

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT AND
THE CITY OF WEST PALM BEACH
FOR THE IMPLEMENTATION AND ENFORCEMENT OF
THE PRETREATMENT ORDINANCE**

WPB Legal No. 11673
WPB Res. No.

THIS AGREEMENT made and entered into this ____ day of _____, 2016 between the **CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT** ("Riviera Beach") and the **CITY OF WEST PALM BEACH** ("WPB").

WITNESSETH

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, on September 9, 1992, the ECRWWTFB was established pursuant to the Florida Interlocal Cooperation Act of 1969 by the City of West Palm Beach, Palm Beach County, the City of Lake Worth, the City of Riviera Beach Utility Special District, and the Town of Palm Beach ("Entities") for the purposes of owning, operating and managing the East Central Regional Wastewater Treatment Facilities ("Facilities"); and

WHEREAS, Riviera Beach currently utilizes the Facilities for the treatment of wastewater; and

WHEREAS, the ECRWWTFB is required to implement and enforce a pretreatment program to control discharges from all industrial users pursuant to the requirements set forth in 40 CFR, Part 403 and Rule 62-625, Florida Administrative Code (F.A.C.); and

WHEREAS, the ECRWWTFB is required to implement and enforce a pretreatment program as a condition of its National Pollutant Discharge Elimination System Permit ("NPDES Permit"); and

WHEREAS, WPB is the holder of the NPDES permit on behalf of the ECRWWTFB and is authorized to administer and enforce a pretreatment program on behalf of the ECRWWTFB.

WHEREAS, Riviera Beach has adopted an industrial pretreatment ordinance, set forth in Chapter 20, Article VII of the Riviera Beach Code of Ordinances (the "Pretreatment Ordinance");

NOW THEREFORE, in consideration of the mutual terms and conditions set forth

herein, the parties agree as follows:

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

2. **Enforcement of Pretreatment Ordinance.**

2.1. WPB shall diligently enforce local pretreatment standards set forth in Riviera Beach's Pretreatment Ordinance.

2.2. WPB shall take all actions necessary to ensure that industrial users within Riviera Beach's service area are subject to an approved pretreatment program to the extent required by Rule 62-625.500, F.A.C. and 40 CFR 403.8, including the performance of all technical and administrative duties necessary to implement and enforce Riviera Beach's Pretreatment Ordinance against industrial users located within its jurisdiction. WPB shall: (1) periodically update the industrial waste survey; (2) issue permits to all significant industrial users as defined in Rule 62-625, F.A.C.; (3) conduct inspections, sampling, and analysis; (4) perform enforcement activities; (5) take emergency action to halt or prevent any discharge that may cause imminent danger to persons, the environment or the Facilities; and (6) perform any other technical or administrative duties deemed appropriate or necessary.

2.3. WPB shall maintain current information on industrial users located within the Riviera Beach's service area. WPB shall update the industrial waste survey at least once a year and will forward a copy of the survey to Riviera Beach.

2.4. Upon identification of an industrial user within Riviera Beach's service area by WPB or Riviera Beach, or any time an existing industrial user increases its annual average discharge by twenty-five percent (25%) or modifies its discharge, WPB shall require the industrial user to respond to an industrial user questionnaire. The industrial user questionnaire shall be in a form acceptable to Riviera Beach. WPB shall review the questionnaire and determine if the industrial user is significant as defined in Rule 62-625, F.A.C. All industrial users determined to be significant shall be issued a wastewater discharge permit.

2.5. WPB shall provide Riviera Beach with copies of all records, correspondence or documents relevant to the pretreatment program for any industrial user discharging through Riviera Beach into the Facilities.

2.6. WPB shall periodically inspect and sample all significant industrial users located within Riviera Beach's service area. All procedures will conform to those set forth in Rule 62-625, F.A.C. and Rule 62-160.670, F.A.C., except as otherwise required by the Florida Department of Environmental Protection. Upon notice to WPB, Riviera Beach may conduct additional inspections and sampling of significant industrial users discharging through Riviera Beach's sewer system into the Facilities.

2.7. WPB shall issue permits to all significant industrial users located within Riviera Beach's service area. Permits must be issued prior to any discharge. Permits must contain, at a

minimum, appropriate effluent limitations, monitoring and reporting requirements, a statement of duration, a statement of nontransferability, a statement of applicable civil and criminal penalties, and any reasonable conditions requested to be included in the permit by Riviera Beach. WPB shall promptly forward copies of all permits to Riviera Beach.

2.8. WPB shall periodically report to Riviera Beach on the compliance status of each significant industrial user and any enforcement response taken or anticipated. The report will include the time frames for initial enforcement actions, as well as any subsequent enforcement actions. Should formal enforcement be required by Riviera Beach's code enforcement department, WPB shall notify Riviera Beach of such requirement.

2.9. WPB shall enforce the provisions of Riviera Beach's Pretreatment Ordinance and permits. In the event WPB fails to take adequate enforcement action against noncompliant users in Riviera Beach, Riviera Beach may take such action on behalf of WPB.

2.10. Riviera Beach may take emergency action, when necessary or upon request from WPB, to stop or prevent any discharge which presents, or may present, an imminent danger to persons, the environment, or which threatens to cause damage to the Facilities. Riviera Beach shall provide informal notice to the industrial user and WPB of its intent to take emergency action prior to taking such action.

2.11. In the event that an industrial user located outside Riviera Beach's service area discharges wastewater into the Riviera Beach sewer system, Riviera Beach shall enter into an agreement with the jurisdiction in which the industrial user is located to ensure implementation and enforcement of a pretreatment program by Riviera Beach's delegated agent.

2.12. WPB shall provide annually to Riviera Beach a list of industrial users who were in significant noncompliance with applicable pretreatment standards for the previous twelve (12) months. Riviera Beach will in turn publish the list in the newspaper published within the subregional service area in accordance with the requirements of Rule 62-625, F.A.C.

2.13. WPB shall collect all fees, penalties and fines from industrial users within Riviera Beach's subregional service area as required by Riviera Beach's Pretreatment Ordinance. All fees, penalties and fines collected by WPB shall be retained by WPB to offset the costs of enforcement actions. Collection of surcharge fees for conventional pollutants is not included within this Agreement, and implementation and enforcement of a surcharge program shall be the sole responsibility of Riviera Beach.

2.14. Riviera Beach and WPB shall periodically review and, if necessary, revise this Agreement along with their respective pretreatment ordinances to ensure compliance with the Federal Clean Water Act and the rules and regulations issued thereunder.

3. **Effective Date.** An original counterpart of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida, at Riviera Beach's cost. The provisions of this Agreement shall become effective upon execution and filing with the Clerk of the Court. This Agreement shall continue in full force and effect until terminated as provided in

this Agreement.

4. **Implementation and Enforcement Fees.** Riviera Beach shall pay to WPB a fee of Seven Thousand Two Hundred Thirty Six Dollars (\$7,236.00) per significant industrial user per year for implementation and enforcement of Riviera Beach's Pretreatment Ordinance as detailed in this Agreement. These costs shall be subject to audit and revision on an annual basis corresponding to the annual review and approval of WPB's industrial pretreatment budget. WPB shall invoice Riviera Beach separately for costs for industrial users outside of Riviera Beach's local service area so that Riviera Beach can forward the costs for these services on to Riviera Beach's contract customers, in its sole discretion.

5. **Compliance with Pretreatment Ordinance.** By execution of this Agreement, Riviera Beach acknowledges that nothing in this Agreement is in conflict with the requirements of Riviera Beach's Pretreatment Ordinance.

6. **Default.** Riviera Beach and WPB agree that in the event either party is in default of its obligations under this Agreement, the party not in default shall provide to the party in default thirty (30) days written notice to cure the default before exercising any rights provided in this Agreement, except as provided in Section 2.10 above. In the event WPB fails to enforce Riviera Beach's Pretreatment Ordinance or permits, Riviera Beach may, upon the required notice of default to WPB, take such action to enforce the same.

7. **Disputes.** Disputes under this Agreement may be resolved by the authorized representatives of Riviera Beach and WPB. If such authorized representatives are unable to reach a resolution and either Party believes that the issue is of sufficient merit, the parties shall select a mediator mutually acceptable to both parties to conduct a non-binding mediation of the issues involved and make a recommendation to both parties. The Parties agree to be responsible for their respective costs and fees incurred during the mediation and that each Party shall pay the mediator's fees and costs in equal amounts.

8. **Termination.** This Agreement may be terminated by either party upon sixty (60) days prior written notice to the other party, provided such termination will not result in a violation of the NPDES permit or any requirement of the Florida Administrative Code.

9. **Liability.** Each Party shall be liable for its own actions and negligence and, to the extent permitted by law, Riviera Beach shall indemnify, defend and hold harmless WPB against all actions, claims or damages arising out of Riviera Beach's actions in connection with this Agreement and any amendment hereto, and WPB shall indemnify, defend and hold harmless Riviera Beach against all actions, claims or damages arising out of WPB's actions in connection with this Agreement and any amendment thereto. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either Party for such other Party's negligent, willful or intentional acts or omissions.

10. **Notices.** All notices required to be given pursuant to this Agreement shall be deemed sufficient when delivered by United States mail to the following addresses:

Riviera Beach:

CITY OF RIVIERA BEACH
Attention: Utility Special District
600 West Blue Heron Boulevard
Riviera Beach, Florida 33404

WPB:

City of West Palm Beach
Attn: Director of Public Utilities
401 Clematis Street, 4th Floor (33401)
P.O. Box 3366
West Palm Beach, FL 33402

with copy to:

City of West Palm Beach
City Administrator
PO Box 3366
West Palm Beach, FL 33402

11. **Non-Discrimination.** No Party hereto shall discriminate against any individual because of that individual's race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation with respect to any activity occurring pursuant to this Agreement.

12. **Assignment.** This Agreement shall not be assigned in whole or in part without the prior written consent of both Parties. Any assignment made in whole or in part without the prior written consent of the other Party hereto shall be void and without legal effect.

13. **Survival.** The provisions of paragraphs 8, 14, 15, 17 and 21 shall survive the expiration or termination of this Agreement. In addition, any covenants, provisions, or conditions set forth in this Agreement that bind the Parties after the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

14. **Beneficiaries of Agreement.** It is the intent and understanding that this Agreement is solely for the benefit of Riviera Beach and WPB. No person or entity other than Riviera Beach or WPB shall have any rights or privileges under this Agreement in any capacity whatsoever, either as a third-party beneficiary or otherwise.

15. **Applicable Law; Venue; Waiver of Jury.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Any and all legal actions necessary to enforce this Agreement shall be held in Palm Beach County, Florida. RIVIERA BEACH AND WPB HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT AND ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION HERewith.

16. **Enforcement Costs.** Any costs or expenses, including reasonable attorney's fees, associated with enforcement of the terms or conditions of this Agreement shall be borne by the respective parties.

17. **No Transfer of Power.** Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. The governing bodies for Riviera Beach and WPB shall each maintain all legislative authority with regard to their respective political subdivision. All of the privileges and immunities from liability; exemption 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-territorially under the provisions of this Agreement.

18. **Records.** Riviera Beach and WPB shall each maintain adequate records pursuant to this Agreement for at least the minimum period required by Chapter 119, Florida Statutes, or four (4) years, or final resolution of matters resulting from any litigation or claim, whichever period is longer. Both parties to this Agreement reserve the right, upon reasonable request and during normal business hours, to have access to such books, records, and documents as required in this section for the purpose of inspection.

19. **Amendments.** No additions, alterations, or variations from the terms of this Agreement shall be valid, nor can the provisions of this Agreement be waived by either party, unless such addition, alteration, variation or waiver is expressed in writing and signed by the parties hereto.

20. **Non-waiver.** No waiver by Riviera Beach or WPB of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to Riviera Beach or WPB upon any breach under this Agreement shall impair such right to remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Riviera Beach or WPB of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition of this Agreement.

21. **Severability.** In the event that any section, paragraph, sentence, clause or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

22.. **Interpretation.** The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement or any provision hereto. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted. In the event that any provision of this Agreement conflicts or appears to conflict, this Agreement and all exhibits and documents specifically incorporated herein by reference shall be interpreted as a whole to resolve the inconsistency.

23. **Execution.** Three (3) originals of this Agreement shall be executed. This Agreement may be executed in counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

24. **Filing.** An original counterpart of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida, at Riviera Beach's cost.

25. **Entirety of Agreement.** This Agreement represents the entire understanding of the parties and supersedes all other negotiations, representations or agreements, either written or oral relating to this Agreement. This Agreement shall bind the parties' agents, employees and independent contractors.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

**CITY OF RIVIERA BEACH
UTILITY SPECIAL DISTRICT**

ATTEST:

By _____
Terence "TD" Davis
Chair

Claudene L. Anthony, CMC
City Clerk

Date: _____, 2016

CITY OF WEST PALM BEACH

ATTEST:

By: _____
Geraldine Muoio, Mayor

City Clerk

Date: _____, 2016

City Attorney's Office
Approved as to form and legality
By: _____