

**AGREEMENT FOR THE DELIVERY OF RECLAIMED WATER
BETWEEN
INDIAN RIVER COUNTY, FLORIDA
AND
JOHN'S ISLAND WATER MANAGEMENT, INC.**

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 2017 (the "Effective Date") by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, the address of which is 1801 27th Street, Vero Beach, Florida 32960 (hereinafter the COUNTY) and JOHN'S ISLAND WATER MANAGEMENT, INC., a Florida Not-For-Profit Corporation, the address of which is 1 Turtle Beach Road, Vero Beach, Florida 32963 (hereinafter JIWM).

WITNESSETH:

WHEREAS, the COUNTY operates and maintains publicly owned wastewater treatment facilities which are capable of producing irrigation quality wastewater effluent (hereinafter referred to as "Reclaimed Water", "Reuse Water" or "IQ Water") as that term is defined by the Florida Department of Environmental Protection (FDEP) for use on grass, woodlands, landscape, pastures, golf courses and other types of approved vegetation; and;

WHEREAS, JIWM's service area is described in Exhibit 'A' (the "Property"), attached hereto: and

WHEREAS, JIWM desires to utilize reclaimed water and JIWM is required to accept reclaimed water in accordance with the terms of this Agreement, FDEP regulations and the St. Johns River Water Management District (SJRWMD) Consumptive Use Permit; and

WHEREAS, JIWM acknowledges that COUNTY will need to upgrade the COUNTY infrastructure to accommodate the supply of reclaimed water;

NOW THEREFORE, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

Section 1. Delivery and Acceptance:

(a) The COUNTY will deliver and JIWM agrees to receive reclaimed water at JIWM's property line at a mutual agreeable point. JIWM, at its own expense, shall install the transmission line, control valves, metering, remote monitoring & telemetry system, and associated appurtenances from the COUNTY's reclaimed water main located at the corner of 77th Street and Old Dixie Highway.

(b) JIWM shall install a reclaimed water flow monitoring and recording device (hereinafter referred to as a "reclaimed meter") to monitor the volume of reclaimed water delivered to JIWM. The reclaimed meter will be installed at a mutually agreed upon location on JIWM's property. The COUNTY shall be granted reasonable access to the reclaimed water system and related appurtenances. The reclaimed water system components shall be reviewed and approved by the COUNTY prior to installation.

(c) JIWM covenants that it shall not directly discharge reclaimed water into any water body of the State of Florida other than to the impoundments owned and maintained by JIWM. JIWM shall take

reasonable precaution to prevent the use of reclaimed water received as potable water. Signs shall be strategically posted in accordance with the Florida Administrative Code. JIWM's reclaimed water facilities shall be operated, maintained, and administered in a manner which adheres to the codes, standards, and guidelines established by the COUNTY and the respective regulatory agencies.

(d) JIWM shall use the reclaimed water to irrigate the Property in a manner consistent with all Federal, State and local laws and regulations. JIWM shall file a written plan (IQ Protocol or Reclaimed Water Use Protocol) with SJRWMD, FDEP and the COUNTY, which outlines the intended use of the reclaimed water. The Protocol shall be updated and amended in writing whenever the intended use materially changes. JIWM shall strictly comply with all Federal, State and local regulations with respect to the discharge of any reclaimed water into State of Florida waters.

Section 2. COUNTY's Liability for Failure to Deliver Reclaimed Water:

(a) JIWM understands and acknowledges that the COUNTY will not guarantee the delivery of a set amount of reclaimed water.

(b) JIWM further agrees that the COUNTY shall not be held liable to JIWM for any damages or expenses incurred by JIWM because of the COUNTY's failure to deliver reclaimed water.

Section 3. JIWM's Obligations:

(a) Unless otherwise noted, JIWM shall prepare at its own expense; plans, specifications, agreements, advertisement and general conditions, hereinafter referred to as the "contract documents" for the lines and facilities necessary to deliver the reclaimed water from the COUNTY's reuse storage and repump facility located at 77th Street to the reclaimed water meter serving the Property. JIWM must obtain COUNTY approval for all plans and specifications prior to submittal to the permitting agencies. JIWM shall be responsible for all costs associated with the design and permitting and construction of the facilities not on the Property (which includes but is not limited to transmission lines, reclaimed meter, and associated appurtenances) whether designed, permitted or constructed by JIWM or the COUNTY.

(b) The design, permitting, construction, operation and maintenance of all on-site reclaimed water facilities which are on the Property (including but not limited to reclaimed water meter, transmission lines, pumps, valves, storage facilities, and irrigation equipment) shall be JIWM's sole responsibility and expense. All construction of on-site reclaimed water lines and facilities up to the irrigation system shall be subject to COUNTY review and approval.

(c) JIWM shall comply with reasonable requests by the COUNTY concerning on-site operations and maintenance including but not limited to all FDEP and SJRWMD regulations relating to reporting requirements, signs, spraying, and color-coding of reclaimed water equipment.

(d) JIWM shall be deemed in possession of the reclaimed water on JIWM's side of the reclaimed water meter, however JIWM shall not be deemed to own the reclaimed water and the right to transfer or sell the reclaimed water is limited. JIWM may not transfer or sell the reclaimed water to any party for use offsite of the Property without written permission from the COUNTY, which permission shall not be unreasonably withheld.

(e) JIWM may change the location of the site or sites where the reclaimed water is applied provided such change does not interrupt nor diminish JIWM's ability to accept all of the reclaimed water and such change remains in compliance with all Federal, State and local regulations and the terms and conditions of this Agreement.

(f) JIWM shall convey to the COUNTY a non-exclusive easement for the reclaimed water meter site and the reclaimed water system. In addition, JIWM shall grant to the COUNTY a non-exclusive ingress-egress easement necessary for the COUNTY to install, maintain, operate and monitor the reclaimed water meter and reclaimed water system.

(g) JIWM shall be responsible for obtaining all construction and operating permits required for the construction, delivery, use, monitoring and storage of the reclaimed water.

(h) After the COUNTY's final inspection of the off-site reclaimed water facilities for conformance with the approved plans and specifications, JIWM shall convey all the off-site facilities to the COUNTY. The conveyance shall include, but not be limited to the following documents, in a form acceptable to the COUNTY:

- 1) Bill of Sale
- 2) Grants of Easements
- 3) Maintenance Bond
- 4) Record Drawings (hard copy and electronic format - AutoCAD rel. 14.0)

Section 4. Quality of Reclaimed Water:

The COUNTY will provide reclaimed water meeting the standards set forth by the FDEP as defined in the COUNTY's Wastewater Treatment Facility (WWTF) Operating Permit Reclaimed Water. Sampling for conformance with reclaimed water quality shall be performed at the location and frequency defined in the FDEP WWTF Operating Permit. Only reclaimed water meeting FDEP water quality standards will be delivered to JIWM.

Section 5. Property to be Served:

JIWM shall use the reclaimed water only on the Property.

Section 6. Use of Other Water Resources

Notwithstanding anything to the contrary herein, JIWM shall, subject to the terms of the Consumptive Use Permit, FDEP Permit, NPDES Permit and regulatory agency permitting, have the right to use groundwater and stormwater for irrigation to the extent there is insufficient reclaimed water available.

Section 7. Fees and Charges:

(a) Upon satisfaction of all of the requirements set forth in section 3 above, JIWM shall begin paying the current established base rate for reclaimed water delivered to the Property.

(b) The COUNTY shall have the sole and exclusive right to set fair and reasonable fees and charges for reclaimed water (usually expressed in terms of dollar amount per thousand gallons). The reclaimed water fees and charges may be changed at any time at the sole discretion of the COUNTY and such charges shall apply to JIWM and this Agreement at the time of such change. The COUNTY shall use reasonable efforts to set the reclaimed water fees and charges such that they are sufficient to cover the total cost of providing reclaimed water and that such costs reflect the appropriate allocation of expenses between the provisions of reclaimed water and the associated wastewater treatment costs. However, rates paid by JIWM during the initial 25-year term shall be reduced by 50% of current base rate for the first one million gallons delivered daily.

(c) The County agrees to credit JIWM's monthly reclaimed water bill 20% of the current base rate for any reclaimed water sold to others through the JIWM constructed pipeline, however in no event shall the credit, under this subsection, exceed the amount billed to JIWM for the month.

(d) JIWM shall be invoiced according to the COUNTY's normal billing practices for water customers. JIWM shall pay interest at the rate in place at the time of any past due amounts from the date the amount came due until the date paid. Written or verbal notice of delinquency is not required for the interest to accrue.

Section 8. Volume Allocation:

The COUNTY will attempt to allocate to JIWM an average daily flow of one million gallons per day. This allocation is non-binding and non-committal. JIWM shall control the volume of reclaimed water accepted, stored and utilized by JIWM. Notwithstanding anything to the contrary, JIWM is not obligated to accept reclaimed water which does not meet FDEP standards or any time JIWM's reclaimed water impoundment is at capacity. JIWM agrees that the use of reclaimed water shall take precedence over any other irrigation water source including storm water and groundwater.

Section 9. Term:

The term of this Agreement is twenty-five (25) years beginning on the Effective Date, as provided above. This Agreement shall be renewed automatically for successive terms at the expiration of any preceding term, unless the Town of Indian River Shores franchise expires or any party notifies the other of cancellation by written notice not less than 180 consecutive calendar days in advance of the expiration date of the preceding term. The Term of this Agreement shall run concurrently with the COUNTY's Regional Wastewater Treatment Facility FDEP Operating Permit serving the area.

Section 10. No Direct Offsite Discharge:

JIWM covenants that it shall not directly discharge reclaimed water into any body of water in the State of Florida other than the ponds or lakes (impoundments) owned by JIWM. JIWM will take all reasonable precautions to prevent the use of reclaimed water received as potable water. "Reclaimed Water in Use" warning signs shall be posted in strategic places to prevent consumption of the water. Sign location and color of the posted signs shall be in conformance with FDEP regulations. In addition, exposed reclaimed water piping shall be painted 'Pantone Purple 522C'.

Section 11. Reclaimed Water Use Permits:

JIWM shall obtain FDEP and all other approvals to deliver and apply reclaimed water to the Property. If, through no fault of the parties involved, any federal, state or local government or agency (excluding the COUNTY) fail to issue necessary permits, grant necessary approvals, or require a material change in the system, then to the extent necessary and if possible, the parties agree to negotiate an amendment to the Agreement to reflect the change in condition. If it becomes impossible or impracticable to perform under the terms of this Agreement because of the above, then this Agreement shall terminate and the parties shall have no further obligations to the other.

Section 12. Town of Indian River Shores Franchise

This Agreement is contingent upon approval of a mutually agreed upon 25-year franchise for the COUNTY by the Town of Indian River Shores.

Section 13. Amendment:

A written instrument executed by the party or parties to be bound thereby may only amend this Agreement.

Section 14. Assignability:

Either party may assign this Agreement, however, the rights granted herein shall run with the land and are not considered the personal property of JIWM. Therefore, while JIWM has the right under

this Agreement to freely transfer the rights and obligations granted by this Agreement, the assignee shall not have the right to use the reclaimed water anywhere but on the property unless this Agreement is amended in writing by the assignee and the COUNTY to provide otherwise.

Section 15. Authority

Each party hereto represents and warrants to the other that the execution of this Agreement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations and are enforceable in accordance with their terms.

Section 16. Captions:

Captions, if included, in this Agreement are included for convenience only and are not to be considered in any construction or interpretation of this Agreement or any of its provisions.

Section 17. Definition

All pronouns shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the party or parties may require.

Section 18. Entire Agreement:

This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there is no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

Section 19. Governing Law & Jurisdiction:

This Agreement shall be governed by the laws of the State of Florida and the laws of the United States pertaining to transactions in such State and all actions arising out of this Agreement shall be brought in Indian River County. All of the parties to this agreement have participated freely in the negotiation and preparation hereof; accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

Section 20. Multiple Counterparts:

This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party to be charged.

Section 21. Recording of Agreement:

The Agreement shall be recorded in the public records of Indian River County. The obligations defined in this Agreement shall be a condition, which shall run with the land and shall bind subsequent owners of the Property for the term of this Agreement. JIWM shall pay for the cost of recording.

Section 22. Severability / Invalid Provision:

If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

Section 23. Time of Essence:

Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State of Florida, then, in such event, the time of such period shall be extended to the

next day which is not a Saturday, Sunday or legal holiday.

Section 24. Effective Date. This Agreement shall become effective upon execution of the parties.

IN WITNESS WHEREOF, the COUNTY and JIWM have accepted, made and executed this Agreement upon the terms and conditions above stated on day and year first above written.

By: *[Signature]*

President

John's Island Water Management, Inc.

Date: 11-17-17

Eunice Smith

Witness (signature)

Eunice Smith

Printed Name

[Signature]

Witness (signature)

James L Moller

Printed Name

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____ who is personally known to me or who has produced _____ as identification and who did take an oath.

Notary Public

Name: _____

Commission Number: _____

Commission Expiration: _____

(Notary Stamp)

BOARD OF COUNTY COMMISSIONERS OF
INDIAN RIVER COUNTY, FLORIDA

Jeffrey Smith, Clerk

By: _____
, CHAIRMAN

EX -A

Franchise Service Area Territorial Boundaries

Section 18 T32S R40E, less Government lots 7, 8, 11 and 12.

That portion of Sections 12 & 13 T32S R39E lying east of the Intracoastal Waterway 500' R/W including John's Island Cemetery as recorded in Plat Book 8, Page 24, Public Records of Indian River County, Florida and Tract B, John's Island Plat 31, Plat Book 11, Page 72, Public Records of Indian River County, Florida.

Sections 6 & 7 T32S R40E.

That portion of Section 1 T31S R39E lying east of the Intracoastal Waterway 500' R/W less and except the Shores Subdivision as recorded in Plat Book 11, Page 61 Public Records of Indian River County, Florida and Government Lot 1. North of Old Winter Beach Road.

The south 189.42' of Government Lot 10 Section 36, T31S R39E less the 70' R/W as described in Official Record Book 89 Page 292, Public Records of Indian River County, Florida.

All lands being within the municipal boundaries of the Town of Indian River Shores, Florida.

The above is informally displayed on the attached map with the service area being delineated within the lined sections.

