

**INTERLOCAL AGREEMENT BETWEEN
CITY OF LAKE WORTH BEACH AND THE TOWN OF LANTANA
FOR WATERMAIN INTERCONNECTION**

THIS AGREEMENT is hereby made and entered into this _____ day of _____, 2023, by and between THE CITY OF LAKE WORTH BEACH, FLORIDA, a municipality organized under the laws of the State of Florida (hereinafter "CITY"), and the TOWN OF LANTANA, FLORIDA, a municipality organized under the laws of the State of Florida (hereinafter "TOWN").

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 parties hereto have the common power to provide essential public utility services within their respective geographic jurisdictions; and

WHEREAS, the TOWN owns and operates a Community Public Water System to serve residents living within the TOWN Service Area as shown on **Exhibit "B"**; and

WHEREAS, the TOWN wishes to use the interconnects for potable water for emergency use from the CITY for distribution and sale to its customers within the TOWN Service Area for emergency service connections; and

WHEREAS, the CITY wishes to sell the TOWN bulk potable water within the TOWN Service Area pursuant to the terms and conditions of this Agreement; and

WHEREAS, the TOWN and CITY both wish to leave the water connections from the CITY through interconnects active in case needed as emergency service connections as well as to provide bulk potable water through the term of this Agreement; and

WHEREAS, as a consecutive system, the TOWN and CITY wish that the TOWN implement and facilitate conservation of water resources in accordance with the direction of the CITY, and restrictions in effect on the CITY's system; and

WHEREAS, the physical, chemical and biological quality of all treated potable waters produced by the CITY currently meets or exceeds all Federal, State and local laws, regulations and requirements, and the CITY will take reasonable steps to maintain the quality of treated waters to the Points of Connection (as later defined in this Agreement); and

WHEREAS, it is solely the responsibility of the TOWN to operate and maintain the water delivery system on the discharge side of the Points of Connection so that the physical, chemical and biological quality of the treated water meets or exceeds all Federal, State and local laws, regulations and requirements; and

WHEREAS, the CITY and TOWN have determined that entering this Agreement serves a valid public purpose.

NOW, THEREFORE, for and in consideration of these promises, the mutual undertakings and agreements herein contained and assumed, the sufficiency of which is acknowledged by both parties hereto, the CITY and TOWN hereby covenant and agree as follows:

1. Recitals. The foregoing statements are true and correct and are incorporated herein by reference and made a material part of this Agreement.
2. Scope of Agreement. The CITY agrees to furnish, and the TOWN agrees to purchase and accept, an emergency supply of Potable Water in accordance with the terms and conditions of this Agreement. The CITY shall furnish, and the TOWN shall accept, the Potable Water at the Point(s) of Connection shown in **Exhibit "A"**.
3. Term. This Agreement shall commence on the Effective Date of this Agreement and continue for a term of five (5) years. The Term of this Agreement may be renewed three (3) times for successive periods of five (5) 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. Renewals of this Agreement may be executed by the City (or Town) managers for the TOWN and the CITY.
4. Effective Date. The Effective Date of this Agreement is the date this Agreement is approved by the TOWN's and the CITY's governing bodies. Once this Agreement is fully executed, it shall be filed with the Palm Beach County Clerk and Comptroller.
5. Prior Agreements. This Agreement, upon its approval and execution by both parties, shall supersede any and all prior negotiations, correspondence, conversations, agreements, including the expired prior agreement and any amendments thereto, or understandings applicable to the provision of emergency bulk potable water interconnect and supply 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 Agreement. Accordingly, it is agreed by the parties that there shall be no deviation from the terms hereof which shall be predicated upon any prior representation or agreements whether oral or written, unless said are specifically provided for herein.
6. 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:
 - (a) "Average Daily Flow (ADF)" – the average daily flow rate of potable water collectively measured through all Points of Connection. The Average Daily Flow rate is calculated by dividing the total amount of Potable Water flowing through the Points of Connection in any one fiscal year by the number of days in that same fiscal year.
 - (b) "CITY's Potable Water System" – the system owned and/or operated by the CITY for the production and distribution of Potable Water to all retail, wholesale, and/or bulk customers of the CITY, said system being located on the CITY's side of the various Points of Connection and including all Potable Water meters and related appurtenances located at the Point(s) of Connection.
 - (c) "Point(s) of Connection" – The location(s) where the CITY's Potable Water System is connected with the TOWN's Potable Water System, as shown in **Exhibit "A"**,

which is incorporated herein and attached hereto. The Potable Water System of the CITY shall include the water meter(s) and related appurtenances located at the Point(s) of Connection, with said water meter(s) being utilized for the measurement and payment of emergency Potable Water obtained by the TOWN.

- (d) “Potable Water” – Water for human consumption which meets all applicable Federal, State, and County standards.
 - (e) Service Areas:
 - a. “TOWN Service Area” - That area within which TOWN owns and maintains a potable water distribution system.
 - b. “TOWN’s Potable Water System” – the system owned and/or operated by the TOWN for the distribution of potable water, said system being located on the TOWN’s side of the Point(s) of Connection.
7. Point(s) of Connection: The parties hereto agree that the Points of Connection of the TOWN System to the CITY System and meter locations shall be as set forth below:
- (a) Federal Highway at 18th Avenue South. The TOWN agrees to pay at a cost not to exceed \$60,000.00 to the CITY to re-activate and add metering. Such payment shall be due within 30 days of project completion and meter activation.
 - (b) North Ridge Road and Shirley Court, which the CITY recently paid the costs to reactivate.
8. Obligation to Accept Service. Except as otherwise provided herein, TOWN agrees that during the term of this Agreement, the CITY shall be a provider of emergency bulk potable water services to the Town service area set forth in **Exhibit “B”**, and the TOWN shall only accept potable water services from the CITY and the City of Boynton Beach for the TOWN service area as set forth in **Exhibit “B”**.
9. Each party agrees that they are responsible for all improvements, maintenance and repairs related to their respective equipment on their side of the Point of Connection and that the point to determine compliance with the contract terms is the Point of Connection.
10. It is mutually agreed that by entering into this Agreement, the CITY does not incur any responsibility for the quality, flow, or pressure of the potable water beyond the Points of Connection.
11. Operation of Interconnect Facilities in an Emergency. The piping to serve TOWN will be left intact in case of a need for an emergency connection. In the event of a potable water system failure causing an emergency in the TOWN Service Area, the valves will be opened so as to permit the flow of potable water to the TOWN Service Area. No supply of potable water shall be provided except in case of an emergency and upon the following terms and conditions to be determined by the CITY as set forth below. “CITY” in this paragraph shall mean the City Manager or designee.
- (a) There must be a sufficient surplus of potable water available after the CITY meets all of its anticipated needs, which shall be determined by the CITY in its sole discretion.

- (b) The CITY may reasonably, which shall be determined by the CITY in its sole discretion, limit the amount of potable water to be supplied to the TOWN.
- (c) The CITY shall determine that the provision of potable water to the TOWN will not impose a danger to the health, safety or welfare of its citizens of the CITY. Any resultant expenses incurred by the CITY as a result of the connection to the TOWN system shall be reimbursed by the TOWN.
- (d) The CITY may require the TOWN to impose use restrictions on its customers as prescribed by the CITY.
- (e) The CITY, in its sole discretion, may place a reasonable termination date for the emergency supply period.
- (f) Water shall be considered the property and responsibility of the TOWN once it has passed through the Point(s) of Connection. The CITY and TOWN each shall have the sole and exclusive right to sell and distribute the water in its respective water system on its respective side of the Point(s) of Connection.
- (g) Procedure to Activate Interconnects during emergencies:

1. In case of an emergency, a written or verbal communication from the TOWN's Town Manager, or his/her designated representative, setting forth the emergency and estimated time of need of emergency potable water, shall be made and shall be the only request necessary to open the valves. The request shall be made to the CITY's Utilities Director or designated representative. If said communication is made verbally, said notice shall be immediately followed by a written communication. Notwithstanding the provisions above, the request by the TOWN to the CITY to turn off valves and discontinue providing the emergency potable water supply shall be handled by the same procedure.
2. If the TOWN's required emergency potable water supply needs last more than 24 hours, then within 36 hours of the valve opening, the Director of the TOWN's utility shall transmit a letter to the CITY's Utility Director, outlining the reasons for the required needs, the probable duration of such requirements, the estimated usage in gallons per day and the maximum peak hour request.
3. The TOWN expressly acknowledges the right of the CITY to refuse to provide the emergency potable water service, as set forth in this Agreement, if the CITY determines that the provision of such service would not be in its best interest or would constitute a danger to the health, safety and welfare of its citizens. In the event of such refusal, the TOWN hereby expressly waives any and all claims of loss or damage against the CITY.

12. Monthly Billed Usage. The TOWN shall be billed the Service Rate on a monthly basis for actual metered water service delivered by the CITY in accordance with the following conditions:

- (a) Emergency usage shall be charged at bulk temporary rates, with no capacity or fixed charges, as set forth in sub-section 12(b).

- (b) The CITY shall charge the TOWN a bulk temporary service rate of \$0.309 per hundred gallons commencing upon the Effective Date of this Agreement. Future rate changes will be allowed only at the time of the CITY's Water System rate increases. The new rate to be charged will be equal to the current rate plus the same percentage increase as the CITY's Water System.
 - (c) The CITY agrees to provide the TOWN with written notification of all rate increases upon passage of the new rate by the CITY's City Commission or 30-days before rates go into effect, whichever is greater. In the case of multiple-year rate authorizations, a separate notice will be sent 30-days prior to each incremental change approval.
 - (d) The TOWN agrees to pay for all potable water received from the CITY and to make payments to the CITY within thirty (30) days from the date the bill is rendered by CITY. A one percent (1%) per month interest charge will be assessed on any outstanding balance thereafter. If payment has not been received after ninety (90) days from the date of the original bill, then the CITY may discontinue services provided to the TOWN by this Agreement.
 - (e) Payments required herein shall be governed by the provisions of Chapter 218, Part VII, Florida Statutes, the "Local Government Prompt Payment Act," or its successor in function, or as otherwise mutually agreed to between the parties hereto.
13. Additional/Future Capacity Fees. If permanent additional capacity is required to meet the needs of the TOWN, the TOWN shall be required to pay additional capacity charges as calculated in accordance with the CITY's regulations regarding capacity charges, and at a cost per ERU as established by the CITY for all new water connections within the Service Area(s). It is further agreed that these capacity fees are the property of the CITY but that the TOWN may charge their own additional connection charges, surcharges or equivalent to its new customers.
14. Presumed Consumption and Required Payment In Case of Billing Meter Failure. Both parties agree that, if at any time a billing meter fails, the TOWN will pay to the CITY at a daily consumption rate equal to the average consumption of the ninety (90) day period prior to the date the meter failed, if emergency potable water was being supplied during that period. If not, the TOWN will pay to the CITY the average daily flow rate of the most recent consumption period. The CITY shall make all efforts to restore the meter to working order as soon as possible, with the cost of any repairs to be split by the CITY and the TOWN.
15. Termination of Agreement
- (a) Termination for Cause. 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. Failure to cure said default within ninety (90) days following notice shall be grounds for termination of this Agreement. Termination of this Agreement by either party shall require thirty (30) days prior written notice to the other party prior to the termination date. The parties may mutually agree to extend the time for cure and/or termination.

- (b) Termination by Mutual Agreement. This Agreement may be terminated by law or at any time by the written agreement of the CITY and TOWN. The TOWN will not be entitled to a refund of any Capacity Fees or other reimbursements, and all service will be discontinued upon the termination date if so terminated.
 - (c) Termination Upon Expiration. This Agreement shall be considered terminated on the expiration date of the Agreement as adjusted by extensions approved in accordance with Paragraph 3 of this Agreement. The TOWN will not be entitled to a refund of any Capacity Fees or other reimbursements, and all service will be discontinued upon the expiration date.
 - (d) Termination for Convenience. Either party may terminate this Agreement with or without cause by providing thirty (30) days written notice to other party. In such event TOWN terminates the Agreement for convenience, it will not be entitled to a refund of any Capacity Fees or other reimbursements.
- 16. Water Shortages. In the event the South Florida Water Management District or other government unit with authority declares a water shortage, then the CITY shall have the right to restrict service to the TOWN by the same percentage, level and/or manner as the CITY restricts service to customers located within the CITY's service area.
 - 17. Water Quality. The physical, chemical and biological quality of all waters delivered to the TOWN by the CITY currently meets or exceeds all Federal, State and local laws, regulations and requirements, and the CITY shall take reasonable steps to maintain the quality of treated waters to the Point of Connection.
 - 18. Employee Status. Persons employed by one party in the performance of services and functions pursuant to this Agreement shall have no claim to salary, pension, workers' compensation, civil service, or other employee rights or privileges granted by any other party to its officers and employees.
 - 19. 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, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, said party shall not be liable for such nonperformance. This provision shall not affect the payment terms in this Agreement.
 - 20. Successors and Assigns. The CITY and the TOWN 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 TOWN shall assign, sublet, convey, or transfer its interest in this Agreement without prior written consent of the other party. Such consent will not be unreasonably withheld.
 - 21. Severability. 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 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.

22. 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 at:

City of Lake Worth Beach
7 N. Dixie Highway
Lake Worth Beach, Florida 33460
Attn: Carmen Y. Davis, City Manager

with copies to:

Sam Heady
Utility Director
City of Lake Worth Beach
301 College Street
Lake Worth Beach, FL 33460

and

Glen J. Torcivia, Esq.
City Attorney
7 North Dixie Highway
Lake Worth Beach, FL 33460

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

Town of Lantana
500 Greynolds Circle
Lantana, FL 33462
Attn: Brian K. Raducci, Town Manager

with copies to:

Jerry Darr
Assistant Utilities Director
Town of Lantana
510 W. Pine Street
Lantana, FL 33462

and

R. Max Lohman, Esq.
Town Attorney
500 S. Australian Avenue
Suite 531
West Palm Beach, FL 33401

23. Filing. This Agreement and all amendments and renewals thereto shall be filed with the Clerk of the Circuit Court for Palm Beach County.
24. Amendment and Modification. This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto, except, as provided in paragraph 3 herein, that renewals of this Agreement may be executed by the City (or Town) managers for the TOWN and the CITY as long as all other terms and conditions remain the same.
25. Liability.
 - (a) The CITY and TOWN 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. The CITY and TOWN 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.
 - (b) Indemnity. To the extent permitted by law and subject to the limitations of Florida Statutes, Section 768.28, TOWN agrees to indemnify and hold harmless from and against any loss, damage, liability, claim or obligation of any kind or nature whatsoever, which CITY may incur or which may be asserted against CITY as a result of any actions or conditions on the discharge side of the Point of Connection affecting quality, water service or water availability.
26. Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Agreement is solely an Interlocal Agreement to provide services as authorized by Chapter 163, Florida Statutes. The governing bodies for the CITY and the TOWN shall each maintain all legislative authority with regard to their respective municipality. All of the privileges and immunities from liability, exemptions 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-territoriality under the provisions of any such Interlocal Agreement.
27. Waiver. No delay by either party in enforcing any covenant or right hereunder shall be deemed a waiver of such covenant or right, and no waiver by either party of any particular provision hereof shall be deemed a waiver of any other provision or a continuing waiver of such particular provision, and except as so expressly waived, all provisions hereof shall continue in full force and effect.

28. Entirety of Agreement. This Agreement constitutes the entire understanding of the parties with respect to the provision of public water supply services. Except as provided in paragraph 3 above, this Agreement may not be modified unless such modification and/or waiver is in writing and is agreed to and signed by both parties. The parties expressly agree that any uncertainties or ambiguities contained herein shall not be construed against or in favor of either party.
29. No Third Party Beneficiaries. There are no third party beneficiaries under this Agreement.
30. No Agency Created. Nothing contained herein is intended to nor shall create an agency relationship between the TOWN and CITY.
31. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which constitute but one and the same instrument. Either or both parties may sign this Agreement electronically or by facsimile or email and such signature is as valid as the original signature of such party.
32. Compliance with Law. The CITY and TOWN shall comply with all laws, ordinances, and regulations applicable to their obligations under this Agreement.

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IN WITNESS WHEREOF, TOWN 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:

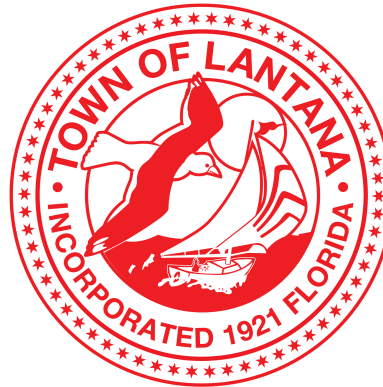
TOWN OF LANTANA
TOWN CLERK

TOWN OF LANTANA
BY ITS TOWN COUNCIL

By: Kathleen Dominguez
Kathleen Dominguez, Town Clerk

By: Karen Lythgoe
Karen Lythgoe, Mayor

(SEAL)



APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

By: R. Max Lohman
R. Max Lohman, Town Attorney

ATTEST:

CITY OF LAKE WORTH BEACH, FLORIDA
BY ITS CITY COMMISSION

By: _____
Melissa Ann Coyne, City Clerk

By: _____
Betty Resch, Mayor

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Yannick Ngendahayo
Financial Services Director