

Prepared By and Return To:

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Martha O. Haynie, Comptroller

Orange County, FL

MB - Ret To: ORLANDO - LEGAL AFFAIRS 0



For Recording Purposes Only

**AGREEMENT FOR THE DELIVERY AND USE OF RECLAIMED WATER BETWEEN
METROWEST MASTER ASSOCIATION AND CITY OF ORLANDO**

THIS AGREEMENT FOR THE DELIVERY AND USE OF RECLAIMED WATER ("Agreement") is made and entered into on this 8 day of September, 2010, between the CITY OF ORLANDO, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, ("City") and METROWEST MASTER ASSOCIATION, INC., a not-for-profit corporation formed under the laws of the State of Florida, ("MWMA") (City and MWMA are sometimes collectively referred to herein as the "Parties" and individually as the "Party").

RECITALS

- A. MWMA is the fee title owner of that certain real property located in Orange County, Florida within the property commonly known as the MetroWest Development of Regional Impact ("**MetroWest Master Association Property**").
- B. The MetroWest Master Association Property, among others, is subject to that certain Agreement For The Delivery Of Sanitary Sewer Service And For The Delivery And Use Of Reclaimed Water by and between the City and DEBRA, Inc. (MWMA's predecessor in interest to the MetroWest Master Association Property) dated October 24, 2000 and recorded on October 25, 2000 in Official Records Book 6115, Page 4138, in the Public Records of Orange County, Florida ("**Sewer Service and Reclaimed Water Agreement**").
- C. Pursuant to the Sewer Service and Reclaimed Water Agreement, the City currently delivers pressurized reclaimed water to the MetroWest Master Association Property from the City's publicly owned water reclamation facility known as the Water Conserv II Water Reclamation Facility ("**Reclaimed Water**").
- D. Pursuant to Paragraph 6 the Sewer Service and Reclaimed Water Agreement, the City desires to charge MWMA, and MWMA agrees to pay, the Bulk Service Rate (as

hereinafter defined) for the delivery and use of the Reclaimed Water, in accordance with the terms and conditions set forth herein.

- E. MWMA desires to continue to use Reclaimed Water for irrigation and the Parties desire now to express their agreement with respect to the Delivery and Use of Reclaimed Water to the MetroWest Master Association Property as more particularly set forth hereinbelow.
- F. The City's governing council has approved this Agreement and has authorized its execution by the undersigned representatives.

NOW THEREFORE, for and in consideration of the commitment of the City to deliver reclaimed water to MWMA and the commitment of MWMA to receive and beneficially use this water for irrigation or other approved purposes, the Parties agree to the following terms and conditions:

- 1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein by this reference.
- 2. **Term.** The term of this Agreement shall run concurrently with the Sewer Service and Reclaimed Water Agreement and, therefore, shall terminate October 24, 2020, unless terminated earlier pursuant to this Agreement and/or the Sewer Service and Reclaimed Water Agreement.
- 3. **Rates and Payment.**
 - a. **Wholesale Service Rate.** The City shall charge and MWMA shall pay the bulk service rate in the amount of \$0.69 per thousand (1,000) gallons ("**Bulk Service Rate**") for the volume of Reclaimed Water delivered to and used by the MetroWest Master Association Property on and after February 1, 2010, which the City shall include or cause to be included on a monthly utility billing statement ("**Monthly Utility Billing Statement**") in accordance with Section 32.13 of the City of Orlando Code of Ordinances. MWMA and City agree that each and all of these rates will be subject to change as rate adjustments are approved by City Council and this Agreement will not have to be amended to reflect such rate adjustments. In no event shall the cost of Reclaimed Water exceed the cost of potable water.
 - b. **Service Bill.** The Parties agree that MWMA shall pay to the City by July 1, 2010, the amount of Twenty-Five Thousand dollars and no cents (\$ 25,000.00) for overdue Reclaimed Water bills for the period beginning on June 30, 2006 and ending August 12, 2008 ("**Service Bill**").

c. Payment. The Monthly Utility Billing Statements will be part of MWMA's billing from the Orlando Utilities Commission and payment shall be made to the Orlando Utilities Commission, as agent of the City. City may change the payment address with prior written notice to MWMA.

4. **Use of Reclaimed Water; MWMA's System.**

a. MWMA shall continue to use the Reclaimed Water delivered by City for irrigation of the MetroWest Master Association Property as long as such use of the Reclaimed Water shall be consistent and in compliance with current and future FDEP and other applicable regulatory agency rules and regulations. In no event will MWMA discharge the Reclaimed Water directly to surface waters of the State of Florida without written authorization from the FDEP and Suppliers. MWMA also shall follow all applicable Operating Practice Restrictions specified in Exhibit "C" attached hereto and incorporated herein by this reference.

b. MWMA shall be solely responsible for the ownership, operation, and maintenance of all portions of the distribution system located within the boundaries of MWMA's Property. A map of the MetroWest Master Association Irrigation System and connection point are contained in Exhibit "A" and Exhibit "B" attached hereto and incorporated herein by this reference. MWMA shall agree to implement, maintain, and renew any permits, licenses or other programs required by state, regional or federal regulatory agencies to continue or expand MWMA's Reclaimed Water distribution system. For the purposes of this Agreement, the "**distribution system**" is defined as MWMA's system of Reclaimed Water infrastructure built and operated for the purpose of conveying Reclaimed Water within the boundaries of the MetroWest Master Association Property.

5. **Water Quality.** City will deliver, to MWMA, Reclaimed Water of a quality consistent with the requirements for "public access" treatment levels described in the rules of the FDEP, Chapter 62-610, Florida Administrative Code.

6. **Delivery of Reclaimed Water.** MWMA agrees that Reclaimed Water furnished from the City pursuant to the provisions of this Agreement shall be the primary source of water used by MWMA for irrigation of the MetroWest Master Association Property. The City shall, as it has done under the Sewer Service and Reclaimed Water Agreement, continue to deliver the Reclaimed Water to the connection point shown in Exhibit A. The City shall make reasonable efforts to deliver and MWMA shall use reasonable efforts to use the total anticipated annual Reclaimed Water irrigation demand which is approximately one hundred million (100,000,000) gallons per year. Reasonable efforts will be made by City to accommodate the systems and practices of its customers. However, City shall not guarantee a minimum pressure at which the

Reclaimed Water is delivered. The Parties recognize that adverse weather conditions or unforeseen circumstances may necessitate modification, or interruption, of the delivery of Reclaimed Water. In the event of adverse weather conditions or unforeseen circumstances, MWMA shall have the right to draw additional water, subject to availability as determined by the City. The City reserves the right to limit the rate of flow or interrupt flow to maintain adequate operating parameters in the City's Reclaimed Water system. MWMA shall have the right to restrict or refuse the use of the Reclaimed Water to be delivered in the event MWMA determines that the volume of Reclaimed Water described herein may be detrimental to the Property or in the event of adverse weather conditions or unforeseen circumstances.

7. **Disclaimer of Representations and Warranties.** City does not represent or warrant that the volume or quality of Reclaimed Water delivered shall increase the productivity of the MetroWest Master Association Property or result in changes to the land or vegetation of any kind. MWMA shall secure independent advice and shall make an independent judgment as to the use of the volume of water described in Section 6 and of the water quality delivered to MWMA by City pursuant to this Agreement.
8. **Inspection.** City shall have the right, upon written or oral notice to MWMA and when reasonably necessary, to enter upon the MetroWest Master Association Property upon which MWMA's distribution system is located and Reclaimed Water is used, to review and inspect the MWMA's operating practices as related to this Agreement and any backflow prevention devices between MWMA's system and any well and potable water system connection which is maintained by MWMA.
9. **Excuse from Performance by Governmental Acts.** If for any reason, during the term of this Agreement, and through no fault of MWMA or City, local, regional, state or federal governments, agencies or courts (other than the Parties to this Agreement) shall fail to issue necessary permits, grant necessary approvals, or shall require any change in the operation of the treatment, transmission and distribution systems or the application and use of Reclaimed Water by MWMA or City, then to the extent that such requirements shall affect the ability of any party to perform any of the terms of this Agreement or significantly increase the cost to the City or MWMA, the affected Party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible or necessary, by the Parties hereto in conformity with such modified permits, approvals, or requirements.
10. **Effect on Other Agreements.** The Parties hereby acknowledge and agree any payment which the City may seek to receive from MWMA or which MWMA may be obligated to pay to the City pursuant to the Sewer Service and Reclaimed Water Agreement for the Reclaimed Water delivered to and used by the MetroWest Master

Association Property shall be subject to and in accordance with the terms of this Agreement. In all other respects, and except as otherwise specifically set forth herein, the Sewer Service and Reclaimed Water Agreement shall continue in full force and effect as written and the Parties agree to be bound thereby.

11. **Effective Date.** The effective date of this Agreement shall be the later of the dates upon which this Agreement is signed by either the City or MWMA ("**Effective Date**").

12. **Assignment.**

a. City shall have the right to transfer all or any part of its treatment, transmission or distribution facilities to another supplier and to assign all or any part of their rights and obligations under this Agreement to an alternate supplier.

b. MWMA shall have no right to assign or transfer this Agreement and its rights hereunder to any parcel of land not included in the MetroWest Master Association Property, and any attempted assignment shall be void and of no effect or alternatively shall be treated by City as a material breach entitling City to terminate this Agreement as its sole remedy.

c. If MWMA changes the use of the MetroWest Master Association Property to another land use, such act shall also be treated by City as a material breach entitling City to terminate this Agreement as its sole remedy.

d. MWMA's right to sell, transfer, or encumber the MetroWest Master Association Property, in whole or in part, shall not be restricted by this Agreement and MWMA shall notify City in writing of any proposed sale or transfer of the MetroWest Master Association Property at least thirty (30) days prior to the scheduled sale or transfer date. Upon the sale or transfer of all or part of the MetroWest Master Association Property to a third party, MWMA shall be released from any and all obligation and liability hereunder provided and to the extent the same have been assigned to and assumed, in writing, by such third party.

13. **Recording.** This Agreement shall be recorded in the Public Records of Orange County, Florida and MWMA shall bear the costs of such recording.

14. **Termination.**

a. The City may cease delivery of Reclaimed Water to MWMA if any monthly invoice that has come due is not paid in full in sixty (60) days of the date of invoice or the Service Bill is not paid my March 1, 2010. Reclaimed Water service will be

reinstated upon full payment of the invoice and/or Service Bill, together with any service and late charges. The City may terminate this Agreement for cause, with thirty (30) days prior written notice to MWMA, if any invoice is not paid in full within ninety (90) days of the date of the invoice or the Service Bill is not paid in full by March 1, 2010, if such cause is not cured as set forth hereinbelow.

b. If the City determines that the MWMA has failed to use Reclaimed Water as their primary source of irrigation for the MetroWest Master Association Property for a period of at least sixty (60) days, the City shall provide MWMA written notice of such failure, and MWMA shall have thirty (30) days after receipt of such notice to resume using Reclaimed Water as its primary source of irrigation for the MetroWest Master Association Property. If MWMA fails to do so, the City shall have the right to terminate this Agreement by providing written notice thereof to MWMA. The City's failure to exercise this right shall not constitute a waiver by City to terminate this Agreement based upon subsequent like breaches.

c. City may terminate this Agreement for cause, with thirty (30) days prior written notice to MWMA, for any other material breach of this Agreement or the Sewer Service and Reclaimed Water Agreement, if such material breach is not cured within thirty (30) days after MWMA's receipt of written notice of such material breach from the City. Notwithstanding anything herein to the contrary, if the nature of MWMA's material breach or failure to perform under the terms of this Agreement is such that more than thirty (30) days are reasonably required for its cure, then the City shall not terminate this Agreement for cause so long as MWMA has commenced such cure within thirty (30) days after MWMA's receipt of written notice from the City of such breach or failure and thereafter MWMA diligently pursues such cure to completion; provided, however, MWMA shall have no more than ninety (90) days total within which to effectuate any such cure.

15. **Notices.** All notices required or authorized under this Agreement shall be given in writing and will be deemed to have been given when personally delivered or mailed by first class mail, return receipt requested, or when receipt is acknowledged if sent by facsimile or other electronic transmission device. Notices to the Parties will, unless another address is specified in writing, be sent to the addresses indicated below:

For MWMA: MetroWest Master Association
1803 Park Center Dr., Suite 215
Orlando, Florida 32835

For the City: Director of Public Works
400 South Orange Avenue

P.O. Box 4990
Orlando, FL 32802-4990

16. Indemnification.

a. MWMA will indemnify and hold harmless City from any and all claims, actions, and judgments, including all costs of defense and attorney's fees in defending against same and regarding property damage or bodily harm arising from and related to MWMA's negligent use of City's Reclaimed Water provided pursuant to this Agreement. For purposes of this Section, MWMA's acts include the acts of any of MWMA's agents and/or employees.

b. So long as MWMA shall use Reclaimed Water under the terms and conditions of this Agreement and subject to the extent permitted by law, the City shall indemnify MWMA and hold MWMA harmless from any and all claims, actions, suits, proceedings, costs, expenses, (including, without limitation, attorneys' fees at trial and appellate levels), damages and liabilities arising out of the claims by third parties residing on or using land adjacent to or in close proximity to the MetroWest Master Association Property, that the use of Reclaimed Water has resulted in adverse human health effects; provided, MWMA shall give the City notice of any such claim or information suggesting that such a claim may be made within seventy two (72) hours after MWMA learns of the same. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes, or other law, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

c. This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue upon, to or for the benefit of any third party not a formal party hereto.

17. Non-Waiver. The failure of either Party to insist upon the other Party's compliance with its obligations under this Agreement in any one or more instances shall not operate to release the other Party from their duties to comply with such obligations in all other instances.

18. Miscellaneous.

- a. Section Headings Not to Affect Meaning. The headings contained in this Agreement are provided for convenience only and shall not be considered in construing, interpreting or enforcing this Agreement.
- b. Entire Agreement; Severability. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and shall not be modified except in writing signed by the Parties. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to the extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- c. Modification. Any and all modifications to the provisions herein shall be by mutual agreement of the Parties, in writing, and executed by all the Parties thereto.
- d. Applicable Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any proceeding brought hereunder shall be Orange County, Florida.
- e. Time Of The Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.
- f. Singular/Plural. Where the sense of this Agreement requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the singular of said term.
- g. Benefited Parties and Property. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns. The rights and obligations hereunder shall exist for the benefit of and run with the title to the MetroWest Master Association Property.
- h. Independent Contractors. Nothing in this Agreement shall be construed to make the Parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other.
- i. Agreement Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall be deemed one and the same document.

[SIGNATURE PAGES FOLLOW]

COPY

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Agreement_for_the_Delivery_and_Use_of_Reclaimed_Water(MetrowestMasterAssociation)(clean5-25-2010)
(2) Agreement_for_the_Delivery_and_Use_of_Reclaimed_Water(MetrowestMasterAssociation)(clean5-25-2010) (2)

IN WITNESS WHEREOF, this Agreement has been entered into by the Parties voluntarily and with independent advice and legal counsel and has been executed by the authorized representative of each party on the dates written below.

City of Orlando, Florida

[Handwritten Signature]

Mayor/Mayor Pro Tem

Date: 9/8/10

ATTEST:

[Handwritten Signature]
Alana C. Brenner, City Clerk

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida, only.

September 8, 2010.

[Handwritten Signature]
Assistant City Attorney
Orlando, Florida

STATE OF FLORIDA

COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority, Antonio Oct. 2,
and Alana C. Brenner, personally known to me, and known by me to be the
Mayor Pro Tem and City Clerk, respectively, and acknowledged before me
that they executed the foregoing instrument on behalf of the City of Orlando, Florida, as its true
act and deed, and that they were duly authorized to do so.

WITNESS my hand and official seal this 8 day of September, 2010.

[Handwritten Signature]
NOTARY PUBLIC
Print Name: Carolyn A. Skuta
My Commission Expires: 4/4/13

NOTARY PUBLIC-STATE OF FLORIDA
Carolyn A. Skuta
Commission # DD862244
Expires: APR. 04, 2013
BONDED BY STANAC BOERING CO., INC

WITNESSES:

[Signature]

Print Name: Jessica Coleman

[Signature]

Print Name: Jeremy Hollis

MetroWest Master Association, Inc.

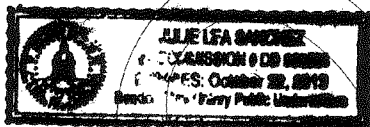
By: [Signature]

Date: 8/12/2010

STATE OF Florida
COUNTY OF Orange

Jodee Alter PERSONALLY APPEARED before me, the undersigned authority, as Director of MetroWest Master Association, Inc, a Florida not for profit corporation, well known to me or who has produced _____ as identification, and known by me to be the, and acknowledged before me that he executed the foregoing instrument on behalf of said company as its true act and deed, and that he was duly authorized to do so.

WITNESS my hand and official seal this 15th day of August, 2010.



[Signature]
NOTARY PUBLIC
Print Name: JULIE SANCHEZ
My Commission Expires: 10/22/13