

SERVICE CONTRACT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by the CITY OF POMPANO BEACH, hereinafter referred to as "City" and W.D. Thompson, Inc. d/b/a Beach Raker, a Florida corporation, hereinafter referred to as "Contractor."

WHEREAS, City requires services which Contractor is capable of providing, under the terms and conditions hereinafter described or referenced; and

WHEREAS, Contractor is able and prepared to provide such services as City does hereinafter require, under those terms and conditions set forth.

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. Contract Documents. The Contract Documents consist of this Agreement; Exhibit "A" – Scope of Work; Exhibit "B" insurance requirements, if needed; and all written change orders and modifications issued after execution of this Agreement. These form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.
2. Purpose. City hereby contracts with Contractor to provide beach cleaning services upon the terms and conditions herein set forth
3. Scope of Work. Contractor will provide the services to be rendered as set forth in Exhibit "A" (Scope of Work), attached hereto and by reference incorporated herein and made a part hereof.
4. Term of Contract. The Term of this Contract shall be for an initial period of one (1) year from the date of execution by both the City and the Contractor.
5. Renewal. The Contract shall be automatically renewed for four (4) additional one-year periods unless the City gives notice to the other party of intent not to renew for the additional period, which notice must be delivered by certified mail and must be received at least sixty (60) days prior to the end of the initial contract period. All terms, prices and conditions shall remain firm for the initial period of the contract and any renewal period.
6. Maximum Obligation. City agrees to pay Contractor in consideration for its services described herein. It is the intention of the parties hereby to insure that unless otherwise directed by the City in writing, Contractor will continue to provide services as specified in Exhibit "A" for the term of the contract.
7. Price Formula. City agrees to pay Contractor for performance of the services set forth in this Agreement as follows:

The Contractor will provide beach cleaning, seaweed management, turtle nest surveying & re-establishment, and mechanical beach cleaning equipment. The Contractor has all the equipment, labor, tools, and materials needed to provide Beach Cleaning Services as outlined in Scope of Services, and Tasks/Deliverables, as well as all other items indicated and defined in this Agreement, such as, permitting, insurance, and licensing.

Payment of a not to exceed Fixed Fee of \$18,100 per month

8. Invoices. Contractor shall submit the invoices to City, if requested by City, as follows:

Invoices shall be submitted on a monthly basis.

9. Payment. All payments by the City shall be made after the service has been provided. All invoices shall be submitted to the City for approval and payment will be issued within forty-five (45) days of submittal.

10. Disputes.

A. Any factual disputes between City and the Contractor in regard to this Agreement shall be directed to the City Manager for the City, and such decision shall be final.

B. Any action brought against either party to enforce this Agreement will be brought in Broward County, Florida.

11. Communications. All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof to the persons named below.

If to Contractor: W.D. Thompson, Inc. d/b/a Beach Raker
Tim Greener
Owner
220 NE 13th Street
Pompano Beach, Florida 33060

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

12. Information and Documents. All information, data, reports, as are existing, if any, and necessary for carrying out the work as outlined in Exhibit "A" hereof, shall be furnished to Contractor without charge by City, and City shall cooperate in the carrying out of the work without undue delay.

13. Termination. This Agreement may be terminated without cause by either party upon thirty (30) days written notice to the other party.

14. Force Majeure. Contractor shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Contractor. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or

other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.

15. Insurance. Throughout the term of this Agreement, Contractor shall procure and maintain liability insurance in the type and amounts set forth in Exhibit "B" attached hereto. Such insurance shall specify that it is issued on an "occurrence" basis. Contractor shall name City as additional insured on said policies and shall provide evidence of such insurance. Such policies shall provide that they may not be canceled without at least thirty (30) days notice to City.

16. Indemnity. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The parties agree that one percent (1%) of the total compensation paid to Contractor for the work of the contract shall constitute specific consideration to Contractor for the indemnification to be provided under the contract.

17. Assignment. Contractor shall not assign all or any portion of this Agreement without the prior written consent of the City, and it is agreed that said consent must be sought in writing by Contractor not less than fifteen (15) days prior to the date of any proposed assignment.

18. Performance Under Law. The Contractor, in the performance of duties under the Agreement, agrees to comply with all applicable local, state and/or federal laws and ordinances including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity.

19. Audit and Inspection Records. The Contractor shall permit the authorized representatives of the City to inspect and audit all data and records of the Contractor, if any, relating to performance under the contract until the expiration of three years after final payment under this contract.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that City or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontractor.

20. Adherence to Law. Both parties shall adhere to all applicable laws governing their relationship with their employees including, but not limited to, laws, rules, regulations and policies concerning worker's compensation, unemployment compensation and minimum wage requirements.

21. Independent Contractor. The Contractor shall be deemed an independent Contractor for all purposes, and the employees of the Contractor or any of its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of City. As such, the employees of the Contractor, its Contractors or subcontractors, shall not be subject to any withholding for tax, social security or other purposes by City, nor shall such Contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from City.

22. Mutual cooperation. The Contractor recognizes that the performance of this contract is essential to the provision of vital public services and the accomplishment of the stated goals and mission of City. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with City and shall actively foster a public image of mutual benefit to both parties. The Contractor shall not make any statements or take any actions detrimental to this effort.

23. Public Records.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

1. Keep and maintain public records required by the City in order to perform the service.

2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.

4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

B. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

**IF THE CONTRACTOR HAS QUESTIONS REGARDING
THE APPLICATION OF CHAPTER 119, FLORIDA
STATUTES, TO THE CONTRACTOR'S DUTY TO
PROVIDE PUBLIC RECORDS RELATING TO THIS**

**CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC
RECORDS AT:**

CITY CLERK

100 W. Atlantic Blvd., Suite 253

Pompano Beach, Florida 33060

(954) 786-4611

RecordsCustodian@copbfl.com

24. Governing Law. This Agreement has been and shall be construed as having been made and delivered within the State of Florida, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. Any action at law, or in equity, shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

25. Waiver. Any waiver of any breach of the covenants herein contained to be performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

26. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or 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 Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

27. Headings. The headings or titles to sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

28. Severability. Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

The City hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials, if any, and to do and cause to do and be done the above-described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor for himself and for his heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

It is further provided that no liability shall be attached to the City by reason of entering into this contract, except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **ASCELETA HAMMOND** 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

"CONTRACTOR"

Witnesses:

Ray Thompson

Ray Thompson
(Print or Type Name)

Tyler Moon

Tyler Moon
(Print or Type Name)

W.D. Thompson, Inc. d/b/a Facility Dude
(Print or type name of company here)

By: [Signature]

Print Name: ANDREW GREENER

Title: C.O.O.

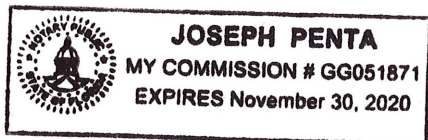
Business License No. 17-00053307

STATE OF FLORIDA

COUNTY OF Broward.

The foregoing instrument was acknowledged before me this 12 day of JANUARY, 2017, by ANDREW GREENER as W.D. THOMPSON, INC d/b/a BEACH RAKES of, a Florida corporation on behalf of the corporation on behalf of the company. He/she is personally known to me or who has produced FL DL (type of identification) as identification.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

JOSEPH PENTA
(Name of Acknowledger Typed, Printed or Stamped)

GG051871
Commission Number

l:agr/genl srvs/service contract

EXHIBIT A SCOPE OF WORK

The Contractor shall provide beach cleaning, seaweed management, and debris removal services for the City of Pompano Beach that will include the use of mechanical beach cleaning equipment by reference incorporated herein and made a part hereof.

A. City Properties

The cleaning schedule for the City properties listed below shall include all tide lines within the boundary area, seven days per week. The wrack line area may be raked with the tractor and seaweed rake; Barber Surf Rake or equivalent equipment, depending on the beach conditions. Regardless of the method used, the Contractor shall bury all seaweed at or below the wrack line (also referred to as the Mean High Water Line). Any debris or garbage in these areas shall be handpicked and removed from the beach prior to burial of the seaweed. The Contractor shall make a minimum of four passes with the Rake Tractor, Barber Surf Rake or equivalent equipment and will be required to clean the area from the high tide line to the water's edge. The Contractor shall work all holidays.

Areas to be cleaned (lineal footage) include:

- (a) S.E. 12 Street 46'
- (b) S.E. 8 Street 50'
- (c) S.E. 6 Street 50'
- (d) S.E. 4 Street 50'
- (e) S.E. 2 Street 50'
- (f) Main Beach 2955'
- (g) N.E. 10 Street 25'
- (h) N.E. 13 Street 50'
- (i) N.E. 16 Street 130'

Outside of Turtle Nesting season, November 1st up to March 1st, the area from the tide line west to within 10 ft. of the vegetation lines shall be cleaned daily using mechanical beaching cleaning equipment, such as, a Barber Surf Rake, Cherrington Sand Sifter or equivalent beach equipment.

During Turtle Nesting season, March 1st up to November 1st, only the areas designated and authorized by FWC and FDEP can be mechanically cleaned above the wrack line. These areas can be mechanically cleaned from the tide line west to within 10 ft. of the vegetation line daily using a Barber Surf Rake, Cherrington Beach Cleaner or equivalent beach cleaning equipment.

B. Other Properties

The cleaning schedule for other properties listed below shall include all tide lines within the boundary area. These areas shall be raked and cleaned with the Rake Tractor or Barber Surf Rake or equivalent beach cleaning equipment depending on conditions, five days a week: Monday, Tuesday, Thursday, Friday, and Saturday

with the exception of approved public holidays, at the tide line. Additionally, outside of Turtle Nesting season, November 1st up to March 1st, the Contractor shall clean the area once a month from the tide line west up to 10 feet from the vegetation line (upper beach area) using a Barber Surf Rake, Cherrington Beach Cleaner or equivalent equipment.

Area to be cleaned from Hillsboro Inlet to Terra Mar Drive, excluding Main Beach.

C. Turtle Nest Management

During Turtle Nesting season, from March 1st to October 31st the Contractor must work with Broward County Natural Resource Division, FDEP, and FWC to ensure all special permit conditions are in compliance, in order to avoid (65) day suspension of mechanical beach cleaning by these departments to the City of Pompano Beach. The Contractor is responsible for taking GPS sub-meter recordings of each and every turtle nest that occurs on the City's Beach during Turtle Nesting Season. All nest locations on the City's Beach shall be recorded by the Contractor with a GPS unit with 20" inch sub-meter capability, as well as demonstrate their ability to submit a weekly GPS report with the following data – Turtle Nest Number, Species, Date, and Location - to Broward County Natural Resource Division, or equivalent governing body. Note: mechanical beach cleaning is not permitted landward of the high tide line, i.e., upper portion of beach without the GPS sub-meter technology. This is an FWC and FDEP permit requirement for mechanical beach cleaning the upper portion of beach in turtle nesting season.

D. Street Ends

The following street ends are to be cleaned daily using with the Barber Surf Rake and/or Rake Tractor depending on conditions.

- (a) S.E. 12 Street
- (b) S.E. 8 Street
- (c) S.E. 6 Street
- (d) S.E. 4 Street
- (e) S.E. 2 Street
- (f) N.E. 10 Street
- (g) N.E. 13 Street
- (h) N.E. 16 Street

E. Hazard Management

The Contractor agrees to grade areas of beach and remove fill from place to place in order to correct hazardous conditions that may develop from time to time.

F. Erosion Control

The City is from time to time in need of certain measures for erosion control and beach repair. The Contractor agrees to provide limited beach repair and erosion

control measures to the extent of the reasonable capability of their equipment. The following services are included:

1. Backfilling of washouts.
2. Grading of excessive sand deposits.
3. Grading of escarpments to a more easily navigated slope.

G. Hours of Operation

The Contractor may begin work at 6:30 a.m. and work until 11:00 a.m. If the Contractor finds it necessary to work past 11:00 a.m., approval can be obtained from the Public Works Director or his designee. Severe weather conditions shall be the only acceptable reason for not providing cleaning service on a scheduled day. For each day that the Contractor fails to provide service without an acceptable reason, there shall be a deduction of \$750 from the Contractor's monthly payment.

H. Holidays

The Contractor shall work all holidays. On the following dates, the Contractor shall only rake and clean the Main Beach, also known as the City Proper.

- Thanksgiving Day
- Christmas Day
- New Year's Day

4. Tasks/Deliverables

A. Equipment

The Contractor shall provide all equipment required for beach cleaning service, including a Barber Surf Rake, Seaweed Rake Tractor, Cherrington Sand Sifter, Beach Tech Cleaner, ATV and Trimble GPS Sub-meter Unit or equivalent equipment. Contractor is also responsible for providing additional equipment, as deemed necessary by the Contractor, and backup equipment to provide uninterrupted service in the event of a mechanical breakdown. Upon request, the Contractor shall submit a list and description of all equipment available for use in cleaning those areas of the City beach listed herein. All equipment must meet governmental environmental standards as approved by the City of Pompano Beach Fleet Manager.

B. Debris Removal

The Contractor shall be responsible to remove all debris from the City's beach on the day of collection, with the exception of seaweed and rock, which may be buried on the beach below the high tide mark. Debris must be removed and disposed by the Contractor offsite, in a manner compatible with all governmental requirements. There may be additional costs for hurricane, severe storm debris, and large items that wash onshore, such as boats. All additional costs shall be verified and approved by the City prior to removal.

C. Turtle Nest Monitoring

Contractor shall re-establish turtle nests, using the GPS sub-meter technology, in the event of an extreme high tide condition, storm, or vandalism where nest markers are removed from the beach. The Contractor, not the Turtle Monitoring Program, is responsible for re-staking these nests, as well as responsible for all costs associated with the re-staking, such as stakes, tape markings, ATV transportation, labor, and GPS sub-meter unit. Upon request, the Contractor shall submit copies of their current FWC permit that lists at a minimum (2) current and active employees employed by the Contractor that are certified to re-establish turtle nest by the FWC.

D. Permits and Licenses

The Contractor shall be required to obtain all necessary permits and licenses to operate this type of business and comply with this Agreement, and upon request, shall provide the City with a copies.

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EXHIBIT B INSURANCE REQUIREMENTS

Throughout the term of this Agreement, Contractor shall procure and maintain liability insurance in the type and amounts set forth herein. Such insurance shall specify that it is issued on an "occurrence" basis. Contractor shall name City as additional insured on said policies and shall provide evidence of such insurance. The Contractor shall furnish to the City the certification or proof of insurance required by the provisions set forth herein, and sent: Attention Risk Manager, 100 West Atlantic Boulevard, Pompano Beach, Florida, 33060. Such policies shall provide that they may not be canceled without at least thirty (30) days notice to City.

Throughout the term of this Agreement, City, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as City's review or acceptance of insurance maintained by Contractor, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

Throughout the term of this Agreement, Contractor and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements.

- A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
- B. Liability Insurance
 - 1) Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from Contractor's negligent acts or omissions in connection with Contractor's performance under this Agreement.
 - 2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance

Limits of Liability

GENERAL LIABILITY: Minimum \$1,000,000 Per Occurrence and
\$1,000,000 Per Aggregate

* Policy to be written on a claims incurred basis

XX	comprehensive form	bodily injury and property damage
XX	premises - operations	bodily injury and property damage
—	explosion & collapse hazard	
—	underground hazard	
—	products/completed operations hazard	bodily injury and property damage combined
XX	contractual insurance	bodily injury and property damage combined
XX	broad form property damage	bodily injury and property damage combined
XX	independent contractors	personal injury
XX	personal injury	
—	sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate

AUTOMOBILE LIABILITY: Minimum \$1,000,000 Per Occurrence and \$1,000,000 Per Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.

XX comprehensive form
XX owned
XX hired
XX non-owned

REAL & PERSONAL PROPERTY

— comprehensive form Agent must show proof they have this coverage.

EXCESS LIABILITY		Per Occurrence	Aggregate
XX	umbrella form	bodily injury and	\$1,000,000
—	other than umbrella	property damage combined	\$1,000,000

PROFESSIONAL LIABILITY		Per Occurrence	Aggregate
—	* Policy to be written on a claims made basis	\$1,000,000	\$1,000,000

3) If Professional Liability insurance is required, Contractor agrees the indemnification and hold harmless provisions of the Agreement shall survive the termination or expiration of the Agreement for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

- C. Employer's Liability. Contractor and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.
- D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the Contractor, the Contractor shall promptly provide the following:
- 1) Certificates of Insurance evidencing the required coverage;
 - 2) Names and addresses of companies providing coverage;
 - 3) Effective and expiration dates of policies; and
 - 4) A provision in all policies affording City thirty (30) days written notice by a carrier of any cancellation or material change in any policy.
- E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the City.

Waiver of Subrogation. Contractor hereby waives any and all right of subrogation against the City, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

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