

AGREEMENT

between

THE CITY OF COCONUT CREEK

And

BACKFLOW SOLUTIONS, INC.

for

BACKFLOW DATA MANAGEMENT

(Online Software, Website, and Online Database Subscription)

THIS AGREEMENT is made and entered into this _____ day of _____, 20____ by and between the City of Coconut Creek, a municipal corporation, with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 (the "City") and Backflow Solutions, Inc. with offices located at 12609 S. Laramie Avenue, Alsip, IL 60803 (the "BSI") to provide an online subscription for backflow data management.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Vendor agree as follows:

1) The Contract Documents

The contract documents consist of this Agreement, all amendments or addenda, all modifications issued after execution of this Agreement and Attachment "A" – Scope of Services. These documents form the Agreement, and all are as fully a part of the Agreement if attached to this Agreement or repeated therein.

2) Cost

- a. The Agreement shall be performed in current funds for the sum of \$9.95 (Data Entry Charge) for each Test Report submitted to the Online Database.
- b. The City shall pay BSI the sum of \$495.00 per calendar year as the annual online Subscription Fee.

3) Payment

- a. The Data Entry Charge shall be paid by the City after each report has been entered into the Online Database by the "testing company."
- b. BSI will invoice the City on a quarterly basis for each test report submitted.
- c. The City agrees to pay the Data Entry Charge per report entered into the BSI Online Database within thirty (30) days after approval of said invoice by the Utilities & Engineering Director or designee.
- d. If, at any time during the service term, the City shall not approve or accept the Vendor's work performance, and an agreement cannot be reached between the City and the Vendor to resolve the problem to the City's satisfaction, the City shall negotiate with the Vendor on a payment for the services provided.
- e. The City of Coconut Creek, without invalidating the Agreement may make changes to increase or decrease services and/or locations as required. Such work shall be executed under the conditions of the original Agreement.

4) Data Extraction

During the term of and within thirty (30) days following termination of this Agreement, City may request BSI to provide consulting services to City in order to perform a custom extract of City data from the Licensed Products. BSI will provide the requested consulting services for an hourly rate of \$150.00 per hour. Custom data extracts will be provided electronically in a text delimited flat file format (or other mutually acceptable format) and will be scrubbed of all BSI proprietary data structures. City and BSI will work together to determine a list of the specific data elements to be provided, at which point BSI will provide an estimate of the time required to extract the data. Once the estimate has been provided, if City wishes BSI to proceed with the data extract, City will make a mobilization payment of fifty percent (50%) of the estimated amount to BSI. After receipt of this payment, BSI will then have thirty (30) days to deliver the data extracts to City. City shall have thirty (30) days upon receipt of the data to review for acceptance. Upon acceptance, BSI will provide City with a final accounting of hours and City shall be responsible for payment of the additional consulting fees.

5) Secondary Data

City agrees that it will be responsible for creating a copy of data entered into the Licensed Products by City or data generated by City's usage of the Licensed Products. This copy will provide City with access to such data following any termination of this Agreement and will additionally allow City to respond to any public records requests. In the event City does not fulfill this obligation, City may request Data Extraction as provided for in Section 4, including any applicable fees. Due to the specific nature of these activities and the technical functionality provided by the Licensed Product, City agrees that it will be the custodian for purposes of responding to public records requests requested to be inspected or copied pursuant to Chapter 119, Florida Statutes, or as otherwise provided by law.

6) City Data

BSI and City acknowledge and agree that data City enters into the BSI Hosted Products ("City Data") remains the property of City. City grants BSI a limited, nonexclusive license to copy, transmit, use and prepare derivative works of the City Data to the extent necessary for BSI to perform its obligations under this Agreement. BSI is permitted to use City Data in an aggregate data form; provided that no aggregated data may be used or shared with third parties unless the data has been anonymized and compiled in a way that does not identify City's end users, vendors, or specific activities within the BSI Product. Upon termination, cancellation, expiration, or other conclusion of this Agreement, City may request that BSI remove City Data from BSI's production systems. City acknowledges that as part of a commercially reasonable backup strategy, BSI does maintain long term archival backups that may continue to contain City Data after termination of this Agreement. BSI agrees not to utilize such archival backups for the specific purpose of accessing City Data after termination of this Agreement, unless specifically authorized to do so by City.

7) Data Breach/Loss/Incident Reporting

BSI shall provide notice to City of breaches of security and loss of data/records where the City's data/records were included. Such notice must be provided to the City as soon as practicable.

The written notice must include the following information and shall be addressed to the City Manager with a copy to the Director of Human Resources/Risk Manager at the address listed in the Notice section of this Agreement:

1. Synopsis of the events surrounding the breach at the time notice is provided.
2. The number of records that were, or potentially have been affected by the breach/loss
3. Any services related to the breach being offered or scheduled to be offered, without charge, to City, and instructions as to how to use such services
4. An explanation of any other actions taken by BSI to prevent recurrence

5. The name, address, telephone number, and e-mail address of BSI's employee from whom additional information may be obtained about the breach

8) Service Term

The initial Agreement period shall be for two (2) years. This agreement shall be on a full calendar year basis.

9) Contract Extension

The City reserves the right to extend the Agreement for three (3) additional one (1) year periods, providing both parties agree to the extension; all the terms, conditions and scope of services remain the same; and such extension is approved by the City. Vendor shall give written notice to the City not less than ninety (90) days prior to renewal date of any adjustment in the initial Contract amount. Agreement renewal shall be based on satisfactory performance, mutual acceptance, and determination that the Contract is in the best interest of the City.

In the event services are scheduled to end because of the expiration of this contract, the Vendor shall continue the service upon the request of the Contract Administrator. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Vendor shall be compensated for the service at the rate(s) in effect when the City invokes this extension clause.

10) Warranty and Hold Harmless

- a. BSI hereby represents and warrants to City that BSI is the owner of the BSI Online Software and Website or otherwise has the right to grant to City the rights set forth in this Agreement. In the event any breach or threatened breach of the foregoing representation and warranty, City's sole remedy shall be to require BSI to either: i) procure, at BSI's expense, the right to use the software, or ii) refund to City the full amount of the Subscription Fee.
- b. The City acknowledges and agrees that the BSI Online Software and Website are the exclusive property of BSI and that BSI is making the BSI Online Software, Website, and Online Database available to the City and the testers. While the BSI Online Software, Website enables testers to upload completed test data, BSI, accepts no responsibility for fraudulent acts, errors, or omissions, which may be contained in the Test Reports.

11) Protection and Confidentiality

The City acknowledges that the BSI Online Software, Website and Online Database constitute and contain valuable proprietary products and trade secrets of BSI and/or its suppliers. Therefore, the City agrees:

- a. To respect and not to remove, obliterate, use or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the BSI Online Software or Website or output generated by the BSI Online Software or Website.
- b. That it will not modify, reverse engineer, disassemble, or decompile the BSI Online Software, or any portion thereof.
- c. That all copies of the BSI Online Software in any form provided by SI or made by City are the sole property of BSI and/or its suppliers. The City shall not have any right, title, or interest to any such BSI Online Software or Website or copies thereof except as provided in this Agreement, and further shall secure and protect all BSI Online Software, the Website and any documentation related thereto consistent with maintenance of BSI's proprietary rights therein.

- d. To treat (and take precautions to ensure that its employees treat) the BSI Online Software, Website and any documentation related thereto as confidential in accordance with the confidentiality requirements and conditions set forth in this Agreement.

12) Public Records

Consultant shall keep such records and accounts and require any and all Consultants and subconsultants to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the project and any expenses for which Consultant expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by City and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for City's disallowance of any fees or expenses based upon such entries.

City is a public agency subject to Chapter 119, Florida Statutes. To the extent Consultant is a Consultant acting on behalf of the City pursuant to Section 119.0701, Florida Statutes, Consultant shall comply with all public records laws in accordance with Chapter 119, Florida Statute. In accordance with state law, Consultant agrees to:

- a) Keep and maintain all records that ordinarily and necessarily would be required by the City in order to perform the services.
- b) 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 copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Florida Statute, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the contract if the Consultant does not transfer the records to the City.
- d) Upon completion of the services within this Agreement, at no cost, either transfer to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the services. If the Consultant transfers all public records to the City upon completion of the services, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the services, the Consultant 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.
- e) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.**

If Consultant does not comply with this Section, the City shall enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

13) Indemnity/Hold Harmless

The parties agree that one percent (1%) of the total compensation paid to Vendor for the work of

the contract shall constitute specific consideration to Vendor for the indemnification to be provided under the Contract. The Vendor shall indemnify and hold harmless the City Commission, the City of Coconut Creek, and its agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Vendor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the City, or any of their agents or employees by any employee of the Vendor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on this amount or type of damages compensation or benefits payable by or for the Vendor or any subcontractor under Workers' Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts. Nothing in this section shall affect the immunities of the City pursuant to Chapter 768, Florida Statutes, as amended from time to time, nor shall it constitute an agreement by the City to indemnify Vendor, its officers, employers, subcontractors or agents against any claim or cause of action.

14) Insurance Requirements

If the Vendor is required to go on to City of Coconut Creek property to perform work or services as a result of this Agreement, the Vendor shall assume full responsibility and expense to obtain all necessary insurance as required by the City of Coconut Creek. Throughout the term of this Agreement, Vendor and/or any and all subcontractors or anyone directly or indirectly employed by either of them shall maintain in force, at all times, insurance as follows:

General Liability

Commercial General Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for premises/operations, contractual liability, personal injury, explosion, collapse, underground hazard, products/completed operations, broad form property damage, cross liability and severability of interest clause. This policy of insurance shall be written in an "occurrence" based format.

General

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit and provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

Should any required insurance lapse during the Contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option terminate this Agreement effective on the date of such lapse of insurance.

General Liability policies shall be endorsed to provide the following:

- a) Name as additional insured the City of Coconut Creek and its Officers, Agents, Employees and Commission Members.

- b) That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

All policies shall be endorsed to provide sixty (60) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to:

City of Coconut Creek
Attn: Risk Manager
4800 West Copans Road
Coconut Creek, Florida 33063

The issuing agency shall include full name, address and telephone number in each insurance certificate issued.

Vendor must submit Certificate of Insurance naming the City of Coconut Creek as additional insured for all liability policies.

Insurance Company and Agent

All insurance policies herein required of the Vendor shall be written by a company with a A.M. Best rating of A-VII or better that is duly authorized and licensed to do business in the State of Florida and shall be executed by agents, thereof that are duly licensed as agents in said state.

15) Independent Vendor

Vendor is an independent Vendor under this Agreement. Personal services provided by the Vendor shall be by employees of the Vendor and subject to supervision by the Vendor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the Vendor.

16) Assignment and Subcontracting

No assignment of this Agreement or any right occurring under this Agreement shall be made, in whole or in part, by the Vendor without the express written consent of the City Commission which consent shall not be unreasonably withheld. In the event of any assignment, the assignee shall assume the rights, duties and responsibilities of the Vendor.

17) Agreement Subject to Funding

~~This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.~~

18) Venue

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Agreement is situated exclusively in the 17th Judicial Circuit Court in and for Broward County, Florida or the United States District Court for the Southern District of Florida.

19) Signatory Authority

The Vendor shall provide the City with copies of requisite documentation evidencing that the signatory for Vendor has the authority to enter into this Agreement.

20) Severability; Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

21) Merger; Amendment

This Agreement constitutes the entire Agreement between the Vendor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Vendor and the City.

22) Anti-Discrimination

That Consultant shall for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, hereby covenant and agree that:

- a) No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of or performance of services described herein; and
- b) Consultant, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression.

That in the event of a proven breach of the above non-discrimination covenant, the City shall have the right to terminate the Agreement as if this Agreement had never been made.

23) Default

23.1 Termination for Cause

In the event the Vendor shall default in or violate any of the terms, obligations, restrictions or conditions of this contract, the City may, upon written notice to the Vendor, terminate this contract effective immediately. In the event of such termination the City may hold the Vendor liable for any and all damages sustained by the City arising out of such default, including but not limited to costs of reprocurement and cover.

Procedures:

- a. Written notice shall be provided to Vendor setting forth the reasons for said termination and
- b. Only after the Vendor has been afforded a reasonable opportunity as determined by the City to correct alleged problems; and
- c. Only after a hearing before the City Manager is granted to Vendor, at which time the Vendor shall be given an opportunity to be heard.

23.2 Termination for Default

In the event the Vendor shall default in any of the terms, obligations, restrictions or conditions in the contract documents, the City shall give the Vendor written notice by registered, certified mail of the default and that such default shall be corrected or actions taken to correct such default shall be commenced within three (3) calendar days thereof. In the event the Vendor has failed to correct the conditions(s) of the default or the default is not remedied to the satisfaction and approval of the City, the City shall have all legal remedies available to it, including, but not limited to termination of the Contract in which case the Vendor shall be liable for any and all damages permitted by law arising from the default and breach of the contract.

23.3 Termination for Convenience of City

Upon thirty (30) calendar days written notice delivered by certified mail, return receipt requested, to the Vendor, the City may without cause and without prejudice to any other right or remedy, terminate the contract for the City's convenience whenever the City determines that such termination is in the best interest of the City. Where the contract is terminated for the convenience of the City the notice of termination to the Vendor must state that the contract is being terminated for the convenience of the City under the termination clause and the extent of termination. The Vendor shall discontinue all work on the appointed last day of service.

24. Gratuities and Kickbacks

24.1 Gratuities: It is unethical for any person to offer, give, or agree to give any employee or for any employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, audit, or in any other advisory capacity in any proceeding or application, request for ruling, determination claim or controversy, or other particular matter, pertaining to any program requirement or an Agreement or subcontract, or to any solicitation or proposal therefore.

24.2 Kickbacks: It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under an Agreement to Vendor or higher tier subcontractor any person associated therewith, as an inducement of the award of a subcontract or order.

24.3 Agreement Clause: The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every Agreement and subcontract and solicitation therefore.

25. Notice

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses.

CITY
City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063

With a copy to the City Attorney at the same address.

VENDOR

Brad Stancampiano, Executive Vice President

Backflow Solutions, Inc.

12609 S. Laramie Avenue

Alsip, IL 60803

Phone: 800-414-4990

Fax:

Email:

Web Address:

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF COCONUT CREEK, through its City Manager or designee and Backflow Solutions, Inc., signing by and through Executive Vice President, Brad Stancampiano (President, Owner, CEO, etc.) duly authorized to execute same.

CITY OF COCONUT CREEK

ATTEST:

Mary C. Blasi, City Manager Date

Leslie Wallace May Date
City Clerk

Approved as to form and legal sufficiency:

Terrill C. Pyburn, City Attorney Date

VENDOR

ATTEST:

BSI Online

Company Name

Donald Smith

(Corporate Secretary)

M.D. Eisenhauer 10-20-17

Signature of President/Owner Date

Donald Smith

Type/Print Name of Corporate Secy.

Michael D. Eisenhauer

Type/Print Name of President/Owner

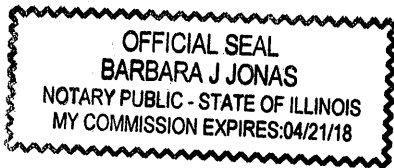
(CORPORATE SEAL)

CORPORATE ACKNOWLEDGEMENT

STATE OF Illinois ~~FLORIDA~~:
COUNTY OF Cook :SS

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Michael Eisenhauer, of BSI Online a _____ Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 23rd day of October, 2017.



Barbara J. Jonas
Signature of Notary Public
State of ~~Florida~~ at Large
Illinois

Barbara J. Jonas
Print, Type or Stamp
Name of Notary Public

- Personally known to me or
- Produced Identification

Type of I.D. Produced

- DID take an oath, or
- DID NOT take an oath.

ATTACHMENT "A"

BACKFLOW DATA MANAGEMENT

(Online Software, Website, and Online Database Subscription)

SCOPE OF SERVICES

1. City Responsibilities

In addition to any other responsibilities set forth in this Agreement, City shall:

- a. Furnish BSI with a current water customer billing database, which shall include a current list of attestable Assemblies, and identify the type of testable assembly, make, model number, serial number, size, hazard, and location address of each such Assembly (the "User Data").
- b. Furnish the User Data in an electronic format, acceptable to BSI ("Electronic Data").
- c. Cooperate with BSI for the purposes of updating User Data and other information to ensure the continuing accuracy of the "Online Database".
- d. The City shall require all Testers performing Backflow Tests in its community to post all Test Reports to the Online Database.

2. BSI Responsibilities

In addition to any other responsibilities set forth elsewhere in this Agreement, BSI shall through the use of its proprietary software (the "BSI Online Software"):

- a. Maintain the Online Database to insure a functional backflow assembly tracking system that is easy to understand and use by licensed testers ("Testers"). BSI shall also maintain an internet website (the "Website") where Testers shall input all data related to Backflow Tests they conduct within the City (the "Test Reports").
- b. Send up to two (2) notices to water customers that have Assemblies, advising them that their Assembly is due for testing. The "Test Due Notice" shall be mailed approximately thirty (30) days prior to the scheduled test date ("Test Date"). The second notice (the "Overdue Notice") shall be sent after the Test Date has passed if Backflow Test results have not been entered to the Online Database. The Overdue Notice will advise the water customer of its delinquent test status and recite the penalties, which may result from failure to comply with the testing procedure. BSI shall transmit an electronic copy of each Test Report to the City with a reasonable time following its receipt. To facilitate the test procedure, the Test Due Notice will include the identity of the water customer's last Tester of record, together with all relevant contact information, provided that information is available to BSI. At the time the Test Due Notice is mailed to the water customer, BSI will also transmit a notice to the last Tester of record advising that Tester that the water customer's assembly is due to be tested (the "Tester Notification"). The Tester Notification is designed to increase test compliance, thereby reducing enforcement cost incurred by the Municipality.
- c. Transmit a notice of non-compliance to the City by electronic transmission ("email") if BSI fails to receive a Test Report for a water customer within fifteen (15) days of the Overdue Notice.