

PLEASE RETURN DOCUMENT TO:

Mary L. Chambers, CMC
City Clerk
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, FL 33060

original #3

SANITARY SEWER AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of June, 2005, by and between The CITY of Pompano Beach, a Florida municipal corporation, hereinafter referred to as "CITY" and the TOWN of Lauderdale by the Sea, a Florida municipal corporation, hereinafter referred to as "TOWN".

WITNESSETH:

WHEREAS, the CITY and TOWN desire to provide sanitary sewer service to respective TOWN and CITY residents in the area commonly referred to by the TOWN as the North Beach Area and comprised of the Terra Mar Island, Palm Club, Sunset Lane, and the Bel Aire neighborhoods, and

WHEREAS, the CITY owns and operates a sanitary sewer system in the vicinity of these neighborhoods, which do not have sanitary sewer service but are currently serviced by septic tanks, and

WHEREAS, the TOWN is in the process of designing and constructing a sanitary sewer system which will extend the CITY'S sanitary sewer system into the above-listed areas and which, on completion will enable the CITY to own, maintain and operate said system and,

WHEREAS, the CITY is willing to allow the extension of its sanitary sewer system for this purpose and to join in the Town's project to extend the CITY sanitary sewer system to the north end of Terra Mar Island which is within the jurisdictional boundaries of the CITY ;

NOW, THEREFORE, in consideration of mutual promises and other valuable consideration, the receipt of which is hereby acknowledged between both parties hereto, agree as follows:

1. The TOWN will plan, design and construct a sanitary sewer system (hereinafter referred to as the North Beach Sanitary Sewer Project or NBSSP) within the Town and the CITY to serve the North Beach area and the following listed residential neighborhoods, designated by phase:

- A. Terra Mar Island (185 units¹ in the TOWN and 39 units in the CITY);
- B. Bel Aire (222 units in the TOWN);
- C. Sunset Lane (12 units in the TOWN, and
- D. Palm Club (119 units in the TOWN)

The NBSSP service area is depicted on the Project Map a copy of which is attached as Exhibit "A" with each neighborhood marked to correspond to the letter designation above and the project phase number.

2. The sanitary sewer collection system shall consist of such pipes, lines, manholes, lift stations, force mains and other required appurtenances thereto to collect and deliver the waste

¹ The number of actual units referred to in A-D is subject to confirmation by the parties.

water flow from the area served to an existing force main owned by the CITY located within the west right-of-way of State Road A1A in the vicinity of Terra Mar Drive.

The NBSSP shall be constructed in three (3) phases.

Phase One -Terra Mar Island and Sunset Lane shall begin no later than September 30, 2005.

Phase Two- Bel Aire shall begin no later than September 30, 2006.

Phase Three- Palm Club project shall begin no later than September 2007.

All three phases will be completed by December 2008.

3. The CITY will pay 100% of all additional costs of the shared improvements in excess of the amount that TOWN would have been required to pay in the event the CITY was not connected to the Terra Mar Island portion of the NBSSP. Such additional costs shall be determined the project engineer's estimate or by alternative bids for the work by mutual agreement by the CITY and TOWN.

4. Any and all services associated with the planning, engineering and construction of the project including field engineering inspection services shall be contracted and or provided and paid for by the TOWN and will be reimbursed by the CITY to the extent set forth herein.

5. The CITY will issue a purchase order to TOWN to cover all work to be performed for which the CITY will be responsible. The CITY will approve periodic invoices for services and submit payment to TOWN within twenty (20) days of receipt of such invoice as follows:

6. The CITY shall reimburse the TOWN a fixed fee in the amount of \$42,900 for the design of that portion of Terra Mar Island within the CITY's corporate limits and includes construction phase services, including certification of the final installation required by the County to place the system in service. The CITY will reimburse the TOWN for construction costs of the project as the work is completed, billed and approved by the TOWN's engineer.

7. All design plans and shop drawings including any changes there to shall be reviewed and approved by the CITY Engineer prior to construction. Construction services shall include certification of the system as required by Broward County. All design plans and as built will be turned over to the CITY upon completion of the project in both hard copy and electronic format. The electronic format shall be AutoCAD compatible. The hard copy as-built shall be signed and sealed by a Professional Surveyor and Mapper or Professional Engineer registered in the State of Florida.

8. The TOWN shall provide for daily engineering inspections by a field inspector approved by the CITY as required to certify the system on completion of the work. The City may elect to require a full time engineering field inspector on the CITY'S portion of the work, but the CITY

shall be responsible for the fees of the inspector. The CITY shall reimburse the TOWN for inspection services on that portion of the project within the CITY limits. In addition, the TOWN shall pay the CITY a fee of \$120,000.00 of project costs for engineering plan review and inspection services for that portion of the system that lies within the corporate limits of the TOWN.

9. CITY, by and through its Engineer or designee, shall have complete access at all times to inspect all work on the project throughout the construction process. Any objections to work on any portion of the system by the City Engineer or designee shall be provided in writing to the TOWN as soon as possible after CITY has knowledge of a deficiency. All such objections must be resolved to the satisfaction of the CITY prior to the acceptance of the project by the CITY. In the event of a dispute regarding a deficiency claimed by the CITY, the parties will submit their dispute to a third party engineer mutually selected by the parties. The third party engineer's fees shall be paid equally by the parties.

10. Upon completion of the project, the CITY shall inspect the project to determine if the system has been constructed per the approved construction plans, and that the system meets all specifications and requirements. Upon approval and acceptance of the project by the CITY, TOWN shall transfer all ownership of the system to the CITY at no cost to CITY, project shall become a part of the CITY'S sanitary sewer system. The CITY shall assume ownership and maintenance responsibility for the completed project, and shall have the right to operate the system within the service territory as set forth herein.

11. The TOWN property owners who connect to the system shall pay all fees and charges, as set forth in Chapters 50 and 51 of the Pompano Beach Code of Ordinances as amended from time to time including but not limited to, sewer connection fees and capital recovery fees, plan review fees, permitting fees, and inspection fees.

12. Property owners shall have up to 180 days from the date of completion of the project to connect to the system as set forth in Section 51.02 of the CITY Code. The TOWN will conform its Code to require property owners to timely connect to the system. Each individual lot or property will be limited to one sanitary sewer connection. Any property that has not connected to the system within 180 days will be billed as if they were connected to the system. It shall be the responsibility of the individual cities to take the necessary actions to ensure all properties within their respective boundaries connect.

13. Any proposed new customers to be added to the TOWN'S sanitary system or the connection of private lines located in the TOWN must first be approved by the CITY per 51.03 Installation; Connection Charges of the CITY'S ordinances.

14. New customers requesting connection to the system will be responsible for paying the appropriate impact fees. Any system expansion shall have the prior approval by the CITY. The CITY has the right to deny additional connections to this system that are not made under the initial time period set forth in paragraph 1 and 8 of this Agreement. Determination of future connections shall be based upon operational factors including, but not limited to, system capacity.

15. The TOWN agrees that there is hereby granted to the CITY, its successors and assigns, the right, privilege or franchise to construct, maintain and operate in, under, upon over and across the present and future easements, streets, alleys, rights-of-way and public ways of the TOWN and its successors in accordance with established practice with respect to sewer collection system including all the sewer mains, pipes, connections, manholes, fittings, pumps, lift stations and any and all other additional equipment or appurtenances of any nature necessary to effect a sewer collection system for the purpose of providing a sewer collection services to TOWN and its successors, inhabitants thereof, to specifically serve the service territory described herein.

16. Upon acceptance of the project by the CITY, operation of the portion of the project with the limits of the TOWN shall be governed by the terms and conditions of the existing Sewer Service Agreement between the CITY and TOWN and any extension thereto, or subsequent agreement, excluding the provisions for rates and charges which shall be governed by the terms set forth below in paragraph 18. of this Agreement for the service territory. That portion of the service territory located within CITY limits, however shall not be subject to said rates and charges.

17. Periodic Payment: The TOWN will submit a periodic payment request for expenses as set forth in paragraph 2. of this Agreement, to the CITY by the 25th of each month for work installed by that date. The CITY will process approved payments and make payment within twenty (20) days after receipt of the payment request.

18. Governing Law: This agreement will be governed and construed in accordance with the laws of the State of Florida, and venue for any litigation will be in Broward County.

19. Severability and Waiver: If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other provision or, subsequent breach.

20. Legal Fees: If any dispute arises between the parties with respect to the matters covered by this Agreement which leads to the filing of litigation to resolve such dispute, the prevailing party in such matter shall be entitled to receive its reasonable attorney's fees plus costs necessitated by the proceedings.

21. Warranty: TOWN agreement with the contractor for the project shall require that the contractor warrants the completed system to be free from any and all defects, including but not limited to, design, materials, and workmanship, for a period of one (1) year from the date of acceptance by the CITY. TOWN contractor shall agree to provide a warranty during said one-year period under which it will replace, repair, reconstruct, or otherwise resolve any defect or deficiency to the satisfaction of the CITY, with all costs of same paid by the TOWN. The CITY will be named as a third party beneficiary of the contractor's guarantee.

22. Rates and Charges: CITY'S ordinances and fee schedules are amended from time to time. Rates and Charges passed by the CITY'S Commission will become the adopted rate schedule for this Agreement. Properties located in the service territory within the TOWN as described in this Agreement, will not be charged under TOWN'S master meter and will not be under TOWN'S cost of service rate schedule. CITY'S rate charged to its own residents, plus 25%, will be the maximum applicable rate for property owners in the TOWN who are billed for sewer service under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

"TOWN":

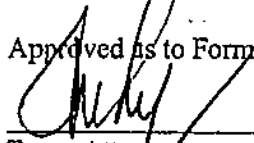
ATTEST:

TOWN OF LAUDERDALE-BY-THE-SEA,
FLORIDA


ALINA MEDINA, Town Clerk

By: 
OLIVER PARKER, Mayor


Approved as to Form:


Town Attorney

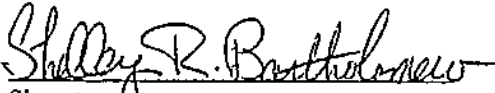
"CITY":

Witnesses:

CITY OF POMPANO BEACH


Signature

By: 
JOHN C. RAYSON, MAYOR


Signature

By: 
C. WILLIAM HARGETT, JR.,
CITY MANAGER

Attest:


MARY L. CHAMBERS
CITY CLERK

(SEAL)

Approved As To Form:


GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20th day of June, 2005 by JOHN C. RAYSON as Mayor of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:




NOTARY PUBLIC, STATE OF FLORIDA

Asceleta Hammond

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20th day of June, 2005 by C. WILLIAM HARGETT, JR., as City Manager of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:




NOTARY PUBLIC, STATE OF FLORIDA

Asceleta Hammond

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20th day of June, 2005 by MARY L. CHAMBERS as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:



Asceleta Hammond
NOTARY PUBLIC, STATE OF FLORIDA

Asceleta Hammond

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

EXHIBIT - 'A'



SCALE=N.T.S.

