

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

This Agreement (hereafter “Franchise Agreement”) is made and entered into this ___ day of _____, 2020, (hereafter “Effective Date”) by and between 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. Pursuant to such municipal powers, general law authority such as chapter 180, Florida Statutes, various special acts, the city’s charter, the earliest declaration of exclusive service area and acceptance of the duty to serve outside its corporate boundaries, the CITY is in the business of furnishing water, wastewater, and reclaimed water utility services and any component of such services within and without the corporate limits of CITY.

4. The CITY is in the business of furnishing water, wastewater, and reclaimed water utility services and any component of such services within certain unincorporated and incorporated areas of the COUNTY.

5. In recognition thereof, and in order to provide customers with water and wastewater utility services in the most efficient, orderly, and cost-effective manner, the Parties previously established the respective water and wastewater utility service areas for each Party pursuant to that certain “Agreement Between Indian River County and the City of Vero Beach Setting Service Areas for Water and Sewer Service; Memorializing Certain Water and Sewer Allocations; and Repealing Prior Agreements” finally approved September 19, 1989 (the “Service Area Agreement”).

6. Pursuant to said Service Area Agreement, the CITY is responsible for and provides water and wastewater utility services within the boundaries of its service area

established therein (the "City Service Area"), which City Service Area includes certain areas of unincorporated Indian River County (the "Unincorporated Service Area") as such Unincorporated Service Area has been modified by expansion and contraction since adoption of the Service Area Agreement.

7. COUNTY Resolutions 87-13 (water) and 87-14 (wastewater), both effective as of March 5, 1987 (collectively the "Franchise Resolutions"), as modified by the Service Area Agreement, provided that the CITY would collect and remit a franchise fee to the COUNTY in return for use of COUNTY rights of way.

8. The Service Area Agreement shall remain unaffected by this Franchise Agreement.

9. The Franchise Resolutions expired March 4, 2017.

10. In anticipation of the expiration of the Franchise Resolutions, 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.

11. 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 and unless the appropriate franchise ordinance or resolution is formally adopted by both the Board of County Commissioners of COUNTY and the City Council of the CITY approving this Franchise Agreement.

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 County Area, to provide water, wastewater, and reclaimed water utility services to customers currently served by CITY within the County 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. 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 County Area, the inhabitants thereof, and persons and entities beyond the jurisdiction of COUNTY thereof.

Section 4. Initial Franchise Term and Renewal. The initial term of this Franchise Agreement and the Franchise granted hereunder shall be for a period of Thirty (30) years commencing on the Effective Date. This Franchise Agreement and the Franchise granted hereunder shall automatically renew for additional Fifteen (15) year terms unless either party shall send written notice to the other party at least four (4) years prior to the date of expiration of the initial term and thereafter such subsequent term as the case may be.

Section 5. Utility Rates and Fees. The rates for water, wastewater, and reclaimed water utility services established and charged by the CITY for customers within the Unincorporated Service Area shall be just and equitable and based on the same factors used in fixing rates, fees, and charges for customers inside the CITY's corporate boundaries, shall be subject to such regulation as may be provided by state law, and shall not exceed the rates charged to customers within the same customer classification within the corporate limits of the CITY. The right to regulate water, wastewater, and reclaimed water utility rates and surcharges (subject to the foregoing), service policies, and other rules and regulations for the construction, installation, maintenance, and operation of the CITY's water, wastewater, and reclaimed water utility systems is reserved to and vested solely in the CITY, consistent with applicable laws of the Federal government or the State of Florida. Nothing contained in this Section is intended to limit or abrogate the CITY's reserved police powers for setting utility rates and fees.

Section 6. Developer Agreements. CITY shall have the authority to enter into agreements with developers of real estate projects and other consumers within the County Area. Developer agreements entered into by CITY shall be fair, just, and non-discriminatory, and generally 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, streets, and other areas owned, held, and/or used 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.

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 Unincorporated Service Area..

(b) For so long as the COUNTY complies with the terms of this Franchise Agreement and the Service Area Agreement, the CITY waives and shall not add to the rates, fees, and charges for water or wastewater utility service within the Unincorporated Service Area, the "outside city limits surcharge" authorized pursuant to section 180.191, Florida Statutes.

(c) CITY shall not charge impact fees, connection charges, capacity charges, assessments, capital recovery charges, or any form thereof to customers within the Unincorporated Service Area that are existing and receiving service from the CITY on the Effective Date. The expense for any capital improvements undertaken by the CITY within the Unincorporated Service Area to serve such existing customers shall be borne solely and completely by the CITY. Notwithstanding the foregoing language to the contrary, such restriction on fees, charges, and other assessments shall not apply to any new connections for any new services or modification to any existing connection or service that results in an increase in service capacity, whether an existing or new customer or service address.

(d) 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 Unincorporated Service Area a 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. Such fee is an acceptable, bargained-for fee, which is reasonably related to the value of the benefits given by the COUNTY and received by the CITY, and the expenses incurred by the

COUNTY, as a result of this Agreement. The CITY shall remit the fees collected to the COUNTY on a monthly basis.

(e) 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 regulations of the Federal Government and the State of Florida. 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. 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. 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 Unincorporated 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) Maintain wholesale emergency interconnect agreements and interconnects as appropriate in order to continue to provide adequate service in the event of outages, excessive demand, or other related events.

(e) 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 under the supervision 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 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 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 Agreement, and the approval of this 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 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.

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 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 Agreement. Except for a written waiver as provided for herein, the failure of a Party to assert any of its rights under this 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 18. No Joint Venture or Agency. Nothing in this 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 19. Disclaimer of Third Party Beneficiaries. This 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 20. 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 21. Governing Law; Venue; Waiver of Jury Trial; Attorney Fees. 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 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 Agreement. The Parties shall each bear their own attorneys' fees, experts' fees, and costs in any dispute arising under this Agreement, except to the extent such fees or costs are recoverable pursuant to general law, including but not limited to section 57.105 and Chapter 164, Florida Statutes.

Section 22. Severability. If any provision of this 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 Agreement will not be materially and adversely affected thereby, such provision shall be fully severable; this 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 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 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, except as to the Service Area Agreement referenced herein as subsequently modified, supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement. Amendments to the provisions of this 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 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. Nothing contained in this Agreement is intended to affect or supersede the terms and conditions of the Service Area Agreement.

SIGNATURE PAGE FOLLOWS

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

ATTEST:

CITY OF CITY

Tammy K. Bursick,
City Clerk

By: _____
Mayor Tony Young

(SEAL)

Date: _____

Reviewed as to form and legal
sufficiency:

Approved as conforming to municipal
policy:

John Turner
City Attorney

Monte K. Falls, P.E.
City Manager

BOARD OF COUNTY
COMMISSIONERS OF COUNTY,
FLORIDA

By: _____
Susan Adams, Chairman

Approved by BCC _____

Attest:

Jeffrey R. Smith, Clerk of Circuit Court
and Comptroller

By: _____
Deputy Clerk

Jason E. Brown, County Administrator

Approved as to Form and Legal
Sufficiency

Dylan Reingold, County Attorney