

**LARGE USER
WASTEWATER AGREEMENT**

BETWEEN

CITY OF FORT LAUDERDALE

and

BROWARD COUNTY

LARGE USER WASTEWATER AGREEMENT

THIS IS A LARGE USER WASTEWATER AGREEMENT, entered into on April 22, 2022, by and between:

CITY OF FORT LAUDERDALE, a municipality of the State of Florida, hereinafter referred to as "CITY", which term shall include its successors and assigns,

and

BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "CUSTOMER", which term shall include its successors and assigns.

WITNESSETH:

That for and in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, CITY and CUSTOMER hereby agree as follows:

ARTICLE 1

PREAMBLE

In order to establish the background, context, and frame of reference for this Agreement and to generally express the objectives and intentions of the respective Parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

- 1.1 The Federal Water Pollution Control Act Amendments of 1972 Public Law 92-500 (PL 92-500) establishes the enforcement mechanism for achieving water quality standards which are applicable to all municipal and industrial wastewater discharges. This law also sets forth the conditions under which Federal assistance may be obtained for the construction of wastewater transmission and treatment facilities.
- 1.2 The Broward County Wastewater Facilities Plan, developed in March 1978 in accordance with PL 92-500, recommends that Broward County be divided into three wastewater regions:
 - North Region
 - Central Region
 - South Region

Under this plan, the CITY of Fort Lauderdale will be the lead agency in the Central Wastewater Region. The plan proposed also that the Central Region include the Cities of Fort Lauderdale, Oakland Park, Wilton Manors, a portion of Tamarac, Port Everglades,

and a portion of the Town of Davie service area for the purpose of wastewater collection and treatment. This service area is not limited and may be expanded.

- 1.3 The CITY, as the lead agency, is both a regional and a local collection and treatment utility. The designated municipalities within the Central Region will continue to own and operate their respective wastewater collection systems, consisting of gravity sewers, lift stations, and force mains. Regional facilities to be owned and operated by the City of Fort Lauderdale will intercept from point of connection, pump, transport and treat wastewater within the Central Region.
- 1.4 CITY owns and operates a regional wastewater transmission, treatment, and disposal facilities serving CUSTOMER.
- 1.5 CITY has or will attempt to obtain sufficient wastewater treatment capacity, when requested, to furnish wastewater transmission, treatment, and disposal requirements of CUSTOMER. Additional capacity will be dictated by early notice and economic considerations following good planning practices.
- 1.6 CITY will make every effort to have sufficient wastewater treatment capacity to furnish the projected wastewater transmission, treatment and disposal needs of CUSTOMER during the entire term of this Agreement.
- 1.7 CUSTOMER agrees to purchase wastewater transmission, treatment, and disposal services from CITY in accordance with the terms set forth in this Agreement.
- 1.8 The authority for this Agreement is Chapter 63-1181 Laws of Florida, Special Acts of 1963, as amended, and Chapter 28 of the Code of Ordinances of the City of Fort Lauderdale.

ARTICLE 2

DEFINITIONS

Unless the context specifically indicates otherwise, the following words and phrases used in this Agreement shall have the following meanings:

- 2.1 Words and terms related to water and wastewater shall have the definitions listed in Section 28-26, "Definitions", of Chapter 28 of the Code of Ordinances of the City of Fort Lauderdale, as may be amended or revised, except as indicated.

"AVERAGE DAILY FLOW"

The average daily flow is calculated by dividing the sum of the daily flow values (millions of gallons per day (MGD)) of the preceding three years by the number of days within those three years. This value shall be calculated at the beginning of each month for each CUSTOMER.

"CITY TREATMENT FACILITIES"

This term shall mean those facilities owned or operated, or both, by CITY for the purpose of wastewater treatment and disposal within the Central Wastewater Region as shown on Appendix "B" attached hereto, including such future additions and extensions to these facilities as may be made from time to time.

"CITY TRANSMISSION FACILITIES"

This term shall mean those facilities owned or operated by CITY within the Central Wastewater Region as shown on Appendix "B" attached hereto, including present and future master pumping stations and force mains, that are now or will be used for the purpose of transmitting wastewater to CITY Treatment Facilities.

"CUSTOMER'S SYSTEM"

This term shall mean the wastewater system defined by this Agreement including gravity sewers, manholes, laterals, lift stations, pumping stations, force mains, and appurtenances thereto upstream from the POINT OF CONNECTION to the CITY system.

"POINT OF CONNECTION"

This term shall mean the point where the CUSTOMER'S system connects to the CITY system for the purpose of delivering wastewater into the CITY system from the CUSTOMER'S system; said POINT OF CONNECTION is further defined, described, and set forth in Article 3.1 thereof.

"CUSTOMER", "CONSUMER", OR "LARGE USER"

Any municipality including the CITY, special district, or other governmental entity including the CITY which operates wastewater collection and transmission facilities which connect into the CITY wastewater transmission, treatment, and disposal facilities. Specifically, those municipalities include the City of Oakland Park, the City of Wilton Manors, the City of Tamarac, the Town of Davie, and Port Everglades pursuant to Section 28-29 of the CITY's Code, as may be amended or revised. This term applies to this Agreement only. A legal description of the CUSTOMER'S service area is contained in Appendix "C," attached hereto.

"DOMESTIC WASTEWATER"

This term shall mean wastewater derived principally as a result of personal hygiene and sanitary use from dwellings, business buildings, institutions, and the like.

"INDUSTRIAL WASTES"

This term shall mean any liquid, solid, or gaseous substance or form of energy, or combination thereof, resulting from any process of industrial, commercial, business, trade, or search, including the development, recovery, or processing of natural resources, or from sources identified in the Standard Industrial Classification Manual of the U.S. Office in Management and Budget, as amended.

"INFLOW/INFILTRATION (I/I)"

This term shall mean any additional wastewater volume (in gallons) in exceedance of the potable water volume (in gallons) purchased by the CUSTOMER during any month.

Inflow - Water other than sanitary flow that enters a sewer system from sources which include, but are not limited to, roof leaders, cellar drains, yard drains, area drains, drains from wet areas, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwater, surface runoff (including leaking manhole covers),

street wash-water, or drainage. Inflow does not include and is distinguished from infiltration.

Infiltration - Groundwater that infiltrates a sewer system through defective pipes, pipe joints, connections, or manholes. Infiltration does not include and is distinguished from inflow.

"PEAK HOUR FLOW"

This term is the largest volume of flow occurring within 1-hour period in the record examined.

"WASTEWATER LARGE USERS REGIONAL ADVISORY BOARD"

This term shall mean the Board that is established and composed of representatives of large users receiving wastewater transmission, treatment, and disposal services from CITY, and whose function it is to serve in an advisory capacity to the CITY Commission regarding rates, modification to the facilities, and to perform other duties and functions as provided in Section 28-29 of the CITY Code, as may be amended, or revised.

The Board shall be composed of at least one (1) representative from each large user as defined herein, with a projected average wastewater flow of one (1) to five (5) Million Gallons per Day (MGD), with one (1) representative for each five (5) MGD increment in excess of five (5) MGD.

The CITY'S Assistant Public Works Director – Utilities or Designee, shall be chairman of the Board. Other large users with less than one (1) MGD may attend meetings, but do not have voting rights.

"MASTER PUMP STATION"

A pump station used in repumping wastewater within the regional system not to include pump stations upstream of wastewater flow metering devices located between the regional system and the customer's system, or pumping stations used by the CITY for pumping CITY wastewater generated exclusively within the CITY.

ARTICLE 3

**PROVISIONS PERTAINING TO CONNECTION
TO THE CITY WASTEWATER TREATMENT SYSTEM**

3.1 POINT OF CONNECTION

Both Parties agree that the POINT OF CONNECTION and meter location shall be as determined by CITY after consultation with CUSTOMER.

3.2 TRANSFER OF LAND AT POINT OF CONNECTION

CITY may locate the POINT OF CONNECTION and meter location and necessary transmission facilities on property now being used by CUSTOMER for wastewater transmission or treatment facilities. Where applicable, CUSTOMER will convey at no cost to CITY either the fee simple title or appropriate easement to the property needed by CITY

for the POINT OF CONNECTION, meter, location, pump stations, transmission facilities, and such interest in property as is necessary to provide ingress or egress to CITY to said POINT OF CONNECTION, meter location, pump stations and transmission facilities. Such property shall be of sufficient magnitude to allow for future projected expansion, shall be free and clear of any encumbrances, and sufficient to allow access of maintenance vehicles.

3.3. MAINTENANCE OF CUSTOMER'S FACILITIES

CUSTOMER agrees to construct where necessary, and to operate and properly maintain at its own cost and expense, all sanitary gravity sewers, lift stations, pumping stations, force mains, and other required appurtenances related and directly attributable to the wastewater collection system upstream of the POINT OF CONNECTION that are necessary to properly and continuously collect and convey sanitary wastewater to the POINT OF CONNECTION to the CITY system at such elevation pressure and flow rates as described in Article 3.5 herein. As part of the regional system, CUSTOMER will timely submit to the CITY its pipe assessment, repair and replacement action plans with a five (5) year planning horizon that complies with Sec. 403.086(7), Fla. Stat., as may be amended or revised.

3.4 CUSTOMER'S FUTURE FLOW PROJECTIONS

CUSTOMER agrees that it has reviewed its present needs for wastewater transmission and wastewater treatment services and has projected its future needs as shown below to the best of its knowledge and ability.

Fiscal Year (FY)	Monthly AADF* W/W Allocation (mgd)	Max Monthly W/W Allocation (mgd)
FY21-22	0.39	1.28
FY22-23	0.49	1.62
FY23-24	0.74	1.96
FY24-25	1.00	1.98
FY25-26	1.09	2.00
FY26-27	1.19	2.02
FY27-28	1.28	2.06
FY29-30	1.37	2.13
FY30-31	1.47	2.20
FY31-32	1.56	2.27
FY32-33	1.60	2.32
FY33-34	1.64	2.37
FY34-35	1.69	2.41
FY35-36	1.73	2.46
FY36-37	1.77	2.51
FY37-38	1.79	2.56
FY38-39	1.81	2.61
FY39-40	1.84	2.65
FY40-41	1.86	2.70

Fiscal Year (FY)	Monthly AADF* W/W Allocation (mgd)	Max Monthly W/W Allocation (mgd)
FY42-43	1.88	2.76
FY43-44	1.89	2.76
FY44-45	1.89	2.77
FY45-46	1.90	2.77
FY46-47	1.90	2.78
FY47-48	1.92	2.81
FY48-49	1.94	2.84
FY49-50	1.97	2.86
FY50-51	1.99	2.89

* AADF-Annual Average Daily Flow

** Table used for reference and planning purposes as related to capacity increases at City Treatment Facilities

These projections shall serve as a reasonable estimate of the future needs of CUSTOMER for the purpose of planning expansion, construction, modification, or alteration of said CITY facilities and shall be so used by CITY in determining plant capacity requirements attributable to CUSTOMER in CITY transmission, treatment, and disposal facilities. CITY'S obligation to furnish service to CUSTOMER under this Agreement shall be limited to the above-stated quantities, or to modification or changes therein as provided for in Article 6 of this Agreement. CITY recognizes and assumes the obligations of the CUSTOMER to serve new connections with the understanding that flows projected in this Agreement are not to be exceeded. CITY shall have all right and power by suit or other such proceedings at law or in equity to enforce the limitation of its obligations hereunder, and to prohibit CUSTOMER or its officers, agents, or employees from flowing wastewater into CITY'S transmission and treatment facilities which exceeds the capacity or pressure rating indicated, and CUSTOMER shall have the right to enforce by suit or other proceedings, at law, or in equity, the obligation of the CITY to accept, treat, and dispose of CUSTOMER'S wastewater flow as set forth in Article 3.4 of this Agreement.

3.5 PRESSURES AT POINT OF CONNECTION

CUSTOMER agrees that, under all operating conditions as outlined by CITY, except as provided in Article 7.5 of this Agreement, the elevation of a gravity system or pressure in a force main at the POINT OF CONNECTION shall be sufficient to deliver all wastewater without backing up the CUSTOMER'S gravity lines or reversing flow in CUSTOMER'S force main system, based on present, as well as projected future flows for that portion of the regional transmission system.

The CITY reserved the right to install flow monitoring device capabilities at any pumping station with a direct connection to the regional facilities. CUSTOMER agrees that no change in pumping characteristics shall be made without prior approval from the UTILITIES DIRECTOR.

3.6 PEAK HOUR FLOW AND AVERAGE DAILY FLOW SURCHARGE

CUSTOMER agrees that, using acceptable methods, adequate provisions will be included in the delivery facilities to reduce I/I. The peak hour flow and average daily flow shall be controlled such that it is transported to CITY'S transmission and treatment facilities by 24-hour-per-day continuous pumping.

In the event CUSTOMER has not provided continuous flow during the entire period of the preceding twelve (12) months, the term "average daily flow" shall mean that flow projected for treatment for the appropriate year, as indicated in Article 3.4. In the event the flow to the CITY Treatment Facility is not controlled as stipulated hereinabove, then CITY may impose a compensatory charge of a percentage of the monthly billing to CUSTOMER, unless a supplemental written agreement entered by both Parties provides otherwise. Such supplemental written agreement may involve adjustment of rates because of reallocation of design, construction, financing, operation and maintenance costs. The compensatory charge shall be computed as follows:

In the event CUSTOMER causes a **peak hour flow** of 150% of the average daily flow as defined in Article 2.1, CUSTOMER shall be charged an additional 25% surcharge of the current month's regular charges during which the exceedance occurred, as discussed in Article 5.

In the event CUSTOMER causes an **average daily flow** as defined in Article 2.1 of 125% of average daily flow of potable water purchased in any calendar month, CUSTOMER shall be charged an additional 25% surcharge of the current month's regular charges during which the exceedance occurred, as discussed in Article 5.

These surcharges are not mutually exclusive and can both apply in any month's invoice for wastewater services; however, only one (1) 25% surcharge for a peak hour flow exceedance or an average daily flow exceedance will be assessed for a maximum surcharge of 50% in any given month. An Example of Calculation of Surcharges is attached as Appendix "D". City shall provide their calculations to CUSTOMER at the time of billing for any surcharge imposed.

CUSTOMER also agrees to notify CITY'S Public Works Department – Utilities Division immediately upon discovering the major failure of a pumping station, breakage of a force main or gravity sewer, which could cause heavy infiltration and introduction of sand into the system, and to begin immediate repair of same.

3.7 CITY TO INSTALL METERS

In the event the capacity of CUSTOMER's metering device becomes inadequate for the amount of flow delivered, CITY, at its expense, shall replace the meter or install such additional metering device or devices as may be necessary, to be located at a site or sites as determined by CITY after consultation with CUSTOMER. The CITY shall retain ownership of the metering device, together with the housing, accessories, and appurtenances thereto.

3.8 CITY TO MAINTAIN METER

CITY agrees to have an annual inspection and report prepared at its expense regarding the condition and accuracy of the metering device performed by a representative of the manufacturer or other competent entity. A copy of the annual report on meter inspection

shall be furnished to CUSTOMER within thirty (30) days of its acceptance. CUSTOMER shall have the right to make its own meter inspection, or to have an independent company check the metering equipment at any time provided; however, no such inspection shall be made unless CUSTOMER shall first give CITY written notice of its intent to have the inspection made, nor shall any such inspection be made prior to twenty-four (24) hours, excluding Saturdays, Sundays, and holidays, subsequent to the receipt of said notice by CITY. All cost and expense of CUSTOMER'S interim inspection shall be borne by CUSTOMER, unless the meter is found to be inaccurate beyond the manufacturer's guaranteed range of accuracy, in which case the cost and expense of such interim metering device shall be borne by CITY. Normal maintenance of the metering device shall be performed by CITY as an expense of wastewater treatment and effluent disposal.

3.9 PAYMENT IN CASE OF METER INACCURACY

Both Parties agree that, should the metering equipment be found to be inaccurate beyond the manufacturer's range of accuracy, the meter will be assumed to be inaccurate since the last meter check or for a period of three months, whichever time should be less, and that the following month's billing will be adjusted to show a credit or additional charge to CUSTOMER for that period. The computation shall be based on the average flow for the previous twelve months of service prior to the last meter check.

3.10 PAYMENT IN CASE OF METER FAILURE

Both Parties agree that, if at any time the metering system shall be inoperative or in any way fails to provide information with respect to the quantity of flow into CITY'S wastewater transmission, treatment, and disposal facilities, CUSTOMER will pay to CITY a monthly amount equal to the average flow based upon the previous twelve months of service prior to the date the meter became inoperative.

3.11 CHARGES TO CITY

CUSTOMER costs to the CITY shall be calculated for all flow delivered to the regional wastewater treatment plant less the total measured flow delivered at each point of connection from CUSTOMERS' systems.

ARTICLE 4

PROVISIONS RELATING TO DISCHARGE AND SAMPLING

4.1 TYPES OF WASTES AND SUBSTANCES WHICH ARE PROHIBITED TO BE DISCHARGED

The rules and regulations contained in City of Fort Lauderdale Code of Ordinances, Chapter 28, Article V, as may be amended or revised, establish the types of wastes and substances which are prohibited to be discharged into CITY'S sewerage system. Except as hereinafter provided, CUSTOMER agrees to comply with these aforementioned rules and regulations.

4.2 CUSTOMER agrees to include in the design of its wastewater delivery system a safe, mutually agreeable sampling station so that CITY can obtain, grab, and composite samples of the wastewater as a means of monitoring the characteristics of the wastewater

received from CUSTOMER, and to provide for such right-of-way or easements as may be necessary to assure CITY access to the sampling station.

The CITY shall have the right at any time to collect samples of sewage and industrial wastes at various locations to be determined by the CITY within CUSTOMER'S facilities for the purpose of making laboratory analysis of these wastes Twenty-four (24) hours' notice will be given of industrial sampling to be conducted by CITY when possible. The costs of collecting and of testing such samples shall be considered a CITY facility operating expense.

- 4.3 CUSTOMER shall supply CITY, not later than September 30th of each year, with a list of the producers of industrial wastes, if any, as of August 31st of each year and supply CITY with an update of any additional producers of industrial wastes as they occur. CUSTOMER shall require that any producer of industrial wastes, as defined in the Florida Administrative Code or Chapter 40 of the Code of Federal Regulations (40 CFR), or any revisions thereto, or those designated by the CITY, submit annually to CITY. A complete laboratory analysis of both the raw and pre-treated wastes, at no cost to the CITY. CUSTOMER shall require that each producer of industrial wastes give CITY at least ninety (90) days written notice and adhere to the CITY Ordinances, Chapter 28 – Water, Wastewater and Stormwater, Article V. Sewer Use Regulations, Division 5 – Reporting Requirements, as may be amended or revised.
- 4.4 CUSTOMER agrees to adopt, enact and enforce such rules, regulations and/or ordinance as may be required to insure that users of CUSTOMER'S system do not discharge or cause to be discharged waters or wastes which would not meet conditions for individuals as defined by the CITY'S Code of Ordinances, or would cause CUSTOMER'S wastewater to be unacceptable under the provisions of this Article, and to furnish to CITY certified copies thereof, within ninety (90) days from date hereof.
- 4.5 CUSTOMER shall be responsible for implementation in its system of any Federal, State, or local regulations imposed upon CITY either now or in the future.
- 4.6 CUSTOMER agrees that this Agreement in its entirety is subject to all applicable provisions of Chapter 28, as may be amended or revised, CITY Code of Ordinances, which shall be deemed supplemental to the terms of this Agreement. CITY will notify CUSTOMER of any revision(s) and/or amendment(s) to CITY Code of Ordinances Chapter 28, that affects the Large User Agreement.

ARTICLE 5

PROVISIONS PERTAINING TO CHARGES

5.1 BASIS OF CHARGES

Both Parties agree that CITY shall provide wastewater transmission, treatment, and disposal service to CUSTOMER at fees, rates, and charges constituting the full cost of such service, which shall include Operating and Maintenance Expense, Debt Requirements, Community Investment Plan (CIP), and Capital Replacement Fund (as required by PL 92-500), reduced by total interest earning of the Central Wastewater Region. CITY shall set the same fees, rates, and charges for all Large Users, including itself as defined in Article 2.6 that are within the same Region. Such fees, rates, and charges shall be adopted or amended by the CITY, and it shall consider recommendations

of the individual CUSTOMERS and recommendations of the Regional Advisory Board. The CITY shall hold public hearings on amendments to the rates and charges in the manner provided by law, and after at least thirty (30) days written notice to the CUSTOMER of such public hearing.

The CUSTOMER shall pay a monthly charge to CITY for wastewater transmission, treatment, and disposal services provided by the CITY. Such charges shall include the following:

- 5.1.1 Operating and Maintenance charges, plus taxes assessed, if any, applicable to the regional treatment plant, regional pumping stations, regional force mains, and disposal works and facilities and appurtenances thereto. The portion of the monthly charge shall be based on the actual flow used by the CUSTOMER during the billing period.

Such monthly charge shall be computed as a charge per 1,000 gallons passing through the meter or meters serving CUSTOMER. The rate for such per 1,000 gallons charge shall be computed by dividing the budgeted annual total regional operating and maintenance expenses, and CIP costs in thousands of dollars, as defined below for CITY'S ensuing fiscal year ending September 30, by the number of thousands of gallons of wastewater which is estimated to be treated and disposed of through CITY'S Regional System for that year.

The operating and maintenance expense portion of such cost shall include, but not limited to, labor, material, equipment, fuel, utilities, chemicals, transportation, travel, and administrative expenses, billing expenses, supplies, rent, insurance, employee benefits, liability and workmen's compensation, outside services, and any other costs of operation and maintenance of the CITY'S regional transmission, treatment, and disposal facilities.

Indirect costs for the services of various CITY departments shall be charged to the regional facilities in accordance with the CITY's Cost Allocation Plan or Internal Service Allocation plan. Charges to the regional facilities for the services provided by the services of the Public Works Department shall be made by direct cost allocation, as such services are rendered.

- 5.1.2 Charges for the principal, interest, and amounts necessary to meet the requirements of bond obligations and covenants on the CITY'S regional treatment plant, transmission, and disposal facilities and appurtenances thereto, including any bonds or other obligations thereon, heretofore or hereafter issued by the CITY for the benefit of the CITY'S regional transmission, treatment, and disposal facilities, shall be computed as a charge per 1,000 gallons passing through the meter or meters serving CUSTOMER. The rate for such per 1,000 gallons charge shall be computed by dividing the total Central Wastewater Region debt service, in thousands of dollars, by the number of thousands of gallons of wastewater which is estimated to be treated and disposed of through CITY'S Regional System for that year.
- 5.1.3 A charge representing the CUSTOMER'S equitable share of replacement costs during the Regional System's 20-year planning period, as required by PL 92-500 and the federal regulations applicable thereto, shall be computed as a charge per 1,000 gallons passing through the meter or meters serving CUSTOMER. The rate for such 1,000 gallons charge shall be calculated annually using the following

formula and dividing the result by the number of thousands of gallons and wastewater which is estimated to be treated and disposed of through the regional system for that year.

$$\frac{\text{Expected Replacement Costs for Remainder of 20-year Period} - \text{Replacement Account Balance}}{\text{Number of Years Remaining In 20-Year Period}}$$

The term "replacement costs" shall be defined as in PL 92-500 as "Expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed. Such replacement expenditures shall be funded from the Replacement account during the Regional System's 20-year planning period will be transferred to the Region's Replacement and Improvement Reserve account, as defined by the CITY'S bond covenants.

Any subsequent revision of PL 92-500 or the federal regulations for replacement charges shall automatically supersede this subsection.

- 5.1.4 A credit for interest earnings of the Central Wastewater Region, shall be computed as a credit per 1,000 gallons passing through the meter or meters serving CUSTOMER. The rate for such per 1,000 gallons credit shall be computed by dividing the budgeted annual total regional interest earnings, in thousands of dollars, for CITY'S ensuing fiscal year, ending September 30, by the number of thousands of gallons of wastewater which is estimated to be treated and disposed of through CITY'S Regional System for that year.
- 5.1.5 An annual adjustment will be computed after the close of the fiscal year and the issuance of the CITY'S Annual Financial Report which will be based upon the actual rate for the year. The actual rate will be computed by dividing the actual operating and maintenance costs, CIP costs, bond debt service covenant requirements and replacement costs less interest earnings of the regional system by the actual number of thousands of gallons of wastewater treated and disposed of through the system for that fiscal year.

CUSTOMER'S actual charge for the fiscal year will be computed by multiplying the actual rate times the number of thousands of gallons of wastewater delivered by CUSTOMER and increasing the amount by any additional charges as described in sections 3.6, 5.2, and 5.4. Should CUSTOMER'S actual charge exceed the amounts previously paid, a special bill will be presented to CUSTOMER showing the additional charge due. Should CUSTOMER'S actual charge be less than the amounts previously paid, the difference will be refunded to CUSTOMER.

- 5.1.6 The illustrations/formula in Appendix A are designed to demonstrate and clarify the items discussed in this section and should be reviewed concurrently.

5.2 REVIEWS

CITY agrees that reviews of the cost of providing wastewater treatment, transmission, and disposal services shall be made annually, based on the CITY'S fiscal year. The fees, rates, and charges which will be effective during the next succeeding fiscal year to the CUSTOMER and other customers of the same class, will be developed by the CITY

following such annual review. In developing such fees, rates, and other charges for the next succeeding fiscal year, the costs, as defined herein, during the current fiscal year, the audited costs for the preceding fiscal year, and the anticipated changes in costs in the next succeeding fiscal year, will be the preliminary basis for establishing the fees, rates, and other charges for the next succeeding fiscal year.

5.3 PAYMENT AND PENALTIES FOR NON-PAYMENT

Both Parties agree that CITY shall bill CUSTOMER for wastewater transmission, treatment, and disposal services monthly, in accordance with CITY'S standard billing procedures. CUSTOMER shall pay such billings as prescribed by the Florida Local Government Prompt Payment Act, contained in Fla. Stat. Chapter 218, as may be amended, or revised. Should CUSTOMER not pay in accordance therewith, it will be assessed penalties as prescribed within the Act, as may be amended or revised. Should a billing or a portion of a billing be outstanding for a period of more than forty-five (45) days from the date of the original billing, then the CUSTOMER shall be considered in default and the CITY, in addition to all other rights and remedies, shall have the right and power, by suit, action, mandamus, or such other proceedings at law or in equity, to protect, enforce, and compel performance by the CUSTOMER and any of the officers, agents or employees of said CUSTOMER to perform and carry out its duties and obligations under this Agreement or applicable law.

5.4 ANNUAL REPORT

CITY agrees to engage a reputable firm of independent Certified Public Accountants to perform an annual audit of its financial statements as required by Florida Statutes, and to issue an Audit Report expressing an opinion thereon. CITY agrees to further engage the Certified Public Accountants to issue a separate Contractual Compliance Report regarding the CITY'S compliance with the terms of this Agreement. The cost of the Contractual Compliance Report will be a cost of regional system. CITY will furnish to CUSTOMER a copy of the CITY'S audited annual financial statement accompanied by the auditor's Contractual Compliance Report within thirty (30) days of receipt and acceptance by the CITY.

5.4.1 ACCESS TO RECORDS

CITY agrees to maintain separate accounting records for the central regional wastewater system. Assets and liabilities of the regional system will be segregated in a separate accounting entity apart from the CITY'S other assets and liabilities. Costs and revenues associated with regional wastewater transmission, treatment, and disposal will also be recorded with this accounting entity apart from other CITY costs and revenues.

Upon reasonable notice given by CUSTOMER, CITY will make available to CUSTOMER, at CITY'S offices, its books, and records regarding operations of the regional wastewater transmission, treatment, and disposal facilities. CUSTOMER agrees that, upon reasonable notice given by CITY, it will in like manner, make available to CITY, at CUSTOMER'S office, its books, and records regarding the operation of wastewater transmission including, but not limited to, accounting and auditing records.

5.5 CITY TO HAVE JURISDICTION

Both Parties agree that CITY has sole and exclusive authority and jurisdiction as to administration, operation, and maintenance of CITY system, establishing the annual

budget, establishing and amending service fees, rates and other charges as provided in the CITY'S ordinances for efficient operation and maintenance of the facilities, and all other matters and things pertaining to the wastewater transmission, treatment, and disposal facilities. However, CITY agrees to consider the recommendations from the individual CUSTOMERS and the Regional Advisory Board before making decisions in areas in which the individual CUSTOMERS and the Advisory Board have an interest.

ARTICLE 6

PROVISIONS PERTAINING TO ADDITIONAL OBLIGATIONS OF BOTH PARTIES UNDER THIS AGREEMENT

6.1 CITY TO EXPAND SYSTEM AND APPLY FOR GRANTS

CITY agrees to attempt to provide whatever extensions and expansion to the regional transmission, treatment, and disposal facilities as may be necessary to provide for CUSTOMER'S future scheduled flow, as set forth herein Article 3.4. Toward this objective, CUSTOMER will make application, as it may be aware, for any available financial assistance from Federal, State, and local programs under which said facilities and the project may be eligible. Further, CITY agrees to apply applicable portions of any such assistance which may be received to offset capital costs of the CITY system.

6.2 CUSTOMER TO DELIVER ALL WASTEWATER

CUSTOMER agrees, during the term of this Agreement, to deliver all existing and future wastewater flows collected by it within the service area defined by this Agreement, to CITY facilities, which flows shall not exceed amounts set forth herein in Article 3.4, as existing or as hereafter amended, for the length of this Agreement, and CITY agrees to accept and treat such wastewater flow not exceeding amounts set forth herein in Article 3.4, as existing or as hereafter amended, for the length of this Agreement.

6.3 CHANGE IN SCHEDULED FLOWS

Both Parties agree that the schedule of flows shown in Article 3.4 herein shall be the basic schedule; however, same may be altered from time to time for the following reasons:

6.3.1 CHANGES NECESSARY BECAUSE OF DEVELOPMENT

CUSTOMER shall have the right to revise the projections attributable to CUSTOMER upward or downward, provided CITY has not yet engaged a firm to prepare plans for additions or modifications to CITY facilities, the need for such plans being based in part upon projections made by CUSTOMER. CUSTOMER shall be given notice by certified mail at least ninety (90) days prior to the date of engaging a firm to prepare said plans for additions or modifications, which notice shall advise CUSTOMER that action is being contemplated by CITY and requesting that any modifications which CUSTOMER may wish to make in its flow projection schedule in Article 3.4 be submitted to CITY before said date.

CUSTOMER agrees to furnish to CITY and to the Wastewater Large Users Advisory Board no later than the first day of June of each year, on the year after consummating this Agreement, a five (5) year projection indicating its yearly projections of its wastewater treatment needs. Said projections are necessary for planning purposes. CITY agrees that it will review the basis of flow projections, as

well as per capita flow projections, and if the CITY agrees, it will use the projections as a tool in determining if and when extensions and modifications to the facilities are required and economically feasible. In the event disagreement exists on flow projections (either gross, net, or per capita), CITY shall not require more stringent criteria or commitments to be utilized by larger users than extended to the CITY proper. In determining whether and when to expand or modify its facilities, CITY will consider recommendations of the individual CUSTOMERS and of the Wastewater Large Users Advisory Board.

6.3.2 CHANGES BY OUTSIDE AGENCIES

The CITY recognizes that standards for wastewater disposal service may be subject to future modifications as a result of future federal, state, county and/or local laws and regulations. Accordingly, the CITY and CUSTOMER agrees that they will abide by and be bound by all present and future local, state, and federal laws, standards, rules, regulations, permit conditions and other requirements related to wastewater disposal service. Further, the CITY may revise the schedule, if any Federal, State, or local agency promulgates regulations that require a change in scheduling or reduction in per capita usage of flows. If there is a determination by either Party that regulations requiring a change in scheduling flows are unreasonable, Party reserves the right to challenge said regulations in court.

6.3.3 CHANGES BEYOND CITY'S CONTROL

CITY may revise the flow schedule for such periods as are reasonable and necessary if anticipated construction is delayed for any reason beyond the control of CITY. The reasons for delay may be, but are not limited to the following:

6.3.3.1 Contractor delays beyond completion date.

6.3.3.2 Lack of acceptance or approval by regulatory agencies.

6.4 CUSTOMER TO CHARGE ADEQUATE RATES

CUSTOMER agrees to establish and maintain service charges or other means of obtaining funds within its area of jurisdiction sufficient to provide monthly payments to CITY for wastewater transmission and treatment services, and that such means will be revised as may be required from time to time to provide sufficient funds to pay any sums due CITY under the terms of this Agreement.

6.5 GRANT INFORMATION

Customer and CITY agree to provide each other with all necessary information pertinent to CUSTOMER'S or CITY'S system and service area which any Federal, State, or local agencies shall require in an application for financial assistance in the construction of CITY'S transmission, treatment, and disposal facilities, or CUSTOMER'S collection and transmission facilities. Further, CUSTOMER and CITY agree to adopt such regulations, execute such Agreements, and do such work as said Federal, State, or local agencies may require as part of CITY'S or CUSTOMER'S application for said grant funds.

ARTICLE 7

PROVISIONS PERTAINING TO VIOLATIONS AND EXCEPTIONS TO THE TERMS OF THIS AGREEMENT

7.1 AGREEMENT NOT TO BE CANCELLED

Both Parties agree that each is undertaking a major obligation in assigning all of CUSTOMER'S existing and future wastewater flow, within the service area described herein, to CITY'S system, and therefore each agrees with the other that this Agreement will not be cancelled on any condition except by mutual cancellation agreement between the Parties hereto, which will be a written document executed with the same formality and of equal dignity herewith.

7.2 NOTICES OF VIOLATION TO CUSTOMER

CITY shall serve CUSTOMER with written notice, via certified return registered receipt (RECEIPT) stating the nature of any violation. Within 30 days of RECEIPT, CITY and CUSTOMER will develop a COMPLIANCE SCHEDULE describing the actions and schedule to correct the violation(s). If CITY and CUSTOMER fail to develop a COMPLIANCE SCHEDULE, the violation shall be corrected within 90 days of RECEIPT.

7.3 INDEMNIFICATION AND HOLD HARMLESS

In consideration of good and valuable consideration received from the other respective Party, and in consideration of the covenants contained in this Agreement, CUSTOMER and CITY, to the extent permitted by law, agree to indemnify and save harmless forever, the other respective Party, its officers, agents and employees from any and all claims, liabilities, actions, losses, costs and expenses, including attorney's fees, which may be sustained by the other respective Party, its officers, employees and agents in connection with the performance of this Agreement. CUSTOMER AND CITY agree to defend against any claims brought or actions filed against the other respective Party, its officers, agents, and employees in connection with the subject of the indemnities contained herein.

Notwithstanding the foregoing, nothing herein shall create any liability of the CUSTOMER or the CITY beyond the scope of Sect. 768.28, Fla. Stat., as may be amended or revised.

CUSTOMER and CITY agree that, if either is guilty of violating any of the provisions of this Agreement, the guilty party shall become liable to the other party of any expense, loss, or damage occasioned by reason of such violation, provided, however, any payment by CITY to CUSTOMER or CUSTOMER to CITY for a violation of any provision of this Agreement shall be from such source other than revenues pledged to bond holders, as may be legally available to CITY or CUSTOMER respectively.

CUSTOMER agrees to hold and save harmless CITY from costs and expenses incurred by CUSTOMER or CITY in any litigation to which CUSTOMER or CITY may become a party, as either plaintiff or defendant, resulting from the effects of the improper introduction of materials by CUSTOMER or any users of CUSTOMER'S collection system into the CITY facilities, or any portion thereof, which may cause damage within or without the CITY system.

7.4 DISPUTE OVER VIOLATION

CUSTOMER agrees that, in the event of any continuing violation by CUSTOMER of the provisions herein contained, which shall continue beyond the date stated in the notice described above and that relates to the payment of money, the CITY shall submit to CUSTOMER an initial, dated proposed billing invoice, and if the Parties do not settle and agree that a violation exists, or if the Parties do not agree upon the amount invoiced if a violation does exist, within thirty (30) days from the billing date, then the CUSTOMER shall automatically deliver to CITY the amount billed. However, the amount of the bill that is in dispute shall be deposited in an interest-bearing bank account in a banking institution agreeable to both Parties during such continuing claimed violation, with adjustment of the billing invoice amount, or actual cost, expense, or damage to be left to subsequent agreement or court adjudication.

7.5 FORCE MAJEURE

Any cessation of wastewater disposal or other service interruptions resulting from and any consequences caused by an Act of God, fire, labor strikes, casualty or other force majeure or inevitable accident or occurrence or cause beyond the reasonable control of the CITY shall not constitute a breach of this Agreement on the part of the CITY and the CITY shall not be liable to the CUSTOMER or its inhabitants, residents or customers for any damage resulting from such cessation or interruption of wastewater services.

Force Majeure shall mean an act of God, which includes but is not limited to: sudden, unexpected or extraordinary forces of nature, such as floods, washouts, storms, hurricanes, fires, earthquakes, landslides, epidemics, pandemics, explosions, or other forces of nature. Inevitable accident or occurrence shall mean those which are unpreventable by the CITY and shall include, but are not limited to: strikes, lockouts, other industrial disturbances, wars, blockades, acts of terrorism, insurrections, riots, federal, state, county and local government restrictions, regulations and restraints, military action, civil disturbances, explosions, and conditions in federal, state, county and local permits.

7.6 JURISDICTION OF OTHER AGENICES

Both Parties agree that certain Federal, State, and local agencies have some jurisdiction and control over pollution matters and, should such an agency issue legally enforceable orders that may alter any of the terms and conditions of this Agreement, there shall be no liability on either party because of such action provided that CITY shall not be precluded from making a necessary adjustment to the sewage transmission and treatment rate. It is further agreed that if such agency shall request a change in the provisions of this Agreement that both Parties will, by mutual agreement, make every effort to comply with such request. However, the terms of this article shall not preclude administrative or judicial challenge, or both, of such order by either or both Parties hereto. This provision shall not be construed so as to permit CUSTOMER to terminate this Agreement.

ARTICLE 8
PROVISIONS PERTAINING TO THE
ADMINISTRATION OF THIS AGREEMENT

8.1 DATE OF BEGINNING

Both Parties agree to be bound of this Agreement as of the date of its execution. Should CUSTOMER, through no fault of CITY, not avail itself of the CITY facilities when such facilities are available or within the applicable time period, it will pay the applicable standby charges, as defined and described in Article 8.1.2. below:

8.1.1 BASIS OF STANDBY CHARGES

Should CUSTOMER fail to deliver all of its wastewater on the date above agreed upon, the CITY will bill, and CUSTOMER will pay the monthly charges set forth in Article 5 hereof, based upon one hundred (100%) of the gallonage collected by CUSTOMER within its jurisdiction.

8.1.2 CUSTOMER WITH NO FLOW

In the event CUSTOMER has no flow to deliver to the CITY on the date above agreed upon, CUSTOMER shall pay only such amounts, based on its projected flow on the date above agreed upon, as are attributable to principal, interest, capital replacement and coverage of bonded indebtedness.

8.2 TERMINATION AND EXTENSION OF AGREEMENT

Both Parties agree that this Agreement shall begin and bind the Parties as set forth in Section 8.1 hereof and shall terminate upon March 31, 2042, at 12:00 o'clock midnight of said date. However, CITY may extend this Agreement for a period not exceeding twenty (20) years from the said termination date in the event, and only in such event, that the issuance of any bonds or other obligations is required in order to obtain funds necessary for expansions or improvements to the CITY system. CITY will provide notice to CUSTOMER of its intent to renew for an additional twenty (20) years twelve (12) months prior to the expiration of this Agreement.

8.3 INVALIDITY OF SECTION, CLAUSE, SENTENCE OR PROVISION

Both Parties agree that the invalidity of any section, clause, sentence, or provision of this Agreement shall not affect the validity of any other part of this Agreement which can be given effect without such invalid part or parts.

8.4 BINDING ON SUCCESSORS

Both Parties agree that this Agreement shall be binding upon the successors and assigns of the Parties hereto, and may be enforced by appropriate action in court, or courts, of competent jurisdiction.

However, this Agreement may not be assigned by either Party without the other Party's prior written consent.

8.5 LEGAL REQUIREMENTS

Both Parties agree that all legal requirements for execution of this Agreement have been performed, and each Party hereto, agrees to exchange with the other executed copies of the official records of its governing body which authorize the execution of this Agreement.

8.6 NOTICE

Any notice required to be given hereunder shall be considered to have been properly given if the same has been sent in writing by certified mail, to the following:

CITY: City Manager
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to: City Attorney
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

CUSTOMER: Chief Executive/Port Director
Port Everglades
1850 Eller Drive, Suite 604
Fort Lauderdale, FL 33316

8.7 ALL PRIOR AGREEMENTS SUPERSEDED

This Agreement supersedes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity.

PUBLIC RECORDS

IF THE CUSTOMER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CUSTOMER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 NORTH ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.

CUSTOMER shall:

1. Keep and maintain public records required by the CITY in order to perform the service.

2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2021), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this Agreement if the CUSTOMER does not transfer the records to the CITY.
4. Upon completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of the CUSTOMER or keep and maintain public records required by the CITY to perform the service. If the CUSTOMER transfers all public records to the CITY upon completion of this Agreement, the CUSTOMER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CUSTOMER keeps and maintains public records upon completion of this Agreement, the CUSTOMER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

8.8 EXECUTION

This Agreement shall be executed in two (2) copies, each of which shall be deemed an original. CUSTOMER shall provide CITY with a copy of CUSTOMER'S Resolution or evidence of other action authorizing CUSTOMER to execute this Agreement, which Resolution or other document shall be attached hereto, as an exhibit and made a part thereof.

(Remainder of page left blank)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature:

CITY OF FORT LAUDERDALE, a municipal corporation

By: 
DEAN TRANTALIS
Mayor

By: 
CHRISTOPHER J. LAGERBLOOM,
ICMA-CM
City Manager

ATTEST:

By: 
DAVID SOLOMON
City Clerk

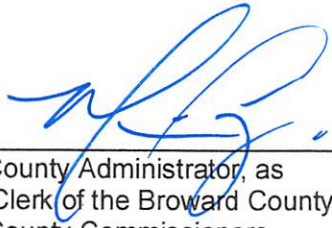


Approved as to Legal Form:
Alain E. Boileau, City Attorney

By: 
RHONDA MONTOYA HASAN
Assistant City Attorney

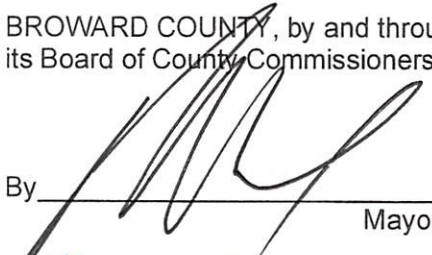
BROWARD COUNTY, a subdivision of the State of Florida

ATTEST:


Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners



BROWARD COUNTY, by and through
its Board of County Commissioners

By  Mayor
13th day of April, 2022

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 302
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404

By ANTONIO LOZADA Digitally signed by ANTONIO LOZADA
Date: 2022.02.17 08:31:46 -05'00'
Antonio Lozada (Date)
Assistant County Attorney
By CARLOS A. RODRIGUEZ-CABARROCAS Digitally signed by CARLOS A. RODRIGUEZ-CABARROCAS
Date: 2022.02.17 10:06:55 -05'00'
Carlos Rodriguez-Cabarrocas (Date)
Senior Assistant County Attorney



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

Today's Date: 4/21/22

3L
04/26/2022

DOCUMENT TITLE: Large User Wastewater Agreement - Broward County

COMM. MTG. DATE:

CAM #: 22-041 ITEM # CM-3 CAM attached: ☒ YES ☐ NO

Routing Origin: _____ Router Name/Ext: _____

Action Summary attached: ☐ YES ☒ NO

CIP FUNDED: ☐ YES ☒ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 3

Is attached Granicus document Final? ☒ YES ☐ NO Approved as to Form: ☒ YES ☐ NO

Date to CCO: 4/21/22

RMH
Attorney's Name

Initials

2) City Clerk's Office: # of originals: 3 Routed to: Danna Laine Date: 4/21/2022

3) City Manager's Office: CMO LOG #: Apr-31 Document received from: _____

Assigned to: CHRIS LAGERBLOOM ☐
TARLESHA SMITH ☐

CHRIS LAGERBLOOM as CRA Executive Director ☐
GREG CHAVARRIA ☐

☐ APPROVED FOR C. LAGERBLOOM'S SIGNATURE ☐ N/A FOR C. LAGERBLOOM TO SIGN

PER ACM: T. Smith _____ (Initial/Date) PER ACM: G. Chavarria _____ (Initial/Date)

☐ PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward 1 originals to ☒ Mayor ☐ CCO Date: 4-22-22

4) Mayor/CRA Chairman: Please sign as indicated. Forward _____ originals to CCO for attestation/City seal (as applicable) Date: _____

5) City Clerk: Forward 3 originals to CAO for FINAL APPROVAL Date: 04/26/2022

6) CAO forwards _____ originals to CCO

7) City Clerk: Scan original and forwards 3 originals to: Rafaela Persaud (Name/Dept/Ext)

Attach _____ certified Reso # _____ ☐ YES ☐ NO

Original Route form to Glynis - CAO/Dept.
TM # 22-0153