



**Interoffice Memorandum**

May 10, 2023

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

**FROM:** Ed Torres, M.S., P.E., LEED AP, Director  
Utilities Department



**SUBJECT: BCC AGENDA ITEM – Consent Agenda  
May 23, 2023, BCC Meeting  
Second Amendment to The Bay Hill Club Water Reuse Agreement  
Contact Person: Edgar Cuartas, Manager  
Customer Service Division  
407-254-9765**

On July 26, 2022, the BCC approved the First Amendment to the Water Reuse Agreement between The Bay Hill Club, Inc.(T.B.H.C., Inc.), and Orange County for the supply of reclaimed water to irrigate the golf course. Given the location of the booster pump station (PS) and a slated upgrade cost of approximately \$595,000, staff found it was in the best interest of the County to transfer ownership of the PS to T.B.H.C., Inc. Accordingly, the First Amendment provided for a one-time County contribution of \$385,000 in exchange for T.B.H.C., Inc. constructing, owning, maintaining, and operating a replacement PS within 180 days of the effective date of the amendment.

Citing project delays caused by global supply chain shortages, manpower issues, and Hurricanes Ian and Nicole, T.B.H.C., Inc. requested an extension to the deadline to complete the replacement PS. This second amendment to the agreement provides T.B.H.C., Inc. with a 120-day extension to complete the replacement PS. In exchange, T.B.H.C., Inc. agrees to take ownership of the existing PS immediately upon execution of this second amendment and be responsible for owning, operating, maintaining, and any other costs or expenses related to the existing PS.

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

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

**All Districts.**

## SECOND AMENDMENT TO WATER REUSE AGREEMENT

THIS SECOND AMENDMENT TO WATER REUSE AGREEMENT (the "Second 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 Second 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 on May 3, 1994 (the "Original Agreement"), and the First Amendment to Water Reuse Agreement on July 26, 2022 (the "First Amendment," and collectively with the Original Agreement and this Second Amendment, the "Agreement").

**C.** Pursuant to the 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.** Pursuant to the First Amendment, the Club is to design, construct, and replace the Existing Booster Pump Station with the Replacement Booster Pump Station within 180 days after the Effective Date of the First Amendment.

**F.** The Club desires, and the County consents to, an extension to complete the Replacement Booster Pump Station.

**G.** As consideration for the County's granting an extension to complete the Replacement Booster Pump Station, the Club has agreed to accept ownership of the Existing Booster Pump Station and maintain and operate the Existing Booster Pump Station at the Club's expense commencing on the Effective Date of this Second Amendment.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Second 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 Second Amendment.

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

3. Construction of the Replacement Booster Pump Station. Section 4 of the First Amendment is hereby amended to extend the deadline for the Club's completion of the Replacement Booster Pump Station until the date that is one hundred and twenty (120) days after the Effective Date of this Second Amendment.

4. Transfer of the Existing Booster Pump Station from the County to the Club. Section 5 of the First Amendment is hereby amended and restated in its entirety as follows:

5. Transfer of the Existing Booster Pump Station from the County to the Club. The County hereby conveys ownership of the Existing Booster Pump Station and the chain link fence surrounding the Existing Booster Pump Station to the Club (the "Transfer"). To memorialize the Transfer, within seven (7) days after the Effective Date of this Second Amendment, the County will execute and deliver a bill of sale (the "Bill of Sale") to the Club. The County's Utilities Director may execute and deliver the Bill of Sale on behalf of the County. Within sixty (60) days after the completion of the Replacement Booster Pump Station, 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 Effective Date of this Second Amendment (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.

5. Section 10 of the First Amendment (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, and the County's reclaimed water transmission lines in accordance with all applicable state and federal laws and local ordinances. The Club agrees to maintain and operate the connection lines, the Existing Booster Pump Station, 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.

6. 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 of the First Amendment, the Club paid \$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, the County remitted to the Club \$298,320.18, representing the difference between the prevailing reclaimed water rate for the Interruptible User – No Onsite Storage cumulative bills from January 1, 2021 through January 23, 2023 and the Monthly Fee cumulative bills from January 1, 2021 through January 23, 2023 (the "Initial Contribution"). Upon completion of the Replacement Booster Pump Station, the Club will recommence payment of the Monthly Fee for reclaimed water provided by the County. 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.

7. Entire Agreement; Modifications. This Second 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 Second Amendment, the Original Agreement and First Amendment remain unchanged, and are in full force and effect. Modifications to and waivers of any provision herein shall be made only in writing signed by both Parties hereto.

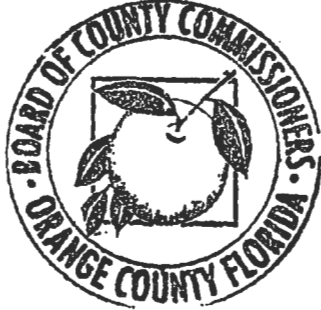
8. Interpretation. Unless the context clearly and unmistakably requires otherwise:

(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: May 23, 2023

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

By: *Jennifer Lara-Klimetz*  
Deputy Clerk

Print: Jennifer Lara-Klimetz

WITNESSES:

[Signature]

Print Name: JASON POZY

[Signature]

Print Name: Kennedy Pokata

**T.B.H.C., Inc.**  
An Ohio profit corporation

By: [Signature]

Name: Brian Battles

Title: CFO

Date: 4/11/23

STATE OF Florida  
COUNTY OF Orange

The foregoing instrument was acknowledged before me by means of  online notarization or  physical presence this 11 day of April, 2023, by Brian Battles as CFO, 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: August 30, 2025  
HH 171229

