

WATER, WASTEWATER, AND RECLAIMED WATER FRANCHISE AGREEMENT BETWEEN INDIAN RIVER COUNTY AND THE CITY OF VERO BEACH

This Water, Wastewater, and Reclaimed Water Franchise Agreement (hereafter "Franchise Agreement") is made and entered into this ____ day of _____, 20__, (hereafter "Effective Date") by and between INDIAN RIVER COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter "COUNTY"), and the CITY OF VERO BEACH, FLORIDA, a municipal corporation created under the laws of the State of Florida (hereafter "CITY").

RECITALS

1. The COUNTY is a political subdivision of the State of Florida, with all powers necessary to carry on county government, as set forth generally in Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, and specifically in Chapter 59-1380, Laws of Florida, and, consistent therewith, has the power and authority to execute and deliver this Franchise Agreement and to carry out its respective obligations hereunder.

2. The CITY is a municipal corporation duly incorporated, validly existing, and in good standing under the laws of the State of Florida, with all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services and, consistent therewith, has the power and authority to execute and deliver this Franchise Agreement and to carry out its respective obligations hereunder.

3. The CITY provided water and wastewater utility services to portions of the unincorporated areas of COUNTY, pursuant to franchises granted by COUNTY in Resolutions 87-13 (water) and 87-14 (wastewater) (collectively, the "Franchise Resolutions"), which both expired on March 4, 2017.

4. The COUNTY and the CITY entered into that "Agreement between Indian River County and the City of Vero Beach Setting Water Service Areas for Water and Sewer Service; Memorializing Certain Water and Sewer Allocations; and Repealing Prior Agreements," dated August 18, 1989 (the "Service Area Agreement").

5. The unincorporated COUNTY areas designated to be served by CITY (hereinafter referred to as "Service Area") are set forth in Exhibit "A" of the Service Area Agreement, dated August 18, 1989, shall remain unaffected by this Franchise Agreement, and shall remain the boundary limit of this Franchise Agreement.

6. The Parties have negotiated in good faith together and have determined it to be appropriate and in the interest of the COUNTY and the CITY to enter into this Franchise Agreement.

7. This Franchise Agreement has been duly authorized by all action and performance of all pre-conditions required to be taken respectively by each party, has been duly executed and delivered by them, and constitutes a valid and binding obligation of each party enforceable in accordance with its terms,

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual benefits to be derived from compliance by the parties with the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

Section 1. Incorporation of Recitals. The above Recitals are true and correct, form a material part of this Franchise Agreement, and are incorporated into the Franchise Agreement.

Section 2. Conditions Precedent. Notwithstanding anything to the contrary contained herein, this Franchise Agreement shall not become effective until approved by both the Board of County Commissioners of COUNTY and the City Council of the CITY.

Section 3. Franchise Grant. COUNTY hereby grants to CITY, with all rights and privileges attendant thereto, an exclusive Franchise to construct, maintain, and operate water, wastewater, and reclaimed water utility systems within the Service Area, to provide water, wastewater, and reclaimed water utility services to customers currently served by CITY within the Service Area and to construct, maintain, operate, expand, and replace water, wastewater, and reclaimed water utility systems in, upon, along, across, above, over and under COUNTY rights of way now laid out or dedicated, and all extensions thereof, within the Service Area. Such water, wastewater, and reclaimed water utility systems shall consist of all water, wastewater, and reclaimed water facilities (including, pipes, fixtures, mains, valves, meters, tanks, lift stations, etc., and communication and electric lines for water, wastewater, and reclaimed water utility system use) for the purpose of supplying water, wastewater, and reclaimed water utility service to the Service Area and the inhabitants thereof. This exclusive Franchise prohibits the County and any other entity from providing water, wastewater, and reclaimed water service in the Service Area without the consent of the City.

Section 4. Initial Franchise Term and Renewal. The term of this Franchise Agreement and the Franchise granted hereunder shall expire THIRTY (30) years from the Effective Date hereof, and may be renewed by written notice by either Party hereto no later than two (2) years prior to the thirtieth (30th) anniversary hereof for one additional term of fifteen (15) years.

Section 5. Utility Rates and Fees. The rates for water, wastewater, and reclaimed water utility services charged by CITY for customers within the Service Area shall be established by City ordinance and shall be fair and reasonable, shall at all times be subject to such regulation as may be provided by State law and shall not exceed the rates charged to customers within the same rate classes within the corporate area of Vero Beach. The right to regulate water, wastewater, and reclaimed water rates, service

policies, including mandatory connections, or other rules or regulations for the construction, operation and maintenance of the water, wastewater and reclaimed water systems is vested solely in Vero Beach, except as may be otherwise provided by applicable laws of the State of Florida.

Section 6. Developer Agreements. CITY shall have the authority to enter into agreements with developers of real estate projects and other consumers within the Service Area. Developer agreements entered into by CITY shall be fair, just, and non-discriminatory, and shall have the same content as developer agreements for projects within the corporate limits of CITY. Such agreements may include but are not limited to provisions relating to:

(a) Advance payment of contributions in aid of construction to finance water, wastewater, or reclaimed water utility system expansion and/or extension.

(b) Revenue guarantees or other such arrangements as may make the expansion/extension self-supporting.

(c) Capacity reservation fees.

(d) Pro rata allocation of water and wastewater plant expansion/main extension charges between two or more developers.

Nothing contained in this Section 6 is intended to limit or abrogate the CITY's home rule authority to enter into contracts.

Section 7. Easements and Other Rights. CITY shall have all rights, authority, privileges, easements, licenses, leaseholds, prescriptive rights, and rights to make all necessary excavations in and use public roads, rights-of-way, highways, and streets, in connection with the construction, reconstruction, installation, maintenance, and operation of the water, wastewater, and reclaimed utility systems (collectively "Easements"). COUNTY will assist CITY in obtaining any such Easements needed by CITY for performance of this Franchise Agreement. Any expense incurred by COUNTY in providing such assistance shall be reimbursed by CITY. At no cost to the CITY, the CITY shall obtain a right-of-way permit through the COUNTY right-of-way permitting process in accordance with Chapter 312 of the Indian River County Code of Ordinances. The COUNTY will issue a general permit, as mutually agreed upon by both parties, for normal maintenance activities associated with everyday operation of the water, wastewater and reuse systems. Such activities include, but are not limited to exercising valves, meter replacements and meter box replacements, sewer televising and cleaning, etc. The conditions of the general permit, including notifications and required maintenance of traffic plans for activities associated with the general permit will be negotiated by staff during the general permit review process. The general permit shall be renewed by the CITY every year.

Section 8. Consideration. In consideration of the Franchise Agreement and the other rights and privileges granted herein to CITY:

(a) CITY shall provide, at its own expense, maintenance, repairs, and replacements of the City's water, wastewater, and reclaimed water utility systems and facilities necessary for the CITY providing water, wastewater, and reclaimed water utility services in the Service Area.

(b) CITY waives, and shall not add to the rates, fees, utility taxes, and charges for water or wastewater utility service within the Service Area, any surcharges or taxes authorized pursuant to Chapters 163 and 180, Florida Statutes.

(c) Pursuant to section 201.08.1, entitled "Fee-in-lieu-of-franchise fee," of the Indian River County Code of Ordinances, the CITY shall charge customers within the Service Area a County fee-in-lieu-of-franchise fee of six percent (6.0%) on the gross revenues received by the CITY from the sale of water and wastewater utility services to such customers. (But specifically excluding sale of reclaimed water service). Such fee shall be shown on customer bills as a separate line item entitled "County Franchise Fee." Such fee is an acceptable, bargained-for fee, which is reasonably related to the value of the benefits given by the COUNTY, as a result of this Franchise Agreement. The CITY shall remit the fees collected to the COUNTY on a monthly basis.

(d) There is no other CITY obligation or consideration for those rights granted under this Franchise Agreement to the COUNTY other than those specified hereinabove.

Section 9. Service Standards. CITY shall construct, maintain, and operate all water, wastewater, and reclaimed water facilities and systems in accordance with the applicable rules, regulations and standards now or hereafter adopted by the Federal Government and the State of Florida and at a level equal to the level provided for customers in the incorporated areas of the CITY. The quantity and quality of water delivered shall at all times be and remain not inferior to the applicable standards for public water supply and other applicable rules, regulations and standards now or hereafter adopted by the Federal Government and the State of Florida and at the level provided for the customers in the unincorporated areas of the CITY. The quantity and quality of wastewater service provided and sold shall at all times be and remain not inferior to the applicable standards for public wastewater service and other applicable rules, regulations and standards now or hereafter adopted by the Federal Government and the State of Florida and at the level provided for customers in the unincorporated areas of the CITY. Excluding fire line service, the CITY shall supply all water to customers through meters which shall accurately measure the amount of water supplied in accordance with normally accepted utility standards.

Section 10. Manner of Service. In providing service to customers within the Service Area, CITY shall:

(a) Provide continuous (subject to unavoidable interruptions or outages), adequate, and customary water, wastewater, and reclaimed water utility services to customers contracting for such service.

(b) Operate, regularly maintain, and promptly repair when necessary the water, wastewater, and reclaimed water utility facilities and systems in order to continue adequate service.

(c) Maintain sufficient water pressure and water mains of sufficient size with fire hydrants and other facilities necessary to allow for fire protection.

(d) Deal with all customers in a manner no less favorable than CITY'S dealings with its customers served inside its own corporate boundaries.

Section 11. Location of Facilities. All water, wastewater, and reclaimed water utility system facilities shall be so located and so constructed as to interfere as little as practicable with traffic over the streets, alleys, bridges, and public places, and with reasonable egress from and ingress to abutting property. The location or relocation of all such facilities shall be made and with the approval of such representatives as the governing body of COUNTY may designate for the purpose, but not so as unreasonably to interfere with the proper construction, maintenance, repair, or operation of the water, wastewater, or reclaimed water utility systems by CITY. When any portion of a street is excavated by CITY in the location or relocation of any utility facilities, the portion of the street so excavated shall, within a reasonable time and as early as practicable after such excavation, be replaced by CITY at its expense, and in as good condition as it was at the time of such excavation. Provided, however, that nothing herein contained shall be construed to make COUNTY liable to CITY for any cost or expense in connection with the construction, reconstruction, repair or relocation of the utility facilities in streets, highways, or other public places made necessary by the widening, grading, paving or otherwise improving by COUNTY of any of the present or future streets, avenues, alleys, bridges, highways, easements, or other public places used or occupied by CITY. Notwithstanding the foregoing, CITY shall be entitled to reimbursement of its costs as may be provided by law, including but not limited to, grants, federal and state funds, leases, and bonds.

Section 12. Liability and Indemnification.

(a) The COUNTY shall in no way be liable or responsible for any accident or damage that may occur in the construction, installation, maintenance, or operation by CITY of the utility facilities hereunder, and approval of this Franchise Agreement by CITY shall be deemed an agreement on the part of CITY to indemnify and hold COUNTY harmless against any and all liability, loss, cost, damage, or expense which may accrue to COUNTY by reason of the negligence or misconduct of CITY in its performance of such construction, installation, maintenance, repair, or operation (but excluding to the extent any such claim is based on the negligence of COUNTY), including but not limited to attorneys' fees, experts' fees, and costs incurred for defending any and all such claims or

suits against COUNTY, through trial and all appellate proceedings and proceedings for determination of entitlement to and amount of such fees and costs. Such indemnification obligation of CITY shall survive expiration or termination of this Franchise Agreement for any covered claim accruing prior to such expiration or termination. However, such obligation to indemnify COUNTY shall be subject to the limitations set forth in section 768.28, Florida Statutes, as may be applicable.

(b) The CITY shall in no way be liable or responsible for any claim, damage, or suit arising from collection or remittance of any franchise fee or fee-in-lieu-of-franchise fee by the CITY pursuant to this Franchise Agreement, and the approval of this Franchise Agreement by the COUNTY shall be deemed an agreement on the part of the COUNTY to indemnify and hold the CITY harmless from any claims, damages, or suits resulting directly or indirectly from the collection and remittance of such fees by CITY (but excluding to the extent any such claim is based on the negligence of CITY), including but not limited to attorneys' fees, experts' fees, and costs incurred for defending any and all such claims or suits against CITY, through trial and all appellate proceedings and proceedings for determination of entitlement to and amount of such fees and costs. Such indemnification obligation of COUNTY shall survive expiration or termination of this Franchise Agreement. However, such obligation to indemnify the CITY shall be subject to the limitations set forth in section 768.28, Florida Statutes, as may be applicable.

Section 13. Attorney's Fees, Venue. The prevailing party in any litigation for enforcement of any terms and conditions of this Agreement shall be awarded, in addition to the relief sought in such litigation, its reasonable attorney's fees, court costs, and expert witness fees incurred in prosecuting or defending such action, including on appeal. This Agreement shall be construed, governed, and interpreted according to the laws of the State of Florida. Venue for resolution of any dispute arising under this Franchise Agreement shall be in Indian River County, Florida. Each of the Parties hereto irrevocably waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Agreement or its performance, or otherwise related to the subject matter of this Franchise Agreement.

Section 14. Service Area Boundary. The Service Area for water, wastewater, and reclaimed water shall remain the boundary limit of the Franchise, unless otherwise agreed to by the Parties in writing. The CITY may provide water, wastewater, and reclaimed water utility services to new customers in unincorporated areas of Indian River County outside of the Service Area only upon request of such new customers and after approval by Indian River County. Any property in the Service Area that is annexed into the CITY shall be removed from the Service Area.

Section 15. Force Majeure. Provisions herein to the contrary notwithstanding, CITY shall not be liable for the non-performance or delay in performance of any of its obligations undertaken pursuant to the terms of this Franchise Agreement, where said failure or delay is due to any cause beyond CITY's control including, without limitation, "Acts of God," unavoidable casualties, wars, riots, pandemics, and labor disputes.

Section 16. Notices. Any delivery of notice required or permitted to be made hereunder may be made by personal delivery, courier, or mailing a copy thereof addressed to the appropriate Party as follows:

If to INDIAN RIVER COUNTY: County Administrator
Indian River County
1801 27th Street
Vero Beach, Florida 32960

If to VERO BEACH: City Manager
City of Vero Beach
1053 20th Place
Vero Beach, FL 32960-5359

Delivery when made by registered or certified mail shall be deemed complete upon mailing.

Section 17. Default and Remedies. Failure on the part of either Party to comply in any material and substantial respect with any of the provisions or conditions of this Franchise Agreement shall be grounds for termination if Ninety (90) calendar days after written notice of such default the defaulting Party has failed or refused to correct the noticed noncompliance. However, should there be any dispute as to the validity of the grounds for termination, or should any other dispute arise between the Parties on the subject of this Franchise Agreement or its performance, the Parties shall utilize the dispute resolution process set forth in Chapter 164, Florida Statutes, the Florida Governmental Conflict Resolution Act, before availing themselves of any otherwise available legal rights. Notwithstanding the foregoing, the Parties in their own discretion may, but are not required to, grant such additional time to the other Party for compliance based on the circumstances.

Section 18. Waiver of Compliance. Any term or condition of this Franchise Agreement may be waived by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained herein, in any one or more instances, shall not invalidate this Franchise Agreement, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation, or warranty of this Franchise Agreement. Except for a written waiver as provided for herein, the failure of a Party to assert any of its rights under this Franchise Agreement or otherwise shall not constitute a waiver of such rights. A waiver by a Party of the time for performing any act shall not constitute a waiver of time for performing any other act or the time for performing an identical act required to be performed at a later time.

Section 19. No Joint Venture or Agency. Nothing in this Franchise Agreement or any exhibit or attachment hereto creates or is intended to create an association, trust, partnership, joint venture, or other entity or similar legal relationship among or between the Parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to the Parties. Neither Party is nor shall be deemed the agent or representative of the other Party in any instance whatsoever.

Section 20. Disclaimer of Third Party Beneficiaries. This Franchise Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

Section 21. Binding Affect. All of the provisions of this Franchise Agreement shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors, assigns, and nominees of the parties.

Section 22. Severability. If any provision of this Franchise Agreement is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of any Party under this Franchise Agreement will not be materially and adversely affected thereby, such provision shall be fully severable; this Franchise Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; the remaining provisions of this Franchise Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision; the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling and to include as a part of this Franchise Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as possible. Such modified provision shall be adopted by the Parties as provided herein for amendments.

Section 23. Entire Agreement; Amendments; Counterparts. This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Franchise Agreement. Amendments to the provisions of this Franchise Agreement shall be made by the Parties only by written formal amendment which amendments shall require approval by the Board of County Commissioners of the COUNTY and the City Council of the CITY. This Franchise Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS THEREOF, the parties have set their hands and seals the date entered below.

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Bursick
City Clerk

By: _____
John E. Cotugno, Mayor

(SEAL)

Date: _____

Reviewed as to form and legal
sufficiency (for reliance of COVB only):

Approved as conforming to municipal
policy:

John S. Turner
City Attorney

Monte K. Falls, P.E.
City Manager

**BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER
COUNTY, FLORIDA**

By: _____
Joseph H. Earman, Chairman

Approved by BCC _____

Attest:

Jeffrey R. Smith, Clerk of Circuit Court
and Comptroller

By: _____
Deputy Clerk

Michael C. Zito, Interim County
Administrator

Approved as to form and legal
sufficiency:

Dylan Reingold, County Attorney