

**RECLAIMED WATER FRANCHISE AGREEMENT  
BETWEEN  
THE TOWN OF INDIAN RIVER SHORES, FLORIDA  
AND  
INDIAN RIVER COUNTY, FLORIDA**

THIS RECLAIMED WATER FRANCHISE AGREEMENT (hereinafter "Franchise Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 201\_, (hereinafter "Effective Date") by and between the Town of Indian River Shores, Florida (hereinafter "INDIAN RIVER SHORES") and Indian River County, Florida (hereinafter "COUNTY").

**WHEREAS**, INDIAN RIVER SHORES 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 obligations hereunder; and

**WHEREAS**, COUNTY is in the business of furnishing, *inter alia*, reclaimed water utility services; and

**WHEREAS**, INDIAN RIVER SHORES and the City of Vero Beach entered into a Water, Wastewater, and Reuse Water Franchise Agreement, dated October 1, 2012, ("Vero Beach Franchise Agreement") for the City of Vero Beach to provide water, wastewater and reclaimed water utility services within the corporate limits of INDIAN RIVER SHORES; and

**WHEREAS**, pursuant to the Vero Beach Franchise Agreement, INDIAN RIVER SHORES has the right to grant non-exclusive reclaimed water franchises to customers not currently being served by the City of Vero Beach and reclaimed water franchises within the John's Island community; and

**WHEREAS**, COUNTY and John's Island Water Management, Inc. and COUNTY have entered into an Agreement for the Delivery of Reclaimed Water Between Indian River County, Florida and John's Island Water Management, Inc., dated December 5, 2017, (the "Agreement") for a twenty-five year term,

**NOW, THEREFORE**, in consideration of the foregoing 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. Adoption of "Whereas" Clauses.** The foregoing "Whereas" clauses are adopted and incorporated herein.

**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 the Town Council of INDIAN RIVER SHORES approving this Franchise Agreement and granting to COUNTY the Franchise contemplated herein.

**Section 3. Franchise Grant.** INDIAN RIVER SHORES hereby grants to COUNTY, with all rights and privileges attendant thereto, a non-exclusive Franchise to construct, maintain, and operate reclaimed water utility systems within the John's Island community and customers not served by the City of Vero Beach ("Service Area"). Such reclaimed water utility systems shall consist of all reclaimed water facilities (including, pipes, fixtures, mains, valves, meters, tanks, lift stations, etc., and telephone and electric lines for water, wastewater, and reclaimed water utility system use) for the purpose of supplying reclaimed water utility service to the Service Area and the inhabitants thereof.

**Section 4. Franchise Term and Renewal.** The term of this Franchise Agreement and the Franchise granted hereunder shall be for a period of Twenty-five (25) years commencing on the Effective Date. This Franchise Agreement shall automatically renew for an additional 25 years unless either party provides notice to the other party of its intent to terminate this Franchise Agreement at least 4 years prior to the expiration of this Franchise Agreement.

**Section 5. Utility Rates and Fees.** Except as set forth in the Agreement, the rates for reclaimed water utility services established and charged by COUNTY for customers within the Service Area shall be no greater than the rates for such utility services as published by the COUNTY for the various rate classifications served. Likewise, any and all other fees and charges established and imposed by COUNTY shall correspond to such fees and charges assessed by COUNTY and shall be no greater than those imposed by COUNTY in each rate classification. The foregoing rates, fees, and charges shall be adopted and applied to each customer's utility billing commencing with the customer's first utility bill that is produced subsequent to Thirty (30) days from the Effective Date. The rates, fees, and other charges assessed shall be adjusted by COUNTY at the same time as any other adjustment made by COUNTY of its corresponding charges and fees. COUNTY shall provide the Town Manager of INDIAN RIVER SHORES for review and comment any proposed rate or fee adjustments no less than Thirty (30) days before the adjustment is scheduled to go before the COUNTY Board of County Commissioners City for consideration. Notwithstanding any of the foregoing language to the contrary, all rates, fees and regulations established by COUNTY shall be otherwise reasonable, and the rates and fees charged by COUNTY shall at all times be subject to such regulation as may be provided by state law. Further, the parties recognize that the right to establish and regulate reclaimed water rates, impact fees, service policies or other rules or regulations, and the construction, operation or maintenance of the reclaimed water utility system shall be vested solely in COUNTY, except as such may be otherwise subject to the applicable laws of the Federal Government and the State of Florida or the provisions of this Franchise Agreement.

**Section 6. Developer Agreements.** COUNTY 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 COUNTY shall be fair, just, and non-discriminatory, and generally have the same content as developer agreements for projects within the unincorporated areas of the COUNTY and shall require consent of INDIAN RIVER SHORES. 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.

**Section 7. Franchise Service Area Boundary Changes.** The Service Area covered by this Franchise Agreement may be expanded or contracted to include or exclude lands by amendments between INDIAN RIVER SHORES and COUNTY approved by the INDIAN RIVER SHORES Town Council and the COUNTY Board of County Commissioners.

**Section 8. Easements and Other Rights.** COUNTY shall have all rights, privileges, easements, licenses, leaseholds, prescriptive rights, and rights to use public and private 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 reclaimed utility systems (collectively "Easements"). INDIAN RIVER SHORES will assist COUNTY in obtaining any such Easements needed by COUNTY for performance of this Franchise Agreement. Any expense incurred by INDIAN RIVER SHORES in providing such assistance shall be reimbursed by COUNTY.

**Section 9. Consideration.** In consideration of the Franchise and the other rights and privileges granted herein to COUNTY, COUNTY shall provide, at its own expense, maintenance, repairs, and replacements of the reclaimed water utility facilities used by COUNTY in its performance of this Franchise Agreement.

**Section 10. Service Standards.** COUNTY shall construct, maintain, and operate all reclaimed water facilities and systems in accordance with the applicable regulations of the Federal Government and the State of Florida, as well as meet all level-of-service standards pursuant to applicable comprehensive plans.

**Section 11. Manner of Service.** In performance of this Franchise Agreement COUNTY shall:

- (a) Provide reclaimed water utility services to customers in the Service Area.
- (b) Operate, regularly maintain, and promptly repair when necessary the reclaimed water utility facilities and systems in order to continue adequate service to the Service Area.
- (c) Deal with customers in the Service Area in a manner no less favorable than COUNTY's dealings with its customers served.

**Section 12. Capital Improvement Plan.** COUNTY shall annually provide the draft of its detailed Five (5) year capital improvement plan, specific to reclaimed water utility systems within the Service Area, to the INDIAN RIVER SHORES Town Manager and Town Planner for review and comment. Such comments shall be provided to COUNTY within Thirty (30) days for consideration in its completion of the capital improvement plan, which plan shall thereafter be provided to INDIAN RIVER SHORES Town Manager.

**Section 13. Reclaimed Water Utility System Infrastructure Plan.** Within three years of the Effective Date of this Franchise Agreement, COUNTY shall prepare a reclaimed water utility system infrastructure plan detailing how COUNTY plans to expand and provide reclaimed water to future users in INDIAN RIVER SHORES.

**Section 14. Right of First Refusal.** COUNTY shall have the right of first refusal to serve reclaimed water within the Service Area. Under the right of first refusal, COUNTY shall have the right to serve any portion of the Service Area, so long as COUNTY is able to design the infrastructure improvements necessary for such service within five years of the Effective Date of this Franchise Agreement, or within two years of receiving a request for service within the Service Area, if that request occurs five years after the Effective Date of the Franchise Agreement. No other entity may provide service in the Service Area, unless a request has been provided to COUNTY and COUNTY is unable to meet the requirements of this section. If any other entity is granted the right to service reclaimed water within a portion of the Service Area and is unable to design such services within two years, COUNTY shall have the right to provide reclaimed to that portion of the Service Area.

**Section 15. Location of Facilities.** All 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 INDIAN RIVER SHORES may designate for the purpose, but not so as unreasonably to interfere with the proper construction, maintenance, repair, or operation of the reclaimed water utility systems by COUNTY. When any portion of a street is excavated by COUNTY 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 COUNTY 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 INDIAN RIVER SHORES liable to COUNTY 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 INDIAN RIVER SHORES of any of the present or future streets, avenues, alleys, bridges, highways, easements, or other public places used or occupied by COUNTY, except, however, COUNTY shall be entitled to reimbursement of its costs as may be provided by law.

**Section 16. Liability and Indemnification.** INDIAN RIVER SHORES shall in no way be liable or responsible for any accident or damage that may occur in the construction, installation, maintenance, or operation by COUNTY of the reclaimed water facilities hereunder, and the acceptance approval of this Franchise Agreement by COUNTY shall be deemed an agreement on the part of COUNTY to indemnify and hold INDIAN RIVER SHORES harmless against any and all liability, loss, cost, damage, or expense which may accrue to INDIAN RIVER SHORES by reason of the negligence or misconduct of COUNTY in its performance of such construction, installation, maintenance, repair, or operation of the reclaimed water systems pursuant to this Franchise Agreement (but excluding to the extent any such claim is based on the negligence of INDIAN RIVER SHORES), including but not limited to attorneys' fees, experts' fees, and costs incurred for defending any and all such claims or suits against INDIAN RIVER SHORES, 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 for any covered claim accruing prior to such expiration or termination. However, such obligation to indemnify INDIAN RIVER SHORES shall be subject to the limitations set forth in section 768.28, Florida Statutes, as may be applicable.

**Section 17. Assignment.** COUNTY may assign this Franchise Agreement and the Franchise, provided that such assignee assumes all the obligations of COUNTY hereunder and such assignment is approved by INDIAN RIVER SHORES, whose approval shall not be unreasonably withheld.

**Section. 18. Time of the Essence.** Time is of the essence in the performance of each and every provision of this Franchise Agreement.

**Section 19. Acts of God.** Provisions herein to the contrary notwithstanding, COUNTY 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 COUNTY's control including, without limitation, "Acts of God," unavoidable casualties, and labor disputes.

**Section 20. 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 SHORES      Town Manager  
Town of Indian River Shores  
6001 N. Highway A-1-A  
Indian River Shores, Florida 32963

If to COUNTY                              Director of Utilities  
1801 27<sup>th</sup> Street  
Vero Beach, FL 32960

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

**Section 21. No Waiver.** The failure of either party hereto to enforce any of the provisions of this Franchise Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.

**Section 22. 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 23. Governing Law; Venue; Attorney Fees.** This Franchise 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 or the Franchise shall be in Indian River County, Florida. The parties shall each bear their own attorney fees in any dispute arising under this Franchise Agreement.

**Section. 24. Entire Agreement; Amendments.** 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 and waivers to the provisions of this Franchise Agreement shall be made by the parties only in writing by formal amendment. This Franchise Agreement may be executed in separate 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:**

**TOWN OF INDIAN RIVER SHORES**

\_\_\_\_\_  
Laura Aldrich  
Town Clerk

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

(SEAL)

Date: \_\_\_\_\_

Reviewed as to form and legal  
sufficiency:

\_\_\_\_\_  
Chester Clem  
Town Attorney

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

By: \_\_\_\_\_  
Peter D. O'Bryan, Chairman

Date: \_\_\_\_\_

Approved by BCC: \_\_\_\_\_

**ATTEST:**

Jeffrey R. Smith, Clerk of Circuit Court and  
Comptroller

By: \_\_\_\_\_  
Deputy Clerk

**APPROVED BY:**

\_\_\_\_\_  
Jason E. Brown, County Administrator

**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY**

\_\_\_\_\_  
Dylan Reingold, County Attorney