



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>_____*</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

**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 fiscal impact to County. HW Spring Training Complex, LLC is responsible for water usage per the Developer Agreement (R2015-1071) and the Sports Facility Use Agreement (R2015-1072).

**C. Departmental Fiscal Review:**

*Karen Lykes* 7/20/17

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development Comments:**

*[Signature]* 7/25/17  
 OFMB ES 7/24 @ 7/24

*[Signature]* for Lewin Prohoritz  
 Contract Development and Control  
 7/27/17

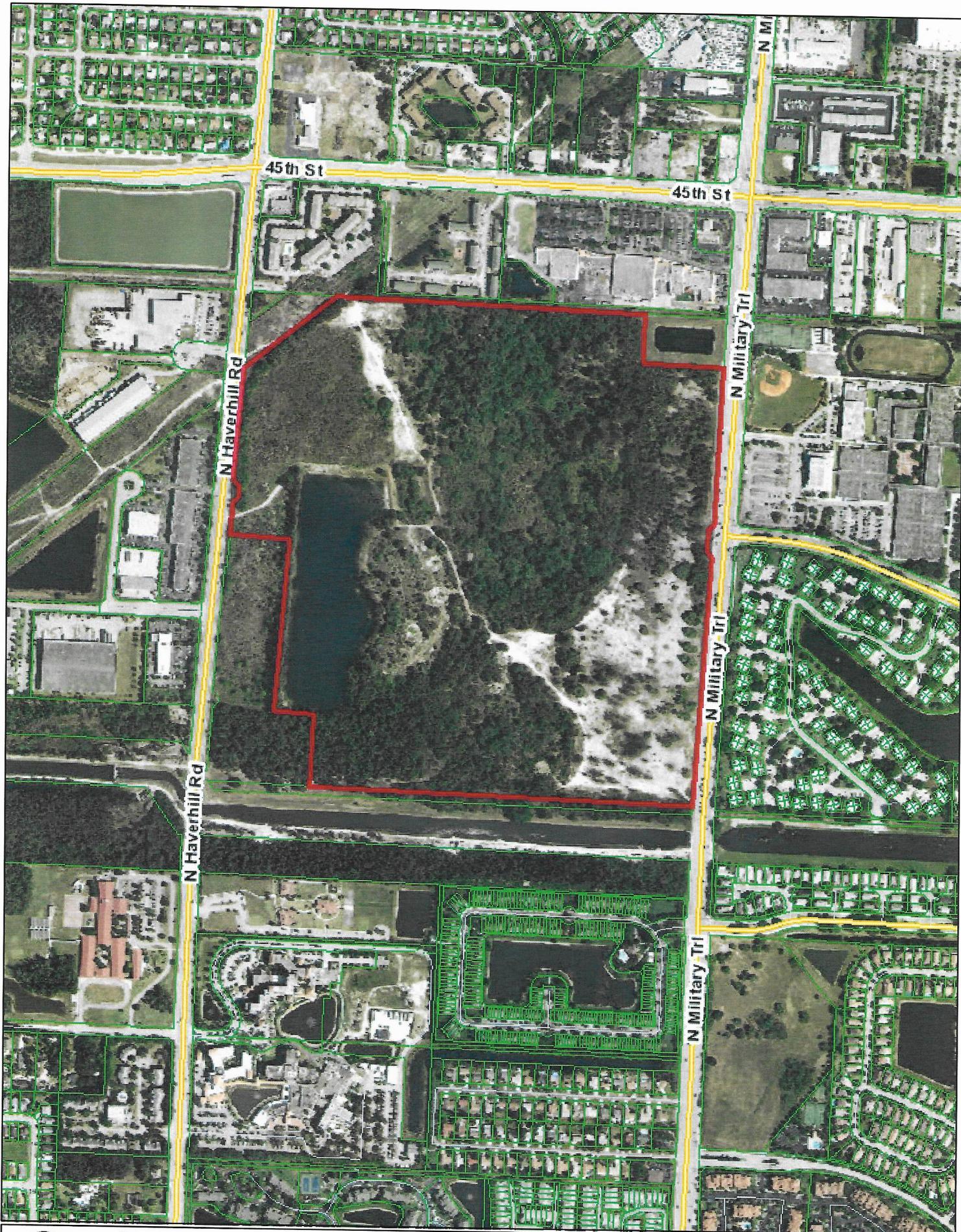
**B. Legal Sufficiency:**

*[Signature]* 8/1/17  
 Assistant County Attorney

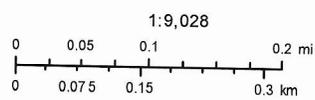
**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

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



74424301210020000  
LOCATION MAP



## LICENSE FOR BULK POTABLE WATER SERVICE

WPB No. 17050

THIS LICENSE is made and entered into this 10<sup>th</sup> day of July, 2017, 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 municipality organized under the laws of the State of Florida (hereinafter "City").

WHEREAS, City and County have previously entered into that Interlocal Agreement, dated August 18, 2015 (R2015 1070), for the exchange of land and construction of the Ball Park of the Palm Beaches ("Ball Park"), to be open for Spring Training 2017 (the "Ball Park Interlocal"); and

WHEREAS, the Ball Park of the Palm Beaches will be constructed on Property within West Palm Beach and the City's utility service area; and

WHEREAS, pursuant to Section 12.4 of the Ball Park Interlocal, The on-site lakes will be used in conjunction with reclaimed water as an irrigation source for the Ball Park; and

WHEREAS, City and County have previously entered into that Interlocal Agreement Between Palm Beach County and the City of West Palm Beach for the Purchase of Bulk Reclaimed Water, dated August 31, 2015, pursuant to which the County will construct a pipeline for the transmission of reclaimed water to serve the Ball Park; and

WHEREAS, the County requires a contingency water source, as there may be delays associated with delivery of reclaimed water to the Ball Park and /or periodic interruptions in delivery of reclaimed water; and

WHEREAS, to ensure that the Ball Park can be serviced with water for irrigation of the ball fields in time for the scheduled opening, the City desires to sell and the County wishes to purchase Bulk Potable Water Service on a temporary, as needed basis; and

IN CONSIDERATION of these premises and the mutual undertakings herein contained and assumed, City will provide potable bulk water to County under the following terms and conditions:

1. **License.** City hereby grants license and permission to County to utilize City's water utility service and Bulk Potable Water, on an as-needed temporary basis, for irrigation of the Ball Park.
2. **Compensation.** County shall pay for Bulk Potable Water at the rates established by the City Commission currently in effect at the time of delivery through the meter. The rate in effect at the time of execution of this Agreement by the City is \$3.81 per 1,000 gallons. There shall be no reservation or capacity fee for this temporary use; nor is there any required minimum take-or-pay amount of Bulk Potable Water Service under this License.

**4. Effective Date; Term.** This License shall become effective upon approval by both parties. This License shall continue in full force and effect until terminated by City or in the event that any of the Baseball Agreements are not effective, in accordance with Section 11 of this License. City shall provide five (5) calendar days written notice of termination to the County.

**5. 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:

“Annual Chlorine Flush” means an annual preventative maintenance procedure performed by the City in which the City utilizes a stronger disinfection process to produce chlorine residual instead of chloramine residual in its Potable Water.

“Bulk Potable Water Meter” means the meter used to measure the quantity of Potable Water utilized for the Ball Park, irrigation.

“Bulk Potable Water Service” means the provision of Potable Water from the City to the County on an as-needed, temporary basis, for irrigation of the Ball Park.

“City” has the meaning set forth in the preamble to this Agreement.

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

“Effective Date” has the meaning set forth in Section 4.

“License” means this License for Bulk Potable Water Service.

“Meters” shall mean meters used to measure the quantity of Potable Water utilized for the Ball Park, including the Bulk Potable Water Meter.

“Potable Water” means water for human consumption which meets all applicable Federal, state, and County standards.

“Potable Water System” means the system owned and operated by the City for the production and distribution of Potable Water to its customers.

**6. Restrictions on Utilization of Bulk Potable Water Service.** County acknowledges and agrees that the City’s provision of Potable Water to its customers is of the utmost importance. Therefore, the County expressly acknowledges the rights of the City to limit, restrict, or terminate the County’s utilization of Bulk Potable Water Service under this License, if the City determines that the provision of such service would constitute a danger to the health, safety, or welfare of its citizens and/or customers, including, but not limited to, the continued provision of Potable Water to customers within the City’s Potable Water System. In the event of such a limitation, restriction, or termination, the County agrees to waive any and all claims of loss or damage against the City.

**7. Annual Chlorine Flush.** In order to maintain water quality, the City performs an Annual Chlorine Flush of the City Potable Water System. County acknowledges that the City will continue

to perform the Annual Chlorine Flush during the Term of this Agreement. City makes no representation or agreement that vegetation, grass or sod irrigated from the City Potable Water System during the Annual Chlorine Flush will not be negatively impacted. County agrees to waive any and all claims of loss or damage against the City to vegetation, grass or sod irrigated from the City Potable Water System during the Annual Chlorine Flush.

**8. Bulk Potable Water Meter.** County will provide detailed plans and specifications for the connections to the City's Potable Water System for City's review and approval thereof prior to connection. County will provide the Bulk Potable Water Meter and City will install the Bulk Potable Water Meter to measure the County's use of Bulk Potable Water for Ball Park irrigation. Said Bulk Potable Water Meter will be owned by the City. County will reimburse the City for the labor expenses for installation and removal of the Bulk Potable Water Meter, within forty five (45) days from the date such bill is rendered by the City. County will grant to City all utility easements necessary for the installation, operation and maintenance of the Bulk Potable Water Meter.

**9. Meter Inaccuracy.**

9.1 In the event the County alleges that the Bulk Potable Water Meter is not accurate, County agrees to pay to have an inspection and report prepared regarding the condition and accuracy of the Bulk Potable Water Meter. A copy of the Bulk Potable Water Meter inspection report shall be furnished to the City. City 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 City shall first give County written notice of the date and time of its intent to have the inspection made. Normal maintenance and the replacement of the Bulk Potable Water Meter shall be performed by the City's sole cost.

9.2 Both parties agree that, should the Bulk Potable Water Meter be found to be inaccurate beyond applicable industry standards, the Bulk Potable Water 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 County for that period, based upon the method established in Section 9.3 of this License.

9.3 Both parties agree, that if at any time the Meter shall be inaccurate with respect to the quantity of consumption by County, County will pay to the City a daily amount equal to the average flowage of the ninety (90) day period prior to the date that the meter became inaccurate multiplied by the City's Bulk Potable Water rate in effect.

**10. Payment of Bills.** The City will bill the County for Bulk Potable Water Service utilized on a monthly basis. County agrees to pay the monthly charges to the City within forty five (45) days from the date the bill is rendered by the City. A past due notice will be mailed the City to County 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.

## **11. Contingent Agreements**

11.1 **Baseball Agreements.** The parties hereto acknowledge that this License is being entered into in relation to the construction, development and operation of the 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 effective, or are terminated, the parties agree that this License may be terminated by either County or City by providing five (5) calendar days written notice to the other party.

12. **No Transfer of Powers.** Nothing contained in this License shall be construed to constitute a transfer of powers in any way whatsoever. The governing bodies for County and City 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.

13. **Indemnification.** 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.

14. **Force Majeure.** In the event that an obligation of either party to this License 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, failure or limitations of the water production facilities or other casualty or disaster or catastrophe, such party shall be liable for such non-performance. City shall have no liability in the event there is a reduction,

impairment or termination of Bulk Water Service due to any prohibitions, restrictions, limitations, or requirements of local, regional, state, or federal agencies or other agencies having jurisdiction over such matters.

15. **Remedies.** This License shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the License 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.

16. **Notice.** All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to City, shall be mailed or delivered to:

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

17. **Filing.** This License may be filed with the Clerk and Comptroller of Palm Beach County, Florida.

18. **Assignment.** County shall not assign this License 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 License. This provision shall be construed to include a prohibition against any assignment by operation of law.

19. **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.

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

21. **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 License.

22. **Construction.** No party shall be considered the author of this document since the parties hereto have participated in negotiations and drafting of this document. The terms of this document shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

23. **LLC.** The City acknowledges that HW Spring Training Complex, LLC ("LLC"), a Florida Limited Liability Company whose sole managers are Arthur Fuccillo and Giles Kibbe, is a third party beneficiary to this License. The parties agree that no manager, member, agent, or employee of the LLC shall have any liability or obligation whatsoever directly or indirectly, personal or authorize, under this License under any legal or equitable theory. City and County further agree that no manager, member, agent, or employee shall directly or indirectly have any liability or obligation under any related agreement or agreement entered into in connection herewith, nor under any related understanding or undertaking, except if and to the extent such person or entity shall have executed an agreement expressly agreeing to such liability. No party to this License shall name or serve any manager, member, agent or employee of the LLC in any proceeding, suit or claim in violation of this paragraph. This paragraph shall not preclude any lawful claim against the LLC as a limited liability company.

24. **No Third Party Beneficiary.** The parties understand and agree that the LLC is a third party beneficiary to this License and may be damaged in the event of a breach hereof. Notwithstanding, LLC shall have no greater rights than County with respect to this License. Other than as to the LLC, no provision of this License 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 License, including but not limited to any citizens of County or employees of County or City.

25. **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 the requirements of this License shall not be

affected by any previous waiver of course or dealing.

26. **Severability.** If any term or provision of this License, 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 License, 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 herein and this License shall be deemed valid and enforceable to the extent permitted by law.

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

28. **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.

29. **Amendment and Modification.** This License may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.

30. **Entirety of Agreement.** City and County agree that this License sets forth the entire agreement between the parties with respect to the subject matter, and that there are no promises or understandings other than those stated herein.

[Signatures on following page.]

IN WITNESS WHEREOF, City and County have duly executed this License for Bulk Potable Water Service.

PALM BEACH COUNTY, a political subdivision of the State of Florida

By: [Signature]  
Karyn Sykes, Fiscal Manager II

By: [Signature]  
Department Director

(Seal)

Dated: July 10, 2017

APPROVED AS TO FORM AND TO LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]  
County Attorney

By: [Signature]  
Department Director

ATTEST:

CITY OF WEST PALM BEACH

By: [Signature]  
City Clerk

By: [Signature]  
Geraldine Muoio, Mayor

Dated: 11/22, 2016

OFFICE OF THE CITY ATTORNEY

Approved as to form and legality

By: [Signature]