

Meeting Date: 11/24/09

Agenda Item 6

REQUESTED COMMISSION ACTION:

Consent       Ordinance       Resolution       Consideration       Workshop

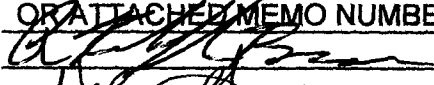
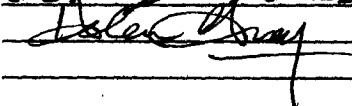
SHORT TITLE OR MOTION: A RESOLUTION APPROVING AND AUTHORIZING PROPER CITY OFFICIALS TO EXECUTE A REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND TRADEMARK METALS, LLC

Summary of Purpose and Why:

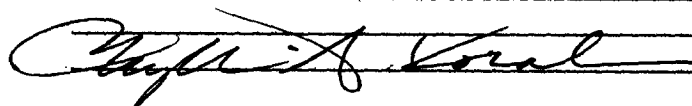
The Trademark Metals, LLC property is located at the northeast quadrant of NW 13<sup>th</sup> Street and Hammondville Road. This area is not served by a public sanitary sewer infrastructure. Per Broward County regulations any industrially zoned property within one-quarter mile of a public sanitary sewer system must connect to that system. This property is less than one-quarter mile, and this Revocable License Agreement provides for the installation of a privately owned, operated, and maintained 2 inch diameter force main to the nearest public system. The developer will be installing a casing of sufficient size to provide for a future force main of a size sufficient to convey all sanitary sewer flow from the currently unsewered area. This casing, once constructed and accepted will be owned by the City.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Helen Gray, PE/Randy Brown Ext. 4738
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: n/a

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Utilities	<u>11/16/09</u>	Approved	
Engineering	<u>11/16/09</u>	Approved	

- Advisory Board
- Development Services Director
- City Manager - Interim



ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
1st Reading	1st Reading	Results:	Results:
2nd Reading			

RESOLUTION NO. 2010-\_\_\_\_\_

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND TRADEMARK METALS RECYCLING, LLC; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That an Agreement between the City of Pompano Beach and Trademark Metals Recycling, LLC, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Trademark Metals Recycling, LLC.

**SECTION 3.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

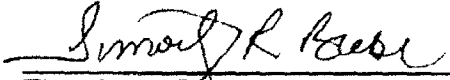
**ATTEST:**

\_\_\_\_\_  
**MARY L. CHAMBERS, CITY CLERK**

GBL/jrm  
8/5/09  
I:reso/2009-290

**CERTIFICATE OF AUTHORITY AND INCUMBENCY**

The undersigned, Michael G. Walbridge, hereby certifies that he is the Secretary of Trademark Metals Recycling, LLC ("TMR"), a Delaware limited liability company and further certifies that Timothy R. Brose is the President of TMR and that his signature is as follows:

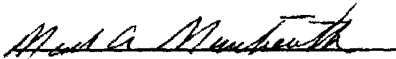
  
\_\_\_\_\_  
Timothy R. Brose

CERTIFIED FURTHER, that Timothy R. Brose is authorized to execute and deliver the Revocable License between the City of Pompano Beach and TMR on behalf of TMR and to obligate TMR on terms and conditions as set forth therein;

CERTIFIED FURTHER, that the officers of TMR, and any one or more of them, be and they (and each of them) are authorized to execute such affidavits, certificates, statements and other instruments or documents, and to make such filings and requests for approvals, as such officers, or any one or more of them, deem necessary or appropriate to consummate and effectuate the Revocable License, and to take such other actions as such officers, or any one or more of them, deem necessary or appropriate in connection therewith;

IN WITNESS WHEREOF, this Certificate has been executed on behalf of TMR as of the 13<sup>th</sup> day of November, 2009.

**TRADEMARK METALS RECYCLING LLC**

  
\_\_\_\_\_

Witness

By:   
\_\_\_\_\_

Name: Michael G. Walbridge

Title: Secretary

# REVOCABLE LICENSE AGREEMENT

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THIS AGREEMENT, made this 10th day of November, 2009, by and between:

**CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida, hereinafter referred to as "CITY,"

and

**TRADEMARK METALS RECYCLING, LLC**, a Delaware limited liability company, hereinafter referred to as "LICENSEE."

## WITNESSETH:

**WHEREAS**, LICENSEE desires to obtain from CITY a license to use a ten foot (10') in width portion of the right-of-way property under Martin Luther King, Jr. Blvd. (Hammondville Road) for the purpose of installing, operating and maintaining a 2" sanitary sewer force main.

**WHEREAS**, inasmuch as the use of said CITY property by LICENSEE for this restricted purpose will not interfere with the rights enjoyed by the public and will be without cost to the public either directly or indirectly.

**NOW, THEREFORE**, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, it is agreed by the parties hereto as follows:

1. CITY hereby grants to LICENSEE and LICENSEE hereby accepts from CITY a non-exclusive license to use a ten foot (10') portion of right-of-way property under Martin Luther King, Jr. Blvd. (Hammondville Road) for the purpose of installing, operating and maintaining a two inch (2") sanitary sewer force main in and under the property shown on the

site plan and description attached hereto and designated as Exhibit "A" and incorporated in this License Agreement. It is expressly agreed and understood between the parties that no above-ground rights are granted to LICENSEE except when installing and maintaining the force main. All work of installation, maintenance, land restoration and clean-up shall be done to the satisfaction of the City Engineer of CITY.

2. LICENSEE agrees that it shall submit its site plan or location plan and blueprints or other documentation as is usually required by the Building Division and the City Engineering Division of CITY for review and, if needed, the issuance of a permit, and the granting of this license does not in any way waive any other building or construction ordinances, fees, or requirements of CITY.

3. This license shall continue from day to day commencing on the date of execution hereof by all parties for ten (10) years or until terminated in accordance with provisions hereinafter stated.

4. LICENSEE agrees to pay CITY as compensation for this License the sum of One Dollar (\$1.00) per annum. Receipt of the first payment of One Dollar (\$1.00) is hereby acknowledged.

5. This license shall, unless otherwise terminated pursuant to this license, at the option of LICENSEE with the consent to CITY, be automatically renewed from year to year after the initial term upon payment by LICENSEE to CITY of the sum of One Dollar (\$1.00) per annum.

6. As further consideration of this License Agreement, LICENSEE further agrees to pay any taxes of whatever nature that may validly be levied against the force main or pursuant to this Agreement during the continuance of this Agreement.

7. This license may be terminated by CITY at any time for good cause, upon giving thirty (30) days' written notice to LICENSEE by certified mail as further provided in Paragraph 14 herein. Good cause for termination shall include, but not be limited to: the CITY installing and making available to LICENSEE a publically owned sanitary sewer system, LICENSEE's failure to maintain or repair the force main or nonpayment of wastewater charges to City. Upon termination, LICENSEE agrees to remove at its sole expense all encroachments lying in, along and under the licensed portion of the right-of-way and to restore the pavement and any modification made by LICENSEE to the licensed premises to its former condition as determined in the sole discretion of the City Engineer.

8. LICENSEE specifically agrees that it will use the CITY right-of-way pursuant to this license only for the purpose of installing, maintaining and utilizing the force main described herein. Further, that it will not suffer or permit the premises or any part thereof to be used for any other purpose without the express consent of CITY.

9. It is further expressly agreed by LICENSEE that it shall not make any alteration other than normal repairs and maintenance to the force main permitted herein by way of increasing the size or capacity of said force main or any other substantial alteration without the express written consent of CITY.

10. It is expressly understood and agreed that no real or personal property is leased to LICENSEE; that it is a LICENSEE, not Lessee; that the LICENSEE's right to occupy the right-of-way is subordinate to CITY's (or any franchisee of CITY) use of said licensed premises, and should any relocation of any public utility be necessitated at any time in the future, then LICENSEE shall relocate subject to approval of relocation plans by the City, if practicable, or

terminate its use of the licensed premises at its own expense. Any relocation must also be completed within one-hundred twenty (120) days' written notice to LICENSEE.

11. LICENSEE assumes all risks in the operation, installation and maintenance of the force main, the term of this License and any renewal located along and under the licensed premises and shall be solely responsible and answerable in damages for all accidents or injuries to person or property arising out of or caused in the performance of any of the work done pursuant to the Agreement, or arising out of the operation and/or maintenance of said force main. LICENSEE further covenants and agrees to indemnify and keep harmless CITY and its officers and employees from any and all claims (which shall include, but not be limited to, the defense of any claim and any and all costs in any judicial or quasi-judicial proceedings and for any and all damages or penalties of any kind or nature), suits, losses, damage or injury to person or property of whatsoever kind and nature, whether direct or indirect, arising out of the installation, operation and maintenance of said force main or the carelessness, negligence or improper conduct of LICENSEE or any servant, agent or employee of LICENSEE.

12. LICENSEE shall procure at its own cost and expense Comprehensive General Liability Insurance coverage in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit in addition to any other insurance or bond CITY may require, which insurance will protect LICENSEE, CITY, and their officers and employees from any claims for damages to property and for personal injuries, including death, which may arise on said property during the term of this Agreement and any renewals. A Certificate of Insurance shall be furnished the CITY, naming the City of Pompano Beach as an additional insured pursuant to this Agreement, said Certificate of Insurance to be approved by the CITY's Risk Manager prior to

execution of this Agreement. A copy of said Certificate is attached hereto and designated as Exhibit "B."

13. LICENSEE may assign, transfer, convey or otherwise dispose of this license to any future owner of LICENSEE's property upon providing notice to CITY and written acknowledgment from the new LICENSEE that it agrees to be bound by the terms and provisions of this License Agreement.

14. Any notice required under the terms of this License Agreement must be in writing and must be sent by certified mail to the address of the party to whom the notice is to be given.

Addresses of the parties are as follows:

**FOR CITY:** City Manager  
City of Pompano Beach  
Post Office Box 1300  
Pompano Beach, Florida 33061-1300

**FOR LICENSEE:** Trademark Metals Recycling, LLC  
400 North Ashley Drive, Suite 1300  
Tampa, Florida 33602  
Attention: Michael B. Walbridge

15. The force main shall be buried at least 30" (thirty inches) deep.

16. All construction shall conform to the attached plans, specifications, as set forth in Exhibit "A," and this Licensing Agreement.

17. Inspections:

a. The LICENSEE shall submit plans for the installation of the force main, or any other structure or item permitted by this Agreement to the Pompano Beach Engineering Division at least thirty (30) days before installation and/or use of the property and shall not

install the force main, or any other user permitted by this agreement until written approval is obtained from the Pompano Beach Engineering Division.

b. The LICENSEE shall notify the Pompano Beach Engineering Division within five (5) days after installation or commencement of use of the force main. The Pompano Beach Engineering Division may require LICENSEE to reinstall or remove the force main or discontinue the use of the property if the improvements and/or use do not comply with the approved plans as set forth in Exhibit "A."

18. Modifications to the approved plans and specifications set forth in Exhibit "A" shall not be made without the approval of the City Engineering Division.

19. As-built drawings of all construction shall be submitted to the City Engineering Division within one (1) month of completion of construction. The As-built drawings shall be supplied on Autocad compatible format with horizontal control based on NAD 1983 state plan coordinate system. The As-builts shall depict the CITY's right-of-way boundary.

20. Work on the paved surface of the right-of-way shall not commence until the LICENSEE submits to the Engineering Division a maintenance of traffic plan for approval. The plan shall be signed and dated by a person who has been certified by the American Traffic Safety Services Association or signed and sealed by a professional engineer. The plan shall conform to FDOT's latest manual on Uniform Traffic Control Devices, as amended for streets and highways, the requirements of the Standard Application Package for railways, including flagging services and Railroad Protective Insurance or acceptable alternative, when applicable, and the FDOT's latest Roadway and Traffic Design Standards and Standard Specifications for Road and Bridge Construction, as amended.

21. LICENSEE shall restore the surface of the paved surface of the right-of-way to substantially the same condition as prior to any work by LICENSEE.

22. This Revocable License Agreement embodies the entire agreement between the parties. It may not be modified or terminated except as provided in this Agreement. If any provision herein is invalid, it shall be considered deleted herefrom, and shall not invalidate the remaining provisions.

23. LICENSEE shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations relating to the operation of the force main.

24. LICENSEE shall be responsible for registering the force main with Sunshine State One Call of Florida, and LICENSEE shall be responsible for marking the location of the force main in response to Sunshine State One call of Florida notifications to LICENSEE.

25. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties to this License Agreement have set their hands and seals on the day and year first above written.

**"CITY":**

**Witnesses:**

**CITY OF POMPANO BEACH**

\_\_\_\_\_

**By: \_\_\_\_\_  
LAMAR FISHER, MAYOR**

\_\_\_\_\_

**By: \_\_\_\_\_  
PHYLLIS A. KORAB  
INTERIM CITY MANAGER**

**Attest:**

**\_\_\_\_\_  
MARY L. CHAMBERS, CITY CLERK**

**(SEAL)**

**Approved by:**

**\_\_\_\_\_  
GORDON B. LINN, CITY ATTORNEY**

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by **LAMAR FISHER** as Mayor, **PHYLLIS A. KORAB** as Interim City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**"LICENSEE":**

Witnesses:

**TRADEMARK METALS RECYCLING, LLC**  
a Delaware limited liability company

*Mad. G. Mouton*  
\_\_\_\_\_

By: *Timothy R. Brose*  
\_\_\_\_\_  
Timothy R. Brose  
Typed or Printed Name

Title: President

(SEAL)

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 13th day of November, 2009, by Timothy R. Brose as President of Trademark Metals Recycling, LLC, a Delaware limited liability company, on behalf of the company. He is personally known to me.

NOTARY'S SEAL:

*Geina Melisa Henderson*  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF OHIO

*Geina melisa Henderson*  
\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

DD784317  
\_\_\_\_\_  
Commission Number

NOTARY PUBLIC STATE OF FLORIDA  
Geina Melisa Henderson  
Commission # DD784317  
Expires: AUG. 02, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

GBL/jrm  
8/25/09  
l:agr/engr/2009-1780

# **EXHIBIT A**

## **Site Plan and Description of Force Main**

A 2-inch force which exits from the Trademark Metals Recycling property (station 13+ 15.00 +/-) located east of the CSX / Andrews Ave Extension and continues westward through a 12 inch steel casing under the CSX railroad and is located south of the north R/W line and generally located 30 - 36 inches below grade. The force main will tie into an existing manhole located west of Andrews Ave Extension near station 24+25.00+/-.

**TMR -POMPANO BEACH SITE  
TRADEMARK METAL RECYCLING, L.L.C. - TAMPA, FLORIDA  
FORCE MAIN EXHIBIT**

