



PARKS AND RECREATION DIVISION - MARINE ADVISORY COMMITTEE  
950 N.W. 38<sup>th</sup> St. • Oakland Park, FL 33309 • 954-357-8133 • FAX 954-357-5991

*Established in 1974 by the Broward County Board of County Commissioners*

Rec.  
8/13/2020  
Cmelt

August 4, 2020

Mark Beaudreau, Recreation Programs Administrator  
City of Pompano Beach  
1801 NE 6<sup>th</sup> St  
Pompano Beach, Florida 33060

Re: **Broward County Broward Boating Improvement Program,  
City of Pompano Beach Alsdorf Seawall Replacement Fiscal Year 2020-2021 Agreements**

Dear Mr. Beaudreau:

Attached are three original Broward County Broward Boating Improvement Grant Program (BBIP) Fiscal Year 2020-2021 Agreements for the above referenced project. All three originals should be signed expeditiously by the City Attorney, the Mayor of Pompano Beach and witnessed. After execution by the Mayor, please return all three agreements as well as the written verification of liability protection required in Article 8 of the Agreement to:

Jay Sanford, Program/Project Coordinator, Senior  
Broward County Parks & Recreation Division  
950 NW 38<sup>th</sup> Street  
Oakland Park, FL 33309

The Fiscal Year 2020-2021 BBIP projects are included as part of the Broward County Budget, which will be formally approved by the Broward County Board of County Commissioners at their second public hearing in September. In order for the Agreements to be executed shortly after the final County Commission Budget Hearing in September, the Agreements should be returned by October 31, 2020. Upon final execution, one original of the fully executed Agreement will be returned to you for your files. If you have any questions, please call me at 954-357-8133.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jay Sanford".

Jay Sanford  
Liaison

c. Broward County Marine Advisory Committee  
Dan West, Director, Broward County Parks & Recreation Division

Attachment



## AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF POMPANO BEACH FOR THE BROWARD BOATING IMPROVEMENT PROGRAM FY 2020 - 2021

This Agreement ("Agreement") is made and entered by and between Broward County, a political subdivision of the State of Florida ("County"), and the City of Pompano Beach, a municipal corporation of the State of Florida ("City") (each sometimes individually referred to as a "Party" and collectively referred to as the "Parties").

### RECITALS

A. County is the recipient of Florida Boating Improvement Program funds pursuant to Section 328.72, Florida Statutes, for the purpose of providing, maintaining, or operating recreational channel markers and other uniform waterway markers, public boat ramps, lifts and hoists, marine railways, boat piers, docks, mooring buoys, and other public launching facilities, and removing any derelict vessels and debris that specifically impede boat access (not including the dredging of channels) or any vessels or floating structures constituting a public health and safety hazard for failure to comply with the requirements under Section 327.53, Florida Statutes.

B. In accordance with Section 9½-16, Broward County Code of Ordinances, the Broward County Marine Advisory Committee recommended funding to City for the Program (as hereinafter defined) under the Broward Boating Improvement Program ("BBIP") to the Broward County Board of County Commissioners.

C. The Program serves a County and public purpose and is eligible for funding under Section 328.72, Florida Statutes, and Chapter 33, Part VIII, Broward County Administrative Code.

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

### ARTICLE 1. DEFINITIONS

1.1. **Applicable Administrative Code** means Chapter 33, Part VIII, Broward County Administrative Code.

1.2. **Board** means the Board of County Commissioners of Broward County, Florida.

1.3. **Broward County Marine Advisory Committee or MAC** means the committee established under Section 9½-16, Broward County Code of Ordinances, with additional authority for the Broward Boating Improvement Program set forth in the Applicable Administrative Code.

1.4. **Contract Administrator** means the Director of the Broward County Parks and Recreation Division or, if designated in writing, County's Program liaison to the Broward County Marine Advisory Committee.

1.5. **County Administrator** means the administrative head of County appointed by the Board.

- 1.6. **County Attorney** means the chief legal counsel for County appointed by the Board.
- 1.7. **County Business Enterprise** or **CBE** means a small business certified as meeting the requirements of Section 1-81, Broward County Code of Ordinances.
- 1.8. **Grant Application** means the grant funding application for the Broward Boating Improvement Program, including any amendments thereto, submitted by City for the Program, which is incorporated herein by reference.
- 1.9. **Program** means The Broward Boating Improvement Program established under the Applicable Administrative Code, pursuant to authority under Section 328.72(15), Florida Statutes.
- 1.10. **Program Funds** means the funding to City under this Agreement for the Program.
- 1.11. **Services** means the services and activities described in Article 3 and Exhibit A to this Agreement.
- 1.12. **Subcontractor** means an entity or individual providing services to County through City for all or any portion of the Services. The term "Subcontractor" shall include all subconsultants.

## **ARTICLE 2. EXHIBITS**

The following exhibits are attached hereto and incorporated into this Agreement:

<b>Exhibit A</b>	<b>Scope of Services</b>
<b>Exhibit B</b>	<b>Certification of Payments to Subcontractors and Suppliers</b>
<b>Exhibit C</b>	<b>Prevailing Wage Statement of Compliance</b>

## **ARTICLE 3. SCOPE OF SERVICES**

3.1. City shall perform all services and activities for the Program as outlined in Exhibit A ("Scope of Services"). The Scope of Services describes City's obligations and responsibilities and includes preliminary considerations and prerequisites and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render performance by City impractical, illogical, or unconscionable.

3.2. The Contract Administrator is authorized to coordinate and communicate with City to manage and supervise the performance of this Agreement. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Code of Ordinances or Broward County Administrative Code, the Contract Administrator may exercise any ministerial authority under this Agreement in connection with the day-to-day management of this Agreement. The Contract Administrator has no authority to exceed the maximum amount of this Agreement as stated in Section 5.1, or to make changes that would increase, decrease, or otherwise modify the scope of the Services, except as provided in Section 3.4. Any change to the

Services must be accomplished by a written amendment, executed by the Parties in accordance with Section 11.20.

3.3. City shall perform the Services in accordance with the terms of this Agreement and the requirements under the Applicable Administrative Code that relate to the Program.

3.4. The Contract Administrator, pursuant to input from the MAC, may approve changes to the Scope of Services to be provided so long as there is not an increase in the total reimburse amounts amount under Section 5.1, the revisions are consistent with the Grant Application policies and the Program guidelines set forth in the Applicable Administrative Code, and the revisions do not diminish the quantity or quality of service to be provided. Such changes shall be incorporated into this Agreement. Any substantive changes in the scope of services for the project described in Exhibit A shall be set forth in an amendment in accordance with Section 11.20, and executed by the County Administrator and City

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

4.1. Term. The term of this Agreement shall commence on the date it is fully executed by the Parties ("Effective Date") and shall end four (4) years after such date, unless terminated earlier as provided herein (the "Term").

4.2. Fiscal Year. The continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from County in accordance with Chapter 129, Florida Statutes.

4.3. Time of the Essence. Unless otherwise agreed by the Parties in writing, all duties, obligations, and responsibilities of City required by this Agreement shall be completed no later than the Term. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

#### **ARTICLE 5. COMPENSATION**

5.1. Reimbursement Amounts. County will pay City up to a maximum amount of Three Hundred and Seventy-Five Thousand dollars (\$375,000.00), on a reimbursement basis, in the manner specified in Section 5.2, for Services actually performed and completed, which amount shall be accepted by City as full compensation for all Services. City acknowledges that the amount set forth herein is the maximum amount payable and constitutes a limitation upon County's obligation to compensate City for services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon City's obligation to perform all Services. Unless otherwise expressly stated in this Agreement, City shall not be reimbursed for any expenses it incurs under this Agreement.

5.2. Method of Billing and Payment.

5.2.1. City may submit an invoice(s) for payment by County after Program completion as described in Exhibit A. All invoices are subject to approval by the Contract Administrator prior to payment by County. City must provide an original invoice plus one (1) copy, and

the final invoice must be received no later than sixty (60) days after this Agreement expires or is otherwise terminated. Invoices shall include supporting documentation as described in Exhibit A, designate the nature of the Services performed and, as applicable, the personnel, hours, tasks, or any other details as requested by the Contract Administrator. Services performed by a Subcontractor may be invoiced to County at no higher than the rates charged by Subcontractor to City, without markup or adjustment. City shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers, utilizing the form attached as Exhibit B. The certification shall be accompanied by a copy of the notification sent to each Subcontractor and supplier listed on the form, explaining the good cause why payment has not been made.

5.2.2. County shall pay City within thirty (30) days of receipt of City's proper invoice, as required under 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. Payment shall be made to City at the address designated in the Notices section.

5.2.3. As all payments to City by County are on a reimbursement basis, City shall pay Subcontractors and suppliers prior to receipt of payment from County for such subcontracted work or supplies. City agrees that if it withholds an amount as retainage from Subcontractors or suppliers, it will release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from County. Failure to pay a Subcontractor or supplier in accordance with this subsection shall be a material breach of this Agreement, unless City demonstrates that such failure to pay results from a bona fide dispute with the Subcontractor or supplier and, further, City promptly pays the applicable amount(s) to the Subcontractor or supplier upon resolution of the dispute. City shall include requirements substantially similar to those set forth in this subsection in its contracts with Subcontractors and suppliers.

5.3. Withheld Funds. Notwithstanding any provision in this Agreement to the contrary, County may withhold, in whole or in part, payment to City if the Contract Administrator deems it necessary to protect County from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator. Payment to City may also be withheld for failure of City to comply with any term, condition, or requirement of this Agreement. Any withheld payment will be made to City within thirty (30) days following City's cure of its failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by County.

5.4. Refunds. If County demands a refund of any or all amounts paid to City under this Agreement, City shall return those amounts to County within sixty (60) days after written notification provided by County. If City does not refund to County any or all of the amounts

described in this Section, City acknowledges that, in addition to any legal remedies that may be available to County, any invoices, payment, or requests for funding by City under this Agreement or any other contract or program administered by County shall be denied until City refunds the demanded amounts to County.

5.5. City's Match. City shall provide matching funds for the Services in the amount of Three Hundred and Seventy-Five Thousand dollars (\$375,000.00).

5.6. This Agreement strictly prohibits the expenditure of Program Funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

## **ARTICLE 6. GOVERNMENTAL IMMUNITY**

Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County or City, nor shall anything included herein be construed as consent by County or City to be sued by third parties in any matter arising out of this Agreement. City is a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law (including, without limitation, any failure by City to comply with the obligations contained in Section 7.2 of this Agreement). County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

## **ARTICLE 7. INSURANCE/INDEMNIFICATION**

7.1. City is a municipal corporation 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.

7.2. City is a governmental entity and is fully responsible for the acts and omissions of its agents or employees, subject to any applicable limitations of Section 768.28, Florida Statutes.

7.3. Upon request of County, City must provide County with written verification of liability protection that meets or exceeds any requirements of Florida law. If City holds any excess liability coverage, City must ensure that Broward County is named as an additional insured and certificate holder under such excess liability policy and provide evidence of the same to County.

7.4. In the event City contracts with a Subcontractor to provide any of the Services, City shall require that each Subcontractor procure and maintain insurance coverage that adequately covers each of Subcontractor's exposure based on the Services provided by that Subcontractor. City must ensure that all such Subcontractors name "Broward County" as an additional insured and certificate holder under the applicable insurance policies. City shall not permit any Subcontractor to provide Services until the insurance requirements of the Subcontractor under

this section are met. If requested by County, City shall furnish evidence of insurance of all such Subcontractors.

7.5. County reserves the right, but not the responsibility, to periodically review any and all insurance policies and to reasonably adjust the limits or types of coverage required therein from time to time throughout the Term.

7.6. City shall indemnify, hold harmless, and defend County and all of County's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of City, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, City shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due City under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

## **ARTICLE 8. TERMINATION**

8.1. This Agreement is subject to the availability of Program Funds. If Program Funds are no longer available, this Agreement shall terminate upon no less than twenty-four (24) hours' notice in writing to City. The Contract Administrator shall be the final authority as to the availability of funds.

8.2. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved Party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause is provided.

8.3. This Agreement may be terminated for cause for reasons including, but not limited to, City's repeated (whether negligent or intentional) submission for payment of false or incorrect

bills or invoices, failure to suitably perform the Services, or failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. This Agreement may also be terminated for cause if City is a "scrutinized company" pursuant to Section 215.473, Florida Statutes, if City is placed on a "discriminatory vendor list" pursuant to Section 287.134, Florida Statutes, or if City provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

8.4. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator deemed necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the Notices section of this Agreement.

8.5. If this Agreement is terminated for convenience by County, City shall be paid for Services properly performed up to the date of termination specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. Upon being notified of County's election to terminate, City shall refrain from performing any further Services or incurring additional expenses under the terms of this Agreement. City acknowledges 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.

8.6. If this Agreement is terminated by County for cause arising from City's noncompliance with its obligations hereunder, County shall have the right to demand refund of all amounts paid to City as provided for in Section 5.4.

8.7. In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

#### **ARTICLE 9. FINANCIAL STATEMENTS AND MANAGEMENT LETTERS**

City shall provide a copy of City's audited financial statements and any management letter(s) as well as City's response to any management letter(s). The audit of the financial statements shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles for the fiscal year Program Funds are received and for each subsequent fiscal year until such time as all of Program Funds are received.

City shall provide to the Contract Administrator copies of a special report showing all revenues, by source, and all expenditures for the Program being funded under this Agreement. The report shall specifically disclose any Program Funds received which were not expended in accordance with the terms of this Agreement or with any regulations incorporated by reference herein. It shall identify the total of noncompliant expenditures as due back to County. If the special report is prepared by an independent certified public accountant, it shall be in accordance with generally accepted auditing standards. If the special report is prepared by an internal auditor, it shall be as nearly in accordance with generally accepted auditing standards as the status of the internal



auditor permits, realizing that the internal auditor may not issue the opinions required therein. The special report is to be filed with City's governing body.

#### **ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE**

10.1. 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. City shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

10.2. Failure by City to carry out any of the requirements of this Section shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances, Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

10.3. Although no CBE goal has been set for this Agreement, County encourages City to fully consider the use of CBE firms to perform Services.

#### **ARTICLE 11. MISCELLANEOUS**

11.1. Rights in Documents and Work. Any and all reports, photographs, surveys, and documents created by City in connection with performing Services shall be owned by County and shall be deemed works for hire by City and its agents; if the Services are determined not to be a work for hire, City hereby assigns all right, title, and interest, including any copyright or other intellectual property rights in or to the work, to County. If this Agreement is terminated, 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 after termination of this Agreement. Any compensation due to City may be withheld until all documents are received as provided in this Agreement. City shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

11.2. Public Records. To the extent City is acting on behalf of County as stated in Section 119.0701, Florida Statutes, City shall:

11.2.1. Keep and maintain public records required by County to perform the services under this Agreement;

11.2.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

11.2.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

11.2.4. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of City or keep and maintain public records required by County to perform the services. If City transfers the records to County, City shall destroy any duplicate public records that are exempt or confidential and exempt. If City keeps and maintains the public records, City shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. City will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that City contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, City must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to County for records designated by City as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by City. City shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

**IF City HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-8100, DANWEST@BROWARD.ORG, 950 NW 38<sup>th</sup> STREET, OAKLAND PARK, FLORIDA 33309.**

11.3. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of City and its Subcontractors that are related to this Agreement. City and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts 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, City or its Subcontractor shall make same available in written form at no cost to County.

City and its Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). City hereby grants County the right to conduct such audit or review at City's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by City in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by City in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to City.

City shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

11.4. 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.

11.5. Discriminatory Vendor List. By execution of this Agreement, City represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement and recover from City all Program Funds paid by County pursuant to this Agreement and may result in debarment from County's competitive procurement activities.

11.6. Public Entity Crime Act. City represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, City further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether City has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, County

shall have the right to immediately terminate this Agreement and recover all sums paid to City under this Agreement.

11.7. Independent Contractor. City is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. 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.

11.8. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a party to this Agreement and in the capacity as owner of the Program. If County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a party to this Agreement.

11.9. 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.

11.10. Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Dan West, Director  
Broward Parks and Recreation Division  
950 N.W. 38th Street  
Oakland Park, Florida 33309  
Email address: danwest@broward.org

FOR CITY:

Mark Beaudreau, Recreation Programs Administrator  
City of Pompano Beach  
1801 NE 6<sup>th</sup> St  
Pompano Beach, Florida 33060  
Email address: Mark.Beaudreau@copbfl.com

11.11. Assignment and Performance. Except for subcontracting approved by County in advance, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted,

pledged or encumbered by City including by change of control, consolidation, dissolution, or operation of law, without the prior written consent of County, which consent shall be in County's sole discretion. Any purported assignment, transfer, subcontract, or encumbrance in violation of this section will be void. If City violates this provision, County shall have the right to immediately terminate this Agreement, in addition to any remedies at law or in equity 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.

11.12. Conflicts. Neither City nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with City's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of City's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or City is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of his or her expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude City or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If City is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, City shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as City.

11.13. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. 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. To be effective, any waiver must be in writing signed by an authorized signatory of the Party.

11.14. Compliance with Laws. City and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

11.15. Severability. If 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.

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

11.17. Interpretation. The titles and 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. Any reference to "days" means calendar days, unless otherwise expressly stated.

11.18. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 11 of this Agreement, the provisions contained in Articles 1 through 11 shall prevail and be given effect.

11.19. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any 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.**

11.20. Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and City.

11.21. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter 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.

11.22. Payable Interest

11.22.1. 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 subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

11.22.2. 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, one quarter of one percent (0.25%) simple interest (uncompounded).

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

11.24. 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.

11.25. Designated Representative. City's Designated Representative under this Agreement is Mark Beaudreau, Recreation Programs Administrator, City of Pompano Beach. City may, in its discretion, change its Designated Representative upon fourteen (14) days prior written notice to County in accordance with Section 10.12.

11.26. 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.

11.27. Use of County Logo. City shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

11.28. Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, City certifies that it has a drug-free

workplace program that it will maintain such drug-free workplace program for the duration of this Agreement.

11.29. Living Wage Requirement. If City is a “covered employer” within the meaning of the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, City agrees to and shall pay to all of its employees providing “covered services,” as defined in the ordinance, a living wage as required by such ordinance, and City shall fully comply with the requirements of such ordinance. City shall ensure all of its Subcontractors that qualify as “covered employers” fully comply with the requirements of such ordinance.

(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 County Administrator, authorized to execute same pursuant to Section 33.79 of the Broward County Administrative Code, and Consultant, signing by and through its \_\_\_\_\_ duly authorized to execute same.

COUNTY

WITNESS #1:

BROWARD COUNTY, by and through  
its County Administrator

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Bertha Henry, County Administrator

\_\_\_\_\_  
Print Name

\_\_\_\_\_ day of \_\_\_\_\_, 2020

WITNESS #2:

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Amanda Tolbert (Date)  
Assistant County Attorney

By: \_\_\_\_\_  
Nathaniel Klitsberg (Date)  
Senior Assistant County Attorney

AMT/jc  
BBIP Form Agreement FY 2020-2021  
7/28/20  
#523356v1

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF POMPANO BEACH FOR THE  
BROWARD BOATING IMPROVEMENT PROGRAM FY 2020 - 2021

City

WITNESSES:

City of Pompano Beach

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Authorized Signor

\_\_\_\_\_  
Print Name of Witness above

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Print Name of Witness above

## **EXHIBIT A - Scope of Services**

I. Project Title: Pompano Beach Alsdorf Sewall Replacement

II. Services provided by City:

A. City shall replace the Alsdorf seawall in accordance with plans which must be approved by the Broward County Marine Advisory Committee prior to commencement of construction, and plans and specification prepared by, or under the supervision and review of, a registered professional architect, engineer, or other appropriate professional as determined by the Contract Administrator..

B. City shall be responsible for obtaining all required state, federal, and local permits, licenses, agreements, leases, easements, and any other required authorizations for the Services described in Subsection A above.

C. City shall submit invoices to County for reimbursement of funds used to perform the Services. Along with these invoices, City shall submit documents which reflect the Services accomplished, including, but not limited to communications, invoices from third parties, photographs, or any other information requested by the Contract Administrator. In accordance with Section 5.2, all invoices are subject to approval by the Contract Administrator prior to payment by County.

D. City shall submit to County signed quarterly project status reports summarizing work or activities accomplished, problems encountered, percentage of work or activities completed, and other appropriate information, as deemed necessary by the Contract Administrator.

E. Project completion shall occur when the work, services, and activities described in Article 3 and Exhibit A have been completed.

F. Upon project completion, as described in Subsection E, City shall be required to comply with the following:

1. City shall dedicate the project for public recreational uses for a minimum of twenty-five (25) years, and the dedication shall be recorded in the Public Records for Broward County, Florida. In the event the project becomes utilized during the dedication period for any purpose other than the intended purpose of the project under this Agreement, City shall be required to refund to County any Program Funds provided by County for the project.

2. City shall erect a permanent sign on the project site identifying the Program and identifying County as a funding source for construction of the project.

3. City shall submit signed as-built site plans including a list of construction facilities and improvements, and color photographs reflecting the work accomplished.

4. An engineer, architect, or other appropriate professional, as determined by the Contract Administrator, shall sign a statement certifying satisfactory completion of the project in accordance with the prepared and approved plans and specifications.

[The remainder of the page is intentionally left blank.]

**EXHIBIT B- Certification of Payments to Subcontractors and Suppliers**

Broward Boating Improvement Program

Project Title \_\_\_\_\_

The undersigned for City hereby swears under penalty of perjury that:

1. City has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on the project in accordance with Article 5 of the Agreement, except as provided in paragraph 2 below.

2. The following Subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor's or supplier's name and address	Date of disputed invoice	Amount in dispute

3. The undersigned is authorized to execute this Certification on behalf of City.

Dated \_\_\_\_\_, 20\_\_\_\_

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

Authorized Signor

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

Print Name and Title

STATE OF                    )  
                                      ) SS  
COUNTY OF                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(NOTARY SEAL)

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name of officer taking acknowledgment; printed/typed/stamped)

My commission expires:

**Exhibit C- Prevailing Wage Statement of Compliance**  
(Prevailing Wage Rate Ordinance No. 83-72)

No. \_\_\_\_\_

Agreement No. \_\_\_\_\_

Project Title \_\_\_\_\_

The undersigned Contractor hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Section 26-5, Broward County Code of Ordinances, and the applicable conditions of this Agreement.

Dated \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Name and Title)

STATE OF            )  
                              )  
COUNTY OF        )

Sworn to (or affirmed) and subscribed before this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
by \_\_\_\_\_ who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Print, Type or Stamp Name of Notary