

WASTEWATER BILLING SERVICES AGREEMENT

THIS is an Agreement between the TOWN OF LAUDERDALE-BY-THE-SEA (hereinafter "TOWN"), and the CITY OF FORT LAUDERDALE, (hereinafter "CITY").

WHEREAS, the CITY currently provides water and wastewater billing services to the TOWN;

WHEREAS, it is efficient and provides cost savings to the TOWN to consolidate the billing of water and sewer services to TOWN residents;

WHEREAS, the CITY and TOWN desire to enter into this Billing Services Agreement;

WHEREAS, the CITY and TOWN entered into a previous Wastewater Billing Services Agreement dated October 1, 2002

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida, at its meeting on June 15, 2021, authorized by motion the execution of this Agreement.

WHEREAS, the Town of Lauderdale-By-The-Sea, Florida, at its meeting on May 11, 2021, authorized by adoption of Resolution No. 2021-29, the execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Billing Services. The CITY will provide monthly water and wastewater billing services to the TOWN in accordance with Exhibit "A." This will include the rendering of monthly bills to TOWN residents for water and wastewater services.

2. Monthly payment. The TOWN shall pay to CITY \$1,448.30 per month for the monthly billing services provided by CITY. Beginning October 1, 2020, the monthly fee of \$1,448.30 shall be adjusted annually in October by an amount not to exceed the increase in the Bureau of Labor Statistics All Urban Consumers Price Index ("CPI") issued by the Bureau of Labor Statistics of the United States Department of Labor.

- (a) As set forth herein, the increase shall be determined by calculating that number greater than one (1) which results from dividing the index figure for the CPI for the month of June, 2020 by the index figure for the CPI for the month of June of the prior calendar year. In no event shall the annual fee decrease from the prior year.
- (b) It is further understood and agreed that if the annual cost adjustment is not immediately determined or determinable at the time of adjustment, the previous monthly payment shall continue until an adjusted annual cost figure can be determined. The sum constituting such adjustment for the months of the period

which has passed prior to the determination of the amount of the adjustment shall be due and payable within thirty (30) days after such determination.

- (c) It is understood and agreed that the above described Index is now being published monthly by the Bureau of Labor Statistics of the United States Department of Labor (the "Bureau"). Should it be published at other intervals, a new Index shall be arrived at from the Index or Indices published by said Bureau. Should the Bureau change the manner of computing such Index, the Bureau shall be requested to furnish a conversion factor designed to adjust the next Index to the one previously in use, and adjustment of the new Index shall be made on the basis of such conversion factor. Should the publication of such Index be discontinued by said Bureau, then such other Index as may be published by such Bureau most nearly approximating said discontinued CPI shall be used in making the adjustment herein described. Should said Bureau discontinue the publication of an Index approximating the Index herein contemplated, then such Index as may be published by another United States governmental agency which most nearly approximates the Index herein first above referred to shall govern and be substituted as the Index to be used, subject to the application of an appropriate conversion factor to be furnished by the governmental agency publishing such Index. If such governmental agency will not furnish such conversion factor, then the parties shall agree upon a conversion factor of the new Index, and in the event an agreement cannot be reached as to such conversion factor of such new Index, then the parties hereto agree to submit to Arbitrators chosen in accordance with the Rules of the American Arbitration Association and the Arbitration laws of the State of Florida, the selection of a new Index approximating as nearly as possible the Index hereinabove contemplated, which new Index may be one published by a governmental agency, or one published by a private agency, and generally accepted and approved as an Index reflecting the contemplated fluctuation in the purchasing power of the United States dollar. The Index selected and the determination made by such Arbitrators shall be binding upon the parties hereto. In the event of any controversy arising as to the proper adjustment of the annual payment as herein provided, TOWN shall continue paying the annual cost to CITY in the monthly amount due for the preceding month until such time as said controversy has been settled, at which time an adjustment will be made retroactive to the adjustment date.
- (d) The number of accounts served by the CITY, as of the date of this agreement, is 995. Should the number of accounts served by CITY under this Agreement, at any time, increase from the number of accounts served as of the date of this Agreement by greater than ten (10%) percent, the monthly fee paid by the TOWN to CITY shall increase in direct proportion to the number of accounts billed.

3. Term. The term shall be ten (10) years from the date of this Agreement. At the conclusion of the initial term, the Agreement shall automatically renew every five (5) years, unless

either Party exercises or has exercised its right to terminate for convenience pursuant to Section 4 herein.

4. Termination. This Agreement shall continue until terminated by either Party upon six (6) months written notice to the other Party or upon notice of less than six (6) months if mutually agreed to by the Parties hereto.

5. Liability.

- (a) To the extent provided by law, and excluding the negligence of CITY, TOWN agrees to indemnify and hold harmless CITY for all costs, losses and expenses, including, but not limited to, damages to persons or property, and including, but not limited to, judgments and attorneys' fees, arising out of and in connection with this Agreement. If called upon by CITY, TOWN shall assume and defend not only itself but also CITY in connection with any suit or cause of action, and such defense shall be at no cost or expense whatsoever to CITY. Nothing in this Agreement is intended to waive the sovereign immunity of the Parties, per Section 768.28, Florida Statutes.
- (b) To the extent provided by law, and excluding the negligence of TOWN, CITY agrees to indemnify and hold harmless TOWN for all costs, losses and expenses, including, but not limited to, damages to persons or property, and including, but not limited to, judgments and attorneys' fees, arising out of and in connection with this Agreement. If called upon by TOWN, CITY shall assume and defend not only itself but also TOWN in connection with any suit or cause of action, and such defense shall be at no cost or expense whatsoever to TOWN. Nothing in this Agreement is intended to waive the sovereign immunity of the Parties, per Section 768.28, Florida Statutes.

6. Rate Changes or Modifications. TOWN agrees to notify CITY of any Sanitary Sewer Rate Changes at least thirty (30) days prior to the effective date of the rate change. Should the methodology of Town's fees for sanitary sewer services change, notice of the proposed change shall be provided to CITY during the formulation and discussion phase of the process so CITY will have sufficient time to evaluate the new methodology and prepare for any changes. Any changes in TOWN's methodology for the charging of sanitary sewer services, which require programming services by CITY shall be borne by TOWN, plus a reasonable fee for CITY personnel to conduct appropriate testing for the purposes of assuring accuracy of billing and collections. Should there be a requirement for programming services to incorporate a change in methodology, TOWN agrees to provide CITY with sufficient time to have the programming services performed and tested by CITY personnel.

7. Sanitary Sewer Service Deposits. As long as CITY requires a deposit for Sanitary Sewer Service to its customers, CITY shall charge TOWN's residents a deposit computed in the same manner and refund deposits as though they are CITY customers.

8. Joint Preparation. The preparation of this Agreement has been a joint effort of the Parties hereto 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.

9. Merger. This Agreement incorporates and includes all prior negotiations, correspondence, 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, the Parties agree 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 change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by both Parties to this Agreement.

10. Assignment. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part.

11. Records. TOWN and CITY shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements set forth in Florida Statutes.

12. Governing Law and Venue. This Agreement shall be governed, construed and controlled according to the laws of the State of Florida without regard to its conflict of laws provisions. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida.

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

14. Notices. Whenever either Party desires to give notice to the other, such notice must be in writing and sent by United States mail, return receipt requested, courier, evidenced by a delivery receipt or by an overnight express delivery service addressed to the Party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving of notice. Notice shall be effective upon delivery.

For CITY:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to:

City Attorney Office

City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

For TOWN:

Town Manager
Town of Lauderdale-By-The-Sea
4501 North Ocean Drive
Lauderdale-By-The-Sea, FL 33308

15. Nondiscrimination. TOWN and CITY decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

16. Third Party Beneficiaries. Neither TOWN nor CITY intend that any person shall have a cause of action against either of them as a third-party beneficiary under this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

17. Compliance with Laws. The Parties shall comply with all federal, state and local laws, codes, ordinances, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

18. Public Records.

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

IF THE CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC

RECORDS AT 954-640-4200, Tedraa@lauderdalebythesea-fl.gov, or by email: Town Clerk, 4501 N. Ocean Drive, Lauderdale-By-The-Sea, FL 33308.

Both parties shall:


1. Keep and maintain public records that ordinarily and necessarily would be required by the other party in order to perform the service.
2. Upon request from a party's custodian of public records, provide the requesting party 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, 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 contract if the parties does not transfer the records to each other.
4. Upon completion of this Agreement, transfer, at no cost, to the receiving party all public records in the party's possession or keep and maintain public records required to perform the service. If all public records are transferred to the receiving party upon completion of this Contract, the other party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If a party keeps and maintains public records upon completion of this Agreement, that party shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the requesting party, upon request from the requesting party's custodian of public records, in a format that is compatible with the information technology systems of the requesting party.

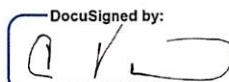
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IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

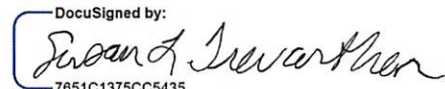
ATTEST:

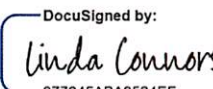
TOWN OF LAUDERDALE-BY-THE-SEA

DocuSigned by:

F79938A3F45D42E
Tedra Allen, CMC
Town Clerk

DocuSigned by:

B0A8AE8CC88D4A1...
By: Chris Vincent
Mayor

Approved as to form:

DocuSigned by:

7851C1375CC5435
Susan Trevarthen
Town Attorney

DocuSigned by:

977245ABA9524EF...
By: Linda Connors
Linda Connors
Interim Town Manager

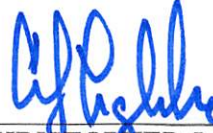
ATTEST:



JEFFREY A. MODARELLI
City Clerk

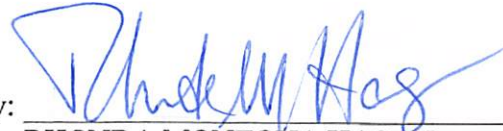


CITY OF FORT LAUDERDALE



By: CHRISTOPHER J. LAGERBLOOM
City Manager

Approved as to form:
ALAIN E. BOILEAU, City Attorney



By: RHONDA MONTOYA HASAN
Assistant City Attorney



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

8/2/2021

Today's Date: 7/27/21

DOCUMENT TITLE: Wastewater Billing Services Agreement - Town of Lauderdale-By-The-Sea

COMM. MTG. DATE: 6/15/21 CAM #: 21-0571 ITEM #: CR-1 CAM attached: ☒ YES ☐ NO

Routing Origin: Router Name/Ext: Claudette R. 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: 2

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

Date to CCO: _____

Attorney's Name: RMH

Initials: [Signature]

2) City Clerk's Office: # of originals: 2 Routed to: Donna Laine Date: 7/28/2021

3) City Manager's Office: CMO LOG #: Jul 16/21 Document received from: _____

Assigned to: CHRIS LAGERBLOOM ☐ CHRIS LAGERBLOOM as CRA Executive Director ☐
TARLESHA SMITH ☐ 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 0 originals to ☐ Mayor ☒ CCO Date: 8-2-21

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

5) City Clerk: Forward _____ originals to CAO for FINAL APPROVAL Date: _____

6) CAO forwards _____ originals to CCO

7) City Clerk: Scan original and forwards 2 originals to: Claudette Rose (Name/Dept/Ext)

Attach _____ certified Reso # _____ ☐ YES ☐ NO

Original Route form to CAO/Dept.

RMH 21-0669