

OLD LYME BEACH ASSOCIATIONS /  
NEW LONDON AGREEMENT

THIS AGREEMENT, made and entered this 27<sup>th</sup> day of April, 2018 by and between the City of New London, Connecticut, a municipal corporation, with its principal place of business at 181 State Street, New London, Connecticut, 06320, acting through its City Council and Water & Water Pollution Control Authority (both hereinafter referred to as the CITY), and The Miami Beach Association and The Miami Beach Association Water Pollution Control Authority, each located in the Town of Old Lyme, Connecticut (collectively, "Miami Beach"); Old Lyme Shores Beach Association and The Old Lyme Shores Beach Association Water Pollution Control Authority, each located in the Town of Old Lyme, Connecticut (collectively, "Old Lyme Shores"); and The Old Colony Beach Club Association and The Old Colony Beach Club Association Water Pollution Control Authority, each located in Old Lyme, Connecticut (collectively "Old Colony") (Miami Beach, Old Lyme Shores and Old Colony are sometimes individually referred to herein as a "BEACH ASSOCIATION" or are collectively referred to herein as the "BEACH ASSOCIATIONS").

WHEREAS, the CITY owns and operates a water supply, treatment, and distribution system, and a wastewater collection, treatment, and discharge system that serves the City of New London, as well as all or part of the Towns of East Lyme and Waterford in Connecticut (hereinafter referred to as the "Systems").

WHEREAS, the CITY and BEACH ASSOCIATIONS have the authority under the laws of the State of Connecticut (the "State") and desire to enter into a contract for the CITY to provide sewage treatment for the BEACH ASSOCIATIONS,

NOW THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree as follows:

**1.0 PURPOSE**

During the term of this Agreement, the CITY agrees to provide sewage treatment for the BEACH ASSOCIATIONS pursuant to the terms and conditions of this Agreement.

**2.0 SCOPE OF SERVICES**

The scope of services to be provided by the CITY under this Agreement shall be to perform all services required for the BEACH ASSOCIATIONS' sewage pursuant to the terms of this Agreement and all interlocal and tri-town agreements now in force, and as hereinafter amended, affecting the operation of the Systems. The CITY warrants that the sewage treatment services provided herein shall comply with all applicable local, State and federal laws and requirements.

**2.1 Daily Flow Rate**

The CITY agrees to provide a maximum of one hundred and twenty thousand (120,000) gallons per day of sewage treatment pursuant to this Agreement. The BEACH ASSOCIATIONS reserve the right to purchase up to an additional 180,000 gallons per day capacity (gpd) in increments of 1,000 with a 25,000 gpd minimum.

## **2.2 Treatment Cost**

The parties agree that the treatment cost pursuant to this Agreement shall be variable and based on actual audited costs associated with operation and administration of the wastewater treatment facility to be billed twice yearly. Said treatment cost shall be variable and calculated as it is for all other member communities. Late fees in the amount of one and one-half percent (1.5%) per month shall be incurred for each month that the BEACH ASSOCIATIONS fail to pay the billed treatment cost. The current rate at the time of the signing of this Agreement is \$2.20/1000 gallons of sewage processed. It is understood by the parties that this rate may be adjusted either upward or downward based on the calculation, rates and costs in effect at the time flow actually commences. Bi annual billing shall be calculated in the same manner as other member communities in terms of content and timeframe. BEACH ASSOCIATIONS members shall be jointly and severally liable for payment of the treatment cost. The Old Colony Beach Association will receive the bill and will be responsible for coordinating payment to CITY and for obtaining payment from the other BEACH ASSOCIATIONS for their share.

## **2.3 Initial Connection Costs**

The BEACH ASSOCIATIONS agree to the connection fee in the amount of one million four hundred and forty thousand dollars (\$1,440,000.00) (\$1,450,000 less the earnest money of \$10,000 previously paid) to be paid over twenty years plus a two percent (2%) interest to be compounded yearly, said payments to be made on a biannual basis billed along with treatment costs. Late fees in the amount of one and one-half percent (1.5%) per month shall be incurred for each month that the BEACH ASSOCIATIONS fail to pay the initial connection costs. This fee is for the initial capacity of 120,000 gallons per day. Construction of project shall commence within 18 months of the signing of the agreement. Every effort shall be made by the BEACH ASSOCIATIONS to expedite the process. Payments under this section shall commence September 1, 2023 or at the beginning of flow from the BEACH ASSOCIATIONS whichever comes first. BEACH ASSOCIATIONS members shall be jointly and severally liable for payment of the initial connections costs. The Old Colony Beach Association will be responsible for coordinating payment to CITY and for obtaining payment from the other BEACH ASSOCIATIONS for their share. New London agrees to enter into negotiations to extend the start date for payments under paragraph 2.3 in the event that the project has been delayed through no fault of the Beach Associations such that flow will not commence by September 1, 2023.

## **2.4 Plant Capital Expenses**

The BEACH ASSOCIATIONS agree to pay one and two-tenths percent (1.2%) of the annual plant capital expenses associated with the 120,000 gallon per day capacity payable on biannual basis along with treatment costs; said payment is due thirty days after billing to the BEACH ASSOCIATIONS. BEACH ASSOCIATIONS members shall be jointly and severally liable for payment of the plant capital expenses. The Old Colony Beach

Association will receive the bill and will be responsible for coordinating payment to CITY and for obtaining payment from the other BEACH ASSOCIATIONS for their share. The percent of capital expenses will increase accordingly with additional capacity purchased in the future. Interest will accrue at a rate of one and one-half percent (1.5%) per month for each and every month that the plant capital expense payment is not made. No capital expenses shall be charged to BEACH ASSOCIATIONS by reason of any capacity expansion by CITY.

## **2.5 Capacity Reservation Option**

The parties agree that the BEACH ASSOCIATIONS will have an option to reserve an additional one hundred and eighty thousand (180,000) gallons per day of flow. Said reservation option is intended to provide additional capacity for future needs. The buy-in for additional capacity is to be purchased in increments of 1,000 with a minimum of 25,000 gpd and shall be calculated utilizing the same formula as the initial buy-in and shall be payable as follows: (a) For the first through fifth years of the Agreement, there shall be a cost of zero dollars (\$0.00). (b) For years six through ten of the option, there shall be a one-time fee in the amount of five thousand dollars (\$5,000.00) payable within thirty days after the BEACH ASSOCIATIONS have exercised the option to continue with the option. (c) For years eleven through fifteen, there shall be a one-time fee in the amount of ten thousand dollars (\$10,000.00) payable within thirty days after the BEACH ASSOCIATIONS have exercised the option to continue with the option. (d) For years sixteen through twenty, there shall be a one-time fee in the amount of fifteen thousand dollars (\$15,000.00) payable within thirty (30) days after the BEACH ASSOCIATIONS have exercised the option to continue with the option

## **2.7 Source of Sewage**

The sewage sent for processing shall be generated solely from the BEACH ASSOCIATIONS communities and from no other source. Any extension of this agreement to additional communities is subject to mutual consent of both parties. The parties agree to not unreasonably deny requests to add additional communities. Sewage shall be domestic only and have parameters based upon typical values of domestic sewage. Atypical sewage is not covered by this Agreement.

## **2.8 Electronic Flow Signal**

The BEACH ASSOCIATIONS shall provide an electronic flow signal to the New London WWTF as part of the overall project. The meter utilized for flow measurement shall be calibrated bi-annually and paid for by the BEACH ASSOCIATIONS. Calibration data shall be submitted within 30 days of calibration.

## **3.0 TERM AND TERMINATION**

### **3.1 Term**

Services by the BEACH ASSOCIATIONS under this Agreement shall commence on the day that the BEACH ASSOCIATIONS' flow commences and end twenty (20) years from such a date (the "Initial Term"), unless this Agreement is terminated as provided herein. The Right to maintain capacity purchased in the facility is not limited by the 20 year time frame as long as all payments are made under paragraph 2.3. The Right to maintain Treatment associated with waste generated by the BEACH ASSOCIATIONS is not limited by the 20 year time frame. Treatment costs are variable and covered under Section 2.2 of this agreement. In the event BEACH ASSOCIATIONS have not utilized any capacity by September 1, 2023, this agreement shall terminate absent an agreement pursuant to paragraph 2.3.

### **3.2 Termination**

This Agreement may be terminated for breach or default (collectively, "breach"), but only if (i) the breach is a material one; (ii) the party claimed to have committed the breach received written notice of such breach given in accordance with Section 5.9 of this Agreement ("Notices"), which notice shall state with reasonable specificity the breach complained of and which shall state that the claimed breach is of such nature that it, in the opinion of the non-breaching party, would give the non-breaching party a right to terminate this Agreement unless the breach is cured as set forth below; and (iii) that party claimed to have breached shall have neither cured the breach within a reasonable time, but in any event within not more than thirty (30) days from the date of its receipt of written notice of breach or, with respect to a breach which cannot be cured with said period, shall have failed to take within said period reasonable steps to cure same and diligently continued to prosecute such cure. If the breach has been cured within said period, or reasonable steps to cure same commenced within said period and diligently prosecuted, the same shall not constitute cause for the termination of this Agreement. It is expressly understood and agreed that the notice required and the right to cure afforded by this provision shall apply to each and every obligation of the parties under the Agreement, whether the obligation is a general or specific one.

For the purpose of this subsection – and subsection 3.3 only, all signatories to this Agreement agree that the term "CITY," for the purpose of termination of the Agreement, shall be a majority vote of the City Council of New London. The City Council of New London shall first obtain a recommendation from the Water and Water Pollution Control Authority regarding any proposed termination. It is specifically agreed that any vote of the Water and Water Pollution Control Authority concerning termination shall be advisory only.

## **4.0 RISK MANAGEMENT AND DISPUTE RESOLUTION**

#### **4.1 Indemnification**

With respect to any and all claims against the CITY, BEACH ASSOCIATIONS agrees to indemnify and save harmless the CITY and each of its elected or appointed officers, employees and agents from and with respect to any claims, demands, suits, liabilities or obligations (whether brought by private parties or governmental agencies) for any and all loss, including but not limited to death, bodily injury, property damage, natural resource damage or any other injury or damage arising out of, or relating to, the services provided by BEACH ASSOCIATIONS which may be made against the CITY arising by reason of, or in connection with, any alleged negligent act or omission, any reckless or willful misconduct or any breach of this Agreement by BEACH ASSOCIATIONS or any person claiming under, by or through BEACH ASSOCIATIONS and if it becomes necessary for the CITY to defend any action seeking to impose any such liability BEACH ASSOCIATIONS will pay the CITY any sums which the CITY may be called upon to pay by reason of the entry of the judgment against the CITY and the litigation in which such claim is asserted.

With respect to any and all claims against the BEACH ASSOCIATIONS, the CITY agrees to indemnify and save harmless the BEACH ASSOCIATIONS and each of its elected or appointed officers, employees and agents from and with respect to any claims, demands, suits, liabilities or obligations (whether brought by private parties or governmental agencies) for any and all loss, including but not limited to death, bodily injury, property damage, natural resource damage or any other injury or damage arising out of, or relating to, the services provided by the CITY which may be made against the BEACH ASSOCIATIONS arising by reason of, or in connection with, any alleged negligent act or omission, any reckless or willful misconduct or any breach of this Agreement by the CITY or any person claiming under, by or through the CITY and if it becomes necessary for the BEACH ASSOCIATIONS to defend any action seeking to impose any such liability CITY will pay the BEACH ASSOCIATIONS any sums which the BEACH ASSOCIATIONS may be called upon to pay by reason of the entry of the judgment against the BEACH ASSOCIATIONS and the litigation in which such claim is asserted.

#### **4.2 Dispute Resolution**

It is the express intention of the parties that all legal proceedings related to this Agreement or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the Superior Court for the Judicial District for New London at New London, Connecticut. The BEACH ASSOCIATIONS and the CITY each irrevocably consents to the jurisdiction of such court in any such actions or proceedings, waives any objection it may have to the laying of the jurisdiction of any such action or proceeding. It shall be a condition precedent to initiating an action in the Superior Court that the parties have engaged in non-binding mediation.

BEACH ASSOCIATIONS AND CITY HEREBY EXPRESSLY WAIVES ANY AND

ALL RIGHTS THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BEACH ASSOCIATIONS AND CITY HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND EITHER PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE PARTIES' CONSENT TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY

## **5.0 MISCELLANEOUS**

### **5.1 Entire Agreement and Amendments**

This Agreement contains the entire agreement between the CITY and BEACH ASSOCIATIONS and supersedes all prior or contemporaneous communications, representations, understandings, or agreements; all of which are merged herein. This Agreement may be modified only by written amendment signed by both parties.

### **5.2 Headings and Exhibits**

The headings contained in this Agreement are for reference only and shall not in any way effect the meaning or interpretation of this Agreement; all of which are merged in this Agreement. The Exhibits to this Agreement shall be construed as an integral part of this Agreement.

### **5.3 Waiver**

The Failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

### **5.4 Assignment**

This Agreement shall not be assigned by either party without the prior written consent of the other party.

**5.5 Access and Inspection by CITY**

The CITY shall have the right to inspect the BEACH ASSOCIATIONS' Systems and equipment at any time. A BEACH ASSOCIATIONS representative shall be notified prior to and permitted to observe the inspection.

**5.6 Force Majeure**

A party's performance of any obligations under this Agreement, other than an obligation to pay money, shall be excused if, and to the extent that, the party is unable to perform because of events of force majeure, which shall include but shall not be limited to, storms, floods and other Acts of God, the acts of civil or military authority, quarantine restrictions, riots, strikes, lockouts or other labor disputes, commercial impossibility, epidemics, fires, explosions and bombings; the inability to obtain or delays in obtaining permits or other private or governmental approvals, or because of any other cause or causes beyond the reasonable control of the party seeking to be excused for performance. In any such event, the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the event or cause which excused performance hereunder.

**5.7 Authority to Contract**

Each party warrants and represents that it has the power and authority to enter into this Agreement and to perform the obligations, including any payment obligations, under this Agreement.

**5.8 Governing Laws**

This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut, exclusive of its choice of law rules.

**5.9 Notices**

All notices will be in writing and will be delivered in person or transmitted by certified mail, return receipt requested. Notice required to be given to BEACH ASSOCIATIONS will be addressed to:

The Miami Beach Association and The Miami Beach Association Water Pollution Control Authority:

The Miami Beach Association Water Pollution Control Authority  
P.O. Box 91  
Old Lyme, CT 06371

Old Lyme Shores Beach Association and The Old Lyme Shores Beach Association Water Pollution Control Authority:

The Old Lyme Shores Beach Association Water Pollution Control Authority  
P.O. Box 80  
South Lyme, CT 06376

The Old Colony Beach Club Association and The Old Colony Beach Club Association Water Pollution Control Authority:

The Old Colony Beach Club Association Water Pollution Control Authority  
P.O. Box 10  
South Lyme, CT 06376

Notices required to be given to the CITY will be addressed to:

Mr. Michael Passero Mayor  
City of New London City Hall  
181 State Street  
New London, CT 06320

Mr. Barry Weiner  
Chairman  
Water & Water Pollution Control Authority  
120 Broad Street  
New London, CT 06320

#### **5.10 Severability**

Should any part of this Agreement, for any reason, be declared invalid or void, such declaration will not affect the remaining portions, which will remain in full force and effect as if this Agreement had been executed with the invalid portion eliminated. Any portion of the Agreement declared invalid or void shall be renegotiated between the parties.

#### **5.11 Third Party Rights**

Nothing contained in this Agreement shall be deemed to create third party rights.


#### **5.12 Survival**

The following terms shall survive the termination of this Agreement: Article 4.1 Indemnification; Article 5.6 Force Majeure; Article 4.2 Dispute Resolution; and Article 5.12 Survival.



IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as the date first above written.

CITY OF NEW LONDON,  
CONNECTICUT

By:   
Michael Passero  
Mayor


Date: 4-23-2018

CITY OF NEW LONDON, WATER &  
WATER POLLUTION CONTROL AUTHORITY

By:   
Barry Weiner Chairman

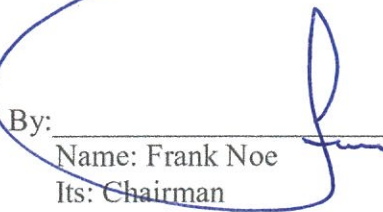
Date: 4/27/18

The OLD COLONY BEACH CLUB ASSOCIATION

By:   
Name: Douglas Whalen  
Its: Chairman

Date: 4-10-18

The OLD COLONY BEACH CLUB ASSOCIATION WATER  
POLLUTION CONTROL AUTHORITY

By:   
Name: Frank Noe  
Its: Chairman

Date: 4/11/18

OLD LYME SHORES BEACH ASSOCIATION

By: Paul Yellen  
Name: Paul Yellen  
Its: President

Date: 4/3/18

THE OLD LYME SHORES BEACH ASSOCIATION WATER  
POLLUTION CONTROL AUTHORITY

By: \_\_\_\_\_  
Name: Joseph Halloran  
Its: Chairman

Date: \_\_\_\_\_

THE MIAMI BEACH ASSOCIATION

By: \_\_\_\_\_  
Name: Mark A. Mongillo  
Its: President

Date: \_\_\_\_\_

THE MIAMI BEACH ASSOCIATION  
WATER POLLUTION CONTROL AUTHORITY

By: \_\_\_\_\_  
Name: Scott J. Boulanger  
Its: Chairman

Date: \_\_\_\_\_

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OLD LYME SHORES BEACH ASSOCIATION

By: \_\_\_\_\_  
Name: Paul Yellen  
Its: President

Date: \_\_\_\_\_

THE OLD LYME SHORES BEACH ASSOCIATION WATER  
POLLUTION CONTROL AUTHORITY

By: Joseph D. Halloran  
Name: Joseph Halloran  
Its: Chairman

Date: 4/3/18

THE MIAMI BEACH ASSOCIATION

By: \_\_\_\_\_  
Name: Mark A. Mongillo  
Its: President

Date: \_\_\_\_\_

THE MIAMI BEACH ASSOCIATION  
WATER POLLUTION CONTROL AUTHORITY

By: \_\_\_\_\_  
Name: Scott J. Boulanger  
Its: Chairman

Date: \_\_\_\_\_

OLD LYME SHORES BEACH ASSOCIATION

By: \_\_\_\_\_  
Name: Paul Yellen  
Its: President

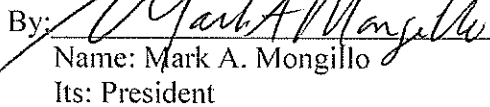
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THE OLD LYME SHORES BEACH ASSOCIATION WATER  
POLLUTION CONTROL AUTHORITY

By: \_\_\_\_\_  
Name: Joseph Halloran  
Its: Chairman

Date: \_\_\_\_\_

THE MIAMI BEACH ASSOCIATION

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Name: Mark A. Mongillo  
Its: President

Date: 4/3/18

THE MIAMI BEACH ASSOCIATION  
WATER POLLUTION CONTROL AUTHORITY

By: \_\_\_\_\_  
Name: Scott J. Boulanger  
Its: Chairman

Date: \_\_\_\_\_

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OLD LYME SHORES BEACH ASSOCIATION

By: \_\_\_\_\_  
Name: Paul Yellen  
Its: President

Date: \_\_\_\_\_

THE OLD LYME SHORES BEACH ASSOCIATION WATER  
POLLUTION CONTROL AUTHORITY

By: \_\_\_\_\_  
Name: Joseph Halloran  
Its: Chairman

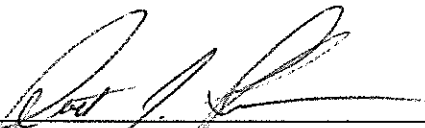
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THE MIAMI BEACH ASSOCIATION

By: \_\_\_\_\_  
Name: Mark A. Mongillo  
Its: President

Date: \_\_\_\_\_

THE MIAMI BEACH ASSOCIATION  
WATER POLLUTION CONTROL AUTHORITY

By:  \_\_\_\_\_  
Name: Scott J. Boulanger  
Its: Chairman

Date: 4/9/18

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