

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration/
Discussion Workshop

SHORT TITLE OR MOTION: Resolution approving and authorizing execution of Interlocal Agreement with Broward County for implementation of projects recommended under the Broward Countywide Integrated Water Resource Plan. (50% reimbursement - not to exceed \$220,000)

Summary of Purpose and Why:

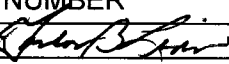
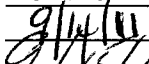
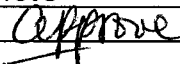
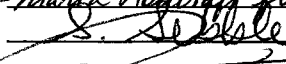

On 6/28/2011, City Commission approved this resolution. When Agreement was returned to Broward County, new legal counsel recommended changes to the document, which necessitates bringing the Agreement back to City Commission for approving and authorizing its execution. The changes were reviewed by the Utilities Director and City Attorney and both recommend proceeding.

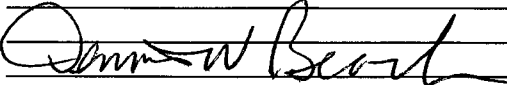
Broward County has awarded a 50% matching fund grant not to exceed \$220,000, for implementation of projects recommended under the Broward Countywide Integrated Water Resource Plan. Specifically, this program will provide the City of Pompano Beach Utilities with a reimbursement for the costs associated with the connection of 770 residential family homes to our existing reuse water supply.

The matching funds will come from the Utility Fund Balance. The Utilities Department has engaged a consultant, Eaton Corporation, who will satisfy the provisions of the Agreement. A copy of Interlocal Agreement, which explains this project in detail, is attached.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: A. Randolph Brown, Utilities Director Ext. 7044
- (3) Expiration of contract, if applicable: 24 months from execution of contract by Broward County
- (4) Fiscal impact and source of funding: n/a

| DEPARTMENTAL COORDINATION | DATE | DEPARTMENTAL RECOMMENDATION | DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER |
|---------------------------|---|---|---|
| City Attorney | 9/6/2011 | Approve | See Attached Resolution  |
| Utilities Director | 9/7/2011 | Approve |  for A. Randolph Brown |
| Finance |  |  |  |
| Budget | 9/11/11 | |  |

City Manager 

ACTION TAKEN BY COMMISSION:

| Ordinance | Resolution | Consideration | Workshop |
|-------------|-------------|---------------|----------|
| 1st Reading | 1st Reading | Results: | Results: |
| _____ | _____ | _____ | _____ |
| 2nd Reading | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |



City Attorney's Communication #2011-1659
September 6, 2011

TO: Patricia M. Vivirito, Department Head Secretary
FROM: Jill R. Mesojedec, FRP, Paralegal
VIA: Gordon B. Linn, City Attorney *GL*
RE: Resolution for Broward County Interlocal Agreement

As requested in your memorandum dated August 31, 2011, Utilities Administration Memorandum No. 11-44, the following captioned resolution, relative to the above-referenced matter, has been prepared and is attached:

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 THE CITY OF POMPANO BEACH AND BROWARD COUNTY FOR IMPLEMENTATION OF PROJECTS RECOMMENDED UNDER THE BROWARD COUNTYWIDE INTEGRATED WATER RESOURCE PLAN TO BE PERFORMED IN PARTNERSHIP WITH LOCAL WATER MANAGERS; PROVIDING AN EFFECTIVE DATE.

If I may be of further assistance, please feel free to contact me.

Jill R. Mesojedec

JILL R. MESOJEDEC

L:cor/util/2011-1659
Attachment

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 THE CITY OF POMPANO BEACH AND BROWARD COUNTY FOR IMPLEMENTATION OF PROJECTS RECOMMENDED UNDER THE BROWARD COUNTYWIDE INTEGRATED WATER RESOURCE PLAN TO BE PERFORMED IN PARTNERSHIP WITH LOCAL WATER MANAGERS; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That an Agreement between the City of Pompano Beach and Broward County for Implementation of Projects Recommended Under the Broward Countywide Integrated Water Resource Plan to be Performed in Partnership with Local Water Managers, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

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

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2011.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK



ENVIRONMENTAL PROTECTION and GROWTH MANAGEMENT DEPARTMENT
Natural Resources Planning & Management Division
Mailing Address: 115 South Andrews Avenue, Room 329H, Ft. Lauderdale, FL 33301
954-519-1270 • FAX 954-519-1496

August 29, 2011

A. Randolph Brown
Director, Utilities Department
City of Pompano Beach
1205 NE 5th Ave
Pompano Beach, FL 33060

Dear Mr. Brown:

Please find enclosed four (4) copies of an Interlocal Agreement between Broward County and the City of Pompano Beach to connect 770 residential family homes to an existing reclaimed water source. This agreement provides for a 50% cost-share grant for an amount not-to-exceed \$220,000. (total project cost of \$460,000), pursuant to the County's Integrated Water Resources Plan.

Please review the Agreement, and if you concur, complete the information in Section 3.4 and Section 10.1, and execute the Agreement by signature of City officials on Page 16. Please return all four (4) signed copies to me. One (1) fully executed copy of the Agreement will be returned to you. Should you require more than one (1) fully executed copy, please make additional copies prior to signature and returning the Agreement to me.

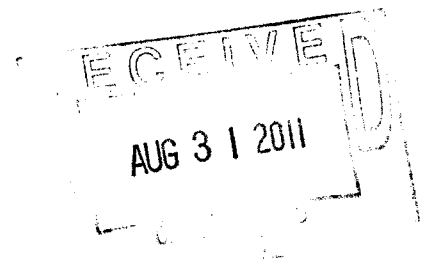
We look forward to proceeding with the project as soon as possible. If you have any questions or need additional information, please do not hesitate to call me at (954) 519-1294.

Sincerely,

A handwritten signature in cursive script that reads "Katie Lelis".

Katie Lelis
Engineer II
Broward County Natural Resources Planning and Management Division

Enclosures (4)



INTERLOCAL AGREEMENT

Between

BROWARD COUNTY

and

CITY OF POMPANO BEACH

for

IMPLEMENTATION OF
PROJECTS RECOMMENDED UNDER THE BROWARD COUNTYWIDE
INTEGRATED WATER RESOURCE PLAN TO BE PERFORMED
IN PARTNERSHIP WITH LOCAL WATER MANAGERS

INTERLOCAL AGREEMENT

Between

BROWARD COUNTY

and

CITY OF POMPANO BEACH

for

IMPLEMENTATION OF
PROJECTS RECOMMENDED UNDER THE BROWARD COUNTYWIDE
INTEGRATED WATER RESOURCE PLAN TO BE PERFORMED
IN PARTNERSHIP WITH LOCAL WATER MANAGERS

This is an Interlocal Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY",

AND

CITY OF POMPANO BEACH, a municipal corporation of the state of Florida, its successors and assigns, on behalf of its Water Utility, hereinafter referred to as "CITY".

WHEREAS, this Interlocal Agreement is entered into pursuant to §163.01, Florida Statutes, also known as the "Florida Interlocal Cooperation Act of 1969"; and

WHEREAS, COUNTY began a planning process, known as the Broward Countywide Integrated Water Resource Plan, in 1997 to improve coordination between all water managers in its geographical borders; and

WHEREAS, COUNTY is desirous of entering into Interlocal agreements to encourage local water managers to pursue IWRP related projects which will optimize the effective and efficient use of local water resources; and

WHEREAS, the Technical Advisory Committee and the Water Advisory Board for the Board of County Commissioners have recommended cost share funding for these IWRP recommended projects; and

WHEREAS, CITY has expressed a desire to cost share the implementation of the Residential Reuse Connection Plan pursuant to the terms and conditions hereafter set forth; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and CITY agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

- 1.1 Agreement - means this document, Articles 1 through 11, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 Board - The Broward County Board of County Commissioners.
- 1.3 Contract Administrator - The Broward County Administrator, the Director of the Broward County Environmental Protection and Growth Management Department, or the designee of such County Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CITY and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Interlocal Agreement as set forth herein. In the administration of this Interlocal Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 County Administrator – The administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.5 County Attorney - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.6 Project - The Project consists of the services described in Article 2.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 CITY shall perform all work identified in this Interlocal Agreement and Exhibit "A". The parties agree that the 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, which are such an inseparable part of the work described that exclusion would render performance by CITY impractical, illogical, or unconscionable.

- 2.2 CITY acknowledges and agrees 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 Interlocal Agreement.
- 2.3 CITY shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from the COUNTY for such subcontracted work or supplies. CITY agrees that if it withholds an amount as retainage from its subcontractors or suppliers, that it will release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from COUNTY, or within thirty (30) days after the subcontractor has satisfactorily completed its work, whichever shall first occur.
- 2.4 COUNTY agrees to transfer to CITY the authority to perform the services in accordance with the attached Exhibit "A".
- 2.5 CITY shall perform the above services pursuant to the attached Exhibit "A".
- 2.6 It is understood and agreed that CITY may be required to employ a consultant to perform the services required under this Interlocal Agreement; however, COUNTY shall not be responsible for any additional costs or expenses associated with the hiring beyond those agreed to herein.
- 2.7 Additional services or cost sharing funds, pursuant to the attached Exhibit "A," such as final design, construction management, or construction not currently indicated on Exhibit "A," may be considered upon written Amendment to this Interlocal Agreement, as provided in Section 11.14, Amendments.

ARTICLE 3

COMPENSATION

- 3.1 COUNTY agrees to pay CITY, in the manner specified in Section 3.2, Method of Billing and Payment, 50% of actual incurred costs up to but not exceeding Two Hundred Twenty Thousand dollars (\$220,000), for work actually performed and completed pursuant to this Interlocal Agreement and set forth in Exhibit "A," which amount shall be accepted by CITY as full compensation for all such work. It is acknowledged and agreed by CITY that this amount is the maximum payable and constitutes a limitation upon COUNTY's obligation to compensate CITY for its services related to this Interlocal Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CITY's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.
- 3.2 METHOD OF BILLING AND PAYMENT

- 3.2.1 CITY may submit an invoice for compensation on one occasion, which shall be associated with completion of the project deliverables. This invoice shall be submitted only after the services for which the invoice is submitted have been completed. An original invoice plus one copy must be received no later than sixty (60) days after this Interlocal Agreement expires. Invoice shall designate the nature of the services performed and/or the expenses incurred. CITY shall submit with the invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit "D"). The certification shall be accompanied by a copy of the notification sent to each subcontractor and suppliers listed in Item 2 of the form, explaining the good cause why payment has not been made.
- 3.2.2 COUNTY shall pay CITY within thirty (30) calendar days of receipt of CITY's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time). To be deemed proper, all invoices must comply with the requirements set forth in this Interlocal Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.
- 3.3 Notwithstanding any provision of this Interlocal 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 which has not been remedied or resolved in a manner satisfactory to Contract Administrator or failure to comply with this Interlocal Agreement. The amount withheld shall not be subject to payment of interest by COUNTY.
- 3.4 Payment shall be made to CITY at:

City of Pompano Beach
 Utilities Department
 1205 NE 5th AVenue

Pompano Beach, FL 33060

ARTICLE 4

TERM AND TIME OF PERFORMANCE OF AGREEMENT

- 4.1 This Interlocal Agreement shall become effective upon execution by COUNTY and shall continue in full force and effect until midnight, twenty-four (24) months following final execution of the Agreement; provided, however, if the term of this Interlocal Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Interlocal Agreement beyond the end of any fiscal year shall

be subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. In addition, the County Administrator is authorized to execute any amendments extending the term of this Interlocal Agreement with the appropriate amendment prepared with the same or similar formality.

- 4.2 All duties, obligations, and responsibilities of CITY required by this Interlocal Agreement shall remain in full force and effect through the termination date or any extended termination date, as set forth above, unless written notice of termination by the COUNTY or the CITY is provided pursuant to Section 10.1, Notices. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Interlocal Agreement.

ARTICLE 5

CHANGE IN SCOPE OF SERVICES

- 5.1 Any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 11.14 below.

ARTICLE 6

GOVERNMENTAL IMMUNITY

- 6.1 Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Interlocal Agreement or any other contract. CITY is a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

ARTICLE 7

INSURANCE

- 7.1 CITY is an entity subject to Section 768.28, Florida Statutes, and CITY shall furnish Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of said Agreement.

ARTICLE 8

TERMINATION

- 8.1 This Interlocal 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, or for convenience by

action of the Board upon not less than thirty (30) days' written notice. This Interlocal Agreement may also be terminated by Contract Administrator upon such notice, as Contract Administrator deems appropriate under the circumstances in the event Contract Administrator determines that termination is necessary to protect the public health or safety. An erroneous termination for cause shall be considered a termination for convenience.

- 8.2 Termination of this Interlocal Agreement for cause by COUNTY shall include, but not be limited to, negligent, intentional, or repeated submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Interlocal Agreement, or multiple breach of this Interlocal Agreement which has a material adverse effect on the efficient administration of the Project notwithstanding whether any such breach was previously waived or cured.
- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Interlocal Agreement except that notice of termination by Contract Administrator which Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Interlocal Agreement.
- 8.4 In the event this Interlocal Agreement is terminated for convenience, CITY shall be paid for any services properly performed to the date the Agreement is terminated; however, upon being notified of COUNTY's election to terminate, CITY shall refrain from performing further services or incurring additional expenses under the terms of this Interlocal Agreement. CITY acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by COUNTY, the receipt and adequacy of which is hereby acknowledged by CITY, is given as specific consideration to CITY for COUNTY's right to terminate this Interlocal Agreement for convenience.
- 8.5 In the event this Interlocal Agreement is terminated, any compensation payable by COUNTY shall be withheld until all documents are provided to COUNTY pursuant to Section 11.1, Ownership of Documents.

ARTICLE 9

EEO AND CBE COMPLIANCE

9.1 EEO COMPLIANCE

CITY shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the

performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. CITY shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

CITY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CITY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

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, as may be amended from time to time). 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 monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

- 9.2 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 10

NOTICES

- 10.1 Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

Director, Natural Resource Planning and Management Division
115 South Andrews Avenue, Room 329-H
Fort Lauderdale, Florida 33301

With copy to:

County Administrator
115 South Andrews Avenue, Suite 409
Fort Lauderdale, Florida 33301

TO CITY:

City of Pompano Beach
Utilities Department
1205 NE 5th Avenue

Pompano Beach, FL 33060

ARTICLE 11

MISCELLANEOUS

11.1 OWNERSHIP OF DOCUMENTS

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Interlocal Agreement are and shall remain the property of COUNTY. In the event of termination of this Interlocal Agreement, any reports, photographs, surveys, and other data and documents prepared by CITY, whether finished or unfinished, shall be delivered by CITY to the Contract Administrator within seven (7) days of termination of this Interlocal Agreement by either party. Any compensation due to CITY shall be withheld until all documents are received as provided herein.

11.2 AUDIT RIGHT AND RETENTION OF RECORDS

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

CITY shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to CITY's records, CITY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CITY. 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.

11.3 FINANCIAL STATEMENTS/MANAGEMENT LETTERS – Deleted.

11.4 PUBLIC ENTITY CRIME ACT

CITY represents that the execution of this Interlocal Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Interlocal Agreement and recovery of all monies paid by COUNTY pursuant to this Interlocal Agreement, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, CITY further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" 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.

11.5 INDEPENDENT CONTRACTOR

CITY is an independent contractor under this Interlocal Agreement. Services provided by CITY pursuant to this Interlocal Agreement shall be subject to the supervision of CITY. In providing such services, neither CITY nor its agents shall act as officers, employees, or agents of the COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to CITY or CITY's agents any authority of any kind to bind COUNTY in any respect whatsoever.

11.6 THIRD PARTY BENEFICIARIES

Neither CITY nor COUNTY intends to directly or substantially benefit a third party by this Interlocal Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Interlocal Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Interlocal Agreement.

11.7 ASSIGNMENT AND PERFORMANCE

Neither this Interlocal Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, as otherwise provided herein, CITY shall not subcontract any portion of the work required by this Interlocal Agreement, except as provided in Exhibit "D."

CITY represents that each person who will render services pursuant to this Interlocal Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CITY shall perform its duties, obligations, and services under this Interlocal Agreement in a skillful and respectable manner. The quality of CITY's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

11.8 MATERIALITY AND WAIVER OF BREACH

COUNTY and CITY agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Interlocal Agreement and, therefore, is a material term hereof.

COUNTY's failure to enforce any provision of this Interlocal Agreement shall not be deemed a waiver of such provision or modification of this Interlocal Agreement. A waiver of any breach of a provision of this Interlocal 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 Interlocal Agreement.

11.9 COMPLIANCE WITH LAWS

CITY shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Interlocal Agreement.

11.10 SEVERANCE

In the event a portion of this Interlocal Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CITY elects to terminate this Interlocal Agreement. An election to terminate this Interlocal Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

11.11 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Interlocal Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

11.12 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Interlocal Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 11 of this Interlocal Agreement, the term, statement, requirement, or provision contained in Articles 1 through 11 shall prevail and be given effect.

11.13 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. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. By entering into

this Agreement, 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.

11.14 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and CITY or others delegated authority to or otherwise authorized to execute same on their behalf.

11.15 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Interlocal Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

11.16 NO INTEREST

Unless required by the Broward County Prompt Payment Ordinance, any monies that are the subject of a dispute regarding this Agreement and that are not paid by COUNTY when claimed to be due shall not be subject to interest. All requirements inconsistent with this provision are hereby waived by CITY.

11.17 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A," "B," "C," and "D" are incorporated into and made a part of this Interlocal Agreement.

11.18 REPRESENTATION OF AUTHORITY

Each individual executing this Interlocal Agreement on behalf of a party hereto does hereby represent and warrant that he or she is, on the date he or she signs this Interlocal Agreement, duly authorized by all necessary and appropriate action to execute this Interlocal Agreement on behalf of such party.

11.19 MULTIPLE ORIGINALS

Multiple copies of this Interlocal Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

11.20 RECORDS

This Interlocal Agreement shall be recorded in the public records of Broward County, in accordance with Section 163.01, F.S. (2008), the Florida Interlocal Cooperation Act of 1969.

11.21 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, Broward County Ordinance No. 83-72, as may be amended from time to time, shall be deemed to apply to such construction work; and further CITY shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in Exhibits "B" and "C".

- REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -

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

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY
COMMISSIONERS

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

By _____
Mayor
____ day of _____, 20____

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form
Office of County Attorney
Broward County, Florida
Joni Armstrong Coffey, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
-(Date)

By _____
Michael C. Owens (Date)
Senior Assistant County Attorney

INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF
POMPANO BEACH FOR FEASIBILITY STUDY, PRELIMINARY DESIGN, OR
RELATED SERVICES FOR PROJECTS RECOMMENDED UNDER THE BROWARD
COUNTYWIDE INTEGRATED WATER RESOURCE PLAN TO BE PERFORMED IN
PARTNERSHIP WITH LOCAL WATER MANAGERS

CITY

WITNESSES:

[Witness Print Name]

[Witness Print Name]

(SEAL)

CITY OF POMPANO BEACH

By _____
Mayor

____ day of _____, 20____

By _____
City Manager

____ day of _____, 20____

ATTEST:

By _____
City Clerk

Approved as to form by

_____, City Attorney
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Telephone: (954) 786-4601
Telecopier: (954) 786-4504

By _____
Assistant City Attorney

Exhibit "A"

RESIDENTIAL REUSE CONNECTION PLAN IMPLEMENTATION BY THE CITY OF POMPANO BEACH RECOMMENDED IN THE BROWARD COUNTY-WIDE INTEGRATED WATER RESOURCE PLAN

SCOPE OF WORK

INTRODUCTION

The Broward County-wide 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 Broward County's water resource and water supply interests. 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; and to diversify water supplies as a drought management strategy and to meet long-term urban water needs. Local water managers were offered opportunities to pursue cost share funds from Broward County to finance projects that serve the goals of the IWRP. The following scope of work describes a project to be conducted by the City of Pompano Beach with IWRP cost-sharing funding, for the connection of residential homes to an existing reclaimed water supply line, for an expected potable water savings of 92.4 million gallons per year, thereby reducing stress on the Biscayne aquifer, while helping to satisfy reuse requirements of Broward County's Water and Wastewater Services under SB 1302.

OBJECTIVE

The objective of the project is to connect 770 residential family homes to an existing reclaimed water supply source, and broaden the availability and use of reclaimed water as an alternative water supply, thereby reducing the use of potable water for irrigation purposes.

BACKGROUND

The City of Pompano Beach constructed a wastewater reuse treatment facility in 1989 to provide an alternate source of irrigation water and lessen reliance on groundwater and on potable water supplies. To date over 10 billion gallons of potable water have been saved, the saltwater intrusion zone has moved eastward, and ocean outfall discharge has been reduced. Reclaimed water from the facility has primarily been used as an irrigation source for golf courses, medians and playing fields. In August 2006, reclaimed water became available for family residential use. To date 73 residents have connected to the system, the City in response has developed a reuse connection plan to encourage residential connection.

The Plan includes a media program incorporating web based outreach, mailers, direct customer contact, signage, homeowner association events and other outreach opportunities. The media program is expected to result in a favorable customer experience and allow for outreach related to water conservation and environmental stewardship.

The reuse connection plan identified impediments to residential connection being upfront costs, annual backflow device testing and maintenance, and the application/permitting process. The City will arrange for all work on the owner's private system necessary to establish a reuse connection, including the backflow device, piping, meter, temperature control valve and any restoration of the yard. Participation in the program will be simple for the homeowner and customer, because only one or two simple forms will need to be filled out (with the assistance of the contractor). Once this is done, everything will be taken care of for the customer.

DESCRIPTION

This project is part of an initiative pursued by the City of Pompano Beach to expand the use of reclaimed water by increasing the number of residential family connections to an existing reclaimed water source. As a beneficial reuse project, this project will lessen stresses on the Biscayne aquifer and reduce flows to ocean outfall in accordance with requirements of Broward County's Water and Wastewater Services under SB 1302.

The City will arrange for all work on the owner's private system necessary to establish a reuse connection, including the backflow device, piping, meter, temperature control valve and any restoration of the yard. The work will be accomplished through private plumbers coordinated through a contractor. The City will own and maintain the backflow device, eliminating one of the major impediments cited by potential customers. Emphasis will be placed on ease of participation for the homeowner.

The cost of the program will be borne by the reuse rates. The City anticipates connection of 770 homes the first year with costs starting at \$600 per connection, for a total minimum cost of \$460,000. The connection of 770 homes is expected to save 93.4 million gallons of potable water annually, and to contribute to the ocean outfall beneficial reuse volume required for the outfall. The reuse water will also recharge a saltwater intruded area and defer future water treatment plant expansions.

The program will serve as a model for municipalities and water utilities seeking to implement and maximize the beneficial use of the resource. The work is expected to begin in June 2011 and take approximately 18 months to complete. Success for the project will be measured in the connection of 770 homes with the anticipated reduction in potable water usage.

DELIVERABLES

Deliverable 1. Two copies of a Final Report and two copies of geographic information systems (GIS) dataset. Report will include project objectives and results, anticipated improvement in water resource management, location of residential connections, summary of coordination efforts with governing agencies, and statement of next steps

reflective of the finding of the project. The report will also include a table containing address location, date of connection, and average daily and per month water use for each residential connection from the connection date up to one month before report submission. The GIS dataset will include address location and a unique identifier enabling a link to the aforementioned table.

BUDGET AND SCHEDULE

The project will be funded through cost share support by Broward County of 50% of actual incurred costs for a total amount not to exceed \$220,000. All project deliverables will be completed within twenty-four (24) months.

| Project | Total Project Cost | Broward County Funds | City of Pompano Beach Funds |
|--|---------------------------|-----------------------------|------------------------------------|
| Residential Reuse Connection Plan Implementation for Connection of up to 770 residential family homes to an existing reclaimed water source. | Minimum of \$460,000 | Not to Exceed \$220,000 | Minimum of \$240,000 |

EXHIBIT "B"

Prevailing Wage Rates: On November 17, 1983, the Broward County Board of County Commissioners enacted Ordinance No. 83-72 providing that, in all non-federally funded construction procurement activity of \$250,000 or more, the rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in like industries as determined by the Secretary of Labor and as published in the Federal Register (latest revision).

1. Prevailing Wage Rate Ordinance. This Project is not federally funded. If the construction cost is in excess of \$250,000, the following sections shall apply:
 - 1.1 The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).
 - 1.2 All mechanics, laborers, and apprentices, employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. CITY shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.
 - 1.3 If the parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Contract Administrator shall submit the question, together with its recommendation, to the County Administrator for final determination.
 - 1.4 In the event it is found by the Contract Administrator that any laborer or mechanic or apprentice employed by CITY, or any Subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the Contract Administrator may: (1) by written notice to CITY terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (2) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, CITY and its sureties shall be liable to COUNTY for any excess costs occasioned to COUNTY thereby.

- 1.5 Sections 1.1 through 1.4 above shall apply to this Agreement to the extent that it is: (1) a prime Agreement subject to the ordinance; or (2) a subcontract also subject to the ordinance under such prime Agreement.
- 1.6 CITY shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.
- 1.7 CITY shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Broward County Ordinance No. 83-72. The Statement shall be in the form attached as Exhibit "C."
- 1.8 The Contract Administrator may withhold or cause to be withheld from CITY so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by CITY or any subcontractor on the work, the full amount of wages required by this Agreement.
- 1.9 If CITY or any subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the work all or part of the wages required by this Agreement, the Contract Administrator may, after written notice to CITY, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

EXHIBIT "C"

STATEMENT OF COMPLIANCE
(PREVAILING WAGE RATE ORDINANCE NO. 83-72)

Agreement No. _____ No. _____
Project Title _____

The undersigned CITY 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 Broward County Ordinance No. 83-72 and the applicable conditions of this Agreement.

Dated _____, _____, _____
CITY
By _____
(Signature)
By _____
(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)
typed, printed or stamped

(Title or rank)

(Serial number, if any)

My commission expires:

EXHIBIT "D"

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RLI/Bid/Contract No. _____

Project Title _____

The undersigned 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 this project in accordance with Section 2.3 of this 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 or suppliers 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__

_____ CITY

By _____
(Signature)

By _____
(Name and Title)

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

(Continued)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, 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)

acknowledgment)

(Signature of person taking

acknowledgment)

(Name of officer taking

Typed, printed, or stamped

(Title or rank)

My commission expires:

(Serial number, if any)