



Interoffice Memorandum

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

March 23, 2015

APR 07 2015 KH/WP

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Raymond E. Hanson, P. E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "R. Hanson", is written over the "FROM:" field.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
April 7, 2015 BCC Meeting
Agreement By and Between City of Apopka and Orange
County for the Wholesale Delivery and Use of Reclaimed Water
Contact Person: Andres Salcedo, P. E., Assistant Director
Utilities Engineering Division
407-254-9719**

Orange County Utilities has worked with the City of Apopka to create an interlocal agreement to govern the delivery of wholesale reclaimed water service to Apopka.

The agreement calls for a total anticipated daily volume of 1 million gallons per day (mgd) for the first year, 2 mgd for the following year and 2.5 mgd for the remainder of the agreement term. The provisions of the agreement include the rates to be charged for the wholesale services, the quality and quantity of reclaimed water to be provided to the City, and specific requirements and respective responsibilities related to the agreement. The agreement is for a 20 year term with automatic 5 year renewals.

Orange County Attorney's Office staff has reviewed the agreement and finds it acceptable as to form. Utilities Department staff recommends approval.

Action Requested: Approval of Agreement By and Between City of Apopka and Orange County for the Wholesale Delivery and Use of Reclaimed Water.

District 2.

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
APR 07 2015 *LH/NP*

AGREEMENT
BY AND BETWEEN
CITY OF APOPKA AND ORANGE COUNTY
FOR THE WHOLESALE DELIVERY
AND USE OF RECLAIMED WATER

THIS AGREEMENT (“Agreement”) is made and entered into as of the date of last execution below (the “Effective Date”), by and between **ORANGE COUNTY, FLORIDA**, a political subdivision and charter county of the State of Florida (the “County”), whose address or principal place of business is 201 South Rosalind Avenue, Orlando, Florida, 32802, and the **CITY OF APOPKA, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida (the “City”), whose address or principal place of business is 120 East Main Street, Apopka, Florida, 32703. The City and the County may also be referred to in this Agreement individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the County owns, operates and maintains water reclamation facilities (“Facilities”) which produce reclaimed water that may be used for productive and beneficial purposes in accordance with permits issued by the Florida Department of Environmental Protection (“FDEP”); and

WHEREAS, the City desires to be a reclaimed water customer of the County under terms and conditions set forth in this Agreement; and

WHEREAS, the Parties understand that the County will rely upon this Agreement in the operation of the County’s reclaimed water delivery system to the City; and

WHEREAS, the City covenants, agrees and acknowledges that this Agreement is not in conflict with the “Renew Reclaimed Water Agreement between the City of Apopka and Orlando

Utilities Commission” entered into on March 5, 2009.

NOW THEREFORE, in consideration of the recitals, agreements, and mutual covenants contained herein, the Parties hereto agree as follows:

1. RECITALS INCORPORATED.

Each of the foregoing recitals forms a material part of this Agreement.

2. TERM OF THE AGREEMENT.

This Agreement shall be effective for an initial term of twenty (20) years from the Effective Date and shall automatically be extended for successive five (5) year terms unless either Party provides written notice to the other Party of its intent to terminate this Agreement at least one (1) year prior to the end of the initial term or any successive term. Further, this Agreement may be terminated as provided in Section 10, herein.

3. RATES AND PAYMENT.

a) The City shall pay the County for reclaimed water at the rates established by Resolution of the Orange County Board of County Commissioners, as amended from time to time, for the class of customer for which the City qualifies. For the purposes of this Agreement, the current rate classification for which the City qualifies is Interruptible User with On-Site Storage. Subject to the metering and billing provisions herein, the City shall pay the County for all reclaimed water delivered.

b) The City agrees to pay monthly invoices generated by the County for reclaimed water used by the City. Said charge shall include the County’s fixed monthly charge and the volume charge based upon and applied to the metered volume of reclaimed water, used by the City on a monthly basis. The County may cease delivery of reclaimed water to the City if any invoice is not paid in full within sixty (60) days of the date of invoice. Reclaimed water service will be reinstated upon full payment of the invoice and any additional charges incurred. All County standard billing procedures and charges, as amended from time to time by the Orange County Board of County Commissioners, shall apply. Payments must be made to the following address:

Orange County Utilities
Customer Service Division
9150 Curry Ford Road
Orlando, FL 32825

4. USE OF RECLAIMED WATER BY THE CITY.

a) The City shall use, or provide to its customers for use, reclaimed water delivered by the County in the City’s Utility Service Area as defined in the “City of Apopka/Orange County Amended and Restated Water, Wastewater and Reclaimed Water Territorial Agreement”

and only for purposes in compliance and consistent with current and future state and federal laws and regulations, as well as the rules and regulations of the FDEP, the applicable water management district and other governmental or regulatory agencies having jurisdiction within the City. In no event will the City discharge or allow others to discharge reclaimed water directly to surface waters of the State of Florida without written authorization from the FDEP. If monitoring is required for the use of reclaimed water used by or provided by the City, the City shall be solely responsible for the installation of monitoring systems and for collecting, analyzing, and reporting all required information to the County, the FDEP, and/or any other governmental or regulatory agency requiring such monitoring at no cost to the County.

b) The City shall obtain, implement, maintain and renew any permits, licenses or other programs required by state, regional or federal regulatory agencies to maintain or expand the City's reclaimed water system.

5. WATER QUALITY.

The County will deliver to the City at the point of connection, the location of which is defined in Section 6 of this Agreement, reclaimed water of a quality consistent with the requirements for "public access" treatment levels as described in Florida Administrative Code Chapters 62-600 through 62-650, and all other applicable regulations, as such regulations may be amended from time to time. The County shall provide to the City, upon written request, any and all routine monitoring and testing of the reclaimed water delivered to the City, but only for those parameters required to meet applicable regulations, as may be amended from time to time. The City reserves the right to independently monitor the quality of the reclaimed water delivered to the City at the turnout, using state-approved and certified testing laboratories, at its sole cost. The City shall provide to the County the results of all such monitoring and testing. The City agrees to notify the County immediately in the event tests indicate that the reclaimed water does not meet applicable standards; and the City shall have the right to stop accepting reclaimed water from the County until the reclaimed water meets the applicable standards required under state or federal laws and regulations. Suspension of the acceptance of reclaimed water to be delivered by the County under the terms of this Agreement is the sole remedy for any failure by the County to deliver to the City reclaimed water of a quality consistent with the terms of this Section 5.

6. CONSTRUCTION OF CONNECTIONS.

a) The City shall be solely responsible for ownership, operation, and maintenance of all portions of the reclaimed water distribution and transmission systems located downstream of the County's turnout assembly, as shown in an approximate location in **Exhibit "A,"** attached hereto and incorporated herein by reference.

b) The City shall install and/or modify the City's reclaimed water distribution and transmission systems to the extent necessary to connect to the County's system at the approximate connection point shown in **Exhibit "A,"** at no cost to the County and no later than six (6) months after the County has installed the master meter. The County shall provide the City a set of reproducible record drawings of the master meter in order for the City to prepare the interconnect construction plans and specifications. The City shall provide one original set of all construction plans and specifications, for the County's review and records, of the connection to

the County's turnout assembly. The City shall provide said plans and specifications to the County no later than fourteen (14) days prior to commencement of construction. The City shall provide to the County a reproducible set of sealed as-built plans, drawings and specifications of the connection to the County's turnout assembly within sixty (60) days of the completion of the construction of the connection.

c) The County plans to install, at County's expense, the turnout assembly and all appurtenances thereto, including the master meter, at the approximate connection point as shown in **Exhibit "A"** approximately twenty four (24) months following the Effective Date of this Agreement. The County shall own and maintain the master meter. The City shall connect, at its expense, the City's reclaimed water distribution system and any transmission system extensions to the point of connection on the County's transmission system agreed to by the Parties and as shown in **Exhibit "A"** in a manner satisfactory to and approved by the County, no later than six (6) months after the County has installed the master meter ("Completion of Connection"). The City and County timeframes for construction may be extended should any regulatory agency cause a delay due to required permit modifications. The Parties shall notify one another to request additional time to complete construction and approve the request only when necessary. Approval of any request for additional time to complete construction must be made by letter agreement executed by the City's Public Services Director and the County's Utilities Director. Additional connection points may be requested by the City in writing and are subject to approval of the County, at the County's sole discretion. **Exhibit "B,"** attached hereto and incorporated herein by reference, delineates the further ownership and maintenance responsibilities of the City and the County.

d) The City shall be solely responsible for all infrastructure improvements to the City distribution system, including development of storage capacity, necessary to accommodate variations in the reclaimed water availability from the County at no cost to the County.

e) The County shall provide the City a Right of Entry for the duration of the Agreement to enable the City to read and maintain the City's turnout and Supervisory Control and Data Acquisition (SCADA) System.

7. DELIVERY OF RECLAIMED WATER.

a) Upon completion of the connection of the City distribution system to the County's turnout, the City agrees to accept reclaimed water provided by the County pursuant to the provisions of this Agreement. The total quantity of reclaimed water to be delivered daily to the City will be at a minimum, one (1) million gallons plus or minus ten percent (+/or-10%) for the first twelve consecutive months of the Agreement following Completion of Connection. The City shall not exceed annual average daily flow of 1.1 MGD in the first year of delivery. For the period that begins on the first day of the thirteenth month up to the last day of the twenty-fourth month following Completion of Connection, the minimum amount of reclaimed water to be delivered daily to the City will increase to two (2) million gallons plus or minus ten percent (+/or-10%). The City shall not exceed annual average daily flow of 2.2 MGD in the second year of delivery. For the period beyond the twenty-fourth month from the Completion of Connection

and for the duration of this Agreement thereafter, the minimum reclaimed water to be delivered daily to the City will increase to an amount between two and a half (2.5) million gallons and three (3.0) million gallons plus or minus ten percent (+/or-10%). The City shall not exceed annual average daily flow of an amount between 2.75 MGD and 3.3 MGD in any year after the second year of delivery. For the duration of this Agreement, the City shall not exceed a maximum daily peak flow greater than 1.3 times the average daily flow for that year. The County agrees to take reasonable steps to provide the necessary pressure to meet the City's needs.

b) Both Parties recognize that adverse weather conditions or unforeseen circumstances may necessitate modification of the reclaimed water delivery. During such adverse conditions, the County may restrict or curtail the delivery of the reclaimed water to the City until the County determines that the adverse conditions have passed. During these periods, reclaimed water flow may be reduced significantly from normal levels. These reductions may include, but not be limited to, the volume and pressure of the reclaimed water supplied to the City. The City shall have the right to restrict or temporarily suspend the use of the reclaimed water to be delivered in the event of adverse weather conditions or unforeseen circumstances.

c) If the County's transmission system fails for reasons or events beyond the County's control, or when the County performs maintenance or repairs the system, then delivery of reclaimed water under the requirements of this Agreement may be temporarily interrupted or limited in quantity.

d) In the event of limitation or interruption pursuant to the circumstances described in subparagraphs 7b) and c), herein, the County shall notify the City in writing in advance. However, if advance written notice is not practical, then the County shall make reasonable efforts to provide advance or contemporaneous oral notice to the City, followed within forty-eight (48) hours by written notice.

e) If the City reclaimed water distribution or transmission system fails for reasons or events beyond the City's reasonable control, then acceptance of reclaimed water under the requirements of this Agreement may be interrupted or limited in quantity. The City shall notify the County, in writing, in advance of its intent to curtail, disrupt, interrupt, or limit the acceptance of reclaimed water. However, if advance written notice is not practical, then the City shall make reasonable efforts to provide advance or contemporaneous oral notice to the County, followed within forty-eight (48) hours by written notice.

8. METERING.

Upon installation, calibration and acceptance, the metering equipment shall remain the property of the County, and the County shall be responsible for the operation, maintenance, calibration and replacement of the master meter. The County shall read the master meter(s) for billing purposes. The metering equipment shall be of standard make and type, installed at a readily accessible location and shall record flow with an error not to exceed plus or minus two percent (2%) of full scale reading for billing purposes. The County shall inspect the master meter at least annually for accuracy and if needed, re-calibrate the meter(s). The County shall provide the City with the meter inspection results. If the master meter is found to be in error

exceeding two percent (2%) of true accuracy shall be recalibrated at the County's sole cost and to the satisfaction of the Parties. If the master meter is found to be inaccurate, a bill adjustment will be made to the flow-based component of the charge. The billing adjustment shall be based upon the difference between the inaccurate reading and the average flow for the twelve (12) month period that preceded the inaccuracy. In no case shall the period for which adjustments are sought exceed twelve (12) months. Individual customer metering shall be the responsibility of the City. The customer metering equipment shall remain the property of the City, and the City shall be responsible for the operation, maintenance, calibration and replacement of the meters. The City shall read the individual customer meters for billing purposes.

9. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS.

If for any reason during the term of this Agreement and through no fault of the County or City, local, regional, state or federal governments, agencies or courts fail to issue necessary permits, grant necessary approvals, or require any change in the operation of the treatment, transmission and distribution systems or the application and use of reclaimed water, then to the extent that such requirements shall affect the ability of either Party to perform any of the terms of this Agreement, or substantially affect the County's ability to deliver reclaimed water under this Agreement, the affected Party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible, by the Parties hereto in conformity with such permits, approvals, or requirements.

10. DEFAULT, TERMINATION, ASSIGNMENT.

a) Each of the following occurrences shall be considered a default by the City and a breach of this Agreement for which the County shall have the right (not exclusive as to other available remedies) to terminate this Agreement at any time and without penalty, upon sixty (60) days prior written notice to the City:

(i) The City fails to receive and use the minimum demand of reclaimed water made available by the County as provided in Section 7, herein,

(ii) The City fails to pay any invoice or bill described in Section 3 herein, in full within the timeframes specified,

(iii) The City fails to complete all connections required in Section 6, herein, within the timeframes specified therein.

b) The following occurrence shall be considered a default by the County and a breach of this Agreement for which the City shall have the right (not exclusive as to other available remedies) to terminate this Agreement at any time and without penalty, upon sixty (60) days prior written notice to the County:

(i) The County fails to provide reclaimed water pursuant to Section 7, herein.

c) After the expiration of the initial term of this Agreement, either Party may terminate for convenience this Agreement upon giving the other Party written notice of its intent to terminate at least one year prior to the date of termination.

d) The County shall have the right to transfer all or any part of its Facilities to another supplier and to assign all or any part of its rights and obligations under this Agreement to an alternate supplier, who shall be bound by and accept, and be exclusively responsible for all applicable terms and conditions of this Agreement.

e) The City shall have no right to assign this Agreement, provided specifically, however, that this Agreement shall not preclude the City from assigning operation and maintenance responsibilities of the City distribution system to a third party.

11. NOTICES.

Any notice, demand, consent, or communication that any Party is required or allowed to give to any other Party hereunder shall be in writing and either served personally by hand-delivery, or by overnight courier service, such as Federal Express, or by United States Postal Service certified mail, postage prepaid, return requested, addressed to the Party at the address set forth opposite the Party's name below, or at some other address as the Party shall have specified by written notice to all the other Parties hereto and delivered in accordance herewith:

City: Chief Administrative Office
City of Apopka
120 East Main Street
Apopka, FL 32703

With a copy to: Public Services Director
City of Apopka
748 East Cleveland Street
Apopka, FL 32703

County: Director
Orange County Utilities
9150 Curry Ford Road
Orlando, FL 32825

With a copy to: County Administrator
Orange County Government
201 S. Rosalind Ave., 5th Floor
P.O. Box 1393
Orlando, FL 32802-1393

A Party shall notify the other Party in writing of a change of address for Notices under this Paragraph, at least thirty (30) days prior to the effective date of the address change.

12. DISPUTE RESOLUTION.

All claims, disputes and other matters in question between the Parties arising out of, or relating to, this Agreement or its performance or breach shall be resolved in accordance with the following steps in the following order: (a) negotiation; (b) non-binding mediation; and (c) judicial resolution.

All claims, disputes and other matters between the Parties shall first be addressed between the City's Water Resources Operations Manager and the County's Utilities Engineering Manager, who will promptly confer in an effort to resolve the dispute. If no resolution is reached, the complaint or dispute shall be submitted in writing to the City's Public Services Director and the County's Utilities Director. Within ten (10) days after delivery of such notice, representatives of both Parties will meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days of the disputing Party's notice, or if the Parties fail to meet within ten (10) days if practicable and possible, either Party may submit the dispute to non-binding mediation.

A Party submitting a dispute to non-binding mediation (the "Requesting Party") shall do so by delivering to the other Party a notice demanding or requesting, as the case may be, mediation of the dispute and providing a list of three mediators acceptable to the Requesting Party. Within ten (10) days after the receipt of the notice from the Requesting Party, the other Party shall, in writing, provide a notice either choosing one mediator from the list provided by the Requesting Party or offering a list of three additional mediators for consideration. Within ten (10) days of Requesting Parties receipt of the notice, the Parties shall mutually agree and appoint a mediator from the lists provided. To the extent practicable, the mediator shall have special competence and experience with respect to the subject matter under consideration. No mediator, appointed, shall have the power to amend or add to this Agreement. Within twenty (20) days after the mediator is named, a time and date for the mediation shall be scheduled and documented in writing. The mediation will be conducted expeditiously and the location of the non-binding mediation will be the Orlando, Florida metropolitan area.

The mediator thereupon shall proceed promptly to hear and determine the controversy. The mediator shall fix a time within which the matter shall be submitted to him or her by both of the Parties. Any settlement achieved through mediation shall be confidential and made in writing and in duplicate, and one copy shall be delivered to each of the Parties.

For all dispute resolution methods, including non-binding mediation, each Party shall pay their respective attorneys fees, expert fees, expenses and court costs, as applicable. The Parties shall equally share in the expenses for the mediator. If no resolution is reached, either Party can submit the dispute for judicial resolution. However, no legal proceeding or action may be brought by either Party without first completing the above-described dispute resolution process, unless one of the Parties refuses to participate in the above-described dispute resolution process in contravention of this provision.

13. NO PARTNERSHIP.

Notwithstanding any provision of this Agreement, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit with the other Party. For the purposes of this Agreement, each Party shall not be construed as the agent for the other Parties. For the purposes of this Agreement the Parties are independent contractors.

14. PARTIES BOUND AND BENEFITTED; DISCLAIMER OF THIRD PARTY BENEFICIARIES.

This Agreement is solely for the benefit of and be binding upon the formal Parties hereto and their respective successors and upon the County's assigns pursuant to the provision of Section 11. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies hereunder. No right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party.

15. SEVERABILITY.

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.

16. NON-WAIVER.

The failure of any Party to insist upon the other Party's compliance with its obligations under this Agreement in any one or more instances shall not operate to release such other Party from its duty to comply with such obligations in all other instances.

17. INDEMNIFICATION AND HOLD HARMLESS.

To the extent permitted by law, each Party agrees to defend, indemnify and hold harmless the other Party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying Party's negligent performance under this agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either Party to assume any liability for the acts, omissions and/or negligence of the other Party.

18. APPLICABLE LAW.

a) This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Any litigation arising out of this Agreement shall be had in the federal or state courts located and lying within Orlando, Orange County, Florida.

b) This Agreement shall be construed as a wholesale reclaimed water service agreement and shall not be construed as a construction contract.

19. HEADINGS.

The various section headings used in this Agreement are for convenience or reference only and are not to be used to interpret, construe, apply or enforce its substantive provisions.

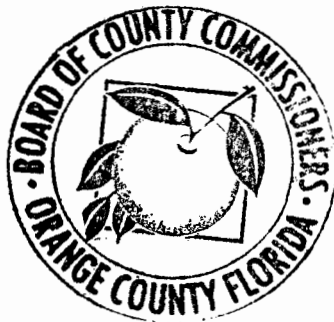
20. ENTIRE AGREEMENT.

This Agreement and the Exhibits attached hereto constitute the entire agreement and understanding between the Parties and shall supersede and replace any and all prior or contemporaneous representations, negotiations, statements, understandings, or agreements between the Parties, whether verbal or written, relating to the matters set forth herein. The Parties hereto fully understand the terms and conditions of this Agreement have entered into this Agreement voluntarily and have received or had the opportunity to receive independent advice and legal counsel.

21. MODIFICATION; AMENDMENTS IN WRITING.

This Agreement may only be modified or amended by an instrument in writing agreed to and executed by the Parties hereto or their successors in interest.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates set forth under each signature.



COUNTY:
ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *[Signature]*
Teresa Jacobs
County Mayor

Date: 4.7.15

Attest: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *[Signature]*
fol Deputy Clerk

CITY:
CITY OF APOPKA

By: Glenn A. Irby
Glenn A. Irby, City Administrator

Date: 3/5/15

ATTEST:

By: Linda F. Goff
Linda F. Goff, City Clerk

(SEAL)

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EXHIBIT "A"
City Connection Point

EXHIBIT "A"



W. Keene Road

Marden Road

200' Wide Equestrian Trail

Orange County Utilities Reclaimed Water Master Meter *

200' Wide Equestrian Trail

NWRF Property Line

Facility Fence Line

OCU RW Main

ORANGE COUNTY NORTHWEST WATER RECLAMATION FACILITY

200' Wide Equestrian Trail

NWRF Property Line

Facility Fence Line

* Approximate location. Actual location to be determined in the field.

EXHIBIT "B"
Meter Assembly Detail/Delineation of Ownership and Maintenance

