

# REVOCABLE LICENSE AGREEMENT

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**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by  
and between:

**CITY OF POMPANO BEACH**, a municipal corporation of the  
State of Florida, whose address is 100 W. Atlantic Blvd., Pompano  
Beach, Florida 33060, hereinafter referred to as "CITY,"

and

**ANDREYEV ENGINEERING, INC.**, a Florida limited liability  
company, with offices located at 4055 St. Johns Parkway, Sanford,  
FL 32771, hereinafter referred to as "LICENSEE."

## WITNESSETH:

**WHEREAS**, LICENSEE desires to obtain from CITY a license to use certain CITY  
right-of-way property for the purpose of installing, operating and maintaining a groundwater  
monitoring well, located in the public right-of-way of SE 28<sup>th</sup> Avenue.

**WHEREAS**, inasmuch as the use of said CITY property by LICENSEE for this  
restricted purpose will not interfere with the rights enjoyed by the public and will be without cost  
to the public either directly or indirectly.

**NOW, THEREFORE**, in consideration of the foregoing and mutual covenants and  
conditions hereinafter contained, it is agreed by the parties hereto as follows:

1. CITY hereby grants to LICENSEE and LICENSEE hereby accepts from CITY a  
non-exclusive license to use a portion of right-of-way property in the said roadway for the  
purpose of installing, operating and maintaining one (1) groundwater monitoring well in and

under the property shown on the site plan and description attached hereto and designated as Exhibit "A" ("License Area") and incorporated in this License Agreement. It is expressly agreed and understood between the parties that no above-ground rights are granted to LICENSEE except when installing, maintaining and monitoring the underground wells. All work of installation, maintenance, land restoration and clean-up shall be done to the satisfaction of the City Engineer of CITY. Prior to the start of construction, LICENSEE shall provide documentation (such as pictures, video, topographic surveys) to the City Engineer to establish the conditions that existed within the License Area prior to construction. All damages caused as a result of such installation to any elements, including, but not limited to, pavement, curbs, sidewalks, landscaping, trees, irrigation, utility poles, etc. located within the public right-of-way shall be restored or repaired to a condition equal to or better than that existing prior to commencement of installation of monitoring wells. This shall include any subsurface features such as water service lines, utility access lines, utility access covers, water meter boxes, water isolation valve stems, sanitary sewer cleanouts, etc. that may deteriorate as a result of removing asphalt, base materials, compaction, paving operations etc. LICENSEE shall be responsible for verifying all underground utilities prior to digging in any area. LICENSEE shall notify all necessary utility companies, 48 hours minimum prior to digging for verification all underground utilities, irrigation and any other obstructions and coordinate prior to initiating operations.

2. LICENSEE agrees that this License Agreement is contingent upon LICENSEE submitting a site plan or location plan and blueprints or other documentation as is usually required by the Engineering Department of CITY for the issuance of a permit, and the granting of this license does not in any way waive any other building or construction ordinances, fees, or

requirements of CITY. LICENSEE shall not commence construction nor occupy the right-of-way for construction purposes prior to approval of the permits.

3. This license shall continue from day to day commencing on the date of execution hereof by all parties for five (5) years or until terminated in accordance with provisions hereinafter stated.

4. LICENSEE agrees to pay CITY as compensation for this License the sum of One (\$1.00) Dollar per annum. Receipt of the first payment of One (\$1.00) Dollar is hereby acknowledged.

5. This license may, at the option of LICENSEE with the consent of CITY, be renewed from year to year after the initial term upon payment by LICENSEE to CITY of the sum of One (\$1.00) Dollar per annum.

6. As further consideration of this License Agreement, LICENSEE further agrees to pay any taxes of whatever nature which may validly be levied against the premises or pursuant to this Agreement during the continuance of this Agreement.

7. This license may be terminated by CITY at any time, for no express reason, upon giving thirty (30) days' written notice to LICENSEE by certified mail as further provided in paragraph 14 herein. Upon termination, LICENSEE agrees to remove at its sole expense all encroachments lying in, along and under the licensed portion of the right-of-way and to restore the pavement and any modification made by LICENSEE to the licensed premises to its former condition or better as determined in the sole discretion of the Public Works Administrator.

8. LICENSEE specifically agrees that it will use the CITY right-of-way pursuant to this license only for the purpose of installing, maintaining and utilizing groundwater monitoring wells described herein. Further, that it will not suffer or permit the premises or any part thereof

to be used for any other purpose without the express consent of CITY. During the construction and installation phase, LICENSEE shall not store materials and equipment in the public right-of-way. Staging of materials in the public right-of-way is strictly prohibited. The City Engineer shall approve all repairs, replacements and maintenance within the License Area.

9. It is further expressly agreed by LICENSEE that it shall not make any alteration other than normal repairs and maintenance to the monitoring well permitted herein by way of increasing the size or capacity of said well or any other substantial alteration without the express written consent of CITY.

10. It is expressly understood and agreed that no real or personal property is leased to LICENSEE; that it is a LICENSEE, not Lessee; that the LICENSEE's right to occupy the right-of-way is subordinate to CITY's (or any franchisee of CITY) use of said licensed premises, and should any relocation of any public utility be necessitated at any time in the future, then LICENSEE shall relocate, if practicable, or terminate its use of the licensed premises at its own expense by restoring the pavement and any modifications made by LICENSEE to the licensed premises to its former condition or better, as determined in the sole discretion of the Public Works Director. In the event that the non-exclusive use, occupation, and possession and maintenance, operation and repair of said wells shall ever (a) conflict with a superior municipal interest of the CITY or public, or (b) at any time the CITY requires the use of the License Area for a superior conflicting municipal purpose or (c) determines that continuation of the License Agreement for the License Area granted herein is no longer in the best public interest, all as determined by the CITY, then in that event, the license granted herein for the License Area shall be terminable at the will of the CITY upon fifteen (15) days written notice to the LICENSEE

11. During the term of this License and any subsequent renewal, LICENSEE assumes all risks in the operation, installation and maintenance of the groundwater monitoring wells located along and under the licensed premises and shall be solely responsible and answerable for damages related to all accidents or injuries to person or property arising out of or caused in the performance of any of the work done pursuant to the Agreement, or arising out of the operation and/or maintenance of said wells. LICENSEE further covenants and agrees to indemnify and hold harmless CITY and its officers, agents and employees from any and all claims (which shall include, but not be limited to, the defense of any claim and any and all costs in any judicial or quasi-judicial proceedings and for any and all damages or penalties of any kind or nature), suits, losses, damage or injury to person or property of whatsoever kind and nature, whether direct or indirect, arising out of the installation, operation and maintenance of said well or the carelessness, negligence or improper conduct of LICENSEE or any servant, agent, subcontractor or employee of LICENSEE.

12. LICENSEE shall procure at its own cost and expense Comprehensive General Liability Insurance coverage in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit in addition to any other insurance or bond CITY may require, which insurance will protect LICENSEE, CITY, and their officers and employees from any claims for damages to property and for personal injuries, including death, which may arise on said property during the term of this agreement and any renewals. The insurance policy shall contain a thirty (30) day cancellation clause period and a Certificate of Insurance shall be furnished the CITY, naming the City of Pompano Beach as an additional insured pursuant to this Agreement, said Certificate of Insurance to be approved by the CITY's Risk Manager prior to execution of this Agreement. A copy of said Certificate is attached hereto and designated as Exhibit "B."

13. LICENSEE is not permitted to assign, transfer, convey or otherwise dispose of this license to any other person or corporation without the prior written consent of CITY. In the event of an attempt to assign, transfer, convey or otherwise dispose of this license to any person not specifically a party to this Agreement, then this license shall be null and void and terminated without notice to LICENSEE.

14. Any notice required under the terms of this License Agreement must be in writing and must be sent by certified mail to the address of the party to whom the notice is to be given.

Addresses of the parties are as follows:

**FOR CITY:** Dennis W. Beach, City Manager  
City of Pompano Beach  
Post Office Box 1300  
Pompano Beach, Florida 33061-1300

**FOR LICENSEE:** Mr. Todd Robbins  
Andreyev Engineering, Inc.  
4055 St. Johns Parkway  
Sanford, Florida 32771

15. Construction and/or monitoring activities shall not commence until the LICENSEE submits to the Engineering Department maintenance of traffic plan ("plan") for approval, if such is needed, as determined by the City Engineer. The plan shall be signed and dated by a person who has been certified by the American Traffic Safety Services Association or signed and sealed by a professional engineer. The plan shall conform to FDOT's latest manual on Uniform Traffic Control Devices, as amended for streets and highways, the requirements of the Standard Application Package for railways, including flagging services and Railroad Protective Insurance or acceptable alternative, when applicable, and the FDOT's latest Roadway and Traffic Design Standards and Standard Specifications for Road and Bridge Construction, as amended.



16. This License Agreement shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this License Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this License Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this License Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Revocable License is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this License, unless otherwise expressly provided. All terms and words used in this License Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

17. This License Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

18. Nothing contained in this License Agreement is intended to serve as a waiver of sovereign immunity by the CITY as provided for in Fla. Stat. 768.28.

19. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this License Agreement. None of the parties intend to directly or substantially benefit a third party by this License Agreement. The parties agree that there are no third party beneficiaries to this License Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this License Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

20. LICENSEE shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this License Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

21. Each party shall maintain its own respective records and documents associated with this License Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

22. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this License Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

23. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this License has been their joint effort.

24. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this License and, therefore, is a material term hereof. Any party's failure to enforce any provision of this License shall not be deemed a waiver of such provision or modification of this License. A waiver of any breach of a provision of this License shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this License.



25. This License Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this License Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, LICENSEE expressly waives whatever other privilege to venue it may otherwise have.

26. Neither party shall be obligated to perform any duty, requirement or obligation under this License Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of LICENSEE be deemed Force Majeure.

**IN WITNESS WHEREOF**, the parties to this License Agreement have set their hands and seals on the day and year first above written.

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
DENNIS W. BEACH, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and \_\_\_\_\_ as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**"LICENSEE":**

Witnesses:

**ANDREYEV ENGINEERING, INC.**  
a Florida Corporation

Print Name

Print Name

By:

Typed or Printed Name

Title:

(SEAL)

STATE OF FLORIDA

COUNTY OF Pinellas

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of November, 2016, by Todd Robbins as Project manager of ANDREYEV ENGINEERING, INC., a Florida Corporation, on behalf of the corporation. He/she is personally known to me or who has produced n/a (type of identification) as identification.

NOTARY'S SEAL:



NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

MEB/jrm  
11/23/16  
L:agr/pw/2017-170