

**FIFTH AMENDMENT TO POTABLE WATER FOR RESALE AGREEMENT
BETWEEN BROWARD COUNTY AND CITY OF COCONUT CREEK**

This is the Fifth Amendment to the Potable Water for Resale Agreement, previously executed by and between Broward County, a political subdivision of the State of Florida (the "SELLER") and CITY OF COCONUT CREEK ("CONSUMER,") (collectively referred to as the "Parties").

RECITALS

WHEREAS, on October 30, 1973, the SELLER and CONSUMER entered into a Potable Water for Resale Agreement (the "Resale Agreement"), under which the SELLER provides treated potable water to CONSUMER for resale; and

WHEREAS, on December 23, 1991, the SELLER and CONSUMER entered into a First Amendment to the Resale Agreement, providing for treated potable water in excess of the then-current metered capacity; and

WHEREAS, on October 4, 1994, the SELLER and CONSUMER entered into a Second Amendment to the Resale Agreement, providing for treated potable water in excess of the then-current metered capacity; and

WHEREAS, on March 7, 2000, the SELLER and CONSUMER entered into a Third Amendment to the Resale Agreement, providing for an additional connection to SELLER's potable water system and extending the term of the Agreement, as previously amended; and

WHEREAS, on May 29, 2013, the SELLER and CONSUMER entered into a Fourth Amendment to the Resale Agreement, to allow CONSUMER to operate emergency interconnects with third parties and to amend the term of the Agreement; and

WHEREAS, the SELLER is constructing a potable water distribution system in an unincorporated area of Broward County, known as Hillsboro Pines as shown and described in Exhibit "D," attached hereto and incorporated herein (the "Hillsboro Pines Service Area"); and

WHEREAS, CONSUMER is the owner and operator of a potable water distribution system which provides water services to areas surrounding the Hillsboro Pines Service Area through CONSUMER's existing water facilities identified in Exhibit "D," (the "CONSUMER's System "); and

WHEREAS, the SELLER wants to use the CONSUMER's System to distribute potable water to serve the Hillsboro Pines Service Area; and

WHEREAS, CONSUMER is willing to distribute the SELLER's potable water through CONSUMER's System to the Hillsboro Pines Service Area; and

WHEREAS, the Fifth Amendment to the Resale Agreement (the "Fifth Amendment") is necessary and reasonable under the circumstances, and is in the best interest of the public; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

1. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties and incorporated herein.
2. Paragraph 1 of the Resale Agreement, as amended by the Fourth Amendment, is hereby amended to add a subsection to read as follows:

...

(a) CONSUMER shall provide SELLER with distribution services for the distribution of potable water to the Hillsboro Pines Service Area, as defined and identified on Exhibit D, attached hereto and incorporated herein.

3. Paragraph 9 of the Resale Agreement is hereby amended as follows:

9. The SELLER shall render monthly statements for water furnished through all meters. Water furnished through additional meters will be included in the monthly statement and not billed separately. The rate for water furnished will be based on the total sum of the meter readings. SELLER shall deduct from the charges listed in the monthly statements, the charge for water that is distributed to the Hillsboro Pines Service Area pursuant to Section (a). The SELLER shall calculate this deduction based on the amount of potable water distributed to the Hillsboro Pines Service Area from the CUSTOMER's System and deducted from the amount of potable water entering the CUSTOMER's System from the SELLER. The measurement of potable water distributed to the Hillsboro Pines Service Area from the CUSTOMER's System shall be measured on the SELLER's side of a water meter to be installed by the SELLER generally at 48th Avenue as identified in Exhibit "D" as part of the Hillsboro Pines Service Area Construction project. The SELLER shall maintain this new meter in the same manner as described in Section 6 for existing meters. The Consumer CONSUMER shall pay promptly all statements furnished. Should the Consumer CONSUMER fail or refuse to pay the amount of such statement within thirty (30) days after same has been submitted, the Seller SELLER shall have the right:

Words in ~~struck-through~~ type are deletions from existing text.
Words in underscored type are additions.

(a) To apply to the Circuit Court of Broward County, Florida, for appointment of a Receiver or mandamus to compel levy or any other relief deemed advisable by the Seller SELLER.

(b) To enforce the provisions of rules and regulations of the Seller SELLER providing for discontinuance of service until past due indebtedness is paid.

4. Exhibit D, "Hillsboro Pines Service Area" is hereby attached and incorporated into the agreement.
5. All other terms and conditions of the Resale Agreement, not inconsistent herewith, shall remain in full force and effect and are to be performed at the level specified in the Resale Agreement.
6. This Fifth Amendment shall be effective upon full execution by the Parties.
7. This Fifth Amendment shall be executed in four (4) counterparts, each of which shall be deemed to be an original.

(Remainder of Page Intentionally Left Blank)

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Words in underscoring type are additions.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Fifth Amendment to Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20____, and the CITY OF COCONUT CREEK, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____, 20__

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Angela F. Benjamin (Date)
Assistant County Attorney

By _____
Michael J. Kerr (Date)
Deputy County Attorney

FIFTH AMENDMENT TO POTABLE WATER FOR RESALE AGREEMENT BETWEEN
BROWARD COUNTY AND CITY OF COCONUT CREEK

CITY

ATTEST:

CITY OF COCONUT CREEK

Leslie Wallace May, City Clerk

By _____
Mikkie Belvedere, Mayor

(SEAL)

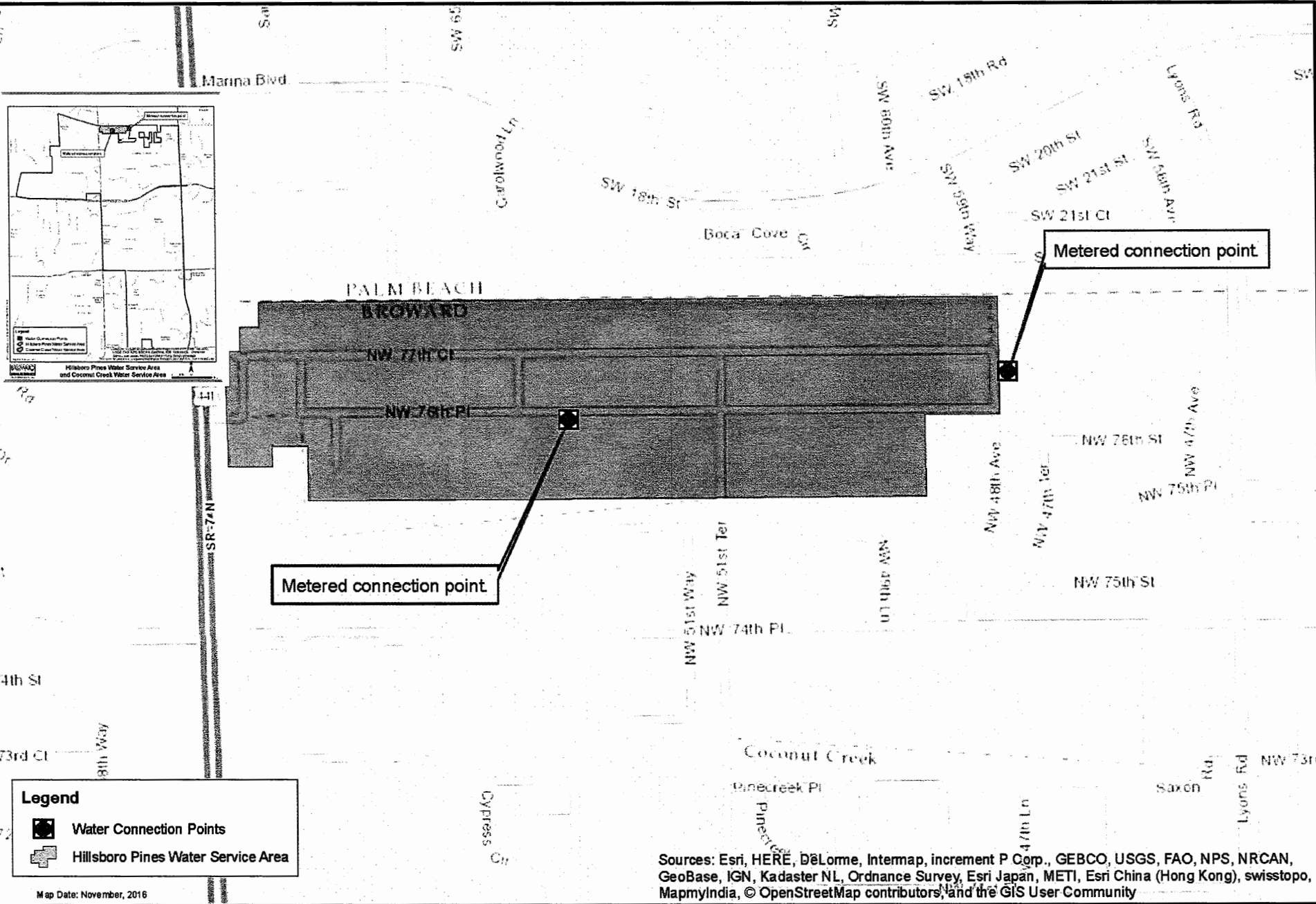
____ day of _____, 20__.

By _____
Mary C. Blasi, City Manager

APPROVED AS TO FORM:

By _____
Terrill C. Pyburn, City Attorney

Map Location: M:\GIS_Maps\HillsboroPines\Exhibit_D_Landscape.mxd



Legend

- Water Connection Points
- Hillsboro Pines Water Service Area

Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community



Exhibit D: Hillsboro Pines Water Service Area

