

**AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF POMPANO BEACH
FOR WASTEWATER METER READING SERVICES**

This is an Agreement ("Agreement"), made and entered into by and between Broward County, a political subdivision of the State of Florida ("County") and City of Pompano Beach, a municipal corporation located in Broward County, Florida, organized and existing under the laws of the State of Florida ("City"), (collectively referred to as the "Parties").

WHEREAS, City currently provides water service to residents of the City of Lighthouse Point ("Lighthouse Point") located in Broward County, Florida, and County provides wastewater service to residents of Lighthouse Point; and

WHEREAS, City and County consider it to be efficient and cost effective, and benefits the Parties, to consolidate the meter reading efforts for both water and wastewater service; and

WHEREAS, County seeks to have City perform the meter reading for wastewater service provided by County to Lighthouse Point residents; and

WHEREAS, City and County desire to enter into this Agreement for wastewater meter reading services; NOW, THEREFORE,

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 Board of County Commissioners of Broward County, Florida.
- 1.2 **Contract Administrator.** The Director of Water and Wastewater 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 **Services.** All work required by City under this Agreement, including without limitation all services specified in Exhibit A.

ARTICLE 2. SCOPE OF SERVICES

- 2.1 City shall perform all work identified in this Agreement including without limitation all services specified in Exhibit A. The Scope of Services stated in this Agreement is a description of City's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part

of the work described that exclusion would render performance by City impractical, illogical, or unconscionable.

2.2 City acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement except as expressly set forth in this Agreement or, to the extent applicable, the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code).

ARTICLE 3. TERM AND TERMINATION

3.1 The initial term of this Agreement shall begin on the date it is fully executed by the Parties and shall continue for five (5) years. At the conclusion of the initial term, the Agreement shall automatically renew for an additional five (5) years, unless either Party exercises or has exercised its right to terminate the Agreement for convenience pursuant to Section 3.2 below. The continuation of this Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

3.2 Either Party may terminate this Agreement for convenience upon ninety (90) days written notice to the other party.

3.3 In the event this Agreement is terminated for convenience by County, City shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. City acknowledges that it has received good, valuable and sufficient consideration from County, the receipt and adequacy of which are, hereby acknowledged by City, for County's right to terminate this Agreement for convenience.

3.4 In the event this Agreement is terminated for any reason, any amounts due City shall be withheld by County until all documents are provided to County pursuant to Section 8.1 of Article 8.

ARTICLE 4. COMPENSATION

4.1 Upon commencement of the meter reading services, County shall pay to City a meter reading fee in the amount of \$0.68 per meter reading, per month ("Cost per Read"). Payments to City shall be based exclusively on the number of meters read per month. The County estimates that 500 meters will be read per month for an estimated annual reading of 6000 meters.

<u>Estimated Monthly Reads</u>	<u>Cost per Read</u>	<u>Total Monthly Cost</u>
500	\$0.68	\$ 340.00

4.2 Beginning at the end of the next fiscal year following the execution of this Agreement, the Cost per Read shall be adjusted annually on October 1st by an amount not to exceed the increase in the Bureau of Labor Statistics All Urban Consumers Price Index for the area of Miami-Fort Lauderdale ("CPI") issued by the Bureau of Labor Statistics of the United States Department of

Labor for the month of October, subject to the procedure established below:

4.2.1 The increase shall be determined by calculating that number greater than one (1) which results from dividing the index figure for the CPI for the month of October, by the index figure for the CPI for the month of October of the prior calendar year. In no event shall the monthly fee decrease from the prior year.

4.2.2 It is further understood and agreed that if the annual adjustment is not immediately determined or determinable, the existing monthly fee shall continue until the annual adjustment can be determined. The sum constituting such adjustment for the period prior to the determination of the adjustment shall be due and payable within thirty (30) days after such determination.

4.3 METHOD OF BILLING AND PAYMENT

4.3.1 City may submit invoices for compensation no more often than on a monthly basis, but only after the Services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires or is otherwise terminated.

4.3.2 County shall pay City within thirty (30) calendar days of receipt of City's proper invoice, as required by the "Broward County Prompt Payment Ordinance," Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of City to comply with a term, condition, or requirement of this Agreement.

4.4 Payment shall be made to City at the address designated for Notices under Section 9.8.

ARTICLE 5. INDEMNIFICATION

5.1 Nothing herein is intended to serve as a waiver of sovereign immunity by any Party 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. County and City are subject to Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of their agents or employees to the extent permitted by law.

5.2 In the event that City contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:

5.2.1 Indemnification: City's contractor shall indemnify and hold harmless County, its officers, agents, and employees, from liabilities, damages, losses, and costs, including, but

not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of City's contractor, and other persons employed or utilized by City's contractor in the performance of this Agreement. These indemnifications shall survive the term of this Agreement. To the extent permitted by law, in the event that any action or proceeding is brought against County by reason of any such claim or demand, City's contractor shall, upon written notice from County, resist and defend such action or proceeding by counsel satisfactory to County.

5.2.2 To the extent permitted by law, the indemnification provided above shall obligate City's contractor to defend, at its own expense, to and through appellate, supplemental, or bankruptcy proceeding, or to provide for such defense, at County's option, any and all claims of liability and all suits and actions of every name and description covered by subsection 5.2.1 above which may be brought against County, whether services were performed by City's contractor or persons employed or utilized by City's contractor.

5.3 The provisions of this article shall survive the expiration, termination upon completion of the services, or earlier termination of this Agreement.

ARTICLE 6. INSURANCE

6.1 City is an entity subject to Section 768.28, Florida Statutes, and City shall furnish the Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

6.2 In the event that City contracts with a third party to provide the services set forth herein, any contract with such third party shall include, at a minimum, the following provisions:

6.2.1 Insurance: City's contractor shall keep and maintain, at the contractor's sole cost and expense, insurance of the types and minimum amounts as set forth in Exhibit "B," and specifically protect County by naming "Broward County" as an additional insured under the Commercial General Liability Insurance policy as well as any Excess Liability policy.

6.2.2 City's contractor, upon request, shall furnish to the Contract Administrator, Certificates of Insurance and Endorsements evidencing the insurance coverage specified above.

6.2.3 Coverage is not to cease and is to remain in full force and effect until all performance required of City's contractor is completed.

ARTICLE 7. EEO

No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

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 County. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by City, whether finished or unfinished, shall become the property of County and shall be delivered by City to the Contract Administrator within seven (7) days of termination of this Agreement. Any compensation due to City shall be withheld until all documents are received as provided herein. City shall ensure that the requirements of this Section are included in all agreements with its subcontractor(s).

8.2 [Intentionally Left Blank.]

8.3 Truth-In-Negotiation Representation. City's compensation under this Agreement is based upon representations supplied to County by City, and City certifies that the information supplied, including without limitation in the negotiation of this Agreement, is accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent such representation is untrue.

8.4 Independent Contractor. City is an independent contractor under this Agreement. In providing Services under this Agreement, neither City nor its agents shall act as officers, employees, or agents of County. City shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

8.5 Third Party Beneficiaries. Neither City nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge 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.

8.6 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via e-mail to the addresses listed below and shall be effective upon sending. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Section.

FOR COUNTY:

Broward County Water and Wastewater Services
Attn: Business Operations Division - Field Customer Service Section
2555 West Copans Road
Pompano Beach, Florida 33069
Email address: wwsbaseone@broward.org

FOR CITY:

City of Pompano Beach
Attn: Utility Billing Division
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Email address: kyle.mcphail@copbfl.com

8.7 **Assignment and Performance.** Except for subcontracting approved in writing by County at the time of its execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by City without the prior written consent of the Contract Administrator. If City violates this provision, County shall have the right to immediately terminate this Agreement. City represents that each person and entity that will provide services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. City agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

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. 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.** City shall 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.** In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this 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 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

8.13 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 8 of this Agreement, the provisions contained in Articles 1 through 8 shall prevail and be given effect.

8.14 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 Parties agree that 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 Parties agree that the exclusive venue for any such 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, CITY 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.**

8.15 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 Board and City or others delegated authority or otherwise authorized to execute same on their behalf.

8.16 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 that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

8.17 Payable Interest

8.17.1 Payment of Interest. County shall not be liable to pay any interest to City for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof City waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This paragraph shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

8.17.2 Rate of Interest. If, for whatever reason, the preceding subsection 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 full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

8.18 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

8.19 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.

8.20 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.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20__, and CITY OF POMPANO BEACH, signing by and through its _____, duly authorized to execute same.

County

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-Officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 20__

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Signature (Date)

Print Name and Title above

By _____
Angela Benjamin (Date)
Assistant County Attorney

Michael J. Kerr (Date)
Deputy County Attorney

AAD; AFB
1/29/16; 7/27/16; 9/6/2016
PompanoBeach-WWMeterReading(ByCityForCounty)_v2

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF POMPANO BEACH
FOR WASTEWATER METER READING SERVICES

City

ATTEST:

CITY OF POMPANO BEACH

City Clerk

By _____
Mayor-Commissioner

(Print or Type Name)

(Print or Type Name)

(SEAL)

____ day of _____, 20____.

City Manager

(Print or Type Name)

APPROVED AS TO LEGAL FORM:

By _____
City Attorney

Exhibit A – Scope of Services

City shall be responsible for the following:

- Reading up to five hundred (500) water meters each month that are located in the City of Lighthouse Point and serve residents for which Broward County Water and Wastewater Services currently provides wastewater services and the City provides water service.
- Providing water meter reading services including, but not limited, to:
 - 1) Readings for opening and closing of accounts will be provided at no cost to the County on an as needed basis. Staff of the Water and Wastewater Services Agency will contact the City via email (meterreads@copbfl.com) to request a meter reading, date, and service address. The City will respond within 3 business days to wwbaseone@broward.org
 - 2) Individual readings requested by staff of the Business Operations Division will be provided at no cost on an as needed basis. The Staff of the Water and Wastewater Services Agency will contact the City via email (meterreads@copbfl.com) to request a meter reading, date, and service address. The City will respond within 3 business days to wwbaseone@broward.org
 - 3) Meter readings for meters inside buildings (if any) that are not readable without entry into the building
- Regular monthly meter readings will be provided within 5 days of the regular monthly billing upload done by the City which occurs on or about the 15th of each month, and each subsequent month with the interval between readings to be no less than 28 and no more than 33 days.
- Meter readings will be delivered to the County via email; wwbaseone@broward.org in Microsoft Excel version 2010 or a newer version.
- The spreadsheet will contain; The service address, meter number, meter size, meter reading in thousand gallons, reading date, usage in thousand gallons, set reads for new meters with new meter number, and out reads for removed meters.
- Discrepancies in meter readings between the City and the County will be handled on a case by case basis. The City and the County will work together to resolve any discrepancies and may include manually verifying readings and equipment.

County shall be responsible for the following:

- Providing the City with a list of accounts, including account holder, addresses, current meter IDs, size of meter, and location of meter.

Exhibit B

The following coverage is deemed the minimum insurance required for this project. The selected firm must be prepared to provide proof of insurance commensurate with or in excess of this requirement. Any deviation is subject to the approval of Risk Management.

TYPE OF INSURANCE	MINIMUM LIABILITY LIMITS		
		Each Occurrence	Aggregate
COMMERCIAL GENERAL LIABILITY Broad form or equivalent <i>With no exclusions or limitations for:</i> <input checked="" type="checkbox"/> Premises—Operations <input checked="" type="checkbox"/> Explosion, Collapse, Underground Hazards <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other:	Bodily Injury Property Damage Combined single limit Bodily Injury & Property Damage Personal Injury	\$ 1 mil	\$ 1 mil
BUSINESS AUTO LIABILITY* COMPREHENSIVE FORM <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Scheduled <input checked="" type="checkbox"/> Any Auto	Bodily Injury (each person) Bodily Injury (each accident) Property Damage Combined single limit Bodily Injury & Property Damage	\$ 1 mil	
EXCESS/UMBRELLA LIABILITY <i>May be used to supplement minimum liability coverage requirements.</i>	Follow form basis or Add'l insd endorsement is required		
<input checked="" type="checkbox"/> WORKERS' COMPENSATION <input checked="" type="checkbox"/> EMPLOYERS' LIABILITY	Chapter 440 FS (each accident)	STATUTORY \$ 500 k	U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water
<input type="checkbox"/> POLLUTION LIABILITY OR ENVIRONMENTAL IMPAIRMENT LIABILITY WITH CLEAN-UP COSTS	(each accident) Extended coverage period		
<input type="checkbox"/> BUILDER'S RISK (PROPERTY) "ALL RISK" WITH WIND AND FLOOD Coverage must remain in force until written final acceptance by County.	Maximum Deductible: \$10 k DED for WIND or WIND & FLOOD not to exceed 5% of completed value CONTRACTOR IS RESPONSIBLE FOR DEDUCTIBLE		Completed Value form
<input type="checkbox"/> Installation floater Coverage must be "All Risk", completed value. Coverage must remain in force until written final acceptance by County.	Maximum Deductible: CONTRACTOR IS RESPONSIBLE FOR DEDUCTIBLE	\$10 k	Completed Value form
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES BROWARD COUNTY AND CITY OF POMPAÑO ARE INCLUDED AS ADDITIONAL INSURED ON THE GENERAL LIABILITY POLICY AND THE AUTOMOBILE LIABILITY POLICY.			
CERTIFICATE HOLDER: City of Pompano			

Revised 2016