

City of Brisbane Agenda Report

To: City Council via City Manager
From: Administrative Services Director
Subject: Altamar request to change meter reading agreement
Date: January 5, 2009

City Council Goals:

To encourage community involvement and participation.

Purpose:

The Homeowners Association (HOA) of Altamar requested Council review the existing billing for water and sewer service agreement.

Recommendation:

Staff recommends that the existing agreement remain intact.

Background:

August 2000 - Council signed an agreement related to billing for water and sewer service agreement with the Altamar HOA. (Attached).

November 2008 – Kevin McHenry, President of the Altamar HOA, requested City Council review the agreement and eliminate the cost of reading meters.

Discussion:

Prior to signing the billing for water and sewer service agreement the City read just the 3 main meters for Altamar and then sent the bill to the HOA. The HOA had a separate billing company to distribute the cost of the service to all its occupants. The City agreed to read and bill the interior meters for \$6.00 per meter per reading cycle. This was less expensive than the HOA was paying for the same service from an outside company. The agreement also states that the rate would increase with inflation each year. Based on economies of scale and new technology the City has not raised the rate it has charged individual homeowners for billing and meter reading.

Fiscal Impact:

The City charges approximately \$7,800 a year for this service. If this was not charged to the Altamar residents there would need to be an increase in rates to offset the loss.

Measure of Success

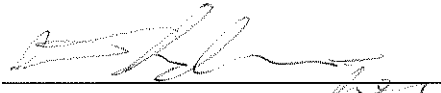
The measure of success will depend on Council's action.

Attachments:

Agreement regarding billing for water and sewer service.

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke at the end.

Administrative Services Director

A handwritten signature in dark ink, featuring a large, stylized 'M' followed by a long horizontal stroke.

City Manager

AGREEMENT REGARDING BILLING FOR WATER AND SEWER SERVICE

THIS AGREEMENT, dated August 14, 2000, by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and ALTAMAR AT THE RIDGE OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("the Association"), is made with reference to the following facts:

A. Association is the owners' association established under the Covenant's, Conditions and Restrictions for the common interest development known as Altamar at the Ridge ("Altamar"), consisting of ___ condominium dwelling units.

B. City provides water and sanitary sewer service for all of the dwelling units at Altamar. At the present time, all of the charges for such water and sewer service are billed by City to the Association which is responsible for payment thereof, and the Association, in turn, bills each of the unit owners for their individual usage of these utility services.

C. The Association has requested City to directly bill the unit owners for water and sewer service and City has agreed to do so, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Effective as of June 16, 2000, and continuing thereafter during the term of this Agreement City shall take readings from the water meters for each of the dwelling units at Altamar to determine the quantity of water consumption that will serve as the basis for billing water and sewer service charges to such units. The Association, on behalf of itself and each of its members, hereby grants to City a right to enter upon any property within Altamar for the purpose of gaining access to the water meters as and when necessary to obtain readings for billing purposes. The Association shall provide City with the water meter readings taken on June 15, 2000, which shall serve as the basis for determining the water consumption as of the next meter readings to be taken by City.

2. The persons who will be responsible for payment of the water and sewer service charges billed to an individual dwelling unit at Altamar (the "Responsible Parties") shall be required to open a service billing account for that unit with City's Finance Department. The Association will undertake to contact all of the Responsible Parties and inform them of the need to open a service account in order to obtain a direct billing for the water and sewer service charges. In the event a dwelling unit at Altamar does not have an active service billing account with City, then all of the service charges for that unit accruing during the absence of such account shall be billed directly to the Association, which shall be responsible for full payment thereof.

3. Upon establishment of a service billing account for an individual dwelling unit, all of the water and sewer service charges for that unit shall thereafter be billed directly to the unit's Responsible Parties. The service charges shall be based upon the quantity of water consumption by that dwelling unit, as shown by the meter readings taken

by City, and shall be calculated in accordance with the applicable rate schedule for water service adopted from time to time by the Brisbane City Council. City shall also be entitled to collect a meter reading charge for each unit, as provided in Paragraph 4 below. All water bills sent directly to the Responsible Parties at Altamar shall be subject to the same rules and procedures for payment and the same penalties upon delinquency as other water bills sent by City to its residential water customers.

4. In addition to the basic charges for water and sewer service billed to each dwelling unit, City shall be entitled to collect a meter reading fee in the amount of six dollars (\$6.00) per unit for each meter reading made by City. Such meter readings shall not be made more frequently than once a month. The meter reading fee shall be subject to annual adjustment on July 1st ("the Adjustment Date"), commencing on July 1, 2001, based upon the percentage increase in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for Urban Wage Earners and Clerical Workers, All Items, for the San Francisco-Oakland Statistical Area ("CPI") published for the month nearest preceding the Adjustment Date, *provided, however*, that no increase in the meter reading fee shall be made until the cumulative percentage increase in the CPI since the last Adjustment Date on which the fee was increased is at least five percent (5%), nor shall any single increase in the meter reading fee on any Adjustment Date exceed five percent (5%). In the event the cumulative percentage increase in the CPI as of any Adjustment Date is greater than five percent (5%), the excess percentage shall be carried over to the next Adjustment Date(s) until the cumulative percentage increase once again reaches at least five percent (5%).

5. The Association acknowledges that City operates a master water meter that measures water consumption by all of the dwelling units at Altamar and City intends to maintain its own record of such total consumption. In the event the total consumption for any period of time is greater than the total of all meter readings obtained by City for the comparable period, the Association shall be billed and shall be responsible for payment of all charges for the excess water consumption, regardless of the cause of the discrepancy unless such cause is attributable to the sole negligence of City. Nothing herein shall prevent the Association from seeking reimbursement for such payment from any Responsible Parties the Association believes are liable for the charges.

6. If any bill for water and sewer service charges sent directly to a Responsible Party is not paid when due, City shall send a Notice of Delinquency to both the Responsible Party and the Association. If the delinquent charges along with any applicable penalty are not paid in full by the Responsible Party within thirty (30) calendar days after the date of mailing the Notice of Delinquency, City shall send the Association a Demand for Payment of all amounts then due and the Association shall remit such payment to City within ten (10) calendar days after receipt of such Demand. The Association shall thereupon be entitled to take such action as the Association deems necessary or appropriate in order to collect the service charges and penalties from the Responsible Party. The Association acknowledges that by virtue of this obligation to pay any and all delinquent service charges owed to City, the Association has guaranteed payment of such charges by the Responsible Parties and City would not have entered into this Agreement in the absence of this guaranty. City shall not be required to take any action against a Responsible Party for collection of past due service charges beyond the sending of a Notice of Delinquency in accordance with this paragraph.

7. This Agreement pertains only to the billing and collection of water and sewer service charges and does not constitute and shall not be construed as an assumption by City of any responsibility or obligation for maintenance, repair, or replacement of any water or sanitary sewer facilities that are owned and maintained by the Association or by any other party.

8. In the event legal action shall be required to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including reasonable attorney's fees.

9. Any notices required or permitted to be given hereunder shall be either personally delivered or sent by regular mail to the other party at the following address:

TO CITY:	City of Brisbane Attention: Finance Director 50 Park Place Brisbane, CA 94005
TO ASSOCIATION:	ALTAMAR AT THE RIDGE OWNERS ASSOCIATION c/o The Helsing Group Attn: Roy Helsing 11875 Dublin Blvd., Suite C141 Dublin, CA 94568

Any notice sent by mail shall be deemed received on the second business day after deposit of the notice in the U.S. Mail, properly addressed with postage prepaid thereon.

10. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes and cancels all other agreements and understandings, whether written or verbal. This Agreement may only be amended by a written amendment executed by both parties.

11. The Association hereby represents and warrants to City that the persons executing this Agreement on behalf of the Association have been duly authorized to do so by its Board of Directors and this Agreement constitutes a valid and binding obligation of the Association.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY:

THE CITY OF BRISBANE,
a municipal corporation

By: Steven W. Waldo
Steven W. Waldo
Mayor

ATTEST:

Sheri Marie Schroeder
Sheri Marie Schroeder
City Clerk

APPROVED AS TO FORM:

Harold S. Toppel
Harold S. Toppel
City Attorney

ASSOCIATION:

ALTAMAR AT THE RIDGE OWNERS
ASSOCIATION, a California nonprofit
mutual benefit corporation

By: Ken P. Martin
President

By: St. Adame 7/27/00
Secretary