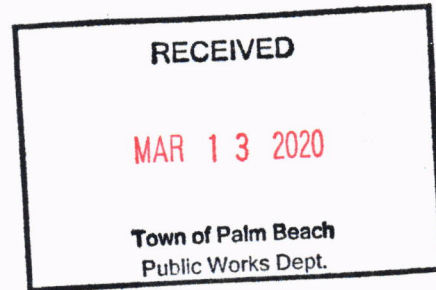




WEST PALM BEACH

Public Utilities



March 13, 2020

Town of Palm Beach

**Subject: Inter-local Agreement Regarding Water System Improvements 2020-2022
Between Town of Palm Beach and City of West Palm Beach**

To Whom It May Concern:

Enclosed are three (3) originals of the above mentioned Inter-local Agreement, including a copy of Resolution No. 33-20 that has been approved by our City Commission and executed by the Mayor of the City of West Palm Beach.

Please refer to Section 3 of Resolution 33-20 for direction regarding the handling of these documents and upon execution and filing from the Town of Palm Beach return a fully executed original to Public Utilities Department, Attn: Peggy Smith, P. O. Box 3366 4th Floor West Palm Beach, FL 33402 to be filed with the City Clerk's Office as a public record.

If you have any questions or concerns, please contact Peggy Smith at 561-494-1060 or msmith@wpb.org or Laura Le LLe@wpb.org

RESOLUTION NO. 33-20

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN OF PALM BEACH AND THE CITY OF WEST PALM BEACH FOR THE 2020 – 2022 TOWN OF PALM BEACH WATER MAIN IMPROVEMENTS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the Water Franchise Agreement signed June 16, 1999, between the Town of Palm Beach and the City of West Palm Beach identified existing water mains serving the Town and owned by the City located within the road right-of-way that required improvement; and

WHEREAS, the City and Town have agreed to review the Town's capital improvement program on an annual basis, to mutually agree on necessary renewal and replacement projects (Town R&R Projects), and coordinate both Town CIP and Town R&R projects with the Town's capital improvement program, and

WHEREAS, the City and Town have reviewed the projects to be undertaken during the period of January 1, 2020 to December 1, 2022, and have agreed that it is in the best interests of both entities to have the Town hire consultants to design the work and to administrate and inspect the construction with review and oversight by the City, and

WHEREAS, the City and Town have agreed that it is in the best interests of both entities to have the Town hire contractors to perform the work and to directly manage the project with review and oversight by the City, and

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, the City of West Palm Beach desires to execute an Interlocal Agreement Regarding Water System Improvements 2020-2022 with the Town of Palm Beach (the "Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, THAT:

SECTION 1: The City Commission of the City of West Palm Beach, Florida, hereby approves the Interlocal Agreement with the Town of Palm Beach for the 2020-2022 Town of Palm Beach Water Main Improvements (the "Agreement"), in such form and substance similar to that attached hereto as **Exhibit A**.

RESOLUTION NO. 33-20

SECTION 2: The City Commission of the City of West Palm Beach, Florida, hereby authorizes the Mayor to execute the Agreement.

SECTION 3: Upon execution of three (3) originals of the Agreement, all originals shall be forwarded to Laura Le, Public Utilities Engineer, to obtain execution by the Town of Palm Beach. Laura Le, Public Utilities Engineer shall ensure that a fully-executed original of the Agreement is provided to the City Clerk for retention as a public record of the City.

SECTION 4: This Resolution shall take effect as provided by law. The Agreement shall be effective the date the Agreement is filed with the Clerk of the County Court pursuant to Sec. 163.01(11), Florida Statutes.

PASSED AND ADOPTED THIS 9TH DAY OF MARCH, 2020.



ATTEST:

X *Hazeline F. Carson*

CITY CLERK
Signed by: Hazeline F Carson

**CITY OF WEST PALM BEACH BY
ITS CITY COMMISSION:**

X *Christina Lambert*

PRESIDING OFFICER
Signed by: *.wpb.org

**APPROVED AS TO FORM AND
LEGALITY:**

3/6/2020
X *Nancy Urcheck*

CITY ATTORNEY
Signed by: *.wpb.org

**INTERLOCAL AGREEMENT
REGARDING
WATER SYSTEM IMPROVEMENTS 2020-2022
BETWEEN
TOWN OF PALM BEACH
AND
CITY OF WEST PALM BEACH**

WPB Contract No. 20680.001

THIS AGREEMENT made and entered into by and between the **TOWN OF PALM BEACH, FLORIDA**, hereinafter referred to as the “TOWN,” and the **CITY OF WEST PALM BEACH, FLORIDA**, hereinafter referred to as the “CITY.”

WITNESSETH:

WHEREAS, the Water Franchise Agreement signed June 16, 1999, between the TOWN and the CITY identified existing water mains serving the TOWN and owned by the CITY located within the road right-of-way that required improvement; and

WHEREAS, the CITY and TOWN have agreed to review the Town’s capital improvement program on an annual basis, to mutually agree on necessary renewal and replacement projects (**Town R&R Projects**), and coordinate both Town CIP and Town R&R projects with the Town’s capital improvement program, and

WHEREAS, the CITY and TOWN have reviewed the projects to be undertaken during the period of January 1, 2020 to December 1, 2022, with the projects / roadways identified on Attachment “A”, and

WHEREAS, the CITY and TOWN have agreed that it is in the best interests of both entities to have the TOWN hire consultants to design the work and to administrate and inspect the construction with review and oversight by the CITY, and

WHEREAS, the CITY and TOWN have agreed that it is in the best interests of both entities to have the TOWN hire contractors to perform the work and to directly manage the project with review and oversight by the CITY, and

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, this Agreement will provide for the duties and responsibilities of the parties in this matter;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. The above recitations are true and correct.
2. The TOWN and CITY hereby set forth the duties and responsibilities of the parties regarding the upgrading of the CITY's water lines by replacing the existing water mains on various roadways within the limits of various capital improvement projects scheduled for the period from January 1, 2020 to December 1, 2022 within the dedicated rights-of-ways in the TOWN (hereinafter referred to as the "**2020 - 2022 Town of Palm Beach Water Main Improvements.**")
3. The TOWN and CITY have agreed to establish a budget of Two Million and Five Hundred Thousand Dollars (\$2,500,000) or the total amount of reserve funds, less 10 percent, whichever is greater over the period from January 1, 2020 to December 1, 2020 for the 2020 - 2022 Town of Palm Beach Water Main Improvements.
4. . An annual budget and schedule of projects has been mutually agreed to by the CITY and TOWN, as identified in Attachment A, attached and incorporated herein. If the estimated budget, including interest thereon, was insufficient to cover the actual costs of any project, such shortfall shall be addressed by amendment to the annual budget or adjustment of the next year's budget.
5. Within ten (10) business days of the establishment of each annual budget and annual schedule of projects, the CITY agrees to pay to the TOWN the amount of that annual budget. The CITY will pay these budget amounts with funds from the

Town of Palm Beach Account within the City's Renewal and Replacement Fund. This amount may be adjusted in case of an approved Change Order pursuant to this Agreement. The TOWN shall place said money into an interest-bearing account and all accrued interest shall be credited to the Town of Palm Beach Account within the City's Renewal and Replacement Fund.

6. The TOWN and CITY may mutually agree in writing to adjust the annual budget and annual schedule of projects at any time during a budget year to accommodate any additional project(s) deemed necessary, provided there are sufficient funds in the Town of Palm Beach Account within the City's Renewal and Replacement Fund to cover the costs of the additional project(s).
7. The TOWN will utilize a consultant ("Consultant") selected from a list of civil engineering firms pre-qualified by the Town to perform the 2020- 2022 Town of Palm Beach Water Main Improvements.
8. The TOWN will utilize a contractor ("Contractor") either selected from a list of utility contractors pre-qualified by the Town or contractor or Construction Manager at Risk by public bid or CCNA selection process to perform the 2020 - 2022 Town of Palm Beach Water Main Improvements.
9. The TOWN will design the 2020 - 2022 Town of Palm Beach Water Main Improvements which will be incorporated into the TOWN's contract with the Contractor. The TOWN's Contractor shall install the 2020 - 2022 Town of Palm Beach Water Main Improvements in accordance with CITY standards and shall provide materials and reconstruct the roadways in accordance with TOWN standards. The TOWN will provide the water main materials and appurtenances under separate contract.
10. The TOWN's Contractor will furnish all testing, field survey control, and related work for the 2020 - 2022 Town of Palm Beach Water Main Improvements. The TOWN will provide to the CITY a monthly report on quantities installed. The TOWN will invite the CITY's representative to all progress meetings relating to the 2020 - 2022 Town of Palm Beach Water Main Improvements, including

constructability meeting, final utility coordination meeting, and preconstruction meeting.

11. The CITY will provide resident inspection of Contractor progress and will inform the TOWN of any objections concerning the 2020 - 2022 Town of Palm Beach Water Main Improvements performed by the TOWN's Contractor. The TOWN, or its designee, will perform observations necessary to certify the 2020 - 2022 Town of Palm Beach Water Main Improvements and to provide necessary forms as well as as-builts documentation to the City for submittal to the Palm Beach County Health Department for clearance for use of the water main.
10. As a condition of this Agreement, the CITY shall have the right to review and approve the contract and any Change Orders between the TOWN and the Consultant or the Contractor, as it relates to the 2020 - 2022 Town of Palm Beach Water Main Improvements portion of the Project.
11. Any Change Orders pertaining to the 2020 - 2022 Town of Palm Beach Water Main Improvements must be approved in writing by the CITY in advance of the commencement of the work. No substitutions of materials are permitted without CITY's written approval.
12. Upon completion of the work, clearance by the Palm Beach County Health Department and acceptance of the 2020 - 2022 Town of Palm Beach Water Main Improvements in writing by the CITY, the CITY shall own, control and maintain all water mains and services replaced under this Agreement subject, however, to the terms of the Water Franchise Agreement between the TOWN and the CITY dated June 16, 1999.
13. The TOWN's Contractor shall prepare a complete set of as-built information/drawings for the 2020 - 2022 Town of Palm Beach Water Main Improvements in accordance to the CITY's latest requirements and shall provide such complete set to the CITY.
14. Upon completion of the 2020 - 2022 Town of Palm Beach Water Main Improvements and acceptance in writing by the CITY, the TOWN shall, within

thirty (30) days, furnish the CITY with a final and complete accounting of all costs incurred in connection with the 2020 - 2022 Town of Palm Beach Water Main Improvements performed. All costs, records and accounts shall be subject to audit by a representative of the CITY. After completion of the 2020 - 2022 Town of Palm Beach Water Main Improvements, any monies remaining in the TOWN's account shall be refunded to the City within forty-five (45) days. Any refunded sums shall be deposited in the Town of Palm Beach Account within the City's Renewal and Replacement Fund. If the estimated budget, including interest thereon, is insufficient to cover the actual costs of the 2020 - 2022 Town of Palm Beach Water Main Improvements, and sufficient funds remain in the Town of Palm Beach Account within the City's Renewal and Replacement Fund, within forty-five (45) days of receipt of the final accounting, the CITY shall pay the amount of such shortfall to the TOWN.

15. Each party shall be liable for its own actions and negligence. Neither party shall indemnify or insure the other party for the other party's negligence. Nothing in this paragraph shall be interpreted as a waiver of the TOWN's or the CITY's sovereign immunity or the limitations relating thereto as contained in Florida Statute Section 768.28. Neither party waives any defense of sovereign immunity or increases the limits of its liability as a result of this Agreement.
16. The TOWN shall ensure that the Contractor hired to perform the work described in this Agreement will indemnify, defend, and hold harmless the CITY against any actions, claims or damages arising out of the Contractor's negligence and shall name the CITY, its commissioners, officers, employees and agents, as additional insureds on any certificates of insurance provided to the TOWN in connection with the 2020 - 2022 Town of Palm Beach Water Main Improvements.
17. The TOWN agrees that the CITY shall be a co-obligee on all required performance bonds and/or guaranties obtained by the TOWN in connection with the 2020 - 2022 Town of Palm Beach Water Main Improvements portion of the

project.

18. Should either party to this Agreement determine that the other is in default of any of the terms and conditions of this Agreement, written notice shall be given by the non-defaulting party allowing the defaulting party thirty (30) days from the date of receipt of such written notice to cure the defaults. Prior to the initiation of any legal proceedings between the parties, the parties shall comply with any state laws related to resolving disputes between local governments. In the event of default by either party to this Agreement, both parties shall have all remedies available under the laws of the State of Florida including, but not limited to, injunction to prevent default or specific performance to enforce this Agreement, subject to state law. The rights of the parties shall be considered cumulative and shall not be waived now or in the future by the exercise of any rights and remedies provided under the terms of this Agreement and authorized by law.
19. Disputes under this Agreement may be resolved by the TOWN's Authorized Representative and CITY's Authorized Representative. 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.
20. Any litigation arising from or relating to this Agreement shall be governed by the laws of the State of Florida and venue in any such proceeding shall be exclusively in Palm Beach County, Florida.
21. Any costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms or conditions of this Agreement shall be borne by the respective parties.
22. Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Agreement is solely an agreement

delineating the parties' respective rights relating to the construction of the 2020-2022 Water Main Improvements, as authorized in Florida Statutes, Chapter 163. The governing bodies for the TOWN and CITY 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.

23. The TOWN and CITY 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.
24. 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.
25. Failure(s) to insist on strict performance of any covenant, condition, or provision of this Agreement by a party, its successors and assigns, shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to

provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

26. In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held to be invalid by a court of competent jurisdiction, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
27. 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.
28. One original of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.
29. All Attachments or Exhibits referenced in this Agreement are incorporated into this Agreement and made a part hereof by this reference.
30. This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, either written or oral, with respect to matters contained herein.
31. The provisions of this Agreement shall become effective upon execution of this Agreement by the CITY and TOWN and filing with the Clerk of the Court.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have hereunto executed this Interlocal Agreement Regarding Water System Improvements 2020-2022 as of the last day and year last indicated below.

TOWN OF PALM BEACH, FLORIDA

CITY OF WEST PALM BEACH, FLORIDA

By: _____
Kirk Blouin, Town Manager

By: Keith A. James, Mayor
Keith A. James, Mayor

Date: _____ 2020.

Date: 3/10 2020.

ATTEST:

ATTEST:

TOWN CLERK:

Hazeline F. Carson
CITY CLERK: Hazeline F. Carson

Approved as to Legal Form and Sufficiency:

Approved as to form and legality:

John C. Randolph
John C. Randolph
Attorney for the Town of Palm Beach

Nancy Hutchins
Office of the City Attorney
for the City of West Palm Beach

RECOMMEND APPROVAL:

H. Paul Brazil, P.E. 3/27/20
H. Paul Brazil, P.E. Date
Director of Public Works

ATTACHMENT "A"

2020 - 2022 TOWN OF PALM BEACH WATER MAIN IMPROVEMENTS

Project Location	Street Limits	Length (Linear Feet, Approx.)
Hammon Avenue	S County Road to S Ocean Blvd	800
TOPB Marina	Peruvian/Chilean/Australian/Brazilian	420
Mid-Town/S Ocean Boulevard	Gulfstream Road to Royal Palm Way	2450
Australian Avenue	S Lake Drive to S Ocean Blvd	3400
S Lake Drive	Peruvian Ave to Royal Palm Way	1350
Everglades Island	Island Dr to Everglades Club	800
Southern Blvd	Flagler Dr to South Ocean Blvd	As Needed

Note: The projects may be modified, as mutually agreed upon by both City and Town, provided there are sufficient funds in the agreement