

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: March 22, 2016 Consent [X] Regular []
Public Hearing []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Interlocal Agreement Among the East Central Regional (ECR) Wastewater Treatment Facilities Operation Board (ECR Board), the City of West Palm Beach (WPB), and Palm Beach County for the Enhancement of the Reclaimed Water Facility (Enhancement Agreement).

Summary: The ECR was organized and operates pursuant to an Interlocal Agreement between the 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 (Interlocal Agreement). The County, WPB and the ECR Board entered into a subsequent Interlocal Agreement Related to the Construction, Operation and Maintenance of Reclaimed Water Facilities dated May 20, 2008 (the Reclaimed Water ILA) (R2008-0907) regarding the construction of a reclaimed water facility at ECR so that the County could provide reclaimed water service predominantly to Florida Power & Light. Pursuant to the Interlocal Agreement and Reclaimed Water ILA, the ECR Board, through WPB as its agent, is responsible for the operation, maintenance, renewal and replacement of the reclaimed water facility at ECR. The County is responsible for the costs to operate and maintain the reclaimed water facility; payments are made to ECR Board.


The reclaimed water facility at ECR requires repair work, including the construction of a bypass line around the storage tank, repairs to sluice gates, mixer assemblies, valves and other equipment, and other necessary work that may be discovered during the construction/repair activities. The proposed Enhancement Agreement will allow the County to undertake the necessary enhancements required to improve the reclaimed water facility. The County will procure professional design and construction services under the County procurement process and will initially fund the costs and expenses of the enhancements. The County will then be reimbursed from the ECR Renewal and Replacement Fund that was established pursuant to the Reclaimed Water ILA and the FPL Renewal and Replacement Fund that was established pursuant to R2008-0906. (District 2) (MJ)

Background and Justification: A number of enhancements are necessary to improve the safety and operational efficiency of the ECR. The proposed Enhancement Agreement will provide for the construction of the necessary enhancements. The County will undertake the necessary construction activities and will fund the initial costs of the enhancements. The County will then be reimbursed from the ECR Renewal and Replacement Fund that was created pursuant to the Reclaimed Water ILA and the FPL Renewal and Replacement Fund that was established pursuant to R2008-0906.

Attachments:

1. Three (3) Original Interlocal Agreements

Recommended By:  3-9-16
Department Director Date

Approved By:  3/17/16
Assistant County Administrator Date

WPB #17153

**INTERLOCAL AGREEMENT AMONG THE
EAST CENTRAL REGIONAL WASTEWATER TREATMENT FACILITIES
OPERATION BOARD
THE CITY OF WEST PALM BEACH
AND
PALM BEACH COUNTY
FOR THE ENHANCEMENT OF THE RECLAIMED WATER FACILITY**

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2016, 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 County, WPB and ECR entered into an Interlocal Agreement Related to Construction, Operation and Maintenance of Reclaimed Water Facilities, dated May 20, 2008 (County Resolution R2008 0907) ("the Reclaimed Water Interlocal") regarding the County's construction of a Reclaimed Water facility for the ECR with the output from the facility dedicated to the County so that the County could provide Reclaimed Water service predominantly to Florida Power & Light (the "Reclaimed Water Facility"); and

WHEREAS, pursuant to the Interlocal Agreement and the Reclaimed Water Interlocal, the ECR, through WPB as its agent, is responsible for the operation, maintenance, renewal and replacement of the Reclaimed Water Facility; and

WHEREAS, the Reclaimed Water Facility is in need of certain immediate enhancements, including the construction of a bypass line around the storage tank, and repairs to sluice gates, mixer assemblies, valves and other equipment, and other necessary work which may be discovered during the construction/repair process, which are set forth in more detail in **Exhibit "A"**, which is attached hereto and incorporated herein (the "Enhancements"); and

WHEREAS, the parties are in agreement that the County is the best party to undertake the Enhancements, and therefore wish to enter into this Agreement to permit the County to do so, and to provide certain assurances to the ECR and WPB related to the Enhancements.

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.

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 for the Repair of the Reclaimed Water Facility.

2.2 "AWT Treatment Facility" means the advanced water treatment facility constructed by WPB pursuant to the Interlocal Agreement between WPB and the ECR, dated January 8, 2001 Concerning the Construction, Operation and Maintenance of Reclaimed Water Production Facilities at the ECR.

2.3 "Construction Costs" has the meaning set forth in Section 3.2.

2.4 "County Damage Costs" has the meaning set forth in Section 3.2.

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

2.6 "ECR Wastewater Treatment Facilities", for purposes of this Agreement, means the ECR facilities used in the treatment and disposal of Wastewater, not including the Reclaimed Water Facility or the AWT Treatment Facility.

2.7 "Enhancements" has the meaning set forth in the Recitals.

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

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

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

2.11 "Interlocal Agreement" has the meaning set forth in the Recitals.

2.12 "Reclaimed Water" means Secondary Treated Effluent that has been further treated in a Reclaimed Water facility.

2.13 "Reclaimed Water Facility" has the meaning set forth in the Recitals.

2.14 "Reclaimed Water Interlocal" has the meaning set forth in the Recitals.

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. REPAIR OF FPL RECLAIMED WATER FACILITY.

3.1 Construction of Enhancements. The ECR and WPB hereby grant to the County the right to perform the Enhancements, and the County agrees to undertake to perform the Enhancements in accordance with this Agreement. The County shall complete the Enhancements within thirty (30) months of the Effective Date of this Agreement. This completion deadline may be extended by the mutual agreement of the Authorized Representatives identified in Section 6.5 below. The ECR agrees to grant a Temporary Construction Easement to the County to enable access to the Reclaimed Water Facility and for the construction of the Enhancements. 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 Enhancements. The County shall design, bid, contract for, permit and construct the Enhancements, or designate other parties to perform those duties, in accordance with the County procurement process. The County shall initially fund and pay directly all costs and expenses of design, bidding, financing, permitting and construction of the Enhancements, and shall be fully or partially reimbursed by the ECR from the ECR Renewal and Replacement Fund established pursuant to Exhibit E of the Reclaimed Water Interlocal, to the extent that funds are available within said fund. With the exception of providing reimbursement from said Fund, the ECR and WPB shall have no other financial obligation to fund the Enhancements. Said reimbursement shall be subject to the County providing sufficient documentation to the ECR and WPB. Any disputes related to said reimbursement shall be subject to the dispute resolution procedures of Section 5 below. The County shall include in its contract(s) for the Enhancements (the "Construction Contract(s)") the requirements regarding insurance and bonds set forth in this Agreement. The County shall be responsible for paying 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 Enhancements (the "County Damage Costs"). The County may utilize the Dispute Resolution Provisions set forth in Section 5 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 Enhancements. The County shall not be subject to the ECR or WPB procurement code with respect to the design, bidding or contracting of the Enhancements.

3.3 Construction Insurance/Bonds.

a) The County shall require that all insurance policies required under the County's Construction Contracts for the Enhancements name the County, ECR and WPB as insured parties. County shall also require that any payment, performance, or other bonds provided by County contractors for the Enhancements name the County, the ECR and WPB as co-obligees of the bonds. This requirement shall not apply to any bid bonds.

b) During the course of construction, the County or its contractor shall maintain builder's risk insurance on the Enhancements 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 deductibles 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 Enhancements.

3.4 Permits and Approvals. The County shall be responsible for obtaining all required governmental permits and approvals for the construction of the Enhancements. In the event that the ECR's FDEP Plant Permit must be amended to accommodate the construction of the Enhancements, 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 FDEP 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 FDEP Plant Permit, where amendment of the FDEP Plant Permit is caused by the construction or operation of the Enhancements. 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 Enhancements to ECR upon completion of construction of same, together with all warranties related thereto. The County, WPB and ECR acknowledge that the Enhancements shall be owned by the ECR as a portion of the ECR Property operated and maintained by WPB.

3.6 Approval of Design. County shall submit the design documents for the Enhancements to the WPB Representative and the ECR Representative for prior approval, which approval shall not be unreasonably withheld or delayed. The County shall construct the enhancements in accordance with the approved design documents. The County shall not make any modifications or alterations to the design without the approval of the WPB Representative and the ECR Representative, which approval shall not be unreasonably withheld or delayed. County shall coordinate construction activities with the ECR Representative to assure no unreasonable interference with the operations of the ECR Wastewater Treatment Facilities.

3.7 Beneficial Use. The ECR, County and WPB acknowledge and agree that pursuant to the Reclaimed Water Interlocal, County shall have the sole beneficial use and allocated operating and renewal and replacement cost of the Reclaimed Water Facility as improved by the Enhancements.

3.8 Costs for Use. There shall be no direct charge to the County for the use of ECR Property for the construction of the Enhancements.

SECTION 4. TERM AND EFFECTIVE DATE. The Agreement will be provided for approval to the ECR and WPB before being provided to the County. If approved by the ECR and WPB, 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 the duration of the term of the Interlocal Agreement, as extended from time to time.

SECTION 5. DISPUTE RESOLUTION. Disputes under this Agreement may be resolved by the County's Authorized Representative, WPB's Authorized Representative and ECR's Authorized Representative and the ECR Board Chair. 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 6. MISCELLANEOUS PROVISIONS.

6.1 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. This Agreement does not supersede or amend the Interlocal Agreement or the Reclaimed Water Interlocal.

6.2 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.

6.3 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.

6.4 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.

6.5. The Authorized Representative for the ECR is the ECR Executive Manager. The 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 Authorized Representative at any time and from time to time by written notice to the other.

6.6. 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.

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

6.8. 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.

6.9. 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.

6.10. 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.

6.11. 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.

6.12. 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.

6.13. 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.

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

6.15. 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.

6.16. 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.

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

6.18 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.

6.19 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.

[Signatures on following page.]

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

ATTEST:

Hazel L. Canon
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: Don

By: Geraldine Muoio
Geraldine Muoio, Mayor

Dated: 2/17/ 2016

ATTEST:
SHARON R. BOCK

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

By: _____
Clerk and Comptroller

By: _____
Mary Lou Berger, Mayor

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Date: _____

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS:

By: Jim Stiles
Department Director

ATTEST:

Hazel L. Canon
City Clerk

CITY OF WEST PALM

By: Geraldine Muoio
Geraldine Muoio, Mayor

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

Dated: 2/17/ 2016

EXHIBIT "A"
DESCRIPTION OF ENHANCEMENTS

ITEM #	PRIORITY	ITEM	SCOPE
1	1	Safety improvements	Add handrail and gratings in high risk areas and other recommended safety improvements as outlined in the K&H safety inspection report.
2	1	Recondition the spare reclaimed pump and motor.	The spare pump and motor was recently installed and the pump and motor that was removed needs to be reconditioned.
3	1	Slice gate replacement	Latest inspection found heavy pitting in all aluminum gates. All gates need to be replaced with stainless steel gates.
4	1	Chemical flash mixer	The mixer impeller broke loose from the gear box and needs to be reinstalled. Cost assumes minimum damage.
5	1	CROM Tank bypass	The only onsite reclaimed water tank at ECR will need to be drained to complete repairs to the inside. By doing this it will take the entire plant out of service for up to two weeks. A revised O&M Reclaimed protocol approved by FDEP will allow the utilization of the pipe line as the chlorine contact chamber, this will prevent building another tank.
6	1	CROM Tank curtain replacement	Existing chlorine baffling curtains inside the chlorine storage tank are delaminating and need to be replaced.
7	2	Spare VFD and Vibration monitor upgrade	Add an additional VFD due to past failures and long lead time for repairs.
8	2	Reclaimed and backwash Pump Check Valves	Pump check valve actuators are leaking and need to be replaced
9	2	Chlorine System	High priced valves need to be replaced and additional feed line needs to be installed in the feed tank.
10	2	Ammonia nitrogen analyzer	Replace current analyzer, current model doesn't respond to variations in ammonia nitrogen.
11	3	Chlorine pumps replacement	The current 5 pumps have high usage and O&M cost. The new pumps will have a lower life cycle cost.

****The Enhancements may include additional necessary construction and repairs to the Reclaimed Water Facility discovered during the project.****

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 _____, 2016 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 certain Enhancements to the FPL Reclaimed Water Facility, such terms being defined in that Interlocal Agreement among the East Central Regional Wastewater Treatment Facilities Operation Board, the City of West Palm Beach, and Palm Beach County for the Enhancement of the Reclaimed Water Facility dated __/__/2016 (the "Repair Interlocal Agreement").

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 Enhancements 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 Enhancements.

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 Enhancements. Notwithstanding such automatic termination, Grantee shall promptly deliver to Grantor a Release of Easement, in a form satisfactory to Grantor, upon completion of the Enhancements, 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 Repair Interlocal Agreement, which is incorporated herein by reference.

5. Grantor's Acknowledgement of Nature of Enhancements. Grantor acknowledges and agrees that the Enhancements shall include permanent reclaimed water 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 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 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, nor the 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 affect 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.

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Signatures on following page.

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: _____

ATTEST:
SHARON R. BOCK

By: _____
Clerk and Comptroller

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

By: _____
Mary Lou Berger, Mayor

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: _____
County Attorney

Date: _____

APPROVED AS TO TERMS AND
CONDITIONS:

By: _____
Department Director

Exhibit "1"

RESOLUTION NO. 270-15

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, ESTABLISHING RATES FOR BULK / WHOLESALE WATER AND WASTEWATER SERVICE; AMENDING AND REPLACING RESOLUTION NO. 245-10; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, Chapter 90, Section 2 of the Code of Ordinances of the City of West Palm Beach, Florida, provides that the City Commission may establish by resolution reasonable fees and charges to be charged to the consumers of the water and wastewater services based on the cost of providing such services; and

WHEREAS, the City Commission last established service fees for bulk/wholesale water and wastewater service by Resolution No. 245-10; and

WHEREAS, the Public Utilities Department utilized the services of Public Resources Management Group, Inc., to update the 2009 study of the City's bulk / wholesale water and wastewater rates and fees and the cost of providing such services. The updated study was completed as of June 2015; and

WHEREAS, based on such study, the City Commission of the City of West Palm Beach desires to amend its bulk / wholesale water and wastewater rates and fees.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: Bulk/wholesale water and wastewater service shall, except as otherwise provided in this Resolution, be billed per one thousand gallons of usage at the following rates:

Bulk / wholesale Water service	\$3.81 per 1,000 gallons
Bulk / wholesale Waste water service	\$3.43 per 1,000 gallons

SECTION 2: The rates in this Resolution shall apply for bulk/wholesale water and wastewater service, except as otherwise negotiated and provided in an Interlocal Agreement duly approved by the City Commission and executed by the City.

SECTION 3: This Resolution shall amend and replace Resolution No. 245-10 as of the effective date of this Resolution No. 270-15 and shall thereafter govern and control the rates for bulk/wholesale water and wastewater service.

SECTION 4: This Resolution shall take effect October 1, 2015.

PASSED AND ADOPTED THIS 31ST DAY OF AUGUST, 2015.



ATTEST:

X *Hazeline F. Carson*

CITY CLERK
Signed by: Hazeline Carson

**CITY OF WEST PALM BEACH BY
ITS CITY COMMISSION:**

X *Geraldine Muoio*

PRESIDING OFFICER
Signed by: Geraldine Muoio

**APPROVED AS TO FORM AND
LEGALITY:**

8/25/2015

X *Nancy Urcheck*

CITY ATTORNEY
Signed by: NUrcheck