

**INTERLOCAL AGREEMENT
TO SATISFY REUSE SYSTEM OBLIGATION
BETWEEN
THE CITY OF MIRAMAR, FLORIDA
AND
THE CITY OF HOLLYWOOD, FLORIDA**

THIS INTERLOCAL AGREEMENT (the “Agreement”) is entered into as of the ____ day of _____, 2019 (“Effective Date”), by and between the City of Miramar, Florida (“MIRAMAR”) and the City of Hollywood, Florida (“HOLLYWOOD”).

WHEREAS, pursuant to Section 403.086(9)(c)(I), Florida Statutes, each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must install, or cause to be installed, a functioning reuse system within the utility’s service area or, by contract with another utility within Miami-Dade County, Broward County or Palm Beach County by December 31, 2025 (the “Ocean Outfall Legislation”); and

WHEREAS, HOLLYWOOD is the holder of a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, and has opted to satisfy a portion of the aforementioned requirement by entering into a contract with another utility within Broward County meeting the requirement under the Ocean Outfall Legislation; and

WHEREAS, a “functioning reuse system” means an environmentally, economically, and technically feasible system that provides a minimum of 60% of a facility’s baseline flow on an annual basis for irrigation of public access areas, residential properties, or agricultural crops; aquifer recharge; groundwater recharge; industrial cooling; or other acceptable reuse purposes authorized by the Florida Department of Environmental Protection (“FDEP”); and

WHEREAS, in early 2016, HOLLYWOOD initiated discussions with MIRAMAR regarding the efficacy of a contracted arrangement for a functioning reuse system with another utility, which culminated, on March 11, 2019, with the goal to target an allocation of 2.0 million

gallons per day (MGD) of contractual reuse commitment for a functional reuse system to be implemented by MIRAMAR as part of ongoing and upcoming improvements to MIRAMAR reclaimed water system; and

WHEREAS, pursuant to the Ocean Outfall Legislation, HOLLYWOOD is subject to an Administrative Order, as clarified by FDEP letter dated January 13, 2016, requiring that it provide a total of 4.5 MGD of contracted reuse water on an annual average daily flow (“AADF”) basis, constituting 40% of its feasible reuse goal of 10.0 MGD established by FDEP in its letter to HOLLYWOOD dated January 13, 2016, of which this contract would provide a total of 2.0 MGD of the 4.5 MGD requirement; and

WHEREAS, pursuant to this agreement, MIRAMAR will utilize proceeds to fund capital improvement projects associated with the ongoing expansion of the Reuse system and future improvements deemed essential by the Utility; and

WHEREAS, MIRAMAR and HOLLYWOOD are municipal corporations duly incorporated, validly existing and in good standing under the laws of the State of Florida, with all governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services; and

WHEREAS, pursuant to such municipal powers, MIRAMAR provides water and wastewater utility services and reclaimed water for beneficial reuse; and

WHEREAS, MIRAMAR currently owns and operates a system that produces 5.0 MGD AADF of reuse water for irrigation within its service areas (“Reuse System”); and

WHEREAS, MIRAMAR plans to expand the Reuse System to 7.5 MGD in order to serve additional customers on the west side of Interstate 75; and

WHEREAS, HOLLYWOOD would like to contract with MIRAMAR to satisfy 2 million gallons per day of HOLLYWOOD’S reuse system requirement under the Ocean Outfall Legislation; and

WHEREAS, Miramar has agreed that by December 31, 2025, MIRAMAR shall have completed an expansion of its Reuse System that will be capable of satisfying 2.0 MGD of HOLLYWOOD’S reuse system requirement upon the terms and conditions set forth in this Agreement; and

WHEREAS, this Agreement is entered into pursuant to Section 163.01, Florida Statutes, as may be amended from time to time, and prior to its effectiveness shall be filed as provided by Section 163.01(11), Florida Statutes.

NOW, THEREFORE, in consideration of the foregoing and the mutual benefits to be derived from compliance by the parties with the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

Section 1. Recitals. The foregoing “Whereas” clauses are adopted and incorporated herein.

Section 2. Term. The term of this Agreement shall commence upon execution by the parties and shall continue for a period of 30 years thereafter, unless earlier terminated as provided below.

Section 3. Expansion of the Reuse System. MIRAMAR shall secure all necessary permits and complete the expansion of its Reuse System to increase reclaimed water production and distribution to a minimum of 7.5 MGD no later than December 31, 2025, such that the Reuse System: (i) complies with applicable federal, state, regional, and local laws as further described in

Section 8; (ii) provides treatment to Part III Reuse Standards; (iii) includes the distribution system to distribute to the customers and the customers to use the reclaimed water; and (iv) provides sufficient reuse water to satisfy the 2.0 MGD contract reuse water requirement set forth in Section 4.

Section 4. Quantity and Timing of Reuse Water; Reuse System Obligation.

Utilizing the expanded Reuse System, MIRAMAR shall provide a minimum of 2.0 MGD AADF of contract reuse water by December 31, 2025, which shall be credited to HOLLYWOOD for the purpose of satisfying 2.0 MGD of HOLLYWOOD's reuse water requirement, and shall maintain said Reuse System in operation for the full term of this Agreement. The expansion of the Reuse System to at least 7.5 MGD AADF as described in Section 3 and the provision of 2.0 MGD AADF of reuse water by December 31, 2025 shall be collectively referred to herein as the "Reuse System Obligation."

Section 5. Compensation. In compensation for MIRAMAR fulfilling and maintaining the Reuse System Obligation throughout the term of this Agreement, and otherwise complying with the terms of this Agreement, HOLLYWOOD shall make a lump sum payment to MIRAMAR in the amount of Seven Million Dollars (\$7,000,000.00) within 90 days of HOLLYWOOD's receipt of written approval of this Agreement by FDEP as complying with HOLLYWOOD's contract reuse water requirement (the "Payment").

Section 6. System Operation, Maintenance, Repair and Replacement. MIRAMAR shall be solely responsible for the following: a) operating, maintaining, repairing, and replacing the Reuse System and any improvements necessary to satisfy the Reuse System Obligation; and b) taking all steps necessary to remain in compliance with all laws applicable to the operation of the Reuse System, as they may change from time to time.

Section 7. Not an Asset Sale or Transfer. This Agreement does not contemplate nor shall it be deemed to include or effect a sale or transfer of any water, wastewater, or reuse water utility assets or facilities or reuse water of either party to the other party, whether real, personal, or mixed property.

Section 8. Service Standards. MIRAMAR shall construct, maintain, and operate the Reuse System and its components in accordance with the applicable regulations adopted by the federal government, the State of Florida, and any regional or local government with jurisdiction as well as meet level-of-service standards pursuant to applicable comprehensive plans. The quantity and quality of reuse water delivered shall at all times be and remain not inferior to the applicable standards for irrigation water supply and other applicable rules, regulations and standards now or hereafter adopted by the federal government, the State of Florida, and any regional or local government with jurisdiction. The quantity and quality of reuse service provided and sold shall at all times be and remain not inferior to the applicable standards for public wastewater reuse service and other applicable rules, regulations, and standards now or hereafter adopted by the federal government, the State of Florida, and any regional or local government with jurisdiction.

Section 9. Manner of Service. MIRAMAR shall:

- (a) Provide continuous (subject to unavoidable interruptions or outages), adequate, and customary reuse water utility services to customers in MIRAMAR.
- (b) Operate, regularly maintain, and promptly repair when necessary the Reuse System in order to continue adequate service to customers in MIRAMAR.
- (c) Maintain sufficient water pressure and water mains of sufficient size and other facilities necessary in the Reuse System to allow irrigation use at all areas within the areas receiving services from MIRAMAR.

Section 10. Capital Improvement Plan. Upon request by HOLLYWOOD, MIRAMAR shall provide a draft of its 5 year capital improvement plan, specific to the Reuse System, to the City Manager and Director of Utilities of HOLLYWOOD for review and verification for compliance with this Agreement.

Section 11. Reuse System Upgrade/Re-ratings. The parties agree that there shall be no price adjustment, credit, or refund of any kind, or prorated capacity share adjustment due to a subsequent Reuse System upgrade expansion, re-rating or capacity adjustment to the Reuse System, provided that the Reuse System Obligation is timely and continually satisfied as required by the terms of this Agreement.

Section 12. Petition to FDEP, Liability, Indemnification and Sovereign Immunity.

(a) Petition. Section 403.086(9)(c)(3), Florida Statutes, provides that if a facility that discharges through an ocean outfall contracts with another utility to install a functioning reuse system, FDEP must approve any apportionment of the reuse generated from the new or expanded reuse system that is intended to satisfy all or a portion of the requirements of the Ocean Outfall Legislation. Consistent with this requirement, upon execution of this Agreement, the parties will jointly petition FDEP for entry of an administrative order or orders in association with their respective permits, acknowledging the execution of this Agreement and HOLLYWOOD's satisfaction of the requirements of the Ocean Outfall Legislation (the "Petition"), and approving the apportionment set forth herein. MIRAMAR and HOLLYWOOD agree to cooperate fully and support the Petition. In connection with the issuance of the administrative order(s), the parties shall provide such information as FDEP may require detailing, among other things, in the case of MIRAMAR, the scope of improvements and schedules for construction and permit activities and, in the case of HOLLYWOOD, the tasks for which

HOLLYWOOD will be responsible, with schedules. If the FDEP does not approve the Petition and issue Notice of Approval to HOLLYWOOD, this Agreement may be terminated by either party.

(b) Liability. Except as provided in Section 14, MIRAMAR and HOLLYWOOD shall each be separately liable and responsible for the actions of their respective officers, agents and employees in the performance of their respective obligations under this Agreement.

(c) Sovereign Immunity. MIRAMAR and HOLLYWOOD shall at all times be entitled to the benefits of sovereign immunity as provided in Section 768.28, Florida Statutes, and common law. Nothing contained in this Agreement shall be construed as a waiver of either party's sovereign immunity.

Section 13. Notices. Any delivery of notice required or permitted to be made hereunder may be made by personal delivery, courier, or mailing a copy thereof addressed to the appropriate party as follows:

If to MIRAMAR:	Vernon E. Hargray, City Manager City of Miramar 2300 Civic Center Place Miramar, Florida 33025-6577 Telephone: (954) 602-3115
Copy to:	Roy Virgin, Ph.D., Director of Utilities City of Miramar 2300 Civic Center Place Miramar, Florida 33025-6577 Telephone: (954) 883-5065
	Jamie Alan Cole, Esq., City Attorney Weiss Scrota Helfman Cole & Bierman, P.L. 200 E. Broward Blvd., Suite 1900 Fort Lauderdale, Florida 33301-1949
If to HOLLYWOOD:	Wazir Ishmael, Ph.D., City Manager City of Hollywood

2600 Hollywood Boulevard, Suite 419
Hollywood, Florida 33020-4807

Copy to:

Francois Domond, Interim Director of Utilities
City of Hollywood
2600 Hollywood Boulevard, Suite 419
Hollywood, Florida 33020-4807

Douglas Gonzales, Esq. City Attorney
2600 Hollywood Boulevard, Suite 419
Hollywood, Florida 33020-4807

Delivery when made by registered or certified mail shall be deemed complete upon mailing.

Section 14. Default, Termination and Remedies. Failure on the part of either party to comply in any material and substantial respect with any of the provisions or conditions of this Agreement shall be grounds for termination if after written notice of such default and a 60 day period (the “Cure Period”), the defaulting party has failed or refused to cure the noticed noncompliance. Notwithstanding any language herein to the contrary, if HOLLYWOOD fails to make the Payment within the time period specified in Section 5, after written notice from MIRAMAR and the Cure Period, MIRAMAR may terminate this Agreement and the parties shall be relieved of all of their obligations hereunder. Notwithstanding any language herein to the contrary, if MIRAMAR fails to satisfy the Reuse System Obligation by December 31, 2025, and has failed to request and receive an extension from FDEP, after written notice from HOLLYWOOD and the Cure Period, HOLLYWOOD may terminate this Agreement and shall be entitled to receive reimbursement from MIRAMAR in an amount equal to the Payment plus interest earned at 1% per year on the Payment within 30 days of such termination, and the parties shall be relieved of their obligations hereunder. Further, MIRAMAR shall pay any penalties and costs charged against HOLLYWOOD by FDEP resulting from MIRAMAR’s failure to satisfy the Reuse System Obligation or maintain and operate the expanded Reuse System in accordance with the requirements set forth in Sections 8 and 9. Should there be any dispute as to the validity of the

grounds for termination, the parties shall negotiate in good faith a resolution of such dispute and failing resolution will submit the dispute to non-binding mediation with a Florida Circuit Court certified mediator with the cost of such mediation divided equally between the parties. If the reasonableness or propriety of the termination is still in dispute thereafter, either party may seek redress in a court of competent jurisdiction.

Section 15. No Waiver. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing.

Section 16. Binding Effect. All of the provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors, assigns, and nominees of the parties.

Section 17. Severability. If any provision of this Agreement or the application thereof to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected and shall continue in full force and effect and be enforced to the fullest extent permitted by law.

Section 18. Audit Rights. HOLLYWOOD shall have the right to audit the books, records, and accounts of MIRAMAR that are related to this Agreement. MIRAMAR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and to satisfy the requirements of FDEP. MIRAMAR and HOLLYWOOD shall preserve and, upon request, make available, at reasonable times for examination and audit by the other party, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of

the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of 3 years after the document or record came into existence. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or 3 years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings.

Section 19. Independent Contractor. MIRAMAR is an independent contractor under this Agreement. Services provided by MIRAMAR pursuant to this Agreement shall be subject to the supervision of MIRAMAR. No partnership, joint venture, or other joint relationship is created hereby. HOLLYWOOD does not extend to MIRAMAR or MIRAMAR's agents any authority of any kind to bind HOLLYWOOD in any respect whatsoever. MIRAMAR does not extend to HOLLYWOOD or HOLLYWOOD'S agents any authority of any kind to bind MIRAMAR in any respect whatsoever.

Section 20. No Third-Party Beneficiaries. Neither MIRAMAR nor HOLLYWOOD intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

Section 21. Assignment and Performance. Neither this Agreement nor any obligation, right or interest herein shall be assigned, transferred, or encumbered without the written consent of both parties to this Agreement.

Section 22. Survival. All representations and other relevant provisions herein shall survive and continue in full force and effect upon termination of this Agreement.

Section 23. Joint Preparation. MIRAMAR and HOLLYWOOD acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them

to form a full and complete understanding of all rights and obligations herein, and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severally against one of the parties than the other.

Section 24. Headings; Conflict of Provisions. Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

Section 25. Governing Law; Venue; Attorney Fees. This Agreement shall be construed, governed, and interpreted according to the laws of the State of Florida. Venue for resolution of any dispute arising under this Agreement shall lie exclusively in Broward County, Florida. The parties shall each bear their own attorney fees and costs in any dispute arising under this Agreement.

Section 26. Entire Agreement; Amendments. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions of this Agreement may be made by the parties only in writing by formal amendment. This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Section 27. Changes in Laws. In the event that a change in law prohibits HOLLYWOOD from utilizing the Reuse System to satisfy its reuse requirement under the Ocean Outfall Legislation in the manner set forth in this Agreement, the parties agree to meet and negotiate in good faith regarding modifications to this Agreement that may be required in order to implement changes due to the change in law. Notwithstanding the foregoing, each party acknowledges that such party shall not be required to expend or reimburse any funds, or grant any

other consideration of any kind, in the performance of such good faith negotiations due to changes in the law.

Section 28. Force Majeure. Non-performance of either party shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, governmental acts or orders or restrictions (“Force Majeure”), provided that the non-conforming Party gives prompt notice of such conditions to the other party and makes all reasonable efforts to perform.

Section 29. Unforeseen Circumstances. In the event that circumstances beyond MIRAMAR’s control necessitate an extension of time for completion of the Reuse System Obligation, MIRAMAR may request an extension of time with FDEP, which HOLLYWOOD will support with FDEP.

[SIGNATURE PAGES FOLLOW]

INTERLOCAL AGREEMENT TO SATISFY REUSE SYSTEM OBLIGATION
BETWEEN THE CITY OF MIRAMAR, FLORIDA AND THE CITY OF
HOLLYWOOD, FLORIDA

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the
respective dates under each signature: MIRAMAR, signing by and through its Mayor,
duly authorized to execute same. and HOLLYWOOD, signing by and through its
Mayor, duly authorized to execute same.

CITY OF MIRAMAR, FLORIDA

By: _____
Wayne M. Messam, Mayor

By: _____
Vernon E. Hargray, City Manager

ATTEST:

Denise A Gibbs, City Clerk

Approved as to form and legal sufficiency for
the use of and reliance by the City of Miramar
only:

By: _____
Weiss Serota Helfman Cole & Bierman, P.A.
City Attorney

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me on _____ by Wayne
M. Messam, as Mayor of the City of Miramar, Florida, a political subdivision of the State of
Florida, who is personally known to me or who has produced _____, as
identification and did take an oath.

Notary Signature,
State of Florida at Large

Printed Name Notary

INTERLOCAL AGREEMENT TO SATISFY REUSE SYSTEM OBLIGATION BETWEEN
THE CITY OF MIRAMAR, FLORIDA AND THE CITY OF HOLLYWOOD, FLORIDA

CITY OF HOLLYWOOD, FLORIDA

By: _____
Josh Levy, Mayor

By: _____
Wazir Ishmael, City Manager

ATTEST:

Patricia A. Cerny, City Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY for the use of and reliance
OF the City of Hollywood, Florida only:

By: _____
Douglas Gonzales, Esq.
City Attorney

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me on _____ by Josh Levy, as Mayor of the City of Hollywood, Florida, a political subdivision of the State of Florida, who is personally known to me or who has produced _____, as identification and did take an oath.

Notary Signature
State of Florida at Large

Printed Name