

**FIRST AMENDMENT TO  
AGREEMENT FOR CAPACITY ALLOCATION  
IN PHASE 1 OF THE C-51 RESERVOIR  
CITY OF HALLANDALE BEACH**

This First Amendment (“First Amendment”) to the Agreement for Capacity Allocation in Phase 1 of the C-51 Reservoir (the “Agreement”) is made and entered into by and between Palm Beach Aggregates, LLC (“Company”), a Florida limited liability company, with its principal offices at 20125 State Road 80, P.O. Box 700, Loxahatchee, Florida 33470, and the City of Hallandale Beach, Florida (“Participant”), a municipality organized and existing under the laws of the State of Florida, whose address is 440 South Federal Highway, Hallandale Beach, FL 33009. Company and Participant shall collectively herein be call the “Parties” and each be individually identified herein from time to time as a “Party.”

Recitals

A. The Parties entered into the Agreement on October 18, 2018 to provide for surface water storage capacity in the proposed collaborative development project known as the C-51 Reservoir, as further described in the Agreement (“C-51 Reservoir”), which is intended to be constructed in two phases.

B. The Agreement provides for an allocation to Participant of one (1) million gallons per day of storage in Phase 1 of the C-51 Reservoir, as further described in the Agreement (“Phase 1 Reservoir”).

C. Despite the best efforts of the Parties, it has taken longer than anticipated to satisfy certain conditions precedent set forth in the Agreement, and the Parties desire to amend the Agreement to extend the relevant time periods thereunder and to continue working together towards completion of the Phase 1 Reservoir project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are true and correct, and are incorporated herein by reference.

2. Unless otherwise stated, for paragraphs 3 – 4 below, words in ~~struck-through~~ type are deletions from existing text and words in underline type (aside from previously included headings) are additions to existing text.

3. Section 3.2 of the Agreement is hereby amended, in part, as follows:

3.2 **Termination.** Upon delivery of written notice to Company, as defined by Article 15 below, Participant may terminate this Agreement:

3.2.1 If Company fails to notify Participant, on or before ~~June 30, 2018~~ November 30, 2019, that it has sufficient permits, commitments, and financing to commence the construction of the

Phase 1 Reservoir; or

....

4. Section 11.1 of the Agreement is hereby amended, in part, as follows:

11.1 All of Company's obligations under this Agreement are expressly made subject to all of the following conditions, which Company agrees to use its reasonable efforts to promptly pursue and satisfy, time being of the essence:

....

11.1.2 Company's securing full Construction Financing for the Phase 1 Reservoir ~~within ninety (90) days after the Minimum Reserved Capacity Date~~ on or before November 30, 2019, with a closing date within ninety (90) days thereafter (the "Phase 1 Construction Finance Date"). On or before the tenth (10th) day after the Phase 1 Construction Finance Date, and at least ~~forty-five (45)~~ sixty (60) days before the closing date for Construction Financing, Company shall notify Participant in writing of the Phase 1 Construction Finance Date, as well as the anticipated closing date for Construction Financing.

....

5. The Agreement is hereby amended to include an Appendix D (C-51 Reservoir – Phase 1 Project Completion Schedule), attached hereto and incorporated herein. Company shall use its best efforts to achieve the project milestones listed in Appendix D within the time periods specified. If Company anticipates a delay in achieving any of the project milestones listed in Appendix D, Company shall promptly notify Participant in writing of such anticipated delay.

6. Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict or ambiguity between this First Amendment and the Agreement, this First Amendment shall control.

7. This First Amendment is effective on the Effective Date, and may be executed by the Parties in counterparts which, when taken together, shall have the force and effect of an original binding document.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date and year set forth above.

**PARTICIPANT**

CITY OF HALLANDALE BEACH,  
FLORIDA

By: \_\_\_\_\_  
Greg Chavarria  
City Manager

\_\_\_\_\_ day of \_\_\_\_\_, 2019

AUTHENTICATION:

\_\_\_\_\_  
City Clerk

(SEAL)

Approved as to form:

CITY ATTORNEY

By: \_\_\_\_\_  
Jennifer Merino  
City Attorney

**COMPANY**

WITNESSES:

PALM BEACH AGGREGATES, LLC, a  
Florida limited liability company

By: \_\_\_\_\_

Name: Enrique Tomeu

Title: President

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

## **Appendix D**

### **C-51 Reservoir – Phase 1 Project Completion Schedule – Outside Dates Revised June 18, 2019**

<b>Description</b>	<b>Milestone Dates</b>
Construction Financing Commitment	November 30, 2019
Notice of Construction Financing Commitment	December 10, 2019
Closing on Construction Financing	February 28, 2020
Commencement of Construction	March 2020
Construction Substantial Completion	January 2022
Operational Testing	February 2022
Final Cleanup and Demobilization	February 2022
2021 Closing and Turnover to C-51 Reservoir, Inc.	March 2022
Commencement of Operations	March 2022