

**Record and Return to:**  
Bruce Barkett, Esq.  
Collins Brown Barkett, Chartered  
756 Beachland Boulevard  
Vero Beach, FL 32963

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

THIS WATER, WASTEWATER, AND RECLAIMED WATER FRANCHISE AGREEMENT (hereinafter "Franchise Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2020, (hereinafter "Effective Date") by and between Indian River County, Florida (hereinafter "INDIAN RIVER COUNTY") and the City of Vero Beach, Florida (hereinafter "VERO BEACH").

**WHEREAS**, INDIAN RIVER 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; and

**WHEREAS**, VERO BEACH 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; and

**WHEREAS**, pursuant to such municipal powers VERO BEACH 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 VERO BEACH; and

**WHEREAS**, VERO BEACH provides water and wastewater utility services to portions of the unincorporated areas of INDIAN RIVER COUNTY, pursuant to franchises granted by INDIAN RIVER COUNTY in Resolutions 87-13 (water) and 87-14 (wastewater), both effective as of March 5, 1987 (collectively, the "Franchise Resolutions"); and

**WHEREAS**, on September 19, 1989, INDIAN RIVER COUNTY and VERO BEACH 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”); and

**WHEREAS**, although the franchises granted in the Franchise Resolutions expired on March 4, 2017, VERO BEACH and INDIAN RIVER COUNTY have been negotiating in good faith on this new Franchise Agreement for water, wastewater, and reclaimed water utility service within those unincorporated areas of Indian River County currently served by VERO BEACH which is a portion of the overall City of Vero Beach Water Service Area set forth in Exhibit “A” (the “County Area”); and

**WHEREAS**, INDIAN RIVER COUNTY and VERO BEACH both acknowledge that INDIAN RIVER COUNTY and VERO BEACH disagree regarding ownership of the infrastructure constituting the water, wastewater and reclaimed water system within the County Area and thus nothing in this Franchise Agreement is intended to be deemed as an acknowledgement that VERO BEACH does or does not own any of the infrastructure constituting the water, wastewater and reclaimed water system within the County Area; and

**WHEREAS**, 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 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 Board of County Commissioners of INDIAN RIVER COUNTY approving this Franchise Agreement and granting to VERO BEACH the Franchise contemplated herein.

**Section 3. Franchise Grant.** INDIAN RIVER COUNTY hereby grants to VERO BEACH, 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 and to provide water, wastewater, and reclaimed water utility services to customers currently served by VERO BEACH within the County Area. INDIAN RIVER COUNTY may grant additional non-exclusive reclaimed water franchises to customers

not currently being served by VERO BEACH. 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 INDIAN RIVER 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. INDIAN RIVER COUNTY shall have the option to renegotiate the terms of the Franchise Agreement before the fifteenth (15<sup>th</sup>) yearly anniversary date from the Effective Date or to terminate the Franchise Agreement on the fifteenth (15<sup>th</sup>) anniversary date. INDIAN RIVER COUNTY, should it desire to renegotiate or terminate, shall give Four (4) years written notice before the fifteenth (15<sup>th</sup>) anniversary date, otherwise the Franchise shall continue uninterrupted under the terms and conditions of this Agreement. 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. In no event shall this Franchise Agreement or the Franchise terminate prior to expiration of any Fifteen (15) year period, except as otherwise provided herein for default.

**Section 5. Additional Customers.** VERO BEACH may provide water, wastewater, and/or reclaimed water utility services to new customers in the unincorporated areas of Indian River County outside of the County Area currently served by VERO BEACH as of the Effective Date of this Franchise Agreement only upon request of such new customers and after appropriate approvals by INDIAN RIVER COUNTY. Such modification shall be approved per section 8 of this Franchise Agreement.

**Section 6. Utility Rates and Fees.** The rates for water, wastewater, and reclaimed water utility services established and charged by VERO BEACH for customers within the County Area shall be no greater than the rates for such utility services as published by the Indian River County Department of Utility Services or its successor (hereinafter "IRC Utilities") or the Equivalent Residential Unit schedule set forth in the Indian River County Code of Ordinances for the various rate classifications served. Likewise, any and all other fees and charges established and imposed by VERO BEACH shall correspond to such fees and charges assessed by IRC Utilities and shall be no greater than those imposed by IRC Utilities in each rate classification. All fees and charges related to fire hydrants, if any, shall also be in conformance with such fees or charges imposed by Indian River County or IRC Utilities. The rates, fees, and other charges assessed shall be adjusted by VERO BEACH within 60 calendar days after any adjustment by IRC Utilities or the Indian River County Board of County Commissioners of its corresponding rates, charges, and fees. VERO BEACH shall assign the same number of Equivalent Residential Units to customers within the County Area as would be assigned to the customers under the INDIAN RIVER COUNTY Equivalent Residential Unit schedule set forth in the Indian

River County Code of Ordinances. VERO BEACH shall not assign a higher number of Equivalent Residential Units based upon meter size, unless expressly authorized by the INDIAN RIVER COUNTY Equivalent Residential Unit schedule set forth in the Indian River County Code of Ordinances.

**Section 7. Developer Agreements.** VERO BEACH 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 VERO BEACH shall be fair, just, and non-discriminatory, and generally have the same content as developer agreements for projects within the corporate limits of VERO BEACH and shall require consent of INDIAN RIVER COUNTY. 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 8. Franchise Service Area Boundary Changes.** The County Area covered by this Franchise Agreement may be expanded or contracted to include or exclude lands by mutual agreement between INDIAN RIVER COUNTY and VERO BEACH. Such mutual agreement must be approved by the Board of County Commissioners of INDIAN RIVER COUNTY and the City Council of VERO BEACH.

**Section 9. Easements and Other Rights.** VERO BEACH shall have all rights, privileges, easements, licenses, leaseholds, prescriptive rights, and rights to 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"). INDIAN RIVER COUNTY will assist VERO BEACH in obtaining any such Easements needed by VERO BEACH for performance of this Franchise Agreement. Any expense incurred by INDIAN RIVER COUNTY in providing such assistance shall be reimbursed by VERO BEACH.

**Section 10. Consideration.** In consideration of the Franchise and the other rights and privileges granted herein to VERO BEACH:

(a) VERO BEACH shall provide, at its own expense, maintenance, repairs, and replacements of the water, wastewater, and reclaimed water utility facilities used by VERO BEACH in its performance of this Franchise Agreement.

(b) Notwithstanding section 180.191, Florida Statutes, VERO BEACH shall not charge any surcharge to water and wastewater use charges incurred by customers served by VERO BEACH in the County Area.

(c) VERO BEACH shall not charge impact fees, connection charges, capacity charges, assessments, capital recovery charges, or any form thereof to customers within the County Area that are existing and receiving service from VERO BEACH on the Effective Date. The expense for any capital improvements undertaken by VERO BEACH within the County Area to serve such existing customers shall be borne solely and completely by VERO BEACH. 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, whether an existing or new customer.

(d) INDIAN RIVER COUNTY may charge to VERO BEACH a franchise fee up to six percent 6% of the gross revenues received by VERO BEACH from the sale of water, and wastewater services in the County Area. Such fee shall be shown on the customers' bills as a separate line item. VERO BEACH acknowledges and agrees that such fee is an acceptable, bargained-for fee, which is reasonably related to the value of the benefits given by INDIAN RIVER COUNTY and received by VERO BEACH, and the expenses incurred by INDIAN RIVER COUNTY, as a result of this Franchise Agreement. VERO BEACH also acknowledges and agrees that a fee of six percent (6%) shall initially be charged by INDIAN RIVER COUNTY on water and wastewater services in the County Area, and shall remain in effect during the term of this Franchise Agreement, unless revised by INDIAN RIVER COUNTY, in its sole discretion. VERO BEACH shall remit the franchise fee to INDIAN RIVER COUNTY monthly in the same manner as remitted under the Franchise Resolutions and without any interruption after the expiration of the Franchise Resolutions.

**Section 11. Service Standards.** VERO BEACH 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, as well as meet all level-of-service standards pursuant to applicable comprehensive plans. 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. VERO BEACH shall supply all water to consumers through meters which shall accurately measure the amount of water supplied in accordance with normally accepted utility standards. VERO BEACH shall submit the consumer confidence reports ("CCR") annually to INDIAN RIVER COUNTY within 30 days of posting the CCR.

**Section 12. Manner of Service.** In performance of this Franchise Agreement VERO BEACH shall:

(a) Provide continuous (subject to unavoidable interruptions or outages), adequate, and customary water, wastewater, and reclaimed water utility services to customers in the County Area. Water shall be provided at a minimum of 40 PSI at the meter of any user.

(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 to the County Area.

(c) Maintain sufficient water pressure and water mains of sufficient size with fire hydrants and other facilities necessary in the water utility system to allow fire protection at all areas within the County Area receiving services from VERO BEACH.

(d) Maintain wholesale emergency interconnect agreements and interconnects as appropriate in order to continue to provide adequate service to the County Area in the event of outages, excessive demand, or other related events.

(e) Deal with customers in the County Area in a manner no less favorable than VERO BEACH'S dealings with its customers served inside its own corporate boundaries.

**Section 13. Capital Improvement Plan.** VERO BEACH shall annually provide the draft of its detailed Five (5) year capital improvement plan, specific to the water, wastewater, and reclaimed water utility systems within the County Area, to the INDIAN RIVER COUNTY County Administrator, the Director of the Community Development Department and the Director of the Utilities Department for review and comment. Such comments shall be provided to VERO BEACH within Sixty (60) calendar days for consideration in its completion of the capital improvement plan, which plan shall thereafter be provided to INDIAN RIVER COUNTY County Administrator and the Director of the Community Development Department.

**Section 14. 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 INDIAN RIVER 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 VERO BEACH. When any portion of a street is excavated by VERO BEACH 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 VERO BEACH 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 COUNTY liable to VERO BEACH 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 COUNTY of any of the present or future streets, avenues, alleys, bridges, highways, easements, or other public places used or occupied by VERO BEACH. Notwithstanding the foregoing, VERO BEACH shall be entitled to reimbursement of its costs as may be provided by law.

**Section 15. Liability and Indemnification.** INDIAN RIVER COUNTY shall in no way be liable or responsible for any accident or damage that may occur in the construction, maintenance, or operation by VERO BEACH of the utility facilities hereunder, and the acceptance of this Franchise shall be deemed an agreement on the part of VERO BEACH to indemnify INDIAN RIVER COUNTY and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to INDIAN RIVER COUNTY by reason of the negligence or misconduct of VERO BEACH in the construction, maintenance, repair, or operation of the water, wastewater, or reclaimed water utility systems pursuant to this Franchise Agreement. This section shall be subject to the limitations set forth in section 768.28, Florida Statutes.

**Section 16. Prior Agreements and Franchises Superseded.** This Franchise Agreement and the Franchise shall supersede all prior grants of franchise to VERO BEACH with respect to water, wastewater, and reclaimed water only and any previous agreements between VERO BEACH and INDIAN RIVER COUNTY regarding such service. Specifically, INDIAN RIVER COUNTY Resolutions 87-13 and 87-14, effective March 5, 1987, and the Service Area Agreement shall terminate and be superseded upon official action of the Board of County Commissioners of INDIAN RIVER COUNTY granting the Franchise provided for herein.

**Section 17. Assignment.** VERO BEACH may assign this Franchise Agreement and the Franchise, provided that such assignee assumes all the obligations of VERO BEACH hereunder and such assignment is approved by INDIAN RIVER COUNTY. INDIAN RIVER COUNTY may assign this Franchise Agreement and the Franchise, provided that such assignee assumes all the obligations of INDIAN RIVER COUNTY hereunder and such assignment is approved by VERO BEACH. Neither INDIAN RIVER COUNTY nor VERO BEACH may unreasonably withhold its approval of an assignment of this Franchise Agreement.

**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, VERO BEACH 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 VERO BEACH'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 COUNTY      County Administrator  
Indian River County  
1801 27<sup>th</sup> Street  
Vero Beach, Florida 32960

If to VERO BEACH                      City Manager  
City of Vero Beach  
1053 20<sup>th</sup> Place  
Vero Beach, FL 32960-5359

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

**Section 21. 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, the parties shall utilize the dispute resolution process set forth in Chapter 164, Florida Statutes before availing themselves of any otherwise available legal rights.

**Section 22. No Waiver.** Any term or condition of this 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 in this Agreement, 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 23. 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 24. 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. 25. 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 per Section 16. Amendments 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 WHEREOF**, the parties have caused this agreement to be duly executed at Vero Beach on the date set forth above.

**ATTEST:**

**CITY OF VERO BEACH**

\_\_\_\_\_  
Tammy K. Bursick,  
City Clerk

By: \_\_\_\_\_  
Mayor Tony Young

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

**(SEAL)**

Approved as conforming to municipal policy:

Reviewed as to form and legal sufficiency:

\_\_\_\_\_  
Monte K. Falls, P.E.  
City Manager

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

\_\_\_\_\_  
John Turner  
City Attorney

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