

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF POMPANO BEACH AND BROWARD COUNTY
FOR THE PROVISION OF POTABLE WATER DURING TIMES OF EMERGENCY**

This Interlocal Agreement for the Provision of Potable Water During Times of Emergency ("Agreement") by and between Broward County, Florida (the "County"), a political subdivision of the State of Florida, and the City of Pompano Beach (the "City"), a municipal corporation organized and existing under the laws of the State of Florida (collectively, the "Parties"), is made and entered into as of the date this Agreement is fully executed by the Parties ("Effective Date").

Recitals

A. The City is authorized by law to provide water treatment and distribution services to the public within the City of Pompano Beach, the Town of Lauderdale by the Sea, the Village of Sea Ranch Lakes, and a portion of the City of Lighthouse Point.

B. The County is authorized by law to provide water treatment and distribution services to the public within its water service area.

C. The City's water service areas are directly adjacent to the County's water service areas.

D. The Parties mutually acknowledge that there is a public benefit to augmenting their respective potable water supplies by constructing an interconnect between their water treatment and distribution systems to allow for the provision of potable water to each other during times of emergency.

E. The Parties desire to jointly arrange for the construction of the above-referenced interconnect and establish a policy and procedure to provide potable water to each other on a temporary, as-needed basis, during times of emergency.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Description of Temporary Emergency.

2.1 Subject to the terms of this Agreement, the Parties agree to provide each other potable water treated in accordance with, and conforming to, the standards of the Florida Department of Environmental Protection and all other non-municipal governmental bodies having regulatory jurisdiction over such

matters, all consistent with principles and practices governing the operation of existing water treatment plant facilities as needed, during times of Temporary Emergency as that term is defined in Section 2.3 below.

- 2.2 The Parties agree that the provision of potable water during a Temporary Emergency pursuant to this Agreement shall be made through an interconnect, to be constructed in accordance with the terms of this Agreement, between their respective water treatment and distribution systems ("Interconnect") that shall remain open only for the duration of the Temporary Emergency.
- 2.3 A Temporary Emergency is the temporary inability of one Party to adequately serve its geographical area due to an unforeseen occurrence that is temporary in nature. Examples of Temporary Emergencies include, but are not limited to, water pipe breakage, pump or plant equipment failure, and temporary peak demand that threatens firefighting capability or reduces pressures to a level that threatens health and safety from cross connections. The inability to service a given geographical area of either the City or the County due to lack of planning, inadequacy of facilities (including the infrastructure), or long-term inability to provide sufficient potable water are not considered qualifying Temporary Emergencies.

3. Funding and Construction of the Interconnect.

- 3.1 The Parties agree to jointly fund the cost of the design, permitting, and construction of the Interconnect (the "Project"), such that each Party is responsible for fifty percent (50%) of all actual Project-related costs, including but not limited to all design, construction, and construction management expenses. The Parties have estimated that, as of the Effective Date, the estimated total cost of the Project is \$172,970 amount, as further described in Exhibit A, attached hereto and incorporated herein.
- 3.2 The City shall be responsible for soliciting and entering into a contract(s) for the design, permitting, and construction of the Interconnect consistent with all applicable statutory purchasing requirements. The City is responsible for administering said contract(s) and the Project.
- 3.3 Payments to contracted firms for completed and accepted work related to the Project, including design and permitting, will follow the procedures identified in the City's contract documents. The City will make payments directly to its consultant and contractor for the design and construction of the Project. The City shall administer the construction contract, including any necessary design changes, clarifications, supplements, and other contract amendments that may be necessary during the design and construction of the Project. Such

contract directives to the consultant and/or the contractor may be in the form of plans, memoranda, reports, change orders, and supplemental agreements and shall be subject to prior written approval by the County; except, however, that upon prior written notification to the County, the County hereby authorizes the City to prepare, execute, and implement minor change orders for contract amendments necessitated by actual field conditions at the Project site so as not to delay the contractor's performance and to meet the intent of the approved Project design. In no event shall the total value of all change orders exceed the Project allowance to be included in the bid approved by both Parties. Additional or extra work which exceeds the above change order authority by the City shall be submitted for prior review and approval by the County.

- 3.4 Upon completion of the Project, and prior to the City issuing final payment to the City's contractor and consultant, the Parties shall conduct a joint and final inspection of the Project. The City shall submit a final Certificate of Completion letter to the County along with an appropriate number of plans detailing the Project as constructed by the contractor (as-built record drawings) and a one-year warranty for the work completed by the contractor.
- 3.5 Upon the City's final payment to the City's contractor and consultant and all other contractor(s), consultant(s), and supplier(s) who perform services or furnish materials related to the Project with whom the City is in privity, the City shall submit to the County an itemized invoice for fifty percent (50%) of all actual Project-related costs. The invoice must show a detailed summary of the total actual cost of the Project and must contain all supporting cost documentation and evidence of payment in full to the City's contractor and consultant and, as applicable, the above-referenced contractor(s), consultant(s), and supplier(s). The County shall submit payment for its portion of all actual Project-related costs in accordance with the following:
 - 3.5.1 If the sum of the Project-related costs identified in the properly submitted invoice is equal to or less than the Project allowance to be included in the bid approved by both Parties or, as applicable, a modified Project allowance based on additional or extra work previously approved by the County, then the County shall pay the City the full amount of the invoice (i.e., fifty percent (50%) of all actual Project-related costs) within thirty (30) days of receipt of the invoice.
 - 3.5.2 If the sum of the Project-related costs identified in the properly submitted invoice exceeds the Project allowance to be included in the bid approved by both Parties or, as applicable, a modified Project allowance based on additional or extra work previously approved by the County, then the County shall pay the City up to fifty percent (50%)

of the applicable Project allowance within thirty (30) days of receipt of the invoice. Thereafter, the Parties shall review the unpaid balance of the invoice and come to an agreed final cost distribution thereof.

3.6 The Parties shall jointly own the Interconnect as constructed.

3.7 The City shall provide or otherwise make available to the County the following in the manner specified:

3.7.1 Within thirty (30) days of the City's submission of a final Certificate of Completion for the Project, the City shall provide the County with: (1) a complete set of record and as-built drawings for the Project in a form acceptable to the County; (2) the design and construction plans and specifications for the Project; (3) a complete program and financial accounting activity report for the Project; and (4) a final release for each of the City's contractor and consultant, and any subcontractors, sub-subcontractors, and suppliers thereof.

3.7.2 Upon the County's request, the City shall make available for the County's inspection all other documents related to the Project within the City's possession.

3.7.3 Upon the County's request, the City shall provide the County with unimpeded, reasonable access to physically observe and inspect the Project.

4. Maintenance and Repair. Each Party is responsible for maintaining their respective meters and isolation valves on the Interconnect. The cost for any and all repairs to the Interconnect, except for the above-referenced meters and isolation valves, shall be borne equally by each Party. If the Interconnect is installed within the City service area, as mutually agreed by the Parties and as shown on subsequently approved permitted plans, the City shall be responsible for maintaining the Interconnect, except for meters and isolation valves belonging to the County, and shall submit to the County invoices for work relating to such maintenance for reimbursement of fifty percent (50%) of the costs thereof. If the Interconnect is installed within the County service area, as mutually agreed by the Parties and as shown on subsequently approved permitted plans, the County will be responsible for maintaining the Interconnect, except for meters and isolation valves belonging to the City, and shall submit invoices to the City for work relating to such maintenance for reimbursement of fifty percent (50%) of the costs thereof.

5. Notification of Temporary Emergency. In the event of a Temporary Emergency, the Utilities Director or designee from the respective Party with the Temporary Emergency shall contact the Utilities Director or the designee of the other Party to request the opening of the Interconnect and the provision of potable water on an emergency basis. If the initial contact

advising of a Temporary Emergency is made by phone or other oral communication, a companion written statement confirming the Temporary Emergency must also be sent to the receiving Party. Prior to opening the Interconnect, a reading of the appropriate meter in the Interconnect shall be jointly completed by the Parties. Upon conclusion of the Temporary Emergency, a subsequent reading of said meter shall be jointly completed by the Parties to determine the total amount of potable water usage. It shall be the responsibility of the Party providing potable water services to schedule a mutually agreeable time for Party representatives to meet at the Interconnect site to open or close valves and take the necessary meter readings.

6. Temporary Emergency Service. Potable water provided by either Party to the other pursuant to this Agreement shall be limited only to potable water that (i) is necessary to provide temporary assistance in the event the requesting Party, due to a Temporary Emergency, has a need for potable water beyond what is available in its own water treatment and distribution system; and (ii) is in excess of the providing Party's then-current needs for potable water. The provision of potable water during such Temporary Emergency pursuant to this Agreement shall be in accordance with the following:

- 6.1 Both Parties shall designate a member of its permanent staff who is to receive all requests for potable water and who shall have the authority to approve or deny such requests.
- 6.2 Each request for potable water shall be acted upon at the sole discretion of the Party receiving the request. Neither Party has accepted any obligation either to supply or to accept any specific quantity of potable water under any specific circumstances.
- 6.3 In its sole discretion, a Party providing potable water pursuant to this Agreement may establish, and enforce by unilateral control of valves under its control, limits as to: the times of the day and/or the days of the week during which delivery of potable water will or will not be made; the rates of flow at which delivery of potable water will be made; the pressure at which delivery of potable water will be made; and the total volume of potable water to be delivered over one or more designated periods. Neither Party shall be responsible for any adverse effects that its adjustments in valve settings, flows, or pressure might produce on the other Party's water treatment and distribution system or the property of any other parties, including customers, receiving potable water through either of the Parties' respective water treatment and distribution systems.
- 6.4 A Party receiving potable water pursuant to this Agreement shall take all reasonably necessary and prudent actions to eliminate the Temporary Emergency affecting it.

7. Compensation for Potable Water Supplied During a Temporary Emergency. Whenever potable water is supplied during a Temporary Emergency pursuant to this Agreement, the receiving Party shall pay the supplying Party for all potable water received in accordance with the following:

- 7.1 Payment shall be on a per thousand gallons basis, as measured by the appropriate meter in the Interconnect. The City or County charges, as applicable, shall be billed at the same rate as the County sales for resale rate as adopted by the Board of County Commissioners and codified in sections 38.18(d)(1)(a)-(b) of the Broward County Administrative Code when the bill was issued.
- 7.2 Each Party must provide for, at its own expense, annual checks of the accuracy of the meter it uses to supply potable water pursuant to this Agreement.
 - 7.2.1 If a Party receiving potable water pursuant to the terms of this Agreement reasonably believes that the charge for such receipt was based upon readings from an inaccurate meter, that Party may request that the supplying Party obtain an additional check of the appropriate meter for accuracy. If such additional check reveals accuracy within the limits of the manufacturer's recommended accuracy, then the Party requesting the additional check shall bear the full cost of obtaining the additional check. If such additional check reveals an error beyond the limits of the manufacturer's recommended accuracy, then the supplying Party shall bear the full cost of obtaining the additional check.
 - 7.2.2 The Parties agree that if either an annual check or an additional check of the accuracy of a meter reveals an error beyond the limits of the manufacturer's recommended accuracy, the Parties hereby agree to assume that such inaccuracy was in existence for the later one-half of the period of time from the last check that indicated acceptable accuracy within the limits of the manufacturer's recommended accuracy. Any billings that occurred during that period shall be adjusted to reflect the assumed inaccuracy, with such adjustment based on the rate per thousand gallons that was in effect at the time the potable water was supplied.
- 7.3 The Parties agree that the rates and charges to be billed for the provision of potable water pursuant to this Agreement shall be the commodity rates and charges in effect at the time of the billing that are applicable to other customers of the same class pursuant to the requirements of Section 7.1 of this Agreement. However, if the County sales to resale rate structure is modified in such a manner that its per thousand gallon commodity rates includes a portion specifically identified as a charge intended to recover

expenses related to system capacity, as opposed to expenses related to actual water delivered, then such capacity-related portion of the supplying Party's per thousand gallon commodity rates shall not apply to the rates established by this Agreement.

- 7.4 The Parties agree that neither Party will be responsible for paying for any "per meter" or "per billing" charges that are required for other customers.

8. Term and Termination. The term of this Agreement begins on the Effective Date. Thereafter, the term of this Agreement shall continue in perpetuity unless terminated as provided for in this Section 8; provided, however, that the continuation of this Agreement beyond the end of any fiscal year shall be subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes.

- 8.1 The County's participation in the Project is contingent upon the City awarding a contract(s) for design, construction, and construction coordination of the Project within eleven (11) months of the Effective Date. In the event such contract or contracts have not been awarded within this time period, then the County shall be under no obligation to provide funding as set forth herein, and the County shall have the option, at its sole discretion, of terminating this Agreement.
- 8.2 After completion of the Project, either Party may terminate this Agreement at any time and for any reason with ninety (90) days advance written notice provided to the other Party.
- 8.3 Before completion of the Project, the County's governing board (i.e., the Board of County Commissioners of Broward County, Florida) may terminate this Agreement for convenience.
- 8.4 This Agreement may also be terminated for cause by the non-breaching party if the breaching party does not correct the breach within thirty (30) days after receipt of written notice from the non-breaching party identifying the breach; provided however, that, if the City breaches the Agreement in a manner which cannot be cured by subsequent action (e.g., misrepresenting to the County a material fact concerning the Project), then the County must only provide the City reasonable notice of its intent to terminate the Agreement. The County may terminate this Agreement for cause for reasons including, but not limited to, the City's failure to perform its obligations under this Agreement, as applicable, regardless of whether any such failure was previously waived or cured, and the City's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices.
- 8.5 In the event this Agreement is terminated for any reason, any amounts due to

the City shall be withheld by the County until the City provides the County with all documents that it is required to provide pursuant to this Agreement.

9. Indemnification.

9.1 The County and the City are entities subject to Section 768.28, Florida Statutes, as may be amended from time to time, and agree to 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 either Party nor will 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.

9.2 If the City contracts with a third party to provide maintenance or repair of the Interconnect, any contract with such third party must include the following provision:

"Indemnification: The City's contractor will indemnify and hold harmless the County, its officers, agents, and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorneys' fees, to the extent caused or alleged to be caused by the negligence, recklessness, or intentionally wrongful conduct of the City's contractor and other persons employed or utilized by the City's contractor in the performance of this contract. These indemnifications will survive the term of this contract. If any action or proceeding is brought against the County by reason of any such claim or demand, the City's contractor must, upon written notice from the County, resist and defend such action or proceeding by counsel satisfactory to the County."

9.3 The provisions of this Section 9 will survive the termination of this Agreement.

10. Miscellaneous.

10.1 Documents. Copies of any and all reports, photographs, surveys, plans, and other data and documents provided or created in connection with this Agreement or the Project must be provided to the County at no cost upon request.

10.2 Audit Rights and Retention of Records. The County shall have the right to audit the books, records, and accounts of the City that are related to the Project. The City shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of the City shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so. The City shall make the same available at no

cost to the County in written form.

The City shall preserve and make available, at reasonable times for examination and audit by the County, all financial records, supporting documents, statistical records, and any other documents pertinent to the Project for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after any termination of this Agreement. 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. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the County's disallowance and recovery of any payment upon such entry. The City shall ensure that the requirements of this Section 10.2 are included in all agreements with its subcontractor(s).

10.3 Payable Interest.

10.3.1 Payment of Interest. County shall not be liable to pay any interest 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 subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

10.3.2 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 full extent permissible under applicable law, .025% (one quarter of one percent) simple interest (uncompounded).

10.4 Nondiscrimination. 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/or expression in the performance of this Agreement.

10.5 Independent Entity. The City is an independent entity under this Agreement, and nothing in this Agreement constitutes or creates a partnership, joint venture, or any other relation between the Parties. In providing services under this Agreement, neither the City nor its agents shall act as officers, employees,

or agents of the County. The City does not have the right to bind the County to any obligations not expressly undertaken by County under this Agreement.

- 10.6 Third Party Beneficiaries. Neither the City 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 will be entitled to assert a right or claim against either of them based upon this Agreement.
- 10.7 Assignment and Performance. Neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by either Party without the prior written consent of the other Party. If either Party violates this provision, the other Party will have the right to immediately terminate this Agreement. Both Parties represent that each person and entity that has provided or 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. Both Parties agree that all services related to the Project have been performed in a skillful and respectful manner, and that the quality of all such services equal or exceed prevailing industry standards for the provision of such services.
- 10.8 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 of this Agreement. Either Party's failure to enforce any provision of this Agreement will not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the relevant Party.
- 10.9 Compliance with Laws. The City and its contractor(s) must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations under this Agreement.
- 10.10 Insurance. The Parties shall each individually maintain throughout the term of this Agreement any and all applicable insurance coverage required by Florida law for governmental entities.
- 10.11 Joint Preparation. This Agreement has been jointly prepared by the Parties,

and must not be construed more strictly against either party.

- 10.12 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and do not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement include the other gender, and the singular includes 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.
- 10.13 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 Sections 1 through 10 of this Agreement, the provision contained in Sections 1 through 10 will prevail and be given effect.
- 10.14 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement will be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, will be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either Party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, THE COUNTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**
- 10.15 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein will be effective unless contained in a written document prepared with the same formality as this Agreement and executed by the Board of County Commissioners of Broward County and the City or others delegated authority to or otherwise authorized to execute same on their behalf.
- 10.16 Entire Agreement. This Agreement embodies the entire agreement between the Parties. It may not be modified or terminated except as provided in this Agreement. If any provision is invalid, it will be considered deleted from this

Agreement, and such deletion will not invalidate the remaining provisions.

- 10.17 Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.
- 10.18 Incorporation by Reference. The recitals and the attached Exhibit A are incorporated into and made a part of this Agreement.
- 10.19 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.
- 10.20 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 instrument.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: Broward County, signing by and through its Mayor or Vice-Mayor, duly authorized to execute same by Board action on the _____ day of _____, 2020, and the City of Pompano Beach, signing by and through its _____, duly authorized to execute same.

BROWARD 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 _____, 2020

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

By _____
Matthew Haber (Date)
Assistant County Attorney

By _____
Michael J. Kerr (Date)
Deputy County Attorney

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND
BROWARD COUNTY FOR THE PROVISION OF POTABLE WATER DURING TIMES OF
EMERGENCY**

CITY OF POMPANO BEACH

ATTEST: _____ OF _____

_____, City Clerk

BY: _____
Mayor
____ day of _____, 2020

Approved as to form and legality:

By: _____
City Attorney
____ day of _____, 2019

By: _____
City Manager
____ day of _____, 2020