

C950734

FRANCHISE AGREEMENT  
BY, BETWEEN AND AMONG  
ISLAND WATER ASSOCIATION, INC.,  
CITY OF SANIBEL  
AND LEE COUNTY, FLORIDA

THIS AGREEMENT, entered into at Lee County, Florida, effective July 16, 1995, by and between ISLAND WATER ASSOCIATION, INC. a Florida nonprofit corporation (herein called "IWA"), the Franchisee); the City of Sanibel, a Florida municipal corporation (herein called "the City"), the Franchisor as to the City Service Area; and Lee County, a Florida political subdivision (herein called "the County"), the Franchisor as to the County Service Area:

WITNESS:

WHEREAS, IWA has been franchised by the County for the previous 30 years for the privilege of constructing, maintaining, equipping and operating a water supply and distribution system and for providing water services to the property described below as both the " City Service Area" and the "County Service Area"; and

WHEREAS, the portion of the Service Area, described as "Sanibel Island" was subsequently incorporated in 1974; and

WHEREAS, a portion of the Service Area is now located in the City and a portion is now located in unincorporated Lee County; and

WHEREAS, IWA is willing to be franchised by each public entity (City and County), but desires to have the franchise terms identical so as to accomplish the goals of providing a water utility service efficiently at rates and charges, and under rules, which are uniform for all customers whether located within the City or within the unincorporated portion of the Service Area;

NOW, THEREFORE, in consideration of the foregoing premises and in consideration of the promises contained herein, and the sufficiency of which is acknowledged by all parties, the parties agree as follows:

Section 1. Service Areas.

The Service Areas are described as follows:

- a. City Service Area. All of the territory located within the City of Sanibel, Florida, as those boundaries exist or as may be established from time to time. The current territorial jurisdiction of the City of Sanibel is set forth in Article II of the Sanibel City Charter, a copy of which is attached hereto as "Exhibit A"; and which boundary is all of Sanibel Island.

b. County Service Area. All of the territory located in the following described area excepting the City Service Area:

- (1) All of unincorporated Captiva Island,
- (2) All islands or territory in unincorporated Lee County located in:

Sections 18, 19, 20, 21, 29, 30 and 31, Township 46 S, Range 23 E;

Sections 7, 8, south 1/2 of Section 9, Sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36, Township 46 S, Range 22 E;

Sections 1, 2, 3, 10, 11, 12, 13, & 14 of Township 46 S, Range 21 E;

Sections 22, 23, 26, 27, 34, 35, 36, and that portion of Section 15 lying south of Redfish Pass, of Township 45 S, Range 21 E.

#### Section 2. Franchise Grant--City to IWA.

The City hereby grants to IWA a franchise, which includes the right and privilege to construct, maintain, equip and operate a water supply and distribution system and to provide a water utility service within the City Service Area.

#### Section 3. Franchise Grant--County to IWA.

The County hereby Grants to IWA a franchise, which includes the right and privilege to construct, maintain, equip and operate a water supply and distribution system and to provide a water utility service within the County Service Area.

#### Section 4. Scope of Grants.

The franchise grants set forth in Sections 2 and 3 above include the right and privilege for IWA to use and occupy the public streets, roads, bridges, rights of way, utility easements and public lands (collectively, Public Areas) within the respective Service Areas, in accordance with established practices within the respective jurisdictions, as necessary for the operation of the water system.

#### Section 5. Term.

The franchise grants are for a period of 20 years from the effective date.

## Section 6. Exclusivity.

Due to the nature of the water resource and of the location of the Service Areas, the franchise grants shall be deemed exclusive. However, nothing in this agreement shall be construed as an absolute prohibition against the grant of another franchise, where, upon application and hearing before the City (as to the City Service Area) or the County (as to the County Service Area) it can be established that to do so would be in the best interests of the public, taking both Service Areas into account.

## Section 7. Franchise Fee; Audit.

- a. A franchise fee will not be imposed at this time. Franchisors reserve the option of imposing a franchise fee in the future. If a franchise fee should be imposed it shall not exceed 3% of gross revenues so long as IWA remains a non-profit entity, or 6% of gross revenues if IWA becomes a for-profit entity.
- b. If and when a franchise fee should be imposed, it would be based upon the applicable percentage of the gross revenues for the previous quarter derived from water utility or supply operations. Without limitation, this includes all charges to customers for any reason. At the option of IWA, franchise fees may be separately set forth on customer billings.
- c. If and when a franchise fee should be imposed, the City and the County shall be permitted to examine IWA's books, records and accounts to verify accuracy of franchise fee payments. Such inspections to be conducted at reasonable times and hours.

## Section 8. Rates and Charges.

- a. The rates and charges (which also include connection/disconnection charges, impact fees, readiness-to-serve charges, demand charges, meter charges, and the like) in effect on the effective date of this agreement shall remain in effect until adjusted by the IWA as further provided for in this Section.
- b. Applications for all rate and charge adjustments shall be filed with the City Council in the form of a "Petition for Rate Adjustment" with supporting documentation at least four months prior to the proposed effective date for the adjustment.
- c. The City shall forward to the County a copy of any application for rate and charge adjustments by the IWA,

within three (3) business days from the City's receipt of same.

- d. As to the City Service Area, the Council of the City shall have the jurisdiction to review, consider and approve rates and charges, prior to their implementation by the IWA.
- e. As to the County Service Area, the County hereby delegates to the Council of the City the necessary and appropriate jurisdiction to review, consider and approve rates and charges, prior to their implementation by the IWA.
- f. The Council of the City shall hold at least one public hearing after due public notice prior to approval of any adjustments to rates and charges. Action shall be taken by resolution and shall constitute final agency action.
- g. Rates and charges shall be just and equitable and shall not discriminate based upon whether the property is located in the City Service Area or the County Service Area. This does not prohibit charges based upon relevant factors other than whether property is located in one or the other Service Areas.

#### Section 9. Rate and Charge Protests.

- a. Any ratepayer of the IWA, regardless of the Service Area, may protest a proposed rate or charge by filing a written protest with the City Manager of the City prior to or at the hearing or by appearing at the hearing and registering such protest.
- b. A legal challenge to the action of the City Council shall be filed in accordance with the Florida Rules of Appellate Procedure as they apply to challenging final agency action.

#### Section 10. Service Rules and Regulations.

IWA is duly empowered to establish, amend and enforce Service rules and Regulations for its operations to the extent that they do not conflict with this agreement, without prior approval of the City or the County, provided:

- a. They have been filed with the City Manager of the City, and
- b. They are not unjust, inequitable, or discriminatory.

Nothing in this Section prohibits the City or County from challenging the Service Rules and Regulations on the basis of unreasonableness, discrimination or inconsistency with this agreement.

Section 11. Work in Public Areas.

- a. All work performed in Public Areas by IWA shall be done in a workmanlike manner, and within reasonable times, in accordance with the ordinances, rules or other policies of the City and the County with regard to their respective Service Areas.
- b. If the City or the County deems it necessary or advisable to connect fire hydrants or other devices to combat fire, no charge shall be made to the City or the County or the respective fire control districts for the connection. This does not prohibit IWA or any governmental entity from charging a private developer for such cost.
- c. Cost of removing or relocating of lines or facilities from the Public Areas at the request of the City or the County shall be borne by IWA, unless otherwise agreed by the City or the County and IWA. This does not prohibit IWA or any governmental entity from charging a private developer for such cost.

Section 12. Ownership of Lines and Equipment.

- a. All water supply facilities used, useful or held for use in connection with supply of water service under the terms of this franchise and installed and furnished by IWA, shall remain the sole property of IWA.
- b. No person or entity shall have the right to connect to the facilities of IWA or to obtain any water services furnished by IWA except with the consent of IWA and upon full compliance with the Service rules and Regulations of IWA, and upon payment of any contribution in aid of construction, connecting charges, fees or rates which may be established and required by IWA. No waiver of rates or charges may be granted by IWA where to do so would result in discriminatory rates or charges.

Section 13. Assignment.

This franchise shall not be assigned or transferred by IWA without first obtaining the written consent of the City and the County. Consent shall be granted only upon a showing that it is in the best interests of the ratepayers and the residents of the Service Areas, and that the assignee is fully capable of and willing to perform fully and in a timely manner, all obligations

contained in this agreement. The City and the County shall act upon a written application under this paragraph within 120 days after it is filed by IWA and the proposed assignee.

Section 14. City and County Actions.

The City and the County agree to adopt or amend all legislation and to take all actions reasonable and necessary for the protection and enforcement of IWA's rights under this agreement.

Section 15. Compliance with Other Law; Plans; Permits.

- a. IWA will conduct its operations in such a manner as to comply with any local, state or federal laws, rules and regulations which may apply to its business.
- b. IWA will submit all plans for future installations to the City or to the County in the respective Service Area of each.
- c. IWA will obtain any permits required by the City or by the County in the respective Service Area of each and will be responsible for having all work performed by duly licensed persons or entities.
- d. The City and the County shall have the right to inspect the work or the facilities in their respective Service Areas to see that they are constructed according to applicable plans, specifications and requirements.

Section 16. Reservation of Rights.

Except as otherwise set forth in this agreement, the City and the County each reserve all other rights granted to them by Florida law.

Section 17. Failure to Comply.

Failure on the part of IWA to comply in any material respect with the provisions of the franchise shall be grounds for forfeiture of the grants contained herein. However, no such forfeiture shall be exercised until written notice of such failure to comply has been given to IWA. Upon receipt of such notice, IWA shall have 90 days within which to comply or show cause for its failure to do so. Forfeiture of the franchise shall only be accomplished by the action of both the City and the County.

Section 18. Purchase of Property.

- a. Subject to current provisions contained in IWA's charter, the City or the County may at any time during this

agreement purchase the property (assets and/or business) of IWA at a price to be agreed upon between IWA and the purchasing party, or for the then fair market value of the property.

- b. IWA hereby grants to the City and to the County jointly the right of first refusal prior to any sale of over one-half of the assets or business of IWA to any other person or entity. In the event of a proposed sale, IWA shall offer the assets or business to the City and the County upon the same terms and conditions as contained in the proposed sale, and the City and the County, or one of them, shall have 90 days in which to exercise the right of first refusal.

Section 19. Commitment to Provide Service.

IWA agrees that it will continue to use its best efforts, skill and experience to provide first-class central water supply and distribution service to the Service Areas described herein. IWA will continue to provide the buildings, plants, systems and appurtenant facilities to extend the necessary lines or other facilities to as much of the Service Areas as is physically possible, economically feasible and consistent with standards contained within the respective comprehensive plans and regulations of the City and of the County.

Section 20. Severability.

If any portion of this agreement is determined to be invalid or unenforceable, that portion shall be severed and the remainder shall remain in force, unless to do so would materially impair the bargain of the parties. If any portion of this agreement pertaining to the right of the parties to establish of rates and charges, or pertaining to franchise fees is determined to be invalid or unenforceable by a court of competent jurisdiction, the agreement shall become null and void and be of no further effect.

Section 21. This agreement is subject to approval by appropriate action by the Board of Directors of IWA, the Council of the City and the Board of Commissioners of the County.

IN WITNESS WHEREOF, the parties have executed this agreement as of the Effective Date.

ISLAND WATER ASSOCIATION, INC.

By: [Signature]  
President

ATTEST: [Signature]  
Secretary

APPROVED AS TO FORM:  
[Signature]  
Attorney

CITY OF SANIBEL, FLORIDA

By: [Signature]  
Wallace M. Kain, Mayor

ATTEST: [Signature]  
Gary A. Price  
City Manager/Clerk

APPROVED AS TO FORM:  
[Signature]  
City Attorney

LEE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA

By: [Signature]  
Chairman of the Board of  
County Commissioners

ATTEST: [Signature]  
Charlie Green, Ex - Officio Clerk  
Board of County Commissioners  
By: [Signature]  
Deputy Clerk

APPROVED AS TO FORM:  
[Signature]  
County Attorney

Ass't.

State of Florida  
County of Lee

I Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

Given under my hand and official seal at Fort Myers, Florida, this 28th day of July 8, A.D. 1995

CHARLIE GREEN, CLERK  
By: [Signature]  
Deputy Clerk

Article II - Corporate Limits

Section 2.01 - Description of Corporate Limits

The following area shall constitute the corporate limits of the City of Sanibel:

A corporate limit line lying offshore from Sanibel Island in portions of Township 46 South, Ranges 21, 22 and 23 East, Lee County, Florida, which line is described as follows:

From the corner common to Sections 17, 18, 19, and 20, Township 46 South, Range 23 East, run easterly along the line common to said Sections 17 and 20 to a point 2,640 feet offshore in San Carlos Bay from the Mean High Tide Line to Section 20 and the point of beginning. From said point of beginning, run easterly 2,640 feet offshore from the Mean High Tide Line of Sanibel Island, to the easterly point of said Island and the mouth of said San Carlos Bay; thence run southwesterly, westerly and northwesterly, 2,640 feet offshore in the Gulf of Mexico from the Mean High Tide Line of Sanibel Island, to an intersection with the centerline of Blind Pass; thence run northeasterly along said centerline to the waters of Pine Island Sound at a point 2,640 feet offshore from the Mean High Tide Line at Wulfert Point in Section 2, Township 46 South, Range 21 East; thence run southeasterly in Pine Island Sound and San Carlos Bay, 2,640 feet offshore from the Mean High Tide Line of said Sanibel Island, to the point of beginning, crossing the entrance to Tarpon Bay in Sections 13 and 14, Township 46 South, Range 22, East. EXCEPTING the right-of-way for the Sanibel Causeway.

EXHIBIT A