



Interoffice Memorandum

July 11, 2022

TO: Mayor Jerry L. Demings  
-AND-  
County Commissioners

FROM: Ed Torres, MS, P.E., LEED AP, Director  
Utilities Department

*Mawa Camacho For  
ED TORRES*

SUBJECT: **BCC AGENDA ITEM – Consent Agenda  
July 26, 2022 BCC Meeting  
First Amendment to The Bay Hill Club Water Reuse Agreement  
Contact Person: Edgar Cuartas, Manager,  
Customer Service Division  
407-254-9765**

On May 3, 1994, The Bay Hill Club (TBHC) and Orange County entered into a water reuse agreement to supply reclaimed water for golf course irrigation. Pursuant to the agreement, the County currently owns, operates and maintains a booster pump station (PS) located in an easement on private property owned by TBHC. The maintenance of the pipes and the irrigation system connecting to the PS is the responsibility of TBHC. Starting on January 1, 2001 and for a period of 20 years, TBHC paid Orange County Utilities a monthly flat rate in the amount of \$1,650 for reclaimed water service. On January 1, 2021 TBHC began paying the County's prevailing reclaimed water rate for the Interruptible User – No Onsite Storage rate classification, currently \$0.54 per 1,000 gallons.

The existing booster pump station is slated for an upgrade at a cost to the County of approximately \$595,000. This agreement is unique and TBHC has been a good partner to the County, providing a long-term effluent management option for reclaimed water. Reclaimed water has become an increasingly valuable commodity and a crucial element to the County's water resource planning efforts. Given the location of the PS on private property, the need to replace it and the long-term operation and maintenance costs, staff finds it is in the County's best interest to transfer ownership of the PS to TBHC.

This first amendment to the agreement provides for a one-time County contribution of \$385,000 in exchange for TBHC constructing, owning, maintaining, and operating the replacement pump station. The County's contribution will be satisfied through an adjustment to the reclaimed water rates paid by TBHC. Once the full amount of the County's contribution is exhausted, TBHC will resume paying the prevailing reclaimed water rates established by the Orange County Board of County Commissioners.

The County Attorney's Office staff finds the agreement acceptable. Utilities Department staff recommends approval.

**Action Requested:** **Approval and execution of First Amendment to Water Reuse Agreement between Orange County, Florida and T.B.H.C., Inc.**

**All Districts.**

## FIRST AMENDMENT TO WATER REUSE AGREEMENT

THIS FIRST AMENDMENT TO WATER REUSE AGREEMENT (the "Amendment") is made and entered into as of the date of latest execution below (the "Effective Date"), between ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 (the "County"), and T.B.H.C., INC., an Ohio profit corporation, whose address is 9000 Bay Hill Boulevard, Orlando, Florida 32819 (the "Club"). The Club and the County may also be referred to in this Amendment individually as a "Party" or collectively as the "Parties."

### RECITALS

**A.** The County owns and operates the South Water Reclamation Facility which produces reclaimed water suitable for irrigation of public access areas, such as golf courses, parks, and landscaped areas.

**B.** The County and the Club entered into that certain Water Reuse Agreement approved by the Board of County Commissioners on May 3, 1994 (the "Original Agreement," and together with this Amendment, the "Agreement").

**C.** Pursuant to the Original Agreement, the County currently supplies reclaimed water to the Club for irrigation purposes on the Property.

**D.** The County currently owns, maintains, and operates the County booster pump station located on the Club's Property (the "Existing Booster Pump Station") within that certain utility easement recorded in Official Records Book 5630, Page 1759, of the Public Records of Orange County, Florida (the "Utility Easement").

**E.** The Club desires to replace the Existing Booster Pump Station with a new booster pump station that will be owned, maintained, and operated by the Club (the "Replacement Booster Pump Station").

**F.** The County agrees to transfer the Existing Booster Pump Station from the County to the Club.

**G.** Despite the transfer of the Existing Booster Pump Station from the County to the Club, the County will retain the Utility Easement for access to and use of the utility pipeline and meter within the Utility Easement.

**H.** The County has paid all costs and expenses described in Sections 6 and 7 of the Original Agreement to defray the Club's expenses for the connection described in Subsection 3.b of the Original Agreement.

**I.** To compensate the County for its expenses and for reclaimed water provided under the Original Agreement, the Club paid the County an annual fee of \$18,000 in twelve equal monthly payments of \$1,500 for twenty (20) years commencing on January 1, 2001, the date that the County began delivering reclaimed water to the Club, and concluding on December 31, 2020.

**J.** The Club began paying the County's prevailing reclaimed water rates for the Interruptible User – No Onsite Storage rate classification on January 1, 2021.

**K.** The County and the Club desire to amend the rate currently paid by the Club for reclaimed water in exchange for the Club constructing, owning, maintaining, and operating the Replacement Booster Pump Station within the Utility Easement at the Club's expense.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Amendment, the sufficiency of which is acknowledged by the Parties hereto, the County and the Club hereby covenant and agree as follows:

1. Recitals. The recitals set forth above are true and correct and form a material part of this Amendment.

2. Defined Terms. Capitalized terms used in this Amendment without definition have the meanings ascribed to such terms in the Agreement.

3. Exhibits. The exhibits attached to this Agreement are an inherent part of it.

4. Construction of the Replacement Booster Pump Station. The Club shall design and construct the Replacement Booster Pump Station within the Utility Easement in accordance with all permits and applicable state and federal laws and local ordinances no later than one hundred and eighty (180) days after the Effective Date. The Club will not remove, alter, or damage the utility pipeline or meter within the Utility Easement. The Club will own, operate and maintain the Replacement Booster Pump Station and replace or upgrade it as needed to meet its needs.

5. Transfer of the Existing Booster Pump Station from the County to the Club. Within sixty (60) days after the Club's completion of the Replacement Booster Pump Station to the County's satisfaction (the "Transfer Date"), the County will execute and deliver a bill of sale (the "Bill of Sale") to the Club transferring the Existing Booster Pump Station and the chain link fence surrounding the Existing Booster Pump Station to the Club (the "Transfer"). The County's Utilities Director may execute and deliver the Bill of Sale on behalf of the County. Within sixty (60) days after the Transfer Date, the Club, at the Club's expense, will disconnect the Existing Booster Pump Station from the County's reclaimed water system and decommission the Existing Booster Pump Station in accordance with all permits and applicable state and federal laws and local ordinances. As of the Transfer Date, the County will no longer own, operate, maintain, or be responsible for any costs or expenses related to the Existing Booster Pump Station. Without the prior written approval of the County, the Club agrees not to install any new fencing or other structures or modify the existing fencing in a manner that would interfere with the County's use

of or access to the utility pipeline and meter within the Utility Easement.

6. AS-IS, WHERE-IS Transfer. The Club agrees that the transfer of the Existing Booster Pump Station from the County to the Club will be "AS-IS, WHERE-IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions and defects, and the County has no obligation to determine or correct any such facts, circumstances, conditions or defects or to compensate the Club for same. The County has specifically bargained for the assumption by the Club of all responsibility to investigate the Existing Booster Pump Station and of all risk of adverse conditions and has structured the terms of this Amendment in consideration thereof. The Club has undertaken all such investigations of the Existing Booster Pump Station as the Club deems necessary or appropriate under the circumstances as to the status of the Existing Booster Pump Station and based upon same, the Club is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers. The Club assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Existing Booster Pump Station. The County hereby disclaims all warranties of any kind or nature whatsoever (including, without limitation, warranties of habitability and fitness for particular purposes), whether expressed or implied including, without limitation warranties with respect to the Existing Booster Pump Station. The Club acknowledges that it is not relying upon any representation of any kind or nature made by the County or its employees with respect to the Existing Booster Pump Station, and that, in fact, no such representations were made. The Club releases the County from and against any and all claims which the Club or any party related to or affiliated with the Club has or may have arising from or related to any matter or thing related to or in connection with the Existing Booster Pump Station and the Club shall not look to the County in connection with the foregoing for any redress or relief. This release shall be given full force and effect according to each of its express terms and provisions, including those relating to unknown and unsuspected claims, damages and causes of action. The provisions of this Section shall survive the Transfer or the earlier termination of the Agreement and shall not be deemed to have merged into the Bill of Sale.

7. Indemnification. Commencing on the Transfer Date, the Club and its successors, assigns, heirs, grantees, representatives, invitees, and permittees hereby agree to release, indemnify, defend (with legal counsel acceptable to the County), and hold the County, its Board members, officers, employees, contractors, agents, and elected and appointed officials, harmless from and against any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including but not limited to attorneys' fees, paralegals' fees, consultants' fees and costs at all administrative, pretrial, trial, and appellate levels) of any kind or nature whatsoever, including without limitation damage to property, arising out of or related in any way to the Existing Booster Pump Station, whether arising before or after the Transfer Date. The provisions of this Section shall survive the Transfer or the earlier termination of the Agreement and shall not be deemed to have merged into the Bill of Sale.

8. Subsections 3(a), 3(b), and 3(c) of the Agreement are amended and restated in their entirety as follows:

3. Delivery and Supply of Reclaimed Water.

(a) The County installed and continues to maintain at its wastewater treatment plant certain existing pumping facilities and transmission lines for the transmission of reclaimed water produced at the County's plant. The County's transmission lines extend through and are located along the rights-of-way adjacent to the Property.

(b) The Club has connected its irrigation system to the Existing Booster Pump Station at a connection point mutually agreed to by the County and the Club. The Club, at the Club's expense, shall connect its irrigation system to the Replacement Booster Pump Station at a location approved by the Club and the County within sixty (60) days after completion of the Replacement Booster Pump Station.

(c) The Club agrees that reclaimed water furnished from the County's wastewater treatment plant pursuant to the provisions of this Agreement, shall be the primary source of water used by the Club for irrigation of the golf course lands and major landscape areas included in the planned development of the Property. The County agrees to provide and maintain the requisite flow from its wastewater treatment plant through its transmission lines in order to deliver to the Club a volume of reclaimed water at least equivalent to its maximum daily irrigation demand of approximately 1,100,000 gallons per day ("gpd"). The Club's anticipated annual average irrigation demand is approximately 800,000 gpd. The County agrees to supply additional reclaimed water to the Club from the County's plant above the maximum daily demand if such additional water is requested by the Club for the purpose of irrigation of the Property and if the Existing Booster Pump Station (until it is decommissioned by the Club) or Replacement Booster Pump Station, once operational, are capable of pumping such volume. The Club shall not be required at any time to accept any volume of reclaimed water from the County's system above the volume of water required by the Club in their sole discretion for the irrigation of the golf course lands and major landscaped areas on the Property; further, the Club shall have the right and authority to limit and exclude certain landscaped areas within the Property from the lands to be irrigated by the reclaimed water. The County acknowledges and agrees that the Club shall have the full right and authority, at their sole discretion, to utilize the lake systems and the deep wells on the Property as additional water sources for irrigation purposes on the Property.

9. The first sentence of Section 4 of the Agreement is amended and restated in its entirety as follows:

4. Water Quality and Monitoring. The County will deliver to the Club reclaimed water of a quality consistent with the requirements of "public access" treatment levels described in the Rules of the Department of Environmental Protection, Chapter 62-610, Florida Administrative Code.

10. Section 5 of the Agreement is amended and restated in its entirety as follows:

5. Operations and Maintenance. The County agrees to maintain and operate the wastewater treatment plant, the storage and pumping facilities at the treatment plant, the County's reclaimed water transmission lines, and the Existing Booster Pump Station (until it is decommissioned by the Club) in accordance with all applicable state and federal laws and local ordinances. The Club agrees to maintain and operate the connection lines, the Replacement Booster Pump Station (once operational), backflow preventions devices, and the irrigation system located on the property in accordance with all applicable state and federal laws and local ordinances. Nothing contained under the provisions of this Agreement shall in any manner be construed to classify or constitute the Property as an effluent or reclaimed water disposal site as referenced in the Rules of the Department of Environmental Protection published in the Florida Administrative Code. Notwithstanding the foregoing, commencing on the Effective Date, the County shall not be required to make any major repairs or replacement of the Existing Booster Pump Station.

11. Section 6 of the Agreement is deleted in its entirety.

12. Section 7 of the Agreement is deleted in its entirety.

13. Section 11 of the Agreement is amended and restated in its entirety as follows:

11. Term of Agreement. The Agreement shall be effective for an initial term of twenty (20) years from the Effective Date of this Amendment 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 13.

14. Section 13 of the Agreement is amended and restated in its entirety as follows:

13. Termination. The following occurrence shall be considered a default by the Club 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 Club:

(a) The Club fails to pay any invoice or bill described in this Agreement in full and within the timeframes specified in this Agreement.

15. Section 15 of the Agreement is amended and restated in its entirety as follows:

15. Club's Payment to the County. The Club began paying the prevailing reclaimed water rate for the Interruptible User – No Onsite Storage on January 1, 2021. Commencing on the Effective Date, the Club will pay \$1,500 per month (the "Monthly Fee") for reclaimed water provided by the County. As consideration for the Club's construction, ownership, maintenance, and operation of the Replacement Booster Pump Station, within forty-five (45) days after the Effective Date, the County will remit to the Club the difference between the prevailing reclaimed water rate for the Interruptible

User – No Onsite Storage cumulative bills since January 1, 2021 and the Monthly Fee cumulative bills since January 1, 2021 in an amount not to exceed \$385,000.00 (the “Initial Contribution”). If the Initial Contribution is less than \$385,000.00, the County will continue to bill the Club the Monthly Fee until such time as the total difference between the prevailing reclaimed water rate for the Interruptible User – No Onsite Storage cumulative bills since January 1, 2021 and the Monthly Fee cumulative bills since January 1, 2021 equals \$385,000.00. At such time, the County will have provided a total of \$385,000.00 to the Club (the “County’s Contribution”) in the form of the Initial Contribution and subsequent monthly bill reductions, and the Club shall then begin paying the prevailing reclaimed water rate for the Interruptible User – No Onsite Storage rate classification set forth in the Reclaimed Water Rate Schedule adopted by the Orange County Board of County Commissioners (the “Board”) and in effect on such date.

Throughout the term, the reclaimed water rate paid by the Club shall automatically adjust to match the prevailing reclaimed water rate for the Interruptible User – No Onsite Storage rate classification set forth in the new Reclaimed Water Rate Schedule.

If the Club fails to construct the Replacement Booster Pump Station as required by Section 4, the County will bill the Club for the County’s Contribution, and the Club will refund the County’s Contribution to the County, along with any additional credits given beyond the prevailing reclaimed water rate after the Effective Date.

The County may cease delivery of reclaimed water to the Club if the Club fails to pay any invoice in full within thirty (30) days of the date of the invoice. Reclaimed Water service will be reinstated upon full payment of the invoice and any additional charges incurred. All Orange County Utilities standard billing procedures and charges, as amended from time to time by the Board, shall apply.

16. Notice. Any notice required or allowed to be delivered pursuant to the Agreement shall be in writing and be deemed to be delivered when (i) hand delivered to the official hereinafter designated, or (ii) three (3) days after the date on which deposited in the United States mail, postage prepaid, certified mail return receipt requested, and addressed to a Party at the address set forth opposite the Party’s name below, or such other address as the Party shall have specified by written notice to the other Party delivered in accordance herewith.

**If to the COUNTY:** Orange County Utilities Department  
9150 Curry Ford Road  
Orlando, Florida 32825-7600  
Attn: Director

With copy to: Orange County Administrator’s Office  
Orange County Administration Building  
201 S. Rosalind Avenue, 5th Floor  
Orlando, Florida 32801-3527  
Attn: County Administrator

**If to T.B.H.C., Inc.:**

TBHC Inc.  
9000 Bay Hill Boulevard  
Orlando, Florida 32819-4880  
Attn: Chief Financial Officer

17. Entire Agreement; Modifications. This Amendment constitutes the entire agreement between the Parties and has been entered into voluntarily and with independent advice and legal counsel and has been executed by the authorized representatives of each Party on the dates indicated below. Except as expressly modified by this Amendment, the Original Agreement remains unchanged, and is in full force and effect. Modifications to and waivers of any provision herein shall be made only in writing signed by both Parties hereto.

18. Interpretation. Unless the context clearly and unmistakably requires otherwise:

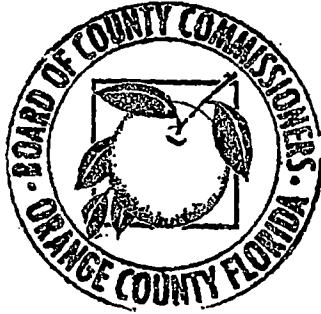
(a) Terms such as "Party A shall take Action X" or "Party A will take Action X" mean that Party A is required to take Action X.

(b) Likewise, terms such as "Party B shall not take Action Z" or "Party B will not take Action Z" mean that Party B is prohibited from taking Action Z.

[SIGNATURES ON FOLLOWING PAGES]



IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed as of the dates indicated below by their duly authorized representatives.



ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: *Jerry L. Demings*  
for Jerry L. Demings  
Orange County Mayor

Date: July 26, 2022

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Katie Smith*  
Deputy Clerk

Print: **Katie Smith**

WITNESSES:

[Signature]

Print Name: Kennedy Polata

[Signature]

Print Name: Kathryn Wush

**T.B.H.C., Inc.**

An Ohio profit corporation

By: [Signature]

Name: Brian Battles

Title: CEO

Date: 6/23/22

STATE OF Florida  
COUNTY OF Orange

The foregoing instrument was acknowledged before me by means of [] online notarization or [] physical presence this 23 day of June, 2022 by Brian Battles as CEO - treasurer of T.B.H.C., Inc., an Ohio profit corporation, who [] is personally known to me or [] has produced \_\_\_\_\_ as identification.

(Notary Stamp)

[Signature]  
Signature of Notary Public  
Print Name: Kristin Raymond  
Notary Public, State of Florida  
Commission Expires: HH 171229

