

This Interlocal Agreement for use of Temporary Debris Management Sites and Other Related Services ("Agreement") is made and entered into by and between Broward County, a political subdivision of the state of Florida, ("County") and City of Pompano Beach ("Government Entity") (collectively, the "Parties").

## RECITALS

A. County wants to help governmental entities within County with debris management in the aftermath of a natural or man-made disaster for debris generated in County during such disaster by offering the use of Temporary Debris Management Sites ("TDMSs") owned by County.

B. Government Entity wants to use the TDMS and other related services in the aftermath of a natural or man-made disaster.

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

## ARTICLE 1. DEFINITIONS

- 1.1 **Board**. The Broward County Board of County Commissioners of Broward County, Florida.
- 1.2 **County Contract Administrator**. The Director of the Broward County Solid Waste and Recycling Services, or designee.
- 1.3 **County Administrator**. The administrative head of County appointed by the Board.
- 1.4 **County Attorney**. The chief legal counsel for County appointed by the Board.
- 1.5 **Debris Management Center**. The central command and control center for debris management coordination efforts between the County, municipalities, and other nonCounty agencies within the County.
- 1.6 **Disaster Debris**. Vegetative Debris, Hazardous Stump, and Other Debris, but not Unauthorized Debris.
- 1.7 **Disaster Debris Monitor or DDM**. The company or entity designated by the County Contract Administrator that will act as a County representative under this Agreement.
- 1.8 **Government Entity Contract Administrator**. Robert McCaughan, Director Public Works.
- 1.9 **Hazardous Stump**. Eligible debris composed of a tree stump that is at least 24 inches in diameter and documented as a hazardous stump on an incoming Load Ticket.
- 1.10 **Load Tickets**. A five-part document, in a form approved by the County Contract Administrator, that tracks Disaster Debris from the original collection point to the TDMS.

1.11 **Other Debris.** Eligible debris that is not exclusively Vegetative Debris, which may contain Vegetative Debris, construction and demolition debris, and other types of bulk debris, but not Unauthorized Debris.

1.12 **Services.** Include, but are not limited to, site management; receipt of Disaster Debris; processing/reduction/segregation of Disaster Debris; loading of Disaster Debris for final disposal; hauling of Disaster Debris for final disposal; final disposal of Disaster Debris; site restoration; monitoring incoming, outgoing, and final disposal of Disaster Debris; and managing TDMS traffic control.

1.13 **TDMS.** Temporary Debris Management Site designated by the County Contract Administrator.

1.14 **Unauthorized Debris.** Any debris not accepted for off-loading, processing, and disposal at County's TDMSs. Unauthorized debris includes, but is not limited to, white goods; chemical, biological, radiological, and nuclear-contaminated debris; hazardous waste; vehicles; vessels; animal carcasses; garbage (household food waste), household hazardous waste; electronic waste; industrial waste; infectious waste; plastic bags (except for clear bags) and sand, soil, mud, and/or sediment.

1.15 **Vegetative Debris.** Eligible debris comprised of whole trees, tree stumps smaller than 24 inches in diameter, tree branches, tree trunks, and other leafy material.

## **ARTICLE 2. SCOPE OF SERVICES**

2.1 Subject to availability and in the County Contract Administrator's sole discretion, County shall provide Services to Government Entity as outlined herein.

2.1.1 County shall allow Government Entity employees or authorized contractors to bring to TDMS Disaster Debris (but under no circumstances Unauthorized Debris) collected from the Government Entity's jurisdictional boundaries.

2.1.2 DDM will be the sole site monitor of the TDMS operations to ensure that Load Tickets are processed and initialed at the time of receipt.

2.1.3 DDM shall ensure that each part of the Load Ticket is distributed to entities identified by the County Contract Administrator. County may, in the County Contract Administrator's sole discretion, use an electronic ticket system.

2.1.4 DDM shall provide periodic user reports to Government Entity.

2.2 All Services offered to the Government Entity by the County shall be at sites that have been previously approved or are currently in the approval process by all applicable regulatory agencies.

2.3 The County Contract Administrator may, in his or her sole discretion, withdraw all or any part of Services by providing Government Entity with at least fourteen (14) days' written notice. In addition, the County Contract Administrator may, in his or her sole discretion, determine the manner in which any Services are provided to Government Entity, including

but not limited to, the selection of TDMS locations, and the hours of operation for TDMS locations.

2.4 The Government Entity shall reimburse County for all costs and Services provided. County will not be liable for its failure or refusal to render or provide Services under this Agreement.

2.5 Government Entity shall comply with the following provisions.

2.5.1 Government Entity shall ensure all trucks are premeasured and that placards are affixed to trucks noting prime contractor and truck capacity (in cubic yards). County may, in the sole discretion of the County Contract Administrator, verify cubic yardage capacity for any reason.

2.5.2 Government Entity shall provide truck certification sheets for any vehicle bringing debris to a TDMS.

2.5.3 Government Entity shall order a sufficient supply of Load Tickets, and ensure that Government Entity's and Government Entity's contractors' trucks arrive with the Load Tickets initialed in the field (pick-up location) by the Government Entity field monitor, or follow other load recordation processes approved in writing by the County Contract Administrator.

If Government Entity fails to comply with any of the following provisions, the County Contract Administrator, in his or her sole discretion, may refuse to provide any or all Services to Government Entity.

2.6 If the Agreement is executed by the Parties on or before April 30, 2018, County shall make Services available to Government Entity starting on June 1, 2018. For each calendar year thereafter, if the Parties execute the Agreement on or before March 31st, County shall make Services available to Government Entity starting on June 1st of the applicable calendar year. If the Agreement is executed by the Parties between March 31st and December 31st of any calendar year after 2018, the County shall make Services available to Government Entity starting on June 1st of the following calendar year, and each calendar year thereafter during this Agreement.

2.7 The County Contract Administrator and the Government Entity Contract Administrator shall coordinate and communicate with each other and manage and supervise execution and completion of the Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the County Contract Administrator on behalf of the County or the Government Entity Contract Administrator on behalf of the Government Entity.

### **ARTICLE 3. COMPENSATION**

3.1 County shall invoice Government Entity for the proportionate share of the cost for Services and for the proportionate share of the cost for associated Debris Management

Center staff time. County shall calculate a proportionate share of costs based on the volume of debris delivered by or on behalf of the Government Entity to the TDMS.

3.2 Government Entity shall pay County its full costs for Services and for its proportionate share of associated Debris Management Center staff time on or before the thirtieth day after receipt of invoice from the County.

3.3 County Contract Administrator may assign work to any one or more of multiple contractors for disaster debris management services, each with its own compensation structure based on a separate agreement between County and the particular disaster debris management service contractor. Government Entity shall pay County the costs of whichever contractor County has assigned work to, at County Contract Administrator's sole discretion. County shall assess costs based on the Governmental Entity's proportional use of the TDMS and/or the Services.

3.4 Government Entity must pay County for all costs under this Agreement regardless of whether such costs are deemed reimbursable by state or federal agencies.

3.5 Government Entity shall deliver the payment to County at:

Broward County Solid Waste and Recycling Services  
1 North University Drive, Suite 400  
Plantation, Florida 33324

#### **ARTICLE 4. TERM AND TIME OF PERFORMANCE**

4.1 The term of this Agreement shall start on the date it is fully executed by the Parties and shall end on November 30, 2022 ("Initial Term"), unless sooner terminated as provided herein. Thereafter, the Parties may, upon mutual written consent of the County Contract Administrator and the Government Entity, renew the Agreement with the same conditions for two additional five-year terms.

4.2 This Agreement may be unilaterally terminated by either party, with or without cause, provided that at least fourteen (14) days' written notice of such termination is given to the other party pursuant to Article 8.5 of this Agreement.

#### **ARTICLE 5. GOVERNMENTAL IMMUNITY**

Government Entity and County are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of their respective agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

#### **ARTICLE 6. INSURANCE**

Government Entity and County are governmental entities subject to the limitations of Section 768.28, Florida Statutes. Government Entity and County shall institute and

maintain a fiscally sound and prudent risk management program with regard to its respective obligations under this Agreement in accordance with the provisions of Section 768.28, Florida Statutes.

## **ARTICLE 7. EEO COMPLIANCE**

7.1 No party to this Agreement may discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. The Parties shall include the foregoing or similar language in their contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure by either party to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the other party deems appropriate.

7.2 The Parties shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, the Parties shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

7.3 By execution of this Agreement, each party represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). Each party hereby materially relies on such representation by the other party in entering into this Agreement. An untrue representation of the foregoing shall entitle the aggrieved party to terminate this Agreement and such other remedy as the aggrieved party deems appropriate.

## **ARTICLE 8. MISCELLANEOUS**

8.1 Rights in Documents and Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the party that created same and will be available to the other party for inspection or use at no cost; provided that nothing herein shall prevent or restrict the owner of the documents from lawfully destroying or lawfully disposing of any such documents.

8.2 Audit Rights and Retention of Records. Each party shall have the right to audit the books, records, and accounts of the other party that are related to this Agreement. Government Entity and County shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance thereunder.

The Parties shall preserve and, upon request, make available, at reasonable times for examination and audit by the other party, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not

applicable, for a minimum period of three (3) years after the document or record came into existence. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings.

8.3 Independent Contractor. Government Entity and County are independent contractors under this Agreement. Services provided by Government Entity pursuant to this Agreement shall be subject to the supervision of Government Entity and Services provided by County, pursuant to this Agreement, shall be subject to the supervision of County. In providing such Services, Government Entity, its officers, employees, or agents are not authorized to and shall not act as officers, employees, or agents of County, and County, its officers, employees, or agents are not authorized to and shall not act as officers, employees, or agents of Government Entity. This Agreement shall not constitute or make the Parties a partnership or joint venture.

8.4 Third Party Beneficiaries. Neither Government Entity nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

8.5 Notices. All notices to be given hereunder shall be in writing, and may be given by United States Mail, postage prepaid, return receipt requested, by commercial express carrier with acknowledgement of delivery, or by hand delivery, addressed to the party to be notified at the last place specified with a simultaneous copy sent via electronic mail. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following as the respective places for giving of notice:

FOR COUNTY:

County Administrator  
Governmental Center, Suite 409  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Email: \_\_\_\_\_

With a copy to:

Director, Solid Waste and Recycling Services  
One North University Drive, Suite 400  
Plantation, Florida 33324  
Email: \_\_\_\_\_

FOR GOVERNMENT ENTITY:

City of Pompano Beach  
City Manager  
P.O. Box 1300  
Pompano Beach, Florida 33060

8.6 Assignment. Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party.

8.7 Conflicts. Neither party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with that party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

8.8 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. Either Government Entity's or County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

8.9 Compliance with Laws. Government Entity and County shall each comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

8.10 Severability. If any part of this Agreement is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of the Agreement shall remain in full force and effect.

8.11 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

8.12 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, GOVERNMENT ENTITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

8.13 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with

the same or similar formality as this Agreement and executed by the County and Government Entity.

8.14 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding the subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

8.15 Payable Interest

8.15.1 Payment of Interest. County shall not be liable to pay any interest to Government Entity for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Government Entity waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement. This subsection shall not apply to any claim for interest, including for postjudgment interest, if such application would be contrary to applicable law.

8.15.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the fullest extent permissible under applicable law, .025% (one quarter of one percent) simple interest (uncompounded).

8.16 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference.

8.17 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

8.18 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.



IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its County Administrator authorized to execute same, by Board action, on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, and \_\_\_\_\_, signing by and through its authorized signatory, duly authorized to execute same.

**COUNTY**

WITNESSES:

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

\_\_\_\_\_, County Administrator

\_\_\_\_\_

\_\_\_\_\_

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Office of the County Attorney  
for Broward County, Florida  
Andrew J. Meyers, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
(Date)

By \_\_\_\_\_  
Angela F. Benjamin (Date)  
Senior Assistant County Attorney

By \_\_\_\_\_  
Michael J. Kerr (Date)  
Deputy County Attorney

INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND  
City of Pompano Beach FOR USE OF BROWARD COUNTY TEMPORARY  
DEBRIS MANAGEMENT SITES AND RELATED SERVICES

ATTEST:

\_\_\_\_\_  
City Clerk or Authority

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

Dated: \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Governmental Entity Attorney

Dated: \_\_\_\_\_

03/09/18 Alternative ILA for TDMS Services form  
AB/doc. # 272880