

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is between the Palm Beach County Health Department ("PBCHD"), and the City of Boca Raton ("City"), (PBCHD and the City are referred to herein as "Party" or "Parties") as of the date last signed below ("Effective Date of Agreement") to settle the enforcement proceeding pending before the Division of Administrative Hearings ("DOAH") Case No. 12-3496 ("DOAH Proceeding" or "Proceeding"), and for other good and valuable consideration, the sufficiency and validity of which is hereby acknowledged. The Parties agree as follows:

### **I. Background**

The PBCHD is the delegated local program of the Florida Department of Environmental Protection authorized under Section 403.182 F.S., having the power and duty to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., F.S., and the rules promulgated thereunder in Title 62, Florida Administrative Code ("F.A.C.") within Palm Beach County, Florida (collectively, the "Applicable Law").

The City owns and operates the public water system including the Boca Raton Water Treatment Plant ("Plant") located at 1401 Glades Road, Boca Raton, Palm Beach County, Florida and the associated distribution system ("System"). The Plant and the System provide drinking water to approximately 128,000 people. The public water system has been assigned PWS ID 4500130 and is classified as a community waster system.

### **II. The Notice of Violation and Orders for Corrective Action**

In the Notice of Violation and Orders for Corrective Action, dated September 19, 2012 ("NOV"), attached hereto as Exhibit "A", the PBCHD sets forth four Counts related to alleged

violations by the City. The City denies the violations described in the NOV. Count V concerns purported costs and expenses of the PBCHD.

The Parties have agreed to settle this matter pursuant to the conditions below.

### **III. Settlement Terms**

The PBCHD and the City are entering into this Agreement in order to settle contested disputes between the Parties in the DOAH Proceeding. Entry into the Agreement shall not constitute an admission of any fault, liability, or wrongdoing on the part of the City, concerning the allegations in the NOV. The City contends that no violations occurred, and that at all times, there was no threat to the public health, safety or welfare of its customers. The City maintains that it operates a water utility that provides high-quality drinking and reclaimed water to its customers. This Agreement shall not, and cannot, be offered by the Parties or their representatives, assignees, or subsidiaries, as evidence, for any reason, in any administrative or agency proceeding, unless the administrative or agency proceeding is based upon alleged non-compliance with the terms of this Agreement.

In connection with settlement of the DOAH Proceeding, the PBCHD hereby agrees to the following:

- a. The PBCHD hereby voluntarily terminates its enforcement action, and withdraws its allegations, as to Count I of the NOV; and
- b. As to Counts II through Count IV, the PBCHD will not pursue the allegations or the Corrective Actions, except as stated herein, or impose civil or administrative penalties related to the allegations contained in the NOV.

In connection with settlement of the DOAH Proceeding, the City, without admitting fault or liability with regard to the NOV or Applicable Law, agrees to the following:

- a. As to Count II, the City has documented its procedures for contacting the State Warning Point ("SWP Document"). The SWP Document identifies when there may be any "actual or suspected sabotage or security breach, or any suspicious incident, involving a public water system". See Rule 62-555.350(10)(a), F.A.C.
- b. As to Count III, the City acknowledges that Rule 62-550.800, F.A.C., which incorporates the Federal regulations (40 CFR Part 141, Subpart I - Control of Lead and Copper), is applicable to the City's utility system. The City will continue to operate its utility system in conformance with the Applicable Law.
- c. As to Count IV, the City acknowledges that Rule 62-555.315(6), F.A.C. is applicable to the City's utility system. The City will continue to operate its utility system in conformance with the Applicable Law, including any provisions that require PBCHD approval prior to placing, or returning, a well into operation.
- d. The City agrees to pay \$2,500 in costs and expenses, as stated in Count V of the NOV.

**IV. Voluntary Dismissal**

Within three days of the Effective Date of this Agreement, the Parties will file a Joint Notice of Withdrawal of the NOV and Voluntary Dismissal of the Petition with Prejudice.

**V. Attorneys Fees and Other Costs and Damages.**

The attorney's fees, and other costs, incurred by each Party in the DOAH Proceeding will be borne by each respective Party.

**VI. Terminology.**

As used herein, indirectly contesting, objecting or opposing a permit, license or other governmental authorization includes funding another person's or entity's contest, objection, or opposition to such permit, license or other governmental authorization.

**VII. Non-Admission of Claims.**

This Agreement represents a good-faith settlement of the DOAH Proceeding without an admission by any Party as to the merits of any allegations contained in the NOV.

**VIII. Jurisdiction; Venue; Governing Law.**

The Parties agree that the venue with regard to any action brought to enforce the terms and the subject matters of this Agreement shall be in a court of competent jurisdiction located in Palm Beach County, Florida. This Agreement shall be enforced and construed according to the laws of the State of Florida.

**IX. Enforcement.**

Each Party to this Agreement shall have the right to enforce this Agreement through any remedy available, in law or equity, including, but not limited to, a suit for damages, specific performance or other injunctive relief. If legal action is taken to enforce this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees incurred in enforcing the Agreement, including fees incurred on any appeal.

**X. Subject to Approval.**

The Agreement is to be executed first by the City Manager, and then by the PBCHD. Upon full execution by the Parties, the Agreement will become binding upon the Parties and the date of full execution shall be deemed the effective date of the Agreement.

AGREED UPON and EXECUTED as of the date indicated above:

ATTEST:

CITY OF BOCA RATON, FLORIDA

BY: Susan S. Saxton  
City Clerk

BY: [Signature]  
Leif J. Ahnell, C.P.A., C.G.F.O.,  
City Manager

Date: 3/22/2013

APPROVED AS TO FORM:

BY: [Signature]  
Office of the City Attorney

PALM BEACH COUNTY  
HEALTH DEPARTMENT

BY: [Signature] - John Campbell

Secretary: N/A  
(Corporate Seal)

For Alvia Alonso, M.D.  
Print Name

Director  
Title

Date: 3-25-2013

800 Clematis Street  
Address

West Palm Beach, FL 33401  
City, State, Zip