

RESOLUTION NO. 87-142

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, APPROVING A CAPITAL PROJECT CONSISTING OF THE ACQUISITION AND CONSTRUCTION OF ALTERATIONS, EXTENSIONS AND ADDITIONS TO THE SANITARY SEWAGE COLLECTION, TRANSMISSION, TREATMENT AND DISPOSAL SYSTEM FACILITIES OF INDIAN RIVER COUNTY, FLORIDA; APPROVING AND ADOPTING THE PLANS AND SPECIFICATIONS PREPARED AND SUBMITTED BY THE ENGINEERS FOR THE COUNTY IN CONNECTION WITH SAID PROJECT; DETERMINING TO LEVY AND ASSESS SPECIAL ASSESSMENTS IN LIEU OF IMPACT FEES AGAINST CERTAIN PROPERTIES OF OWNERS CONSENTING THERETO; PRESCRIBING THE MANNER OF SUCH CONSENT; REQUESTING THE CITY OF SEBASTIAN, FLORIDA TO ADOPT RESOLUTIONS LEVYING AND ASSESSING SPECIAL ASSESSMENTS IN LIEU OF IMPACT FEES PURSUANT TO PROVISIONS OF AN INTERGOVERNMENTAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA (the "Board" and "County", respectively) that:

SECTION 1. AUTHORITY FOR RESOLUTION. This resolution is adopted pursuant to provisions of Ordinance No. 86-88 of the County (the "Ordinance"), Chapter 125, Florida statutes (1985), as amended, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby found and determined that:

A. It is advisable, desirable and in the best interest of the County to undertake certain capital improvements consisting of the acquisition and construction of alterations, extensions and additions to the sanitary sewage collection, transmission, treatment and disposal system facilities of the County (the "Project") in certain unincorporated areas in the northern portion of the County and in certain areas of the City of Sebastian, Florida (the "City"), all as more particularly described in the respective plans and specifications (the "Plans and Specifications") on file with the County.

B. It is in the best interest of the County to assess Special Assessments in Lieu of Impact Fees (individually, an "Assessment", collectively

the "Assessments") against certain properties situate in certain unincorporated areas in the northern portion of the County to be serviced by the Project, the owners of which properties have consented thereto in the manner to be set forth herein (the "Assessed Properties").

C. Pursuant to the Intergovernmental Agreement (the "Agreement") between the County and the City, the County desires the City to adopt appropriate resolutions assessing Special Assessments in Lieu of Impact Fees against certain properties situate in the City to be serviced by the Project, similar in form and substance to the Assessments.

D. It is in the best interest of the County that the Assessments be levied on the basis of the number of Equivalent Residential Units ("ERUs") attributable to the Assessed Properties.

SECTION 3. APPROVAL OF PROJECT. The Project and the Plans and Specifications are hereby approved and adopted.

SECTION 4. SPECIAL ASSESSMENTS IN LIEU OF IMPACT FEES. The County shall assess the Assessments against the Assessed Properties in accordance with the Ordinance. The Assessments shall be assessed on the basis of the number ERUs attributable to the Assessed Properties. The Assessments to be levied against the Assessed Properties shall be paid in ten (10) annual installments, together with interest on the outstanding amount of the applicable Assessments at a rate not to exceed two percent (2%) above the interest rate on the bonds to be issued by the County in connection with the Assessments. If any installment is not paid when due, the County may declare the entire outstanding amount of the Assessment, together with the accrued interest thereon and an appropriate interest and/or prepayment charge, immediately due and payable. Any Assessment or installment thereof not paid when due shall be subject to a penalty at the

rate of one percent (1%) per month or portion thereof until paid. The entire outstanding amount of any Assessment may be prepaid at any time provided that the accrued interest thereon and an appropriate interest and/or prepayment charge is paid together therewith. The Assessments shall be levied against the Assessed Properties on the basis of the number of ERUs assigned to and reserved for each of the Assessed Properties. The lien upon an Assessed Property resulting from the Assessment thereon shall be extinguished upon the recording in the Official Records of the County of an affidavit executed by the Chairman of the Board to the effect that the such Assessment has been paid in full or that sufficient security has been deposited with the County in order to insure timely payment of such Assessment. The lien upon an Assessed Property resulting from the Assessment thereon shall be extinguished as to a portion or portions of such Assessed Property upon receipt by the County of payment of a portion of the outstanding amount of the Assessment upon such Assessed Property together with the accrued interest thereon and an appropriate interest and/or prepayment charge, such portion to be determined by the County in its sole discretion which shall be at least pro rata based upon fair market values as established by appraisals acceptable to the County, or upon sufficient security therefor being deposited with the County, in either case followed by the recording in the Official Records of the County of an affidavit executed by the Chairman of the Board to such effect and describing in sufficient detail the portion or portions of the Assessed Property as to which such lien is extinguished.

SECTION 5. IMPACT FEES NOT TO BE IMPOSED ON PROPERTIES PAYING ASSESSMENTS. An "Impact Fee", as that phrase is defined in Ordinance 84-18 of the County, as amended, shall not be imposed on the Assessed Properties. The term Assessed Properties shall only include properties the owners of which have

given their written consents to the imposition of the Assessments in accordance herewith.

SECTION 6. COLLECTION OF ASSESSMENTS. In lieu of the provisions for collection of the Assessments, as finally determined and adjusted, and all installments thereof and interest thereon set forth in the Ordinance, the County intends to use the method of collection provided for under Section 197.363, Florida Statutes (1985), as amended, and to take all steps necessary in order to do so.

SECTION 7. PUBLICATION OF RESOLUTION. The Clerk of the County is directed to cause this Resolution to be published one time in a newspaper of general circulation published in the County.

SECTION 8. REQUEST CITY TO ADOPT RESOLUTIONS. The County declares its intention and desire to construct certain improvements, included in the Project, within the City. Accordingly, the County hereby requests the City, in accordance with the Agreement, to adopt appropriate resolutions levying and assessing Special Assessments in Lieu of Impact Fees on certain properties situate in the City to be serviced by the Project, similar in form and substance to the Assessments.

SECTION 9. MANNER OF CONSENT. Any owner of real property constituting one of the Assessed Properties shall evidence its consent to the imposition of an Assessment by completing the consent form hereinafter provided for.

The Wastewater Reservation and Consent to Special Assessment (the "Consent") shall be substantially in the form attached hereto and the Director of the Department of Utility Services of the County and the County Administrator are authorized to execute the Consent on behalf of the County with such additions,

deletions and changes as they shall approve, their execution thereof to constitute conclusive evidence of such approval. Such Consents shall be recorded in the Official Records of the County.

In appropriate cases, the County may require the owner of a property to be assessed to agree to provide and keep in full force a letter of credit or other security, in form and substance acceptable to the County, with respect to the payment of such Assessment, prior to permitting such owner to consent to the imposition of such Assessment. In the event that such owner fails to timely so provide such letter of credit or other security, said consent shall be deemed null and void and of no force or effect. In the event that it appears at any time that any such letter of credit or other security is not going to be renewed, replaced or otherwise kept in force, the County, within a reasonable period of time prior to the termination of such letter of credit or other security, may declare the entire outstanding amount of the corresponding Assessment, together with the accrued interest thereon and an appropriate interest and/or prepayment charge, immediately due and payable and may draw on or otherwise collect upon such letter of credit or other security to satisfy such Assessment. The letter of credit shall be substantially in the form attached hereto with such additions, deletions and changes as may be approved by the appropriate officials of the County, their acceptance thereof to constitute conclusive evidence of such approval.

Said officials of the County are also authorized to execute similar consents on behalf of the County in connection with the special assessments in lieu of impact fees to be imposed by the City in connection with the Project.

SECTION 10. MISCELLANEOUS. The appropriate officials of the County are hereby authorized to take all actions necessary or desirable in connection with the Resolution.

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SECTION 11. EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Commissioner Eggert who moved for its adoption. The motion was seconded by Commissioner Bird and, upon being put to a vote, the vote was as follows:

Chairman Don C. Scurlock, Jr.	Aye
Vice-Chairman Margaret C. Bowman	Aye
Commissioner Richard N. Bird	Aye
Commissioner Carolyn K. Eggert	Aye
Commissioner Gary C. Wheeler	Aye

The Chairman thereupon declared the resolution duly passed and adopted this 1st day of December, 1987.

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY, FLORIDA

By: *Don C. Scurlock, Jr.*
Don C. Scurlock, Jr., Chairman

Attest: *Freda Wright*
Freda Wright, Ex-Officio Clerk
by J. Waterhouse

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: *Charles P. Vitunac*
Charles P. Vitunac, Esquire
County Attorney

PROPERTY OWNER'S NAME: _____
PROPERTY OWNER'S MAILING ADDRESS: _____

PROPERTY CONTROL NUMBER: _____
PROPERTY LOCATION: (Unincorporated area or Sebastian) _____
NUMBER OF ERUs RESERVED: _____
SPECIAL ASSESSMENT AMOUNT: \$ _____
LEGAL DESCRIPTION OF THE PROPERTY: _____

WASTEWATER CAPACITY RESERVATION

AND

CONSENT TO SPECIAL ASSESSMENT

Reference is made to the information at the top of this page. The Undersigned, the owner of the Property defined below, hereby irrevocably consents to the imposition by the County of a special assessment in lieu of impact fees in the amount set forth above (the "Special Assessment"). The payment of the Special Assessment together with the interest thereon and the charges in connection therewith will be secured by a lien against the Property. The Special Assessment is imposed in connection with the reservation for the Property by the County of the number of equivalent residential units ("ERUs") set forth above of wastewater treatment plant and transmission capacity.

SECTION "A" of the Master Capacity Reservation and Consent to Special Assessment recorded in Official Record Book _____, Page _____ of the Public Records of Indian River County, Florida is incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF, the County has caused this instrument to be executed as of the _____ day of _____, 1987.

INDIAN RIVER COUNTY, FLORIDA

By: _____
Terrance G. Pinto, Director
Department of Utility Services

By: _____
Charles P. Balczun
County Administrator

ACKNOWLEDGED this _____ day of _____, 1987.

Notary Public

My Commission Expires:

(SEAL)

CONTINUED ON THE NEXT PAGE

SECTION "B" of the aforesaid Master Capacity Reservation and Consent to Special Assessment is incorporated herein by reference and made a part hereof.

This instrument shall not be legally binding until fully executed by the County and the owner of the Property.

IN WITNESS WHEREOF, the owner of the Property has executed or caused to be executed this instrument, intending to be legally bound, as of the ____ day of _____, 1987.

TO BE COMPLETED BY INDIVIDUAL OWNER(S)

WITNESS:

As to both, if applicable

(Signature of Owner)

As to both, if applicable

(Signature of Owner)

ACKNOWLEDGED this ____ day of _____, 1987.

Notary Public

My Commission Expires:

(SEAL)

TO BE COMPLETED FOR ENTITY OWNER

WITNESS:

(Name of entity)

By: _____

Title:

(SEAL)

ACKNOWLEDGED this ____ day of _____, 1987.

Notary Public

My Commission Expires:

(SEAL)

MASTER
WASTEWATER CAPACITY RESERVATION
AND
CONSENT TO SPECIAL ASSESSMENT

SECTION A

INDIAN RIVER COUNTY, FLORIDA (the "County"), hereby reserves the number of equivalent residential units ("ERUs") set forth above of wastewater treatment plant and transmission capacity, as defined in County Ordinance 84-18, as now or hereafter amended and supplemented (the "Reserved ERUs"), for the property described above (the "Property"), under the terms and conditions set forth herein and subject to the policies and practices of the County and its Division of Utility Services (the "Utility Division") of general application with respect to the reservation of wastewater treatment plant and transmission capacity in the County now or hereafter established.

Terms and Conditions

1. The County plans to construct certain wastewater treatment plant and transmission facilities in accordance with plans and specifications on file with the Utility Division (the "Project"). The County will use its best efforts to complete the Project by August, 1989, but does not guarantee such completion date and will not be responsible for construction delays. Further, the County does not guarantee that wastewater service will be available to the Property upon completion of the Project. The availability of wastewater service may require the construction of additional transmission lines, laterals and other facilities as well as facilities to connect the plumbing systems on the Property to the County's wastewater system. Construction of any such additional facilities by the County may require further special assessments against the Property and/or other costs to the Property owner. No representation is made regarding the dates on which construction of any such additional facilities will be commenced or completed. The Property owner should examine the Project plans to determine the nature and amount of additional facilities which will be required before wastewater service will be available to the Property. The County expects to be able to have and will use its best efforts to have wastewater treatment plant capacity available for the Reserved ERUs when service is desired by the Property owner and otherwise available. If the County does not have such capacity available within a reasonable period of time after such date, the Property owner, at any time thereafter prior to such capacity becoming available, shall have the right to cancel the reservation for the Reserved ERUs by written notice thereof to the County. Such cancellation shall not be effective until a written instrument so indicating has been recorded by the County in the public records of the County. Such cancellation shall not affect the Special Assessment, as hereinafter defined, in any manner whatsoever, including without limitation, the terms of payment thereof. In the event of such cancellation the County hereby agrees to pay within six (6) months after the due date of the last regularly scheduled installment of the Special Assessment, regardless of any prepayment, to the owner of the Property as of the date of such payment an amount equal to the Special Assessment paid plus all interest paid thereon. The foregoing right of cancellation shall be the sole and exclusive remedy of the owner of the Property against the County in the event that such capacity is not so available. In no event shall the owner of the Property have the right not to pay the Special Assessment.

2. This reservation runs with the land and may not at any time be sold, transferred, or assigned by the Property owner, except to the County with its written consent or in connection with the sale of fee simple title to the Property.

3. If the entire Reserved ERUs are not reasonably expected to be needed for the Property, the County may reclaim the excess ERUs (the "Excess ERUs") for resale by written instrument, the original of which shall be recorded in the public records of the County and a copy of which shall be sent to the Property owner. Upon receipt of payment for the Excess ERUs and any impact fees and special assessments in connection therewith by the County from the purchaser of the Excess ERUs, the County shall refund to the owner of the Property as of the date the Excess ERUs were reclaimed an amount equal to the amount paid prior to the date the Excess ERUs were reclaimed for the Excess ERUs and any impact fees and special assessments in connection therewith, exclusive of interest and costs associated therewith; provided, however, that the County's obligation to make such refund shall be limited to the amount received from such resale. The County will be under no obligation to find a purchaser for the Excess ERUs. Any amounts received by the County from the purchaser of the Excess ERUs in excess of the amount refunded shall belong to the County.

4. Commencing with the first month following completion of the Project, the Property owner will be required to pay monthly base facilities charges established by the County. In the event the base facilities charge with respect to any unused Reserved ERUs is not paid within 30 days after becoming due and payable and after demand of the County, such unused Reserved ERUs may be reclaimed by the County in the manner set forth in paragraph 3 and the County shall be entitled to resell such unused Reserved ERUs. Upon any such resale, the County shall make a refund in the amount and manner set forth in paragraph 3, provided that the County shall deduct from the refund the amount of monthly base facilities charges due and accruing to the date of the resale of the unused Reserved ERUs.

5. It is expressly understood and agreed that one of the purposes of this instrument is to prohibit speculation in wastewater treatment plant and transmission capacity.

SECTION B

THE UNDERSIGNED, the owner of the Property defined above, for himself and his heirs, executors, personal representatives, successors and assigns, for value received, hereby irrevocably agrees to the foregoing and, pursuant to County Ordinance 86-88, as amended and supplemented, further irrevocably consents to the imposition of a special assessment in lieu of impact fees with respect to the Property in the amount set forth above (the "Special Assessment") and agrees to the terms and conditions thereof as set forth in said Ordinance and the resolutions of the County now or hereafter adopted pursuant thereto. The Special Assessment shall be payable in ten (10) annual installments together with interest on the outstanding amount thereof at a rate not to exceed two percent (2%) above the interest rate on the bonds to be issued by the County in connection with the Special Assessment. The entire outstanding amount of the Special Assessment may be prepaid at any time provided the accrued interest thereon and an appropriate interest and/or prepayment charge is paid together therewith. It is understood and agreed that failure to pay the Special Assessment, interest thereon or any other charge appurtenant thereto may result in foreclosure and loss of title to the Property.

The property owner further agrees that the amount of the outstanding Special Assessment may be increased by the County in connection with the refunding of any issue of outstanding bonds of the County secured by a pledge of the Special Assessment by written instrument, the original of which shall be recorded in the public records of the County and a copy of which shall be sent to the Property owner; provided that the amount of the outstanding Special Assessment and the interest to be paid thereon thereafter is no greater than that which would have been payable without such increase.

[Letterhead of Bank]

IRREVOCABLE LETTER OF CREDIT NO. _____

[Date]

Indian River County, Florida
1840 25th Street
Vero Beach, Florida 32960

Attention: Director of Budget and Management

Dear Sir:

1. At the request of and for the account of [name and address of property owner] (the "Property Owner"), we hereby establish in your favor, in connection with the special assessment in lieu of impact fees imposed upon certain real property legal title to which is held by the Property Owner by resolution of the County adopted _____ (the "Special Assessment"), our Irrevocable Letter of Credit No. _____ (the "Letter of Credit ") in the amount of \$ _____ (as more fully described below), effective _____ and expiring at 5:00 p.m. on _____ or, if such day is not a Business Day, on the next succeeding Business Day (the "Stated Expiration Date"), unless, at our option, we deliver to you a written amendment signed by an authorized signer (specifically referring to [name of Bank] Irrevocable Letter of Credit No. _____") extending the Stated Expiration Date to the date set forth in such amendment, in which case this Letter of Credit shall expire on such extended Stated Expiration Date unless further extended, it being understood that we shall be under no obligation to grant any such extension. This Letter of Credit is subject to automatic termination as provided in paragraph 5 hereof.

2. We hereby irrevocably authorize you to draw on us in accordance with the terms and conditions hereinafter set forth, by one draft on us, an amount not exceeding _____ Dollars (\$ _____) (the "Letter of Credit Amount").

3. Funds under this Letter of Credit are available to you at the time specified below in one drawing by your draft dated the date of its presentation, stating on its face: "Drawn under [name of Bank] Irrevocable Letter of Credit No. _____", certifying that the Property Owner is in default in payment of the Special Assessment, stating the amount drawn and stating your payment instructions. Such draft shall be presented to us at _____ or such other place in the State of Florida as we may hereafter designate by written notice to you and shall be made in the form of a letter to us on your letterhead manually signed by an appropriate official of the County. Upon presentation of your draft, all in strict conformity with the terms and conditions hereof, we will honor the same in accordance with your payment instructions on the later of (i) the second Business Day immediately following

the Business Day on which you present to us your draft or the value date set forth in your draft.

4. As used herein the term "Business Day" means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in the State of Florida are required or authorized by law (including executive order) to close, or (iii) a day on which the New York Stock Exchange is closed. References to any time of day in this Letter of Credit shall refer to Eastern standard time or Eastern daylight saving time, as in effect in Indian River County, Florida on such day.

5. This Letter of Credit shall automatically terminate upon the first to occur of: (a) the Stated Expiration Date (as such date may have been extended), (b) the date on which we receive a certificate from you terminating this Letter of Credit, (c) the fifth Business Day following the date on which you receive written notice from us stating that an Event of Default has occurred under the Reimbursement Agreement dated as of _____ between the Property Owner and us (the "Reimbursement Agreement") and directing you to make a draw under this Letter of Credit, or (d) the date on which the draft provided for hereunder is honored. This Letter of Credit shall be promptly surrendered to us by you upon such termination.

6. Only the County may make a drawing under this Letter of Credit. Upon the payment to the County or its account of the amount specified in a draft drawn hereunder, we shall be fully discharged on our obligation under this Letter of Credit, and we shall not thereafter be obligated to make any further payments under this Letter of Credit.

7. This Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein or to which this Letter of Credit relates, except only the draft referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, except such draft. The draft referred to herein that is presented to us shall become an integral part of this Letter of Credit.

8. This Letter of Credit is subject to the provisions of the Uniform Customs and Practice for Documentary Credits, 1983 Revision, International Chamber of Commerce Publication No. 400 (the "UCP") other than Article 54(e) thereof. This Letter of Credit shall be deemed a contract made under the laws of the State of Florida and shall, as to matters not governed by the UCP, be governed and construed in accordance with the laws of the State of Florida, without regard to principles of conflicts of law.

Very truly yours,

[NAME OF BANK]

By: _____
Title: