

**AGREEMENT BETWEEN
JOE G. TEDDER, TAX COLLECTOR FOR POLK COUNTY
and
POLK COUNTY, FLORIDA
for
LOCKBOX PAYMENT PROCESSING SERVICES**

THIS AGREEMENT (the "Agreement") is made and entered into as of the Effective Date defined in Section 5.b. below, by and between JOE G. TEDDER, TAX COLLECTOR FOR POLK COUNTY, a Constitutional Officer, 430 E. Main Street, Bartow, Florida 33830, hereinafter referred to as the "Tax Collector," and Polk County, a political subdivision of the State of Florida, whose address is 330 West Church Street, Bartow, Florida 33830, hereinafter referred to as the "County."

WHEREAS the County desires to outsource the processing of its lockbox payments for the County's utility system; and

WHEREAS, the Tax Collector has the necessary equipment and personnel to provide lockbox payment processing services; and

WHEREAS, the County and Tax Collector desire to control costs for both the customers of the utility system and the County;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and benefits contained herein, and other good and valuable consideration, the parties agree as follows:

Section 1. Recitals.

The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

Section 2. Services and Procedures.

a. The Tax Collector shall furnish the services and follow procedures set forth in this Agreement, and as outlined in the Standard Services for County document attached hereto as Exhibit "A" and incorporated herein, for the processing of Polk County Utilities Division customer lockbox payments.

b. The Tax Collector hereby acknowledges the County's Identity Theft Protection Program and attests that the Tax Collector has similar policies and procedures that comply with the Federal Trade Commission's Red Flags Rule, which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003 (16 C.F.R. § 681.2).

Section 3. Responsibilities.

a. The Tax Collector will use the County's existing post office box, P.O. Box 2019, located at the Bartow, Florida Post Office. The Tax Collector shall retrieve mail from the post office at least once every business day prior to 8:15 a.m., subject to delays that are beyond the control of the Tax Collector, such as power failure, wars, fires, floods, hurricanes and other acts of God. The need to deviate from this schedule, because of unusual circumstances, will be communicated to the other party as soon as possible after those circumstances become known. For purposes of this Agreement, a "business day" is any Monday through Friday that is not an Observed Holiday of the Tax Collector's Office.

b. The Tax Collector will group the payments into batches of no more than 500 payment items per batch and will process the payments according to the procedures outlined in Exhibit "A," Standard Services for County.

c. The Tax Collector will charge only for the customer payments it processes that are deposited in the County's account. There will be no charge for the sorting of items received in the mail. Checks processed will have MICR (Magnetic Ink Character Recognition) encoding. The Tax Collector will implement and comply with any other bank requirements in order to control processing costs and fees.

d. The County hereby authorizes the Tax Collector to electronically transmit funds to the County-owned bank account designated for utility payments.

e. The County will provide easily identifiable colored envelopes to organizations for which the County does not want the Tax Collector to process payments.

f. The County will provide any proposed changes to the bill forms to the Tax Collector in order for the Tax Collector to evaluate compatibility with the processing equipment.

g. The Tax Collector will process payments every business day.

h. The Tax Collector will process payments as described in the Standard Services for County document attached as Exhibit "A." In the event all payments are not processed and transmitted or all agreed work product is not provided, the Tax Collector will notify the County with details of the inability to process, number of items not processed, and the expected resolution timeframe.

i. The Tax Collector will not be in breach of the contract in the event a force majeure prevents it from timely processing payments. A force majeure event shall include events beyond the control of the Tax Collector including but not limited to the following:

1. act of God (such as, but not limited to, hurricanes, fires, explosions, earthquakes, drought, tidal waves and floods);
2. war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
3. rebellion, revolution, insurrection, or military or usurped power, or civil war;
4. contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
5. riot, commotion, strikes, go slows, lockouts or disorder, unless solely restricted to employees of the Supplier or of his Subcontractors; or
6. acts or threats of terrorism.

j. However, it is critical to the County's operations that payments be posted to utility customer accounts in a timely manner. Therefore, events or situations that affect the Tax Collector's performance beyond a twenty-four hour period will constitute an

immediate suspension of services from the Tax Collector until the situation or event is corrected and the Tax Collector is able to perform pursuant to the terms of this Agreement.

k. Payments that cannot be processed by the Tax Collector in accordance with the Standard Services for County procedures set forth in Exhibit "A" will be forwarded to the County's Utilities Division.

Section 4. Costs and Billing.

a. The County shall pay the Tax Collector a service fee of 21.5 cents per each County utility account payment the Tax Collector processes. The service fee may be billed based on 1/10 cent and will be indexed annually based on the percent change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI) for All Urban Consumers (CPI-U): U.S. city average (All items) (see <http://www.bls.gov/>) based on the twelve-month change in the CPI published two months prior to the anniversary of the date (March 1st) the Tax Collector begins providing services to the County pursuant to this Agreement.

b. The Tax Collector will submit an invoice by email to the County by the 15th of each month for the services provided during the previous month. Each invoice will detail the number of utility account payments processed and the corresponding aggregate fee due and payable. Invoices shall be sent directly to charlesrichards@polk-county.net, or to such other email address(es) that the County may from time to time designate.

Section 5. Term.

a. The initial term of this Agreement shall begin on March 1, 2017, and, unless sooner terminated as provided herein, shall continue for a five (5) year period until February 28, 2022. Thereafter, the Agreement shall annually each March 1st automatically renew for one (1) year renewal terms unless terminated as set forth herein.

b. The effective date (“Effective Date”) of this Agreement is the date the later of the two parties executes the Agreement.

c. This Agreement may be terminated by either party upon ninety (90) calendar days’ written notice to the other party. In the event of termination, the parties agree to cooperate to effect an orderly, efficient, and effective transition of services from the Tax Collector to the County. The Tax Collector shall be entitled to compensation for any work completed prior to the termination date. No damages will be paid by the County to the Tax Collector as a result of the termination of this Agreement.

Section 6. Notices.

a. Whenever either party desires to give notice unto the other, notice may be sent by hand delivery or by certified mail, return receipt requested, to:

COUNTY:

Polk County Utilities Division
Name: Attn: Utilities Division Director
Address: 1011 Jim Keene Boulevard
Winter Haven, FL 33880

TAX COLLECTOR:

Name: Joe G. Tedder, Tax Collector
Address: 430 East Main Street
Bartow, FL 33830

b. Either party may change its address for the delivery of written notice by providing advance written notice to the other party in accordance with this section. All notices delivered as required by this section shall be deemed received when actually delivered or when attempted delivery has been refused.

Section 7. Errors and Omissions; Performance Issues; Default.

a. In the event of any substantial error or omission on the part of the Tax Collector, its agents or employees, the Tax Collector will take all reasonable steps to correct said error or omission with the cooperation of the County at no additional cost to the County.

b. The Tax Collector shall exercise reasonable care to prevent loss of or damage to the County’s customer input data, checks, or other information received for processing but shall not be responsible for any such input data, checks, or other information until retrieved by and in possession of Tax Collector personnel.

c. The Tax Collector shall not be responsible for processing payments that are defaced or otherwise unable to be processed through the equipment.

d. If either party materially defaults in its obligations under this Agreement and fails to cure the same within thirty (30) days after the date the other party delivers written notice of the material default, then the non-defaulting party shall have the right to (i) immediately terminate this Agreement by delivering written notice to party in material default, and (ii) pursue any and all remedies available in law, equity, and under this Agreement.

Section 8. Liability.

a. In accordance with and subject to all the limits of liability provided by Section 768.28, Florida Statutes, or its successor, each party shall be liable for all damages or injury to persons or property caused solely by the negligent or wrongful act or omission of any of its agents or employees acting within the scope of authorized operations, employment, or the employee's office when performing duties or obligations of this Agreement.

b. Should a party (the "Passive Party") be sued for actions or matters associated with the performance of this Agreement that are solely the result of the other party (the "Active Party"), the Active Party shall be notified of such suit, and thereupon, shall have the duty to defend the suit by counsel reasonably acceptable to the Passive Party. Should judgment be awarded against the Passive Party in any such case, the Active Party shall forthwith pay the same and relieve the Passive Party of any obligations relating thereto.

c. In accordance with and subject to all the limits of liability provided by Section 768.28, Florida Statutes, or its successor, each party (an "Indemnifying Party") indemnifies and saves harmless the other party (the "Indemnified Party"), its officers and employees, from any and all damages awarded by judgment to anyone for injury or loss of property, personal injury, or death caused solely by the negligent or wrongful act or omission of any Indemnifying Party employee acting within the scope of the employee's office or employment when performing duties or obligations of this

Agreement and shall pay all expenses including without limitation defense and legal costs and attorney's fees, incurred in defending against any such claim for damages made against the Indemnified Party or any of the Indemnified Party's officers or employees provided, however, the Indemnifying Party's responsibilities to the Indemnified Party or to any third party with respect to such damage liability shall not exceed the limits of liability stated in Section 768.28(5), Florida Statutes, (or any successor statutory provision), regardless of whether a claim for damages or other relief is based in tort, contract, statute, strict liability, negligence, product liability or other legal theory. This section is not intended and does not establish a contractual obligation whereby the Indemnifying Party undertakes responsibility to any party for any liability in amounts exceeding the Section 768.28(5), Florida Statutes, liability limits under any legal theory, claim, or cause of action.

d. Nothing herein shall be deemed or construed as a waiver of sovereign immunity by the Tax Collector or the County, and the parties shall have and maintain at all times and for all purposes any and all rights, immunities and protections available under controlling legal precedent as provided under Section 768.28, Florida Statutes, or its successor and as provided under other applicable law.

e. This Agreement is solely for the benefit of the formal parties to this Agreement, and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any other person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof other than the parties hereto and their respective representatives, successors, and assigns as set forth herein.

Section 9. Binding Effect.

a. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it.

b. The signatories hereof represent that they have the requisite legal authority to execute this Agreement and bind the respective parties hereto.

Section 10. Public Records.

a. The parties shall allow public access to all documents, papers, letters, or other materials which are public records under the provisions of Chapter 119, Florida Statutes, and the constitution of the State of Florida and which have been made or received by the parties in conjunction with this Agreement.

b. IF THE TAX COLLECTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TAX COLLECTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE TAX COLLECTOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS FOR POLK COUNTY AS FOLLOWS:

**ROLLAND HOGUE, RECORDS MANAGEMENT LIAISON OFFICER
POLK COUNTY IT DEPARTMENT
330 WEST CHURCH STREET
BARTOW, FL 33830
PHONE: (863) 534-7527
EMAIL: RollandHogue@Polk-County.net**

Or:

**CHARLES RICHARDS, CUSTOMER SERVICE/FINANCE MANAGER
POLK COUNTY UTILITIES DIVISION
1011 JIM KEENE BOULEVARD
WINTER HAVEN, FL 33884
PHONE: (863) 298-4135
EMAIL: CharlesRichards@Polk-County.net**

c. In accordance with Section 119.0701, Florida Statutes, the Tax Collector shall keep and maintain public records required by the County in performance of services pursuant to the contract. Upon request from the County's custodian of public

records, the Tax Collector shall provide the County 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 pursuant to Chapter 119, Florida Statutes, or as otherwise provided by law. The Tax Collector shall 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 the contract if the Tax Collector does not transfer the records to the County. The Tax Collector shall, upon completion of the contract, transfer at no cost to the County all public records in possession of the Tax Collector, or keep and maintain public records required by the County to perform services pursuant to the contract. If the Tax Collector transfers all public records to the County upon completion of the contract, the Tax Collector shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Tax Collector keeps and maintains public records upon completion of the contract, the Tax Collector shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

d. Notwithstanding Section 10.c. above, the parties intend that when providing the services described in this Agreement, the Tax Collector will not keep or maintain any records of the County. Accordingly, the Tax Collector will not and does not take responsibility for the retention of records on behalf of the County for purposes of meeting state public records laws. Rather, the Tax Collector will provide all such records to the County in accordance with the Standard Services for County listed in Exhibit "A." The Tax Collector will retain paper copies of any such records for ninety (90) days following confirmed delivery to the County after which they will be shredded. The Tax Collector will retain electronic records for thirty (30) days following confirmed delivery to the County after which they will be purged.

Section 11. Records and Audits.

a. The Tax Collector will maintain adequate internal audit procedures. The parties shall maintain in their place of business all books, documents, papers, and other evidence pertaining to work performed under this Agreement.

b. Such records shall be available at any time that a party may reasonably request inspection and copying of the said records.

c. Upon reasonable notice by the County, the Tax Collector will permit authorized representatives of the County, during normal business hours, to inspect the Tax Collector's facilities where services are performed.

Section 12. Compliance with Laws and Regulations.

In performing their obligations pursuant to the Agreement, the parties shall abide by all laws, statutes, ordinances, rules, and regulations pertaining to or regulating the acts contemplated to be performed herein, including those now in effect and hereafter adopted. Any violation of said laws, statutes, ordinances, rules or regulations shall constitute a material breach of the Agreement.

Section 13. Assignment.

This Agreement shall not be assigned by either party without prior written approval of the other, which approval may be withheld in the exercise of absolute discretion of the party whose approval is required.

Section 14. Captions.

Sections and other captions contained in this Agreement are provided for reference purposes only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement, or any provision hereto.

Section 15. Time.

Time is of the essence in the performance of this Agreement, except as otherwise provided.

Section 16. Entire Agreement / Modification.

This Agreement constitutes the complete, integrated and entire Agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior agreements, arrangements, contracts or understandings, whether oral or written, between the parties, all of which, if any, have been integrated herein. This Agreement may not be amended, changed or modified and material provisions hereunder may not be waived, except by written document or equal dignity herewith and signed by all parties to this Agreement.

Section 17. Counterparts.

This Agreement may be executed in multiple counterparts each of which shall be deemed an original and all of which together shall collectively constitute one instrument.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE WITH
THE PARTIES' SIGNATURES.

IN WITNESS WHEREOF, the parties hereto have caused the execution of these premises as of the Effective Date.

POLK COUNTY, a political subdivision of the State of Florida

By: 
Jim Freeman, County Manager




Date: 3-16-17

JOE. G, TEDDER, TAX COLLECTOR FOR POLK COUNTY

By: 

Date: 3/17/17

ATTEST: STACY M. BUTTERFIELD, CLERK TO THE BOARD

By: 
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
Tineshia Morris, Tax Collector Attorney

APPROVED AS TO FORM AND CORRECTNESS: LEGAL SUFFICIENCY:

By: 
County Attorney's Office

Exhibit List:

Exhibit A – Standard Services for County

Exhibit A
Standard Services for County

Polk County Utilities payments and correspondence received via postal mail are to be processed as follows:

A. Envelope received that has a check or money order that matches the stub

1. Open envelope
2. Check stub for address change
3. Check envelope for other correspondence
4. If other correspondence or address change:
 - a) Process payment
 - b) Return envelope with correspondence and payment stub to the County's Utilities Division

B. Envelope received that has multiple checks or money orders that match the stub

1. Open envelope
2. Check stub for address change
3. Check envelope for other correspondence
4. If other correspondence or address change:
 - a) Process payment
 - b) Return envelope with correspondence and payment stub to the County's Utilities Division

C. Envelope received that has a check or money order that matches multiple stubs

1. Open envelope
2. Check stub for address change
3. Check envelope for other correspondence
4. If other correspondence or address change:
 - a) Process payment
 - b) Return envelope with correspondence and payment stub to the County's Utilities Division

D. Envelope received that has a check or money order that does not match the stub

1. Open envelope

2. Hold check, stub, correspondence (if any) and envelope to be picked up by the County's Utilities Division for processing

E. Envelope received that has a check or money order but no stub

1. Open envelope
2. Attempt to find the account number and verify if it is written on the check
3. If account number is located, verify and process
4. If no account number is determined, hold check, stub, correspondence (if any) and envelope to be picked up by the County's Utilities Division for processing

F. Envelope received that has a stub with no check

1. Open envelope
2. Hold correspondence and envelope to be picked up by the County's Utilities Division for processing

G. General correspondence including junk mail

1. Open envelope
2. Hold correspondence and envelope to be picked up by the County's Utilities Division for processing

H. Mail delivered in error

Return to the post office

I. Applications for service

Hold correspondence and payment to be picked up by the County's Utilities Division

J. Applications for bank draft

Hold for pickup by the County's Utilities Division

K. Bank checks

1. Create virtual stub for the bank checks to be processed through the high speed processor at the Tax Collector's Office
2. Items that cannot be processed and items with additional information defined above in Standard Services for County will be sorted and ready for pickup by 11:00 a.m.
3. Process payment

L. Reports, deposits, and other performance standards:

- 1) Daily batch and deposit reports emailed to the County's Utilities Division
- 2) Create a file to be imported into the billing system
- 3) Deposit made to a County designated bank account no later than the next business day
- 4) All payments processed on the day received
- 5) Mail picked up weekdays by 8:15 a.m. at the post office
- 6) Bank file transmitted to the County designated bank account by 4:30 p.m. each business day