reclaimed Water service which is subject to curtailment or cessation of delivery by the City only as a result of the curtailment or cessation of delivery under the Bulk Agreement.

"Lake" means the lake on the Property which will be the receiving facility for the Reclaimed Water.

"Member Entities" has the meaning set forth in the Recitals to this Agreement.

"MGD" has the meaning set forth in the Recitals to this Agreement.

"Offsite Reclaimed Water Facilities" means the Point of Connection Facilities and the Reclaimed Water main running from the ECRWTF Property to the Property, as more fully described in **Exhibit "D"**.

"Onsite Reclaimed Water Facilities" means the connecting Reclaimed Water mains, meter and appurtenances located within the ECRWTF Property, as more fully described in **Exhibit "D"**.

"Point of Connection" means the location where the Project is connected to the Property Reclaimed Water System. The Point of Connection is depicted in **Exhibit "C"**, which is attached hereto and incorporated herein.

"Point of Connection Facilities" means those facilities necessary to connect the Project to the Property Reclaimed Water System, including the Reclaimed Water Meter and appurtenant facilities. The Point of Connection Facilities shall include piping, meter vault, meter, SCADA facilities, and appurtenant facilities.

"Prior Reservation Capacity" is the volume of Interruptible Reclaimed Service expressed on an AADF basis reserved by and allocated to the City pursuant to the Bulk

Agreement. The City has reserved 0.70 MGD under the Bulk Agreement, which is allocated to the County herein.

"Prior Reservation Capacity Fee" means the fee expressed on a dollars per 1,000 gallons basis required to reserve each 1,000 gallon/year increment of Prior Reservation Capacity in the RWP. The Prior Reservation Capacity Fee the City is responsible for under the Bulk Agreement is \$41.17 per 1000 gallons of Prior Reservation Capacity annually.

"Project" has the meaning set forth in the Recitals and **Exhibit "D"**, which is attached hereto and incorporated herein.

"Property" has the meaning set forth in the Recitals to this Agreement.

"Property Reclaimed Water System" means the facilities constructed, owned, operated, and maintained by County for the distribution of Reclaimed Water within the Property. The Property Reclaimed Water System shall be located downstream of the Point of Connection, and shall not be considered part of the Project.

"Reclaimed Water" means Wastewater effluent that has been treated and is permitted by the FDEP and which meets all applicable standards for Wastewater effluent treated to meet non-potable needs as required for discharge on to public access use areas, in accordance with Chapter 62-610, Part III, Florida Administrative Code, as may be amended from time to time.

"Reclaimed Water Project" or "RWP" has the meaning set forth in the Recitals to this Agreement.

"RWP Reclaimed Water" means Reclaimed Water that is produced and transmitted to County utilizing the RWP.

"RWP Reclaimed Water Fee" means the fee expressed on a dollar per 1,000 gallons basis of RWP Reclaimed Water to be charged for the delivery of RWP Reclaimed Water as measured by metering at the Point of Connection.

"Service Initiation Date" means the date the City notifies County that the City can begin to provide RWP Reclaimed Water service for sale to the County through the Point of Connection, which shall be approximately May 2016.

"Wastewater" means liquid and water-carried industrial, domestic, medical, food, superfluous solid, gaseous material, holding tank or other wastes from dwelling units, commercial establishments and manufacturing units, whether treated or untreated.

"WCEC" has the meaning set forth in the Recitals to this Agreement.

"WPB AWT Interlocal Agreement" means that Interlocal Agreement between the City of West Palm Beach and the ECR Board, dated January 8, 2001 Concerning the Construction, Operation and Maintenance of Reclaimed Water Production Facilities at the ECR.

5. Scope of Agreement.

5.1 Design, Bidding and Construction of Project. The County, through its Water Utilities Department, shall design, bid, permit and construct the Project or designate other parties to perform those duties, in accordance with the County procurement process. The County shall fund and pay directly all costs and expenses of design, bidding, financing, permitting and construction of the Project. Notwithstanding the foregoing, the City shall have the right, at its option, to require County to oversize the Project to accommodate future City customers, provided that the City funds the mutually-agreed upon increased costs associated with said oversizing. Said oversizing costs shall apply to the pipeline sizing for the Offsite Reclaimed Water Facilities. The County shall be responsible for the cost of any damages or repairs to the ECRWTF arising out of, related to or resulting from the construction, modification or alteration of the Project. The County shall comply with the County's procurement ordinances, policies, and procedures in the bidding and selection of contractors for the construction of the Project. The County shall not be subject to the City procurement code with respect to the design, bidding, finance, permitting and construction of the Project.

5.2 Approval of Design. The County shall submit the design documents for the Onsite Reclaimed Water Facilities to the ECR Board and City for prior approval. The County shall submit the design documents for the Offsite Reclaimed Water Facilities to the City for prior approval. Approval of design by City and ECR Board shall be for compliance with the Project concept, related agreements and City utility requirements; and shall not constitute approval for regulatory compliance. The City shall not unreasonably withhold or delay its approval of any such design documents. The County shall construct the Project in accordance with the approved design documents. The County shall not make any modification or alteration to the Onsite Reclaimed Water Facilities without written prior approval of the ECR Board and City, and the County shall not make any modification or alteration to the Offsite Reclaimed Water Facilities without prior written approval by the City. The City shall not unreasonably withhold or delay such approval. The County shall submit to the ECR Board and City the design documents for any and each proposed modification or alteration of the Onsite Reclaimed Water Facilities together with the request for approval of such modification or alteration. The County shall submit to the City the design documents for any and each proposed modification or alteration of the Offsite Reclaimed Water Facilities together with the request for approval of such modification or alteration.

5.3 Permits and Approvals. The County shall be responsible for obtaining all required governmental permits and approvals for the construction of the Project.

5.4 Transfer of Title. County shall deliver or cause to be delivered title to the Onsite Reclaimed Water Facilities to ECR Board upon completion of construction of same, together with all contractor, subcontractor and equipment supplier warranties related thereto. County shall deliver or cause to be delivered title to the Offsite Reclaimed Water Facilities to City upon completion of construction of same, together with all contractor, subcontractor and equipment supplier warranties related thereto.

5.5 Purchase and Sale of Reclaimed Water. The City agrees to furnish, and the County agrees to purchase, Reclaimed Water in accordance with the terms and conditions of this Agreement. The Reclaimed Water service shall be Interruptible Reclaimed Service. The Reclaimed Water shall be delivered by the City to the County at the Point of Connection.

6. Reclaimed Water Supply

6.1 Commencing on the Service Initiation Date, the City shall make available to County at the Property Point of Connection 0.70 MGD AADF of RWP Reclaimed Water to meet the water requirements for irrigation of the Property. City may provide flow rates greater than 0.70 MGD AADF to the County but is under no obligation to do so, unless the County requests that the City reserve additional Prior Reservation Capacity from the RWP. Notwithstanding the prior sentence, City acknowledges that the irrigation needs of the Property during the start-up phase of the baseball facility (scheduled to occur during May 2016 to April 2017) may require up to 1.0 MGD AADF of RWP Reclaimed Water, and the City shall provide such RWP Reclaimed Water to the County provided that said RWP Reclaimed Water is available to the City pursuant to the Bulk Agreement.

6.2 County acknowledges that, during the term of this Agreement, it is the City's intent to re-commission the AWT Facility and to thereafter provide Reclaimed Water under this Agreement from the AWT Facility. The substitution of Reclaimed Water from the AWT Facility for the RWP Reclaimed Water is contingent upon the City being able to meet the Reclaimed Water needs of the Haverhill Ball Park, as determined by the County, which determination shall not be unreasonably withheld.

7. Reclaimed Water Fee.

7.1 The RWP Reclaimed Water Fee in the Bulk Agreement is \$0.63 per 1,000 gallons of RWP Reclaimed Water. The RWP Reclaimed Water Fee, for Reclaimed Water delivered by the City to the Point of Connection is calculated by multiplying the RWP Reclaimed Water Fee set forth in the Bulk Agreement by 25%, in order to cover the administrative, operational, maintenance, and renewal and replacement costs of the Project that the City will incur. To the extent that the RWP Reclaimed Water Fee set forth in the Bulk Agreement is increased or decreased, then the RWP Reclaimed Water Fee set forth herein shall increase or decrease accordingly by multiplying the RWP Reclaimed Water Fee set forth in the Bulk Agreement by 25%. With the exception of the prior sentence or pursuant to Section 7.2, the RWP Reclaimed Water Fee shall not be modified for the Term of this Agreement.

7.2 Upon the re-commissioning of the AWT Facility and the provision of Reclaimed Water by the City from the AWT Facility, the Reclaimed Water Fee charged to County for Reclaimed Water delivered by the City to the Property Point of Connection shall be at the rate then in effect for the City, and as may be increased or decreased by City thereafter based on changes to the City's published rates for Reclaimed Water.

8. Capacity Fees.

8.1 City is responsible for the payment of a Prior Reservation Capacity Fee to the

County in accordance with the Bulk Agreement. County shall be responsible for reimbursement to City for the Prior Reservation Capacity Fee attributable to the County, which reimbursement shall be payable within 30 days of City's request for reimbursement. There shall be no mark-up of the Prior Reservation Capacity Fee. County acknowledges that City has been granted a Prior Reservation Capacity of 0.70 MGD RWP Reclaimed Water. County may request City to make a request for additional Prior Reservation Capacity above the .70 MGD, but City makes no representation that additional Prior Reservation Capacity will be available. In the event that County exceeds the Prior Reservation Capacity in any given service year, County shall reimburse City for any Prior Reservation Capacity Fee paid for excess RWP Reclaimed Water used above the total Prior Reservation Capacity; said reimbursement shall be payable within 30 days of City's request for reimbursement.

8.2 Upon the re-commissioning of the AWT Facility and the provision of Reclaimed Water by the City from the AWT Facility, the Reclaimed Water capacity reservation fee charged to County for Reclaimed Water delivered by the City to the Point of Connection shall be at the rate then in effect for the City, and as may be increased or decreased by City thereafter. The Prior Reservation Capacity Fee is subject to change based on changes to the City's published capacity reservation fee.

8.3 If reimbursement of any capacity reservation fee has not been received by the City from the County after sixty (60) days from the date of the original request for reimbursement, service may be suspended until payment is made and a one percent (1%) per month interest charge may be assessed by the City on the outstanding unpaid balance.

9. HW Spring Training Complex, LLC.

It is the intention of the County to assign the design, construction, and operation of the spring training baseball facility on the Property to HW Spring Training Complex, LLC, a Florida Limited Liability Company ("LLC"), whose managers are representatives of the Houston Astros, L.L.C., a Texas Limited Liability Company and the Washington Nationals Baseball Club, L.L.C., a Washington, D.C. Limited Liability Company. The City acknowledges and agrees that the County may partially or wholly assign the obligations of this Agreement to the LLC, including the obligation to make any payment required herein.

A spreadsheet setting forth the responsibilities in relation to the design and construction of the Project is attached hereto and incorporated herein as **Exhibit "E"**. The County acknowledges that any obligation set forth on **Exhibit "E"** other than any assigned to the City ultimately remains the contractual obligation of the County.

10. Point of Connection Facilities.

County shall be responsible for the payment of all design and construction costs of the Point of Connection Facilities. City will own the Reclaimed Water meter and the SCADA facilities at the Property.

11. Additional Responsibilities of the County.

The County shall provide for the design and construction of the Property Reclaimed Water Facilities up to the Point of Connection. The County shall be responsible for the securing of any permits or other approvals required for the design and construction of the Property Reclaimed Water Facilities. The County shall be responsible for the continuing operation, maintenance, renewal and replacement of the Property Reclaimed Water System.

12. Additional Responsibilities of the City.

City shall be responsible for the operation, maintenance, renewal, and replacement of the Project, including the Point of Connection Facilities.

13. Use of Reclaimed Water.

13.1 Operation Permits. County, or its assigns, shall obtain at its expense, any permits required for the operation and maintenance of the Property Reclaimed Water System including the use of the Lake which will be the receiving facility for the Reclaimed Water to be supplied by City to the Property.

13.2 Use. County shall use all Reclaimed Water received from City solely for irrigation on the Property. Reclaimed Water may not be piped into any building that receives potable water.

13.3 Signage. County shall notify the public of the use of Reclaimed Water on the Property. This notification shall be accomplished by posting of advisory signs which comply with all FDEP rules and regulations, and shall be placed at multiple locations along the Lake and throughout the areas being irrigated, in accordance with FAC 62-610.468(2)-(5).

13.4 County shall secure in locked compartments, all sources of Reclaimed Water from access by the public and such sources of Reclaimed Water shall be appropriately labeled as Reclaimed Water, not for drinking, in both English and Spanish ("Do Not Drink – No Beber", together with the standard international symbol) and as required by FDEP regulations. There shall be no hose bibs, faucets, or other connections that could permit usage of Reclaimed Water for any purpose other than supply to the in-ground irrigation system.

13.5 The Reclaimed Water irrigation system shall be completely isolated, without cross connection to any other potable or non-potable water source.

13.6 County shall maintain the irrigation system in good working condition and adjusted properly to minimize spray onto neighboring property or impervious surfaces that allow run-off.

13.7 County shall report any overflows of the Lake or any other abnormal occurrences regarding the Reclaimed Water to the appropriate regulatory agency and to City not later than 24 hours after an occurrence.

13.8 County shall comply with all applicable laws and regulations, including the Florida Department of Environmental Regulations set forth in Chapter 62-610, Florida Administrative Code.

13.9 City shall not be held liable for damages to vegetation or equipment resulting from the application of Reclaimed Water.

14. Payment of Reclaimed Water Fees.

The City will bill the Reclaimed Water Fee to the County on a monthly basis. The County agrees to pay the monthly Reclaimed Water Fee to the City within thirty (30) days from the date the bill is rendered by the City. A past due notice will be mailed by the City to the County after thirty (30) days. If payment has not been received by the City from the County after sixty (60) days from the date of the original bill, service may be suspended until payment is made and a one percent (1%) per month interest charge may be assessed by the City on the outstanding unpaid balance.

15. City to Maintain Meter.

The City agrees to pay to have an annual inspection and report prepared regarding the condition and accuracy of the Reclaimed Water meter located at the Point of Connection. A copy of the annual meter inspection report shall be furnished to the County. The County 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 the County shall first give City written notice 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, excluding Saturdays, Sundays, and holidays, subsequent to the receipt of said notice by County. All costs and expenses of the County's interim inspection shall be borne by the County. If the meter is found not to be in good working order as a result of the County interim inspection, the City shall reimburse the County the cost incurred by the County for the interim inspection. Normal maintenance and the replacement of the Reclaimed Water meter shall be performed by the City at its sole cost.

16. Time Period Limitation In Case of Meter Inaccuracy.

Both parties agree that, should the Reclaimed Water meter at the Point of Connection be found to be inaccurate beyond applicable industry standards, the meter will be assumed to have been inaccurate since the time of the event failure or for a period of ninety (90) days, whichever time should be less, and that the following month's billing will be adjusted to show a credit or additional charge to the County for that period, based upon the method established in Section 17 of this Agreement.

17. Presumed Consumption and Required Payment In Case of Meter Inaccuracy.

Both parties agree, that if at any time the Reclaimed Water meter located at the Point of Connection shall be inaccurate with respect to the quantity of consumption by the County as provided in Section 16 of this Agreement, the County will pay to the City a daily amount equal to the average Reclaimed Water flowage of the ninety (90) day period prior to the date that the meter became inaccurate multiplied by the Reclaimed Water Fee in effect.

18. Security.

Only authorized employees of the City will operate the valves controlling the Point of Connection.

19. Default and Cure Provisions.

The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default ninety (90) days written notice to cure said default before exercising any of its rights as provided for in this Agreement. Each party shall be entitled to seek specific performance and injunctive relief to cure a Default. Failure to cure a payment default by the County within ninety (90) days following notice may be grounds for termination of this Agreement. The parties may mutually agree to extend the time for cure.

20. Force Majeure.

In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or Reclaimed Water Plant failures and Reclaimed Water main breaks, neither party shall be liable for such nonperformance.

21. Indemnification.

21.1 City and County acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. City and County agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

21.2 In the event County assigns this Agreement to a third party ("Third Party"), that Third

Party agrees to indemnify, defend, save and hold harmless the City, its officers, agents and employees, from any claim, demand, suit, loss, cost or expense for any damages that may be asserted, claimed or recovered against or from City, its commissioners, officials, employees or agents arising out of or incidental to or in any way connected with any wrongful act, omission, default or negligence of the Third Party in the use or application of Reclaimed Water or the violation of federal, state, county or municipal laws, ordinances or regulations by Third Party. This indemnification includes, but is not limited to, any costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or the investigation thereof. This paragraph shall not be construed to require Third Party to indemnify the City for City's own negligence, or intentional acts of the City, its agents or employees. Nothing in this Agreement shall be deemed to affect the rights, privileges and sovereign immunities of the City of West Palm Beach or City as set forth in Section 768.28, Florida Statutes. This clause shall survive the expiration or termination of this Agreement.

22. Termination

The parties hereto acknowledge that this Agreement is being entered into in relation to the construction, development and operation of the Haverhill Ball Park, which is subject to the approval and continued effectiveness of the following agreements: (1) the Developer Agreement between the County and HW Spring Training Complex, LLC; (2) the Sports Facility and Use Agreement between the County and HW Spring Training Complex, LLC; (3) the Interlocal Agreement between the City and the County related to the exchange of properties; (4) the Interlocal Agreement between Palm Beach County and the City of West Palm Beach for the Purchase of Bulk Reclaimed Water; and (5) Interlocal Agreement among the East Central Regional Wastewater Treatment Facilities Operation Board, the City of West Palm Beach, and Palm Beach County Related to Reclaimed Water Mains (collectively the "Baseball Agreements"). To the extent that any of the Baseball Agreements are not approved, not effective, or are terminated, the parties agree that this Agreement may be terminated by any party hereto by providing five (5) days written notice to the other party(s).

23. Termination upon Permanent Cessation of Operations ECRWTF/RWP/AWT.

The parties agree that this Agreement is intended to coincide with the term of the operation of the ECRWTF, the RWP and the AWT. The parties further agree that the City shall have no obligation to continue the provision of Reclaimed Water under this Agreement following the permanent cessation of the operation of the ECRWTF, the RWP (prior to the re-commissioning of the AWT), or the AWT (after AWT is re-commissioned). Therefore, if during the term of this Agreement, and for any reason whatsoever, the ECRWTF and/or the RWP (prior to AWT re-commission) or AWT permanently cease operation, then the City shall have the right to immediately terminate this Agreement upon written notice to County. County hereby releases and holds City harmless from any claims and damages based upon termination under this Section.

24. Easements.

The County shall be responsible for securing all easements, licenses or rights necessary for the installation of the Reclaimed Water main, at County's expense. The City will not unreasonably

withhold any easements on property owned by City.

25. Remedies.

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.

26. Successors and Assigns.

The City and the County each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the City nor the County shall assign, sublet, convey, or transfer its interest in this Agreement without prior written consent of the other.

27. Waiver.

The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or nonperformance, and said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.

28. Severability.

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

29. Notice.

All notices or requests provided for herein shall be in writing and transmitted by certified mail or by courier with a signature receipt, and, if to the County, shall be mailed or delivered to the County at:

County:

Palm Beach County
Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway

West Palm Beach, Florida 33411-5605
Fax 561-233-0210

With a copy to not to constitute notice to:

County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401-4791
Fax 561-355-4398

City:

City of West Palm Beach
Attn: City Administrator
401 Clematis Street
West Palm Beach, FL 33401

With a copy not to constitute notice to:

City of West Palm Beach
Attn: City Attorney
PO Box 3366
West Palm Beach, FL 33402-3366

With copies not to constitute notice to:

Giles Kibbe
HW Spring Training Complex, LLC
501 Crawford, Suite 500
Houston, Texas 77001

And

Arthur Fuccillo
HW Spring Training Complex, LLC
Lerner Enterprises
2000 Tower Oaks Boulevard
Eighth Floor
Rockville, Maryland 20852

And

Houston Astros, LLC
501 Crawford, Suite 500
Houston, Texas 77001
Attention: Reed Ryan

And

Washington Nationals Baseball Club, LLC
Mark D. Lerner
Vice Chairman & Principal Owner
Nationals Park
1500 South Capitol Street, SE
Washington, DC 20003

And

Brian M. Seymour, Esq.
Gunster
777 S. Flagler Drive, Suite 500 East
West Palm Beach, Florida 33401

The use of electronic means of notification (e-mail) will not be considered as a method of providing notice for the purposes of this Agreement. Any party may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or three days after the date mailed. Each party to this Agreement shall have a continuing duty to promptly notify the other party of any change to any of this information.

30. No Third Party Beneficiaries.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the City and/or the County.

31. Non-Discrimination.

The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

Pursuant to County Resolution R-2014-1421, as may be amended, City shall be required to submit a copy of City's non-discrimination policy which shall be consistent with the policy of Palm Beach County stated above, prior to entering into any contract with Palm Beach County. Should City not have a written non-discrimination policy, a signed statement affirming City's non-discrimination policy is in conformance with Palm Beach County's policy will be required.

32. Amendment and Modification.

This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.

33. Entirety of Agreement.

The City and the County agree that this Agreement and any Exhibits hereto set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

34. Inspector General.

Palm Beach County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, County and City have executed or have caused this Agreement, 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.

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

(SEAL)

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: _____
Department Director

ATTEST:

CITY OF WEST PALM BEACH, FLORIDA

By: _____
City Clerk

By: _____
Geraldine Muoio, Mayor

OFFICE OF THE CITY ATTORNEY
Approved as to form and legality
By: _____

Dated: _____, 2015

EXHIBIT "A"
PROPERTY

A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER SECTION 1, TOWNSHIP 43 SOUTH, RANGE 42 EAST, SAID LANDS BEING A PORTION OF THE PLAT OF THE PUBLIC WATER SUPPLY AREA WEST PALM BEACH WATER COMPANY, AS RECORDED IN PLAT BOOK 23, PAGES 149 AND 150 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 1, THENCE S.87°45'40" E., ALONG THE NORTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 513.11 FEET TO THE NORTHEAST CORNER OF THOSE CERTAIN LANDS RECORDED IN OFFICIAL RECORD BOOK 8918, PAGE 1853 OF SAID PUBLIC RECORDS, AND BEGINNING; THENCE CONTINUE S.87°45'40"E. ALONG SAID NORTH LINE, A DISTANCE OF 1,674.92 FEET TO THE NORTHWEST CORNER OF THAT CERTAIN FLORIDA DEPARTMENT OF TRANSPORTATION RETENTION AREA, AS RECORDED IN OFFICIAL RECORD BOOK 11131, PAGE 928 OF SAID PUBLIC RECORDS; THENCE S.01°47'54"W. ALONG THE WEST LINE OF SAID RETENTION AREA, A DISTANCE OF 261.46 FEET; THENCE S.87°47'46"E. ALONG THE SOUTH LINE OF SAID RETENTION AREA, A DISTANCE OF 438.30 FEET TO A POINT OF INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF MILITARY TRAIL, AS RECORDED IN OFFICIAL RECORD BOOK 11131, PAGE 928 OF SAID PUBLIC RECORDS; THENCE S.02°40'54"W. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 848.33 FEET; THENCE S.03°41'15"W. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 1517.89 FEET; THENCE N.88°08'01"W. ALONG A LINE 50.00 FEET NORTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 1, A DISTANCE OF 2,080.84 FEET; THENCE N.02°27'51"E., A DISTANCE OF 390.13 FEET; THENCE N.86°00'41"W., A DISTANCE OF 217.70 FEET; THENCE N.04°33'50"E., A DISTANCE OF 922.84 FEET; THENCE N.86°00'00"W., A DISTANCE OF 323.67 FEET; THENCE N.04°55'38"E., A DISTANCE OF 175.20 FEET; THENCE N.49°23'30"E., A DISTANCE OF 35.68 FEET; THENCE N.04°55'39"E., A DISTANCE OF 60.01 FEET; THENCE N.40°35'00"W., A DISTANCE OF 51.86 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, SAID RIGHT-OF-WAY LINE LYING 50.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 1, PER POSTING AND VIEWING AT COUNTY COMMISSION MEETING DATED JULY 5, 1925; THENCE N.04°55'38"E. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 603.73 FEET; THENCE N.51°47'07"E. ALONG THE SOUTHEASTERLY LINE OF THOSE CERTAIN LANDS DESCRIBED IN OFFICIAL RECORD BOOK 8918, PAGE 1853 OF SAID PUBLIC RECORDS, A DISTANCE OF 633.92 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, FLORIDA. CONTAINING 6,160,376 SQUARE FEET/141.423 ACRES MORE OR LESS.

EXHIBIT "B"
ECRWTF PROPERTY

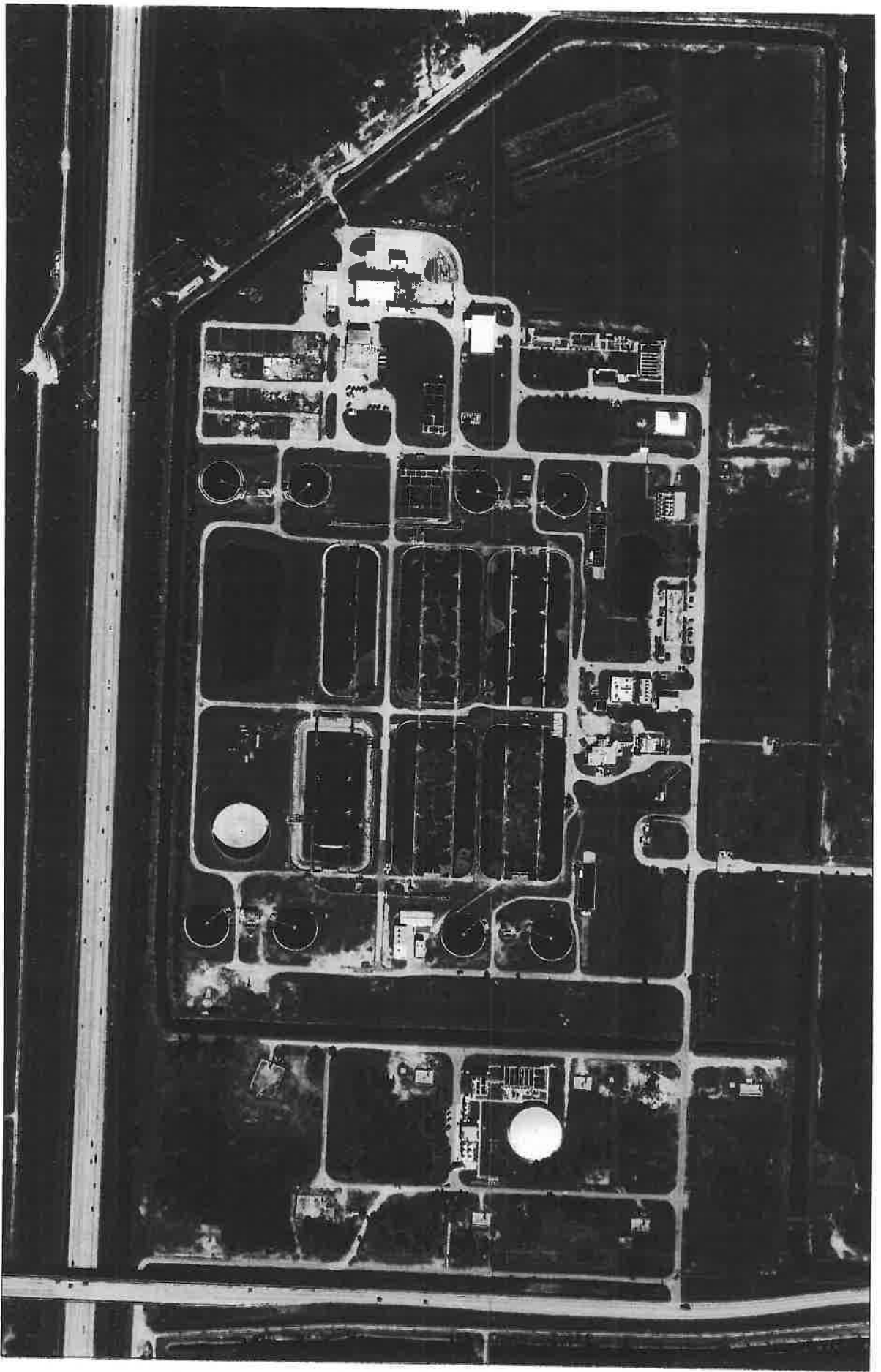


EXHIBIT "C"
POINT OF CONNECTION

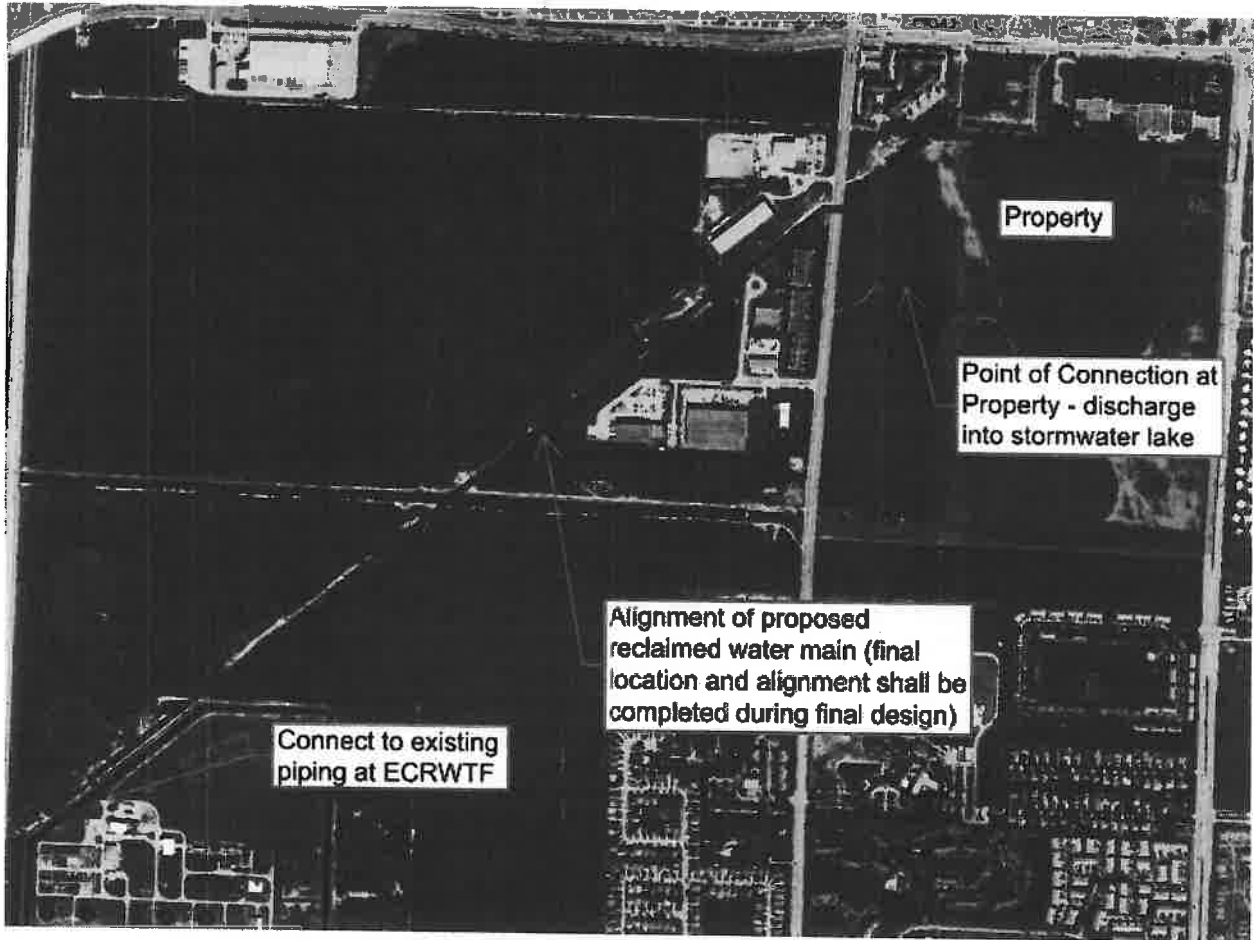


EXHIBIT "D"
PROJECT DESCRIPTION

Onsite Reclaimed Water Facilities: A Reclaimed Water main will be installed that will connect to the existing 30-inch Reclaimed Water main exiting the RWP and near the southwest corner of the ECRWTF Property. At this connection, a meter vault, power source, control valve and meter will be set in accordance with Palm Beach County Water Utilities Department standards, to allow the County to meter and control the flow of Reclaimed Water to the City. Telemetry and power for the meter and control valve will be provided within the RWP. The new Reclaimed Water pipeline will connect to existing Reclaimed Water mains on the ECRWTF Property in order to transmit the Reclaimed Water to the north end of the ECRWTF Property.

Offsite Reclaimed Water Facilities: From this point, a new Reclaimed Water main, sized adequately to serve the Property (except for any pipe oversizing elected by the City pursuant to Section 5.1 of this Agreement), including all associated appurtenances, will be constructed extending to the Point of Connection at the Property on-site Lake.

The discharge and control structure at the Point of Connection at the Lake will be constructed in accordance with City of West Palm Beach standards for Reclaimed Water lake discharge systems and will include, at a minimum, a meter vault, control valve, power source, Supervisory Control and Data Acquisition (SCADA) system. The SCADA system shall be compatible to City's standards and system, to enable the City to acquire data and meter flow in order to control the flow of Reclaimed Water to the Property. The meter at the Point of Connection will be supplied and installed by City and at the County's expense.

EXHIBIT "E"
DESIGN AND CONSTRUCTION RESPONSIBILITIES

**Ballpark of The Palm Beaches
Orders of Prime Agencies' Responsibilities**

	PBCFDO	PBCWUD	WPB	KH&A
Budget Allocation	XXXXXX			
<i>PBCFDO will provide Budget Line Item Number to PBCWUD for all bidding, advertisement and construction costs including staff's time</i>				
Site & Routing Survey and Utility Location				
Easement documents				XXXXXX
Design				
Planning Schematics				XXXXXX
Design Development 30, 60, 90 & 100% design drawings				XXXXXX
Construction Documents				XXXXXX
<i>PBCWUD will provide KH&A and the WPB with electronic copies of PBCWUD's construction contract front - end - document, standards detail sheets and specifications for the PBCWUD SCADA system</i>				
Permitting				
ECR, PBCWUD, City of WPB, FPL, FDEP, SFWMD				XXXXXX
Bidding & Contract Award				
Advertising		XXXXXX		
Pre-Bid		XXXXXX		XXXXXX
Bid Opening		XXXXXX		
BCC Agenda Preparation		XXXXXX		
Award of Bid		XXXXXX		
<i>KH&A will provide PBCWUD with adequate copies of design documents as required and as the Engineer-of-Record, they must address any technical questions during, bidding, award and construction phases.</i>				
Construction				
Preconstruction meeting		XXXXXX	XXXXXX	XXXXXX
Shop Drawings Review and Approval				XXXXXX
Permits on hand				XXXXXX
Commence Construction		XXXXXX		
Progress meetings		XXXXXX		XXXXXX
Construction Operation		XXXXXX		XXXXXX
Substantial Completion		XXXXXX		XXXXXX
System Startup		XXXXXX		XXXXXX
Connection at Ballpark		XXXXXX		
Final Completion		XXXXXX		XXXXXX
Regulatory Agencies Clearance				XXXXXX
Project certification				XXXXXX
As-built drawing				XXXXXX
O&M Manual				XXXXXX
<i>KH&A will provide PBCWUD with adequate copies of design documents as required and as the Engineer-of-Record, they must address any technical questions during, bidding, award and construction phases.</i>				

PBC - Hassan Hadjimiry, Ross Hering
 WPB - Scott Kelly, KH&A - Jason Webber

Meeting at the City of West Palm Beach
 Jul 29, 2015 12-1 p.m.