

RESOLUTION NO. 2024- 57**CITY OF POMPANO BEACH
Broward County, Florida**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF POMPANO BEACH FOR BROWARD COUNTYWIDE INTEGRATED WATER RESOURCE PLAN FUNDING FOR THE EXPANSION OF THE REUSE WATER DISTRIBUTION SYSTEM; ACCEPTING A GRANT IN AN AMOUNT NOT TO EXCEED \$175,000 FROM BROWARD COUNTY TOWARD THE PROJECT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Broward County is offering to provide funding to assist the City by optimizing the beneficial uses of local water resources through more efficient management of the Broward County's secondary canal system, connecting single-family residential customers to the reuse distribution at no additional cost, and to assist water customers by reducing irrigation costs, to provide immediate savings; and

WHEREAS, the designated areas for installation of reuse expansion for the funding are NE 20th Avenue, NE 20th Terrace, NE 21st Avenue, NE 25th Street and NE 26th Street in Lighthouse Point; and

WHEREAS, the estimated total project cost is \$828,940. Broward County shall provide in an amount not to exceed \$175,000 in funding, and the City of Pompano Beach shall be responsible for funding \$653,940 toward the project; now therefore,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That the Interlocal Agreement between Broward County and the City of Pompano Beach for Broward Countywide Integrated Water Resource Plan Funding, attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are authorized to execute the Interlocal Agreement between the Broward County and the City of Pompano Beach.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 23rd day of Janaury, 2024.

DocuSigned by:
Rex Hardin
502CB780EB3F480...
REX HARDIN, MAYOR

ATTEST:

DocuSigned by:
Kervin Alfred
900260F4DD24403...
KERVIN ALFRED, CITY CLERK



MEB/mcm
1/3/24
l:reso/2024-61



INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF POMPANO BEACH FOR BROWARD COUNTYWIDE INTEGRATED WATER RESOURCE PLAN FUNDING

This Interlocal Agreement ("Agreement") is entered into between Broward County ("County"), a political subdivision of the State of Florida, and the City of Pompano Beach, a municipal corporation existing under the laws of the State of Florida ("City") (each a "Party," collectively, the "Parties").

Recitals

- A. The Broward Countywide Integrated Water Resource Plan ("IWRP") was developed in partnership with municipal leaders, water managers, utility directors, and other stakeholder groups representing a broad cross-section of County's water resource and water supply interests.
- B. The goals of the IWRP are to optimize the beneficial uses of local water resources through more efficient management of the County's secondary canal system; to provide a strategy for effective participation in water management on a regional level; to diversify water supplies as a drought management strategy; and to meet long-term urban water needs.
- C. County's IWRP grants have been offered to drainage districts, water control districts, utilities, and municipal partners since 2006 as cost-share funding to support the implementation of the IWRP.
- D. In 2023, partners were offered an opportunity to pursue County funding to finance feasibility analyses and preliminary design of projects, or reclaimed water construction projects that serve the goals of the IWRP.
- E. City's application for the City's Reuse Distribution Expansion project to be conducted by City ("Project") was received and reviewed by the Technical Advisory Committee to the Water Advisory Board, later endorsed by the Water Advisory Board, and approved by the Broward County Board of County Commissioners for funding.
- F. The Parties are desirous of entering into this Agreement to delineate their areas of responsibility with respect to the Project.

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

1.2 **Contract Administrator** means the Director of the Resilient Environment Department, its successors or assigns, or such other person designated by the Director in writing.

1.3 **County Business Enterprise** or **CBE** means an entity certified as meeting the applicable requirements of Section 1-81, Broward County Code of Ordinances.

1.4 **Purchasing Director** means County's Director of Purchasing as appointed by the Broward County Administrator.

1.5 **Services** means all work required by City under this Agreement, including without limitation all deliverables, consulting, training, project management, or other services specified in Exhibit A ("Scope of Services") procured under this Agreement.

1.6 **Subcontractor** means an entity or individual providing services to County through City for all or any portion of the work under this Agreement. The term "Subcontractor" shall include subconsultants.

ARTICLE 2. EXHIBITS

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

- Exhibit A Scope of Services**
- Exhibit B Payment Schedule**

ARTICLE 3. SCOPE OF SERVICES

3.1 Scope of Services. City shall perform all work identified in this Agreement, including, without limitation, the work specified in Exhibit A ("Scope of Services"). Scope of Services 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 that are such an inseparable part of the work described that exclusion would render performance by City impractical, illogical, or unconscionable. City shall meet all applicable federal, state, and local laws, ordinances, codes, rules, and regulations in performing the Services.

3.2 Modifications to Scope of Services. 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.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1 Term. The term of this Agreement shall begin on the date it is fully executed by the Parties ("Effective Date") and shall end twenty-four (24) months after the Effective Date ("Term"). The Term shall include any Extension Term, as set forth in Sections 4.3 and 4.4.

4.2 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 twenty-four (24) months after the Effective Date. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

4.3 Extensions. In the event County elects to extend the term of this Agreement beyond the Term, City agrees it shall continue to provide Services upon the same terms and conditions as set forth in this Agreement for such extended period, which shall not be more than three (3) months beyond the Term ("Extension Term"). This option, if elected by County, shall be exercised by County's Purchasing Director by written notice stating the duration of the extended period, which notice shall be provided to City at least thirty (30) days prior to the end of the Term.

4.4. Extension Term. For any Extension Term, City shall not be paid additional compensation, unless otherwise expressly stated in Exhibit B. City shall continue to provide the Services upon the same terms and conditions as set forth in this Agreement for such extended period.

4.5 Fiscal Year. 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.

ARTICLE 5. COMPENSATION

5.1 Maximum Amounts. For all Services provided under this Agreement, County will pay City up to, and not to exceed, One Hundred Seventy-Five Thousand and 00/100 Dollars (\$175,000.00). Payment shall be made only for Services actually performed and completed pursuant to this Agreement as set forth in Exhibit B (Payment Schedule), which amount shall be accepted by City as full compensation for all such Services. City acknowledges that the amounts set forth in this Agreement are the maximum amounts payable and constitute a limitation upon County's obligation to compensate City for work under this Agreement. These maximum amounts, however, do not constitute any limitation of any sort upon City's obligation to perform all Services. Unless and except to the extent expressly required 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 invoices for compensation after Services have been completed. An original invoice plus one (1) copy are due within sixty (60) days after expiration or earlier termination of this Agreement. Invoices shall designate the Services performed and, as applicable, the personnel, hours, tasks, or other details as requested by the Contract Administrator.

5.2.2. Any invoice submitted by City shall not exceed the amount set forth in Section 5.1 for applicable Services.

5.2.3. County shall pay City within thirty (30) days after 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 then-current County 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.

5.2.4. Payment shall be made to City at the address designated in the Notices section.

5.3 Subcontractors. County's cost share funding does not obligate County to pay any amount to any City Subcontractor, if any exist, and City agrees that no Subcontractor costs or invoices shall be paid or invoiced to County, directly or indirectly, on the basis on this Agreement.

5.4 Withholding Payment. Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1 Representation of Authority. City represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of City, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that City has with any third party or violates Applicable Law. City further represents and warrants that execution of this Agreement is within City's legal powers, and each individual executing this Agreement on behalf of City is duly authorized by all necessary and appropriate action to do so on behalf of City and does so with full legal authority.

6.2 Solicitation Representations. City represents and warrants that all statements and representations made in City's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date City executes this Agreement, unless otherwise expressly disclosed in writing by City.

6.3 Contingency Fee. City represents and warrants that it has not employed or retained any person or entity, other than a bona fide employee working solely for City, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for City, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

- 6.4 Truth-In-Negotiation Representation. City's compensation under this Agreement is based upon its representations to County, and City certifies that the wage rates, factual unit costs, and other information supplied to substantiate City's compensation, including without limitation those made by City during the negotiation of this Agreement, are accurate, complete, and current as of the date City executes this Agreement. City's compensation may be reduced by County, in its sole discretion, to correct any inaccurate, incomplete, or noncurrent information provided to County as the basis for City's compensation in this Agreement.
- 6.5 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. 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.
- 6.6 Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. City represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes. City represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. City represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.
- 6.7 Claims Against City. City represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of City, threatened against or affecting City, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of City to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of City or on the ability of City to conduct its business as presently conducted or as proposed or contemplated to be conducted.
- 6.8 Verification of Employment Eligibility. City represents that City and each Subcontractor have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If City violates this section, County may immediately terminate this Agreement for cause and City shall be liable for all costs incurred by County due to the termination.
- 6.9 Warranty of Performance. City represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services and that

each person and entity that will provide Services 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 represents and warrants that the Services shall be performed in a skillful and respectful manner, and that the quality of all Services shall equal or exceed prevailing industry standards for the provision of such services.

6.10 Prohibited Telecommunications Equipment. City represents and certifies that City and all Subcontractors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. City represents and certifies that City and all Subcontractors shall not provide or use such covered telecommunications equipment, system, or services during the Term.

6.11 Criminal History Screening Practices. If this Agreement is subject to the requirements of Section 26-125(d) of the Code, City represents and certifies that City will comply with Section 26-125(d) of the Code for the duration of the Term.

6.12 Breach of Representations. City acknowledges that County is materially relying on the representations, warranties, and certifications of City stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to City; (c) set off from any amounts due City the full amount of any damage incurred; and (d) debarment of City.

ARTICLE 7. GOVERNMENTAL IMMUNITY

Nothing herein shall constitute a waiver of Section 768.28 of the Florida Statutes by any of the Parties or shall be construed as impacting or modifying the protections set forth therein except to the extent otherwise required under applicable Florida law. In addition, nothing herein shall be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Parties are a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and each Party shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

ARTICLE 8. INSURANCE

Parties are entities subject to Section 768.28, Florida Statutes, and shall furnish the other Party with written verification of liability protection in accordance with state law upon request by the other Party.

ARTICLE 9. TERMINATION

9.1 Termination for Cause. 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 receipt of written notice from the aggrieved Party identifying the breach. This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

- 9.1.1 City's failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices;
- 9.1.2 By the County Administrator or the Director of Office of Economic and Small Business Development ("OESBD") for fraud, misrepresentation, or material misstatement by City in the award or performance of this Agreement or that violates any applicable requirement of Section 1-81 of the Code; or
- 9.1.3 By the Director of OESBD upon the disqualification of City as a CBE or SBE if City's status as a CBE or SBE was a factor in the award of this Agreement, or upon the disqualification of one or more of City's CBE or SBE participants by County's Director of OESBD if any such participant's status as a CBE or SBE firm was a factor in the award of this Agreement.

Unless otherwise stated in this Agreement, if this Agreement was approved by Board action, termination for cause by County must be by action of the Board or the County Administrator; in any other instance, termination for cause may be by the County Administrator, the County representative expressly authorized under this Agreement, or the County representative (including any successor) who executed the Agreement on behalf of County. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination for convenience pursuant to Section 9.2 effective thirty (30) days after such notice was provided and City shall be eligible for the compensation provided in Section 9.2 as its sole remedy.

9.2 Termination for Convenience; Other Termination. This Agreement may also be terminated for convenience by the Board with at least thirty (30) days advance written notice to City. City acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience including in the form of County's obligation to provide advance notice to City of such termination in accordance with this section. 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 this Agreement is terminated by County pursuant to this section, City shall be paid for any Services properly performed through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable, and County shall have no further obligation to pay City for Services under this Agreement.

9.3 Notice of termination shall be provided in accordance with the “Notices” section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4 In addition to any termination rights stated in this Agreement, County shall be entitled to seek any and all available contractual or other remedies available at law or in equity including recovery of costs incurred by County due to City’s failure to comply with any term(s) of this Agreement.

ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

10.1 City and Subcontractors shall not 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 all 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 By January 1 of each year, City must submit, and cause each Subcontractor to submit, an Ownership Disclosure Form (or such other form or information designated by County), available at <https://www.broward.org/econdev/Pages/forms.aspx>, identifying the ownership of the entity and indicating whether the entity is majority-owned by persons fitting specified classifications.

10.3 County Business Entities. Although no CBE goal has been set for this Agreement, County encourages City to give full consideration to the use of CBE firms to perform work under this Agreement.

ARTICLE 11. MISCELLANEOUS

11.1 Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with City to manage and supervise the performance of this Agreement. City acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Scope of Services except as expressly set forth in this Agreement or, to the extent applicable, in the Broward County Procurement Code. Unless expressly stated otherwise in this Agreement or otherwise set forth in the Code or the Broward County Administrative Code, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of this Agreement. The Contract Administrator may also approve in writing minor modifications to the Scope of Services that do not increase the total cost to County or waive any rights of County.

11.2 Rights in Documents and Work. Any and all reports, photographs, surveys, documents, materials, data, or other work created by City in connection with performing Services, whether finished or unfinished (“Documents and Work”), shall be owned by County, and City hereby transfers to County all right, title, and interest, including any copyright or other intellectual property rights, in or to the Documents and Work. Upon expiration or termination of this Agreement, the Documents and Work shall become the property of County and shall be delivered by City to the Contract Administrator within seven (7) days after expiration or termination. Any compensation due to City may be withheld until all Documents and Work are received as provided in this Agreement. City shall ensure that the requirements of this section are included in all agreements with all Subcontractor(s).

11.3 Public Records. Notwithstanding any other provision in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If City is acting on behalf of County as stated in Section 119.0701, Florida Statutes, City shall:

11.3.1 Keep and maintain public records required by County to perform the Services;

11.3.2 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 Applicable Law;

11.3.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and

11.3.4 Upon expiration of the Term 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 requirements of Applicable Law 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.

If City receives a request for public records regarding this Agreement or the Services, City must immediately notify the Contract Administrator in writing and provide all requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

City must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that City contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which City asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In

addition, City must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, City must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by City as Restricted Material, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by City, or the claimed exemption is waived. Any failure by City to strictly comply with the requirements of this section shall constitute City's waiver of County's obligation to treat the records as Restricted Material. City must 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 nondisclosure of Restricted Material in response to a third-party request.

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, JUDI KLADERMAN, AT 954-357-6613, JKLADERMAN@BROWARD.ORG, 115 S ANDREWS AVE, RM 329D, FORT LAUDERDALE, FLORIDA 33301.

- 11.4 Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of City and all Subcontractors that are related to this Agreement. City and all Subcontractors shall keep such books, records, and accounts as may be necessary 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 and all Subcontractors shall make same available in written form at no cost to County. City shall provide County with reasonable access to City's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

City and all 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. This article shall survive any dispute or litigation between the Parties, and City expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. 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. City shall make all such records and documents available electronically in common file formats or via remote access if, and to the extent, requested by County.

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 reveals overpricing or overcharges to County of any nature by City in excess of five percent (5%) of the total contract billings reviewed by County, City shall make adjustments for the overcharges and pay liquidated damages pursuant to Section 5.5. 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 all Subcontractor(s).

- 11.5 Independent Contractor. City is an independent contractor of County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services, 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.
- 11.6 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 not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law 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.
- 11.7 Third-Party Beneficiaries. Neither City nor County intends to primarily or directly 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.
- 11.8 Notices. Unless otherwise stated herein, for 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 email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Payments shall be made to the noticed address for City. Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Resilient Environment Department, its successors or assigns
Attn: Dr. Jennifer Jurado, Deputy Director
115 S. Andrews Avenue, Room 329D
Fort Lauderdale, Florida 33301
Email address: jjurado@broward.org

FOR CITY:

City of Pompano Beach
Randolph Brown, Utilities Director
1205 NE 5th Avenue
Pompano Beach, FL 33060
Email address: Randolph.Brown@copbfl.com

- 11.9 Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for approved subcontracting, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by City without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.
- 11.10 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, none of City's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or City is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's 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 legal 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.

- 11.11 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. 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 shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.
- 11.12 Compliance with Laws. City and the Services must comply with all Applicable Law, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.
- 11.13 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.
- 11.14 Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.
- 11.15 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 any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein" 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 subsections thereof, 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. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.
- 11.16 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 within an article or section of this Agreement, the article or section shall prevail and be given effect.
- 11.17 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. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

11.18 Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and City.

11.19 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

11.20 Payable Interest

11.20.1 Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to City for any reason, whether as prejudgment interest or for any other purpose, and City waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

11.20.2 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).

11.21 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.

11.22 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

11.23 Use of County Logo. City shall not use County's name or logo in marketing or publicity materials without prior written consent from the Contract Administrator.

- 11.24 Drug-Free Workplace. If required under Section 21.23(f), Broward County Administrative Code, or Section 287.087, Florida Statutes, City certifies that it has and will maintain a drug-free workplace program throughout the Term.
- 11.25 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 of the Code, City shall fully comply with the requirements of such ordinance and shall pay to all of its employees providing “covered services,” as defined in the ordinance, a living wage as defined therein. City shall ensure all Subcontractors that qualify as “covered employers” fully comply with the requirements of such ordinance.
- 11.26 Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, City as a result of this Agreement, then Section 26-5 of the Code shall be deemed to apply to such construction work. City shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in Exhibit A.
- 11.27 Polystyrene Food Service Articles. City shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

(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 by Board action on the 12 day of December, 2023 and City of Pompano Beach, signing by and through its Mayor duly authorized to execute same.

COUNTY

BROWARD COUNTY, by and through its County Administrator

By: [Signature]
County Administrator

15th day of March, 2024



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

By Deanna Kalil Digitally signed by Deanna Kalil
Date: 2024.03.14 15:35:32 -04'00'
Deanna Kalil (Date)
Assistant County Attorney

By MAITE AZCOITIA Digitally signed by MAITE
AZCOITIA
Date: 2024.03.15 10:27:15 -04'00'
Maite Azcoitia (Date)
Deputy County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF POMPANO BEACH FOR BROWARD COUNTYWIDE INTEGRATED WATER RESOURCE PLAN FUNDING

CITY OF POMPANO BEACH

City of Pompano Beach

Attest:

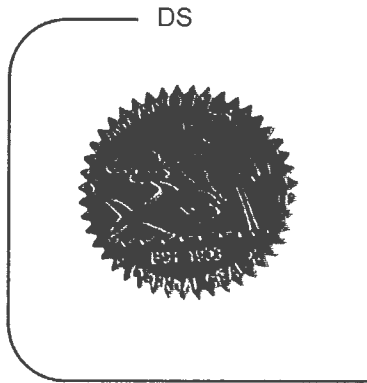
DocuSigned by:
Kevin Alfred
900260F4DD24403...

City Clerk

DocuSigned by:
Rep Hardin
By 502CB780EB3F480

Mayor-Commissioner

29th day of January, 20 24



DocuSigned by:
Gregory P. Harrison
By 7052A67F15A44C8

City Manager

29th day of January, 20 24

APPROVED AS TO FORM:

DocuSigned by:
Mark E. Berman
By 343B0B2C81D9424

City Attorney

Exhibit A
Scope of Services

PROJECT DESCRIPTION

The City of Pompano Beach is continuing the expansion of reuse water distribution system that benefits Pompano Beach, Lighthouse Point, Lauderdale-by-the-Sea and Broward County. The reuse distribution expansion project shall consist of roughly 5,900 linear feet (LF) of 4" and 6" reuse main installation with appurtenances. The planned area of installation for reuse expansion shall be NE 20th Avenue, NE 20th Terrace, NE 21st Avenue, NE 25th Street and NE 26th Street in Lighthouse Point (Figure 1).

Residents are required by Lighthouse Point Ordinance to connect to the reuse system in place of potable or well water.

[Remainder if Page Intentionally Left Blank]

PROJECT GOALS AND OBJECTIVES:

The project goals are to provide additional reuse water for irrigation to new customers in Lighthouse Point thus reducing potable water demand, mitigate saltwater intrusion, and assist Broward County in meeting the Ocean Outfall Legislation by diverting additional effluent intended for the Atlantic Ocean to the City's OASIS Plant.

This project connects single-family residential customers to the reuse distribution at no cost and will assist the customers in the area (Figure 1) by reducing irrigation water costs. For Lighthouse Point customers, the cost per thousand gallons for potable water is \$2.97 versus \$1.14 for reuse. Customers will be connected through our "I Can Water" Program, resulting in immediate savings. All reuse customers are able to water any day of the week compared to the two day per week irrigation restrictions for the rest of the City.

This project is consistent with the Broward County IWRP, the South Florida Water Management District (SFWMD) Lower East Coast Water Supply Plan, and the Broward County Regional Reuse Master Plan. This project will also encourage regionalization of local water supplies by furthering efforts to comply with the State Ocean Outfall Legislation requiring diversion of wastewater discharges through ocean outfalls to beneficial reuse applications. It will also help provide additional potable water for future needs for the cities of Pompano Beach, Lighthouse Point, and Lauderdale-by-the-Sea.

PROJECT DELIVERABLES:

TASK 1. Installation of City of Pompano Beach Reuse Distribution Expansion Project in Lighthouse Point. The area of installation for reuse expansion shall be NE 20th Avenue, NE 20th Terrace, NE 21st Avenue, NE 25th Street and NE 26th Street in Lighthouse Point.

Deliverable 1. Two copies of the Installation/Construction Report and permitting documents for City of Pompano Beach Reuse Distribution Expansion Project in Lighthouse Point. The documents may alternately be submitted electronically as a single ADA accessible pdf document.

Deliverable 2. Electronic GIS files developed for the project.

**Exhibit B
Payment Schedule**

The Project will be funded through cost share support by Broward County and the City of Pompano Beach in the amounts shown below. The Project will be completed in twenty-four (24) months.

Project	Total Project Cost	Broward County Funds	City of Pompano Beach Funds
Installation of approximately 5,900 linear feet (LF) of 4" and 6" reuse main installation with appurtenances. The planned area of installation for reuse expansion shall be NE 20th Avenue, NE 20th Terrace, NE 21st Avenue, NE 25th Street and NE 26th Street in Lighthouse Point	\$828,940.00	Not to Exceed \$175,000.00	\$653,940.00