

Meeting Date: 06/28/2016

Agenda Item: 5

REQUESTED COMMISSION ACTION:

Consent       Ordinance       Resolution       Consideration       Workshop

SHORT TITLE OR MOTION      A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A RECLAIMED WATER SUPPLY AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF POMPANO BEACH TO FURNISH RECLAIMED WATER TO BROWARD COUNTY'S UTILITY SERVICE AREA, WITHIN THE POMPANO BEACH NORTHERN COMMUNITIES; PROVIDING AN EFFECTIVE DATE. NO COST ASSOCIATED AT THIS TIME

Summary of Purpose and Why:

The City of Pompano Beach is seeking to provide reuse water to Broward County through Interlocal Agreement into Broward County's utility service area, within the Pompano Beach Northern Communities. The infrastructure is in place to provide service to Broward County through a master meter. Broward County will purchase and distribute reuse water to its customers up to 1 million gallons of water daily.



This agreement is a Strategic Plan Objective 3.3.8. "Complete agreement with Broward County to serve Highlands and Cresthaven through wholesale contract" under the Confidence Building Government Strategy.

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: A. Randolph Brown, Utilities Director Ext. 954 545-7044
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
City Attorney	<u>6/22/16</u>	<u>✓</u>	<u>[Signature]</u>
Utilities Director	<u>6/15/16</u>	<u>Approve</u>	<u>[Signature]</u>
Finance	<u>6/21/16</u>	<u>Approval</u>	<u>[Signature]</u>
Budget	<u>6/21/16</u>		<u>[Signature]</u>

City Manager [Signature]

[Signature]

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			





**City Attorney's Communication #2016-877**  
June 3, 2016

**TO:** A. Randolph Brown, Utilities Director

**FROM:** Carrie L. Sarver, Assistant City Attorney

**RE:** Resolution – Reclaimed Water Supply Agreement between Pompano Beach and Broward County

Pursuant to your memorandum dated June 2, 2016, Utilities Administration Memorandum No. 16-38, I have prepared and attached the following form of Resolution:

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A RECLAIMED WATER SUPPLY AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF POMPANO BEACH TO FURNISH RECLAIMED WATER TO BROWARD COUNTY'S UTILITY SERVICE AREA, WITHIN THE POMPANO BEACH NORTHERN COMMUNITIES; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

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CARRIE L. SARVER

CLS/ds  
l:cor/util/2016-877  
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 A RECLAIMED WATER SUPPLY AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF POMPANO BEACH TO FURNISH RECLAIMED WATER TO BROWARD COUNTY'S UTILITY SERVICE AREA, WITHIN THE POMPANO BEACH NORTHERN COMMUNITIES; PROVIDING AN EFFECTIVE DATE.**

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

**SECTION 1:** That an Agreement between Broward County and the City of Pompano Beach, 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 Broward County and the City of Pompano Beach.

**SECTION 3:** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**ASCELETA HAMMOND, CITY CLERK**



Phone: (954) 545-7043

**City of Pompano Beach  
UTILITIES ADMINISTRATION**

Fax: (954) 545-7046

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**MEMORANDUM NO. 16-38**

**DATE:** Thursday, June 2, 2016  
**TO:** Mark Berman, City Attorney  
**FROM:** A. Randolph Brown, Utilities Director   
**SUBJECT:** City of Pompano Beach Water Supply Wells Information

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The City of Pompano Beach is seeking to provide reuse water to Broward County through Interlocal Agreement (ILA) into Broward County's utility service area, within the Pompano Beach Northern Communities. The infrastructure is in place to provide service to Broward County through a master meter. Broward County will purchase and distribute the reuse water to its customers. The agreement allows the County to purchase up to 1 million gallons of water daily.

This completion of this agreement is a Strategic Plan Objective 3.3.8. "Complete agreement with Broward County to serve Highlands and Cresthaven through wholesale contract" under the Confidence Building Government Strategy.



Please prepare the resolution for Commission consideration of the attached agreement. The Utility fund will generate revenue from the agreement.

RECLAIMED WATER SUPPLY AGREEMENT  
BETWEEN  
BROWARD COUNTY  
AND  
CITY OF POMPANO BEACH

RECLAIMED WATER SUPPLY AGREEMENT

BETWEEN

BROWARD COUNTY

AND

CITY OF POMPANO BEACH

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

AND

CITY OF POMPANO BEACH, a municipal corporation located in Broward County, Florida, and organized and existing under the laws of the State of Florida, hereinafter referred to as "CITY," collectively referred to as the "Parties."

WHEREAS, CITY owns and operates the Reclaimed Water System; and

WHEREAS, the Reclaimed Water System produces Reclaimed Water for beneficial reuse; and

WHEREAS, the CITY desires to furnish Reclaimed Water to COUNTY; and

WHEREAS, COUNTY desires to purchase Reclaimed Water from the CITY to provide a source for non-potable water within COUNTY's Service Area; and

WHEREAS, CITY has Reclaimed Water capacity sufficient to meet the needs of COUNTY; NOW, THEREFORE,

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

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 Parties herein, the following statements, representations, and explanations shall be accepted as predicates of 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 COUNTY owns and operates COUNTY System.

1.2 CITY owns and operates the Reclaimed Water System capable of serving certain defined Reclaimed Water needs of COUNTY.

1.3 COUNTY agrees to purchase Reclaimed Water from CITY in accordance with the terms set forth in this Agreement.

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

2.1 **Agreement** – This Agreement includes Articles 1 through 7, the exhibits and documents that are expressly incorporated by reference.

2.2 **Board** – The Board of County Commissioners of Broward County, Florida.

2.3 **County Administrator** – The administrative head of COUNTY appointed by the Board.

2.4 **County Attorney** – The chief legal counsel for COUNTY appointed by the Board.

2.5 **COUNTY Reuse System Permits** – All permits, licenses or other governmental approvals necessary for acquisition, construction, operation and expansion of COUNTY Reuse System, including but not limited to, the Florida Department of Environmental Protection (FDEP) Permit No. FL0031771.

2.6 **COUNTY Service Area** – The geographic boundaries for which CITY's Reclaimed Water is ultimately utilized by COUNTY, as shown on Exhibit "A," attached hereto and incorporated herein.

2.7 **COUNTY Reuse System** – Those facilities owned or operated, or both, by COUNTY including present and future Reclaimed Water distribution and utilization system, which may include Reclaimed Water mains, pumping stations, storage facilities, and appurtenances thereto downstream of the Point of Connection to the Reclaimed Water System.

2.8 **Effective Date** – The date on which the Agreement is approved and fully executed by the Parties.

2.9 **Joint Operation and Maintenance Costs** – The portion of total Operation and Maintenance Costs which provide a benefit to both retail and wholesale Reclaimed Water customers of the CITY.

2.10 **Metering Facilities** – Those certain Reclaimed Water meters and appurtenant recording and transmitting devices to be installed and owned by the CITY, as required in Article 3, which are used to measure the volume of Reclaimed Water delivered to COUNTY.

2.11 **Point of Connection** – The point or points where COUNTY System connects to CITY System for the purpose of delivering Reclaimed Water to COUNTY System from the CITY System.

2.12 **Operation and Maintenance Costs** – These costs shall include any and

all costs incurred by the CITY in operating, maintaining and administering the Reclaimed Water System, including, but not limited to, the general administrative and legal costs of the CITY related to operation, maintenance, management, security and development of the Reclaimed Water System; costs associated with tools, equipment, vehicles, supplies, materials, services and support for the operation, maintenance, management, security and development of the Reclaimed Water System; any costs of litigation or legal judgment against the CITY relating to operation, maintenance, management, security and development of the Reclaimed Water System; development expenses relating to expansion of the Reclaimed Water System; all costs incurred in planning or applying for, obtaining, maintaining and defending the Reclaimed Water System Permit; accounting, legal and engineering expenses; ordinary and current rentals of equipment or other property; refunds of moneys lawfully due to others; payments in lieu of taxes and facility impact fees; moneys to be deposited to a rate stabilization fund; and fees for management of the Reclaimed Water System or any portion thereof.

2.13 **Rate Year** – The time period that each annual rate adjustment will be in effect, beginning March 1<sup>st</sup> of each year and ending February 28/29<sup>th</sup> of each year.

2.14 **Reclaimed Water** – Domestic wastewater effluent that has received at least secondary treatment and high level disinfection and which is suitable for direct, non-potable, beneficial reuse in accordance with Florida Department of Environmental Protection (FDEP) regulations.

2.15 **Reclaimed Water Ordinance** – Chapter 54 of the CITY Code, Ordinance titled “Reuse Water and Cross-Connection Control,” as may be amended from time to time.

2.16 **Reclaimed Water System or CITY System** – Those facilities owned or operated, or both, by CITY, including present and future Reclaimed Water treatment and transmission facilities, up to the Point of Connection that are now or will be used for the purpose of providing Reclaimed Water from the CITY System to the COUNTY System.

2.17 **Reclaimed Water System Permits** – All permits, licenses or other government approvals necessary for the acquisition, construction, operation and expansion of the Reclaimed Water System, including but not limited to, FDEP Permit No. FL013581.

2.18 **Reserve Capacity** – The average monthly maximum daily flow expressed in one million gallons per day (MGD) for which COUNTY has reserved Reclaimed Water as set forth in Section 3.7.

2.19 **Retail Operation and Maintenance Costs** – The portion of total Operation and Maintenance Costs which only provide a benefit to retail

Reclaimed Water customers of the CITY.

3. CONNECTING TO CITY RECLAIMED WATER SYSTEM; REUSE; CAPACITY.

3.1 POINT OF CONNECTION AND METERING FACILITIES. The Point of Connection and Metering Facilities shall be as identified in Exhibit "B," attached hereto and incorporated herein.

3.2 MAINTENANCE OF COUNTY SYSTEM. COUNTY shall design, construct, permit, operate, and properly maintain, at its sole cost and expense, COUNTY System that is necessary to properly receive and distribute Reclaimed Water and shall obtain and maintain all required COUNTY Reuse System Permits.

3.3 COUNTY SERVICE AREA. COUNTY agrees that it will not distribute Reclaimed Water outside COUNTY Service Area (as shown in Exhibit A).

3.4 REUSE OF RECLAIMED WATER. COUNTY shall not reuse or permit reuse by a third party of Reclaimed Water without requiring as a condition of such use compliance with the Reclaimed Water Ordinance by COUNTY or such third party. COUNTY shall meet all requirements for public health and reuse of Reclaimed Water as described in Chapter 62-610, Florida Administrative Code (F.A.C.), and be responsible to ensure that third party users meet these same requirements. COUNTY shall be solely responsible for any Reclaimed Water sampling, inspection and testing required by any federal, state or local regulatory agency for Reclaimed Water downstream of the Point of Connection.

3.5 EXCLUSIVITY. COUNTY shall purchase all of its Reclaimed Water exclusively from CITY to meet all of COUNTY's Reclaimed Water needs within COUNTY Service Area and use the Reclaimed Water within COUNTY Service Area (as shown in Exhibit A). COUNTY Service Area may be changed administratively without formal modification to this Agreement, by mutual consent as documented by a letter jointly signed by the persons designated in Section 7.5 of this Agreement.

3.6 RESERVE CAPACITY. CITY's obligation to furnish Reclaimed Water services to COUNTY under this Agreement shall be limited to an average rate of one million gallons per day. 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 COUNTY or its agents or employees from demanding Reclaimed Water which exceeds the amount of Reserve Capacity. If COUNTY exceeds the reserve capacity for four (4) consecutive months, CITY shall have the right to terminate this Agreement for cause pursuant to Article 6 and/or require renegotiation of the Agreement. The above Reserve Capacity may be changed administratively without formal modification to this Agreement, by mutual consent as documented by a letter jointly signed by the persons

designated in Section 7.5 of this Agreement.

3.7 MINIMUM DELIVERY PRESSURE. CITY does not guarantee, but intends and will endeavor to provide a minimum delivery pressure at the Point of Connection of fifty (50) pounds per square-inch as measured at the Metering Facilities. It is anticipated that COUNTY may need to boost pressure for delivery to third parties within COUNTY Service Area.

3.8 COUNTY TO INSTALL METERS AND ANCILLARY EQUIPMENT. COUNTY shall transfer to CITY the ownership of the Metering Facilities and modulating flow control valves capable of isolating flow to COUNTY, together with the housing, accessories, and ancillary equipment thereto, and record drawings acceptable to CITY. COUNTY may install its own Reclaimed Water meters and appurtenant recording and transmitting devices at the Point(s) of Connection. However, the quantity of Reclaimed Water delivered from CITY's Reuse Plant at the specified Point of Connection shall be exclusively measured by the Metering Facilities. In the event the capacity of the Metering Facilities or modulating flow control valve becomes inadequate for the amount of flow delivered because of increased demand by COUNTY, CITY, at COUNTY's sole expense, shall replace the device or install such additional device or devices as may be necessary and invoice COUNTY for the costs of doing so. COUNTY shall remit to CITY the amount invoiced within thirty (30) days of COUNTY's receipt of the invoice.

3.9 CITY TO MAINTAIN METERS. CITY shall maintain the Metering Facilities, routinely inspect the metering devices at least every three (3) months, calibrate twice a year, and have an annual inspection and report prepared regarding the condition and accuracy of the Metering Facilities. A copy of the inspection report shall be furnished to COUNTY electronically within five (5) days of completion. COUNTY shall have the right to make its own interim meter inspection at any time during normal business hours provided, however, no such inspection shall be made unless COUNTY shall first provide CITY with written notice of its intent to have the inspection made, nor shall such inspection be made prior to forty-eight (48) hours, excluding Saturdays, Sundays, and holidays, subsequent to the receipt of said notice by CITY. All costs and expenses of COUNTY's interim inspection shall be borne by COUNTY, unless the Metering Facilities are found to be inaccurate beyond the manufacturer's guaranteed range of accuracy and beyond the adjusted range of accuracy due to the design and installation at the specific location, in which case the reasonable cost and expense of such interim inspection shall be borne by CITY.

3.10 PAYMENT IN CASE OF METER INACCURACY. Should the Metering Facilities be found to be inaccurate beyond the manufacturer's range of accuracy and beyond the adjusted range of accuracy due to the design and installation at the specific location, the Metering Facilities will be assumed to be inaccurate since the last semi-annual meter calibration and the following month's billing will be adjusted to show a credit or additional charge to COUNTY for that period,

based on the previous six-month average that the Metering Facilities were found to be accurate by CITY.

3.11 PAYMENT IN CASE OF METER FAILURE. If at any time the Metering Facilities becomes inoperative or in any way fails to provide information with respect to the quantity of Reclaimed Water flow, COUNTY shall pay to CITY a daily amount equal to the average flow of the monthly billing period prior to the date the Metering Facilities became inoperative.

4. SUPPLY OF RECLAIMED WATER.

4.1 RECLAIMED WATER SUPPLY. CITY does not guarantee the supply of the Reclaimed Water supplied at the Point of Connection. Cessation or restriction of Reclaimed Water supply services, including any resulting from, but not limited to, an act of God; fire; strikes; accidents; casualty; maintenance; expansion; breakdown or damage to machinery, pumps, pipelines, or storage, processing, treatment or other facilities insurrection or riot; government rules, acts orders, restrictions, regulations or requirements; discretionary acts or actions of any government, public, governmental authority, commission, board, agency, agent, official or officer (except for actions or of the Parties or its employees, agents or officers affecting this Agreement); the enactment of any statute, ordinance resolution, regulation, rule, ruling or order; a decree, judgment or injunction of any court; civil or military authority shall not constitute a breach of this Agreement by CITY. CITY shall exercise its regular management practices with respect to providing Reclaimed Water of a supply and quality to meet COUNTY's needs up to the limit of Reserved Capacity.

4.2 UNAVAILABLE RECLAIMED WATER SUPPLY. CITY agrees to attempt, when possible, to give COUNTY notice by telephone, followed by notice in writing via email, in the event the supply of Reclaimed Water has become or will be unavailable.

4.3 RECLAIMED WATER SAMPLING. CITY shall be responsible for having the Reclaimed Water within the Reclaimed Water System sampled and tested as required by the Reclaimed Water System Permits. Any Reclaimed Water sampling, inspection and testing required by any regulatory agency for Reclaimed Water downstream of the Point of Connection shall be the sole responsibility of COUNTY.

5. PROVISIONS PERTAINING TO CHARGES.

5.1 BASIS OF CHARGES. CITY shall provide Reclaimed Water to COUNTY at the following initial Wholesale Reclaimed Water Rate:

Volumetric rate of \$ 0.76 per thousand gallons

The Wholesale Reclaimed Water Rate is subject to change each Rate Year, based on actual costs incurred during the previous Fiscal Year. COUNTY shall be notified of proposed rate changes in writing at least sixty (60) days prior to the

beginning of each Rate Year. No increase shall be implemented without this required notice.

5.2 ESTABLISHMENT OF WHOLESAL RECLAIMED WATER RATE. The Wholesale Reclaimed Water Rate is designed to allow the CITY to pay all Operation and Maintenance Cost of the Reclaimed Water System, both fixed and variable, as may be determined by the CITY based on the cost allocation methodology demonstrated in Exhibit C, as needed to supply Reclaimed Water to wholesale customers. For each Rate Year, the CITY shall fix a Wholesale Reclaimed Water Rate for the sale of Reclaimed Water furnished by the CITY to the COUNTY, as follows:

(1) Assessment of Joint Operation and Maintenance Cost to COUNTY. For each Rate Year, the Wholesale Reclaimed Water Rate will be based on the actual Operation and Maintenance Cost incurred in the prior Fiscal Year. The CITY shall separate the actual Operation and Maintenance Cost from the prior Fiscal Year into Joint Operation and Maintenance Cost and Retail Operation and Maintenance Cost. The City will develop estimates of the actual costs incurred in each Fiscal Year in order to prepare a new rate calculation before the end of January in order to provide notification of any changes to the Wholesale Reclaimed Water Rate at least thirty (30) days prior to the beginning of each Rate Year. The Joint Operation and Maintenance Cost shall be allocated to the COUNTY based on its expected purchase of Reclaimed Water pursuant to Section 5.2 (2) in proportion to the total expected Reclaimed Water demand for said Rate Year and expressed as cost per thousand gallons of Reclaimed Water (the Wholesale Reclaimed Water Rate).

(2) The COUNTY will provide to the CITY an estimate of expected purchases of Reclaimed Water for each Rate Year by the end of December of the preceding year. This estimate shall be used or the previous year's contracted amount (whichever is larger), in combination with the CITY's estimate of retail reclaimed water sales for the next Rate Year, to determine the total expected reclaimed water demand.

(3) Exclusivity. The Wholesale Reclaimed Water Rate shall not be subject to supervision or regulation by any other commission, board, bureau, agency or other political subdivision or agency of the county, state or federal government.

5.3 PAYMENT AND PENALTIES FOR NON-PAYMENT. CITY shall bill COUNTY for Reclaimed Water services on a monthly basis in accordance with its standard billing procedures and COUNTY shall pay such billings within forty-five (45) days of the date of the receipt of each monthly bill. Should COUNTY not pay within the forty-five (45) day period, COUNTY shall pay an interest penalty on the unpaid balance at the maximum rate allowable by law. Should a billing or a portion of a billing be outstanding for a period of more than sixty (60) days from the date of the original billing, COUNTY shall be considered in default

and CITY shall have the right, but not the obligation, to: (a) discontinue service until the past due billing is paid; (b) seek enforcement for the payment of outstanding billings by filing an action in the state court of local jurisdiction; and (c) terminate this Agreement for cause pursuant to Article 6.

## 6. TERM AND TERMINATION AND OTHER AGENCIES

6.1 The Parties acknowledge that each is undertaking a major obligation in consideration for entering into this Agreement. The term of this Agreement shall begin on the Effective Date, and shall continue in perpetuity unless terminated:

- for cause as provided in Sections 6.2 through 6.4 below,
- by mutual agreement of the parties,
- upon three (3) years written notice by CITY to COUNTY or by COUNTY to CITY or
- pursuant to Section 7.6.

6.2 This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved Party identifying the breach.

6.3 Termination of this Agreement for cause shall include, but not be limited to, COUNTY exceeding the reserve capacity for four (4) consecutive months pursuant to Section 3.7, COUNTY's failure to timely pay any billings from CITY for the services provided pursuant to this Agreement pursuant to Section 5.2, or failure to comply with the terms set forth in this Agreement.

6.4 JURISDICTION OF OTHER AGENCIES. The Parties acknowledge that certain federal, state, and local agencies have jurisdiction and control over Reclaimed Water matters. Should any such agency issue legally enforceable laws, regulations, mandates, or orders that may alter any of the terms and conditions of this Agreement, each Party shall not be liable to the other Party because of such action, provided that CITY shall not be precluded from making all necessary adjustments to the rates, fees, and charges defined in Article 5. If such agency requests a change in the terms and conditions of this Agreement, the Parties will, by mutual agreement, make every effort to comply with such request. However, this section shall not preclude either Party from bringing forth administrative or judicial challenge, or both, to any change requested by any agency.

## 7. MISCELLANEOUS

7.1 GRANT INFORMATION. The Parties shall provide each other with all reasonably necessary information pertinent to COUNTY System and COUNTY Service Area or CITY System which any federal, state, or local agencies shall require in an application for financial assistance for construction of Reclaimed Water facilities.

7.2 DEFAULT. In the event any Party defaults under any terms or provisions of this Agreement, the Parties may avail themselves of any rights or remedies available under applicable law, except that the Agreement may not be terminated, except as specified in Article 6.

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

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

7.5 NOTICES. 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 sent by commercial express carrier with acknowledgement of delivery, 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 COUNTY:

Director, Broward County Water & Wastewater Services  
2555 West Copans Road  
Pompano Beach, Florida 33069

With copies to:

County Administrator  
115 S. Andrews Ave., Room 409,  
Fort Lauderdale, FL 33301-1872

County Attorney  
115 S. Andrews Ave., Room 423,  
Fort Lauderdale, FL 33301-1872

FOR CITY:

Director of Utilities

City of Pompano Beach Utilities Department  
1205 NE 5<sup>th</sup> Avenue  
Pompano Beach, FL 33060

With Copies to:  
City Manager  
1205 NE 5<sup>th</sup> Ave  
Pompano Beach, FL 33060  
City Attorney  
1205 NE 5<sup>th</sup> Ave  
Pompano Beach, FL 33060

7.6 ASSIGNMENT.

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. Notwithstanding the Termination provision of this Agreement, CITY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by COUNTY of this Agreement or any right or interest herein without CITY's written consent.

7.7 GOVERNMENTAL IMMUNITY. 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 Agreement or any other contract. COUNTY is an entity subject to Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

7.8 MATERIALITY AND WAIVER OF BREACH. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

CITY's or COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

7.9 COMPLIANCE WITH LAWS. CITY and COUNTY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

7.10 SEVERANCE. 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 COUNTY elects to terminate this Agreement pursuant to article 6.

7.11 JOINT PREPARATION. The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this 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. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

7.12 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 Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 7 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 shall prevail and be given effect.

7.13 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. The Parties acknowledge that jurisdiction of any controversies or legal disputes arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively 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, COUNTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, ARISING FROM, OR IN CONNECTION WITH THIS AGREEMENT.**

7.14 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 CITY and COUNTY, or others delegated authority to or otherwise authorized to execute same on their behalf.

7.15 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. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

7.16 INCORPORATION BY REFERENCE. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. The attached Exhibits "A" and "B" are incorporated into and made part of this Agreement.

7.17 REPRESENTATION OF AUTHORITY. Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

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

IN WITNESS WHEREOF, the Parties have made and executed this 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 \_\_\_\_\_, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-Officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Signature (Date)

By \_\_\_\_\_  
Michael J. Kerr  
Deputy County Attorney

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

RECLAIMED WATER SUPPLY AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF POMPANO BEACH

CITY

ATTEST:

CITY OF POMPANO BEACH

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor-Commissioner

(SEAL)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

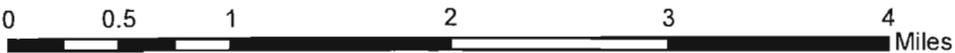
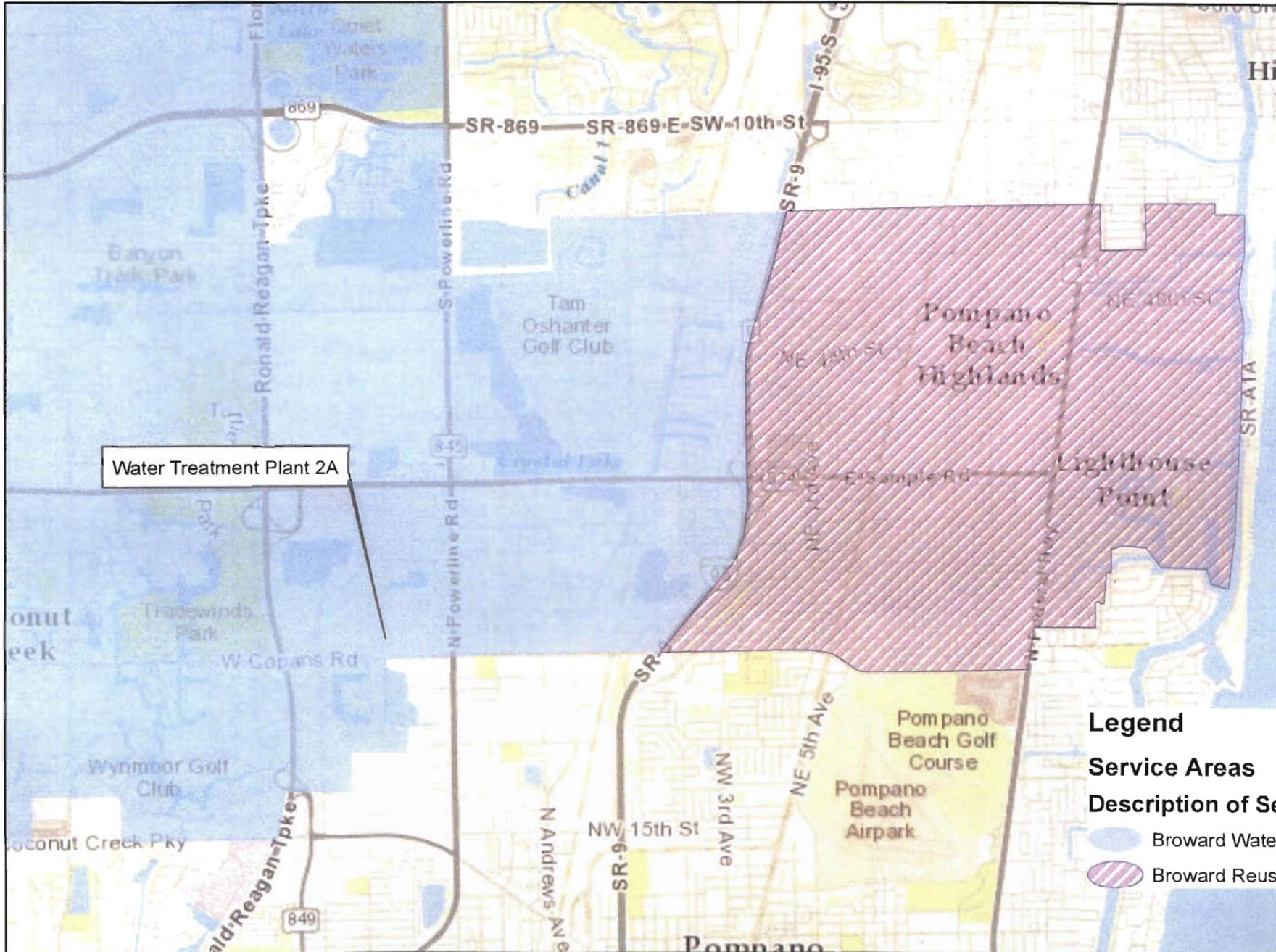
\_\_\_\_\_  
City Manager

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney

# Exhibit A



**Legend**

**Service Areas**

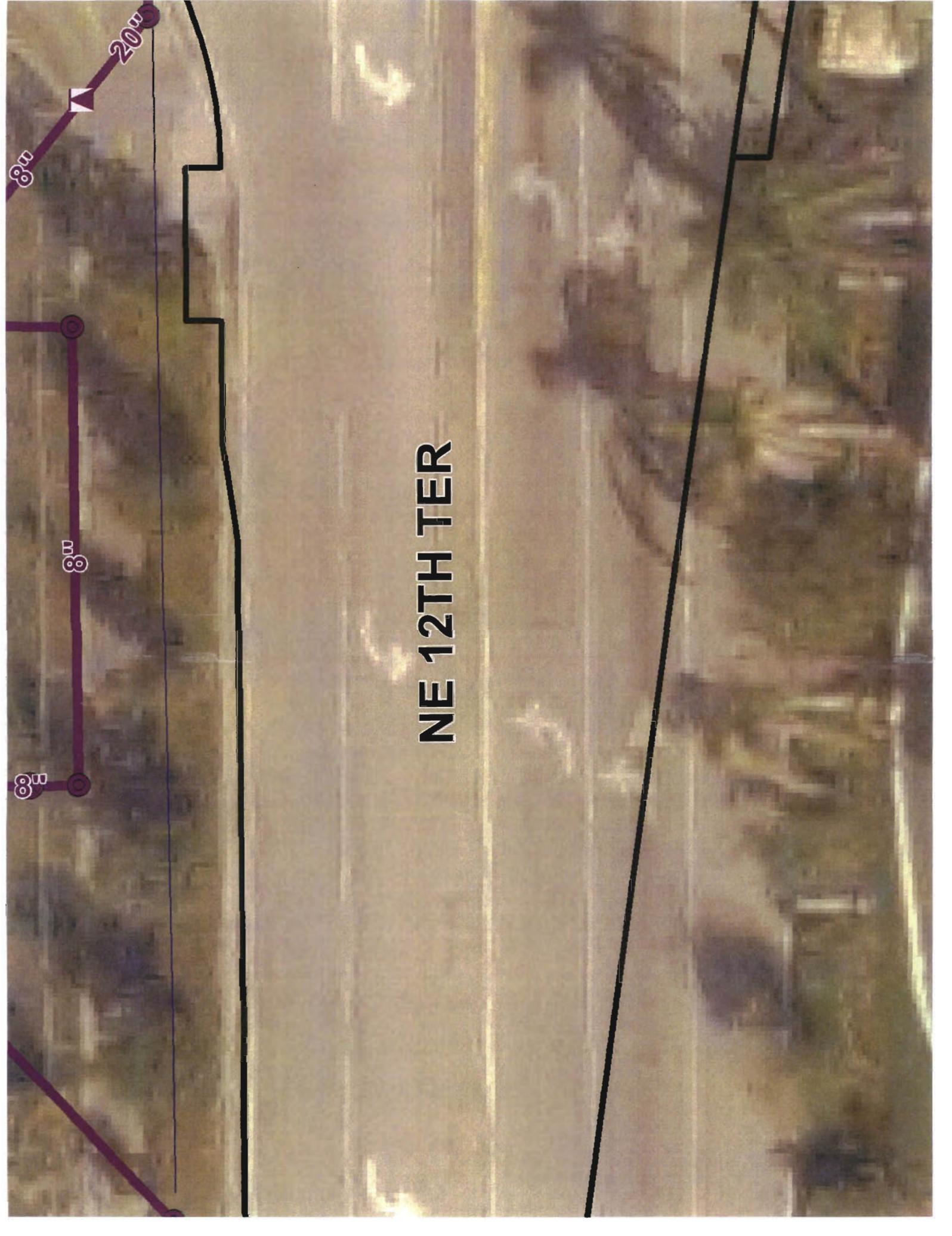
**Description of Service**

-  Broward Water Service Area
-  Broward Reuse Service Area



This product has been compiled from various source data from the City of Pompano Beach. However, the product is for reference purposes only and is not to be considered as a legal document or survey instrument. Any reliance on the information contained herein is at the user's own risk. The City of Pompano Beach assumes no responsibility for any loss resulting from this.

**NE 12TH TER**



**Wholesale Reuse Rates**

**REUSE OPERATING COSTS**

**Reuse Treatment Plant**

Personal Services

Non Empt General Emp	\$ 115,692
Assignment Differential	\$ -
Accrued Vacation / Sick Leave	\$ 23,105
Temporary & Part Time	\$ -
Overtime Regular	\$ -
Overtime Holiday	\$ 5,104
Overtime Call-in	\$ -
Stand By	\$ -
FICA Taxes	\$ 10,911
General Employees Retirement	\$ 53,498
Education	\$ -
<b>Total Personal Services</b>	<b>\$ 208,310</b>

Operating Expenses

Other Professional	\$ 17,478
Central Service Charges	\$ 2,897
Central Stores Charges	\$ 1,229
Customer Service Charges	\$ -
Insur SVC Charges - Health	\$ 16,568
Insur SVC Charges - Risk Mgmt	\$ 29,346
Information Tech Charge	\$ 673
Water & Wastewater	\$ 1,973 <sup>3</sup>
FAA Land Rent	\$ -
Rentals & leases	\$ -
Land, Buidlgs, Improvements	\$ -
Machinery & Equipment	\$ 29,224
Special Services	\$ 2,722
Reuse Meters	\$ -
Office Supplies	\$ 943
Chemical / Horticulture	\$ 64,037
Special Supplies	\$ 1,076
Software Purchases	\$ -
Clothing	\$ 593
Cleaning	\$ -
<b>Subtotal Reuse Treatment Plant Operating Expenses</b>	<b>\$ 168,760</b>

**Reuse Distribution**

Salary Exempt	\$ 36,381
Salary Non-Exempt	\$ 122,866
Fica	\$ 33,418
Other Professional	\$ -
Central Svcs Chgs	\$ 5,146
Central Stores Charges	\$ 9,135
Insur SVC Charges - Health	\$ 61,308
Insur SVC Charges - Risk Mgmt	\$ 4,950
Vehicle Service Charge	\$ 27,983
Information Tech Charge	\$ 6,220
Travel/Education/Member	\$ -
Repair & Maintenance/Land Buildings Improvements	\$ 1,867
Repair & Maintenance/Machinery & Equipment	\$ 17
Repair & Maintenance/Special Services	\$ -
Reuse Water Meters	\$ -
Operating Supplies/Small Tools/Minor Equipment	\$ -
Operating Supplies/Special Supplies	\$ -
Clothing	\$ 1,300
Service Installation Reuse	\$ -
Service Connection Reuse	\$ 94,350
<b>Subtotal Reuse Distribution</b>	<b>\$ 404,941</b>

	FY 2015
<b>Reuse Administration</b>	
Salary Executive	\$ 8,994
Salary Exempt (includes reuse coordinator position)	\$ 70,260
Salary Non-Exempt	\$ 3,354
Fica	\$ 8,612
Automobile	\$ 3,341
Engineering	\$ -
Management Consulting	\$ -
Other Professional	\$ 198
Central Services Charges	\$ 1,684
Central Stores Charges	\$ 424
Insurance Svc Chgs - health	\$ 19,581
Insurance Svc Chgs - risk magmt	\$ 1,346
Information Tech Charge	\$ 1,944
Travel/Education/Member	\$ 8,182
Telephone	\$ 967
Postage	\$ 262
Electric (to pump reuse)	\$ 177,977 <sup>1</sup>
Land, Bldgs, Improvements	\$ -
Advertising	\$ 3,745
Office Supplies	\$ 32,661
Small Tools/Minor Equipment	\$ -
Special Supplies	\$ 950
Clothing	\$ 463
Publications	\$ 200
Subtotal Reuse Administration	\$ 345,145
<b>Subtotal: O&amp;M Costs</b>	<b>\$ 1,127,156</b>
	<b>O&amp;M Cost per Kgal for Reuse \$ 1.45</b>
Capital Outlay Items	
Light	\$ 12,950
Heavy Equipment	\$ 41,177
Total Capital Items	\$ 54,127
<b>REUSE CAPITAL COSTS</b>	
Interfund transfer to fund 420 (R&R Fund)	\$ 575,000
Interfund transfer to 465	\$ -
Total Other Items	\$ 575,000
<b>REUSE DEBT SERVICE</b>	
Reclaimed Water Treatment Facility	\$ 338,403
Reclaimed Water Distribution System Expansion	\$ 202,795
	\$ 541,197
<b>Subtotal: Capital Costs</b>	<b>\$ 1,170,324</b>
	<b>Capital Cost per Kgal for Reuse \$ 1.51</b>
<b>Total Operating and Capital Costs for Reuse System</b>	<b>\$ 2,297,480</b>
<b>Total Cost per Kgal for Reuse</b>	<b>\$ 2.96</b>

**ALLOCATION % of OPERATING COSTS to Wholesale Reuse Customers**

**FY 2015**

**Reuse Treatment Plant**

Personal Services

Non Empt General Emp	100%
Assignment Differential	100%
Accrued Vacation / Sick Leave	100%
Temporary & Part Time	100%
Overtime Regular	100%
Overtime Holiday	100%
Overtime Call-in	100%
Stand By	100%
FICA Taxes	100%
General Employees Retirement	100%
Education	100%

Total Personal Services

Operating Expenses

Other Professional	100%
Central Service Charges	100%
Central Stores Charges	100%
Customer Service Charges	0%
Insur SVC Charges - Health	100%
Insur SVC Charges - Risk Mgmt	100%
Information Tech Charge	100%
Water & Wastewater	100%
FAA Land Rent	100%
Leases and Rentals	100%
Land, Buidgs, Improvements	100%
Machinery & Equipment	100%
Special Services	100%
Reuse Meters	0%
Office Supplies	100%
Chemical / Horticulture	100%
Special Supplies	100%
Software Purchases	100%
Clothing	100%
Cleaning	100%
Cost of backflow devises	0%
Cost of rebate	0%
Annual permit renewals - Light House Point	0%
Annual meter inspections - Light House Point	0%

Total Operating Expenses

**Reuse Distribution**

Salary Exempt	0%
Salary Non-Exempt	0%
Fica	0%
Other Professional	0%
Central Svcs Chgs	0%
Central Stores Charges	0%
Insur SVC Charges - Health	0%
Insur SVC Charges - Risk Mgmt	0%
Vehicle Service Charge	0%
Information Tech Charge	0%
Travel/Education/Member	0%
Repair & Maintenance/Land Buildings Improvements	0%
Repair & Maintenance/Machinery & Equipment	0%
Repair & Maintenance/Special Services	0%
Reuse Water Meters	0%
Operating Supplies/Small Tools/Minor Equipment	0%
Operating Supplies/Special Supplies	0%
Clothing	0%
Service Installation Reuse	0%
Service Connection Reuse	0%

	FY 2015
<b>Reuse Administration</b>	
Salary Executive	0%
Salary Exempt (includes reuse coordinator position)	100%
Salary Non-Exempt	0%
Fica	0%
Automobile	0%
Engineering	0%
Management Consulting	0%
Other Professional	0%
Central Services Charges	0%
Central Stores Charges	0%
Insurance Svc Chgs - health	0%
Insurance Svc Chgs - risk magmt	0%
Information Tech Charge	0%
Travel/Education/Member	0%
Postage	0%
Telephone	0%
Electric (to pump reuse)	100%
Land, Bldgs, Improvements	0%
Advertising	0%
Office Supplies	0%
Small Tools/Minor Equipment	0%
Special Supplies	0%
Clothing	0%
Publications	0%
Subtotal Reuse Administration	

	FY 2015
<b>Allocated O&amp;M Costs to Wholesale Customers</b>	
Reuse Treatment Plant	\$ 377,069
Reuse Distribution	\$ -
Reuse Administration	\$ 248,236
<b>Total Allocated O&amp;M Costs to Wholesale Customers</b>	<b>\$ 625,306</b>

<b>Total Projected Reuse (kgal)</b>	
City of Pompano Beach	782,773
Light House Point	4,465
Broward County	36,500
Total Projected Reuse (kgal)	823,738

<b>Wholesale Reuse O&amp;M Rate per 1,000 gallons</b>	<b>\$ 0.76</b>
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