IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

TOWN OF INDIAN RIVER SHORES,
a Florida municipality,

CASE NO.: 2014-CA-000748

Plaintiff,

v.

CITY OF VERO BEACH, a Florida
municipality,

Defendant.

AMENDED COMPLAINT

Plaintiff, TOWN OF INDIAN RIVER SHORES ("Plaintiff" or "Town"), by and through its undersigned attorneys, sues Defendant, CITY OF VERO BEACH ("Defendant" or "City").

JURISDICTION AND VENUE

1. This is an action for declaratory and supplemental relief as well as damages based on a rare situation in which one municipality -- the City -- seeks to exert extra-territorial monopoly powers and extract monopoly profits within the corporate limits of another municipality -- the Town -- without the Town's consent.

2. This is an action for declaratory and supplemental relief, involving an amount in controversy in excess of $15,000, over which this Court has jurisdiction pursuant to Section 26.012(2)(a) and (c) and Chapter 86, Florida Statutes.

3. This is also an action for damages in excess of $15,000 over which this Court has jurisdiction pursuant to Section 26.012(2)(a), Florida Statutes.

4. Venue is proper in this Court pursuant to Section 47.011, Florida Statutes, because both the Town and the City are municipalities in Indian River County, Florida, and the cause of action accrued in Indian River County.

PARTIES

5. The Plaintiff, Town, is an incorporated Florida municipality of approximately 4,000 residents in Indian River County, Florida, and is an electric utility customer of the City.

6. The Defendant, City, is an incorporated Florida municipality of approximately 15,000 residents in Indian River County, Florida, and owns a municipal electric utility that currently furnishes electric utility service to the Plaintiff and other customers located within and outside the City limits.

STATEMENT REGARDING THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT

7. The Town and the City are both political subdivisions subject to Chapter 164, Florida Statutes (the "Florida Governmental Conflict Resolution Act"). Accordingly, the parties have pursued resolution of this dispute under the Florida Governmental Conflict Resolution Act, but those efforts reached an impasse. Because the parties were unable to resolve the dispute, the Town is renewing its prosecution of this action through this Amended Complaint in order to avail itself of its available legal rights and remedies.

GENERAL ALLEGATIONS

The City Lacks Authority To Provide Extra-Territorial Electric Utility Service Within The Town As Of November 6, 2016

8. The City owns, and is responsible for operating, a municipal electric utility system that serves approximately 34,000 customers, of which approximately 12,000 are located within the City ("Resident Customers") and approximately 22,000 are located outside the City ("Non-

Resident Customers"). Approximately 3,500 of the City's Non-Resident Customers are located within the corporate limits of the Town.

9. The Town is currently an electric customer of the City. Because the Town is located outside the corporate limits of the City it is a Non-Resident Customer of the City.

10. The City has no inherent Home Rule power to provide extra-territorial electric service within the corporate limits of the Town. Art. VIII, § 2(c), Fla. Const. ("Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law."); § 166.021(3)(a), Fla. Stat. ("The subjects of annexation, merger, and exercise of extraterritorial power … require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution.").

11. The City operates pursuant to a Charter enacted by referendum election on March 9, 1982 (the "City Charter"). The City Charter provides that "[a]ll Charter provisions in effect prior to the effective date of this Charter, including, but not limited to, those contained in Chapter 27943, Special Acts, Laws of Florida 1951, are repealed except those provisions which established the municipal corporation known as the City of Vero Beach." City Charter, § 6.01.

12. The City Charter does not authorize the City to provide extra-territorial electric service within the Town, nor does any current general or special law.

13. The City has cited Section 180.02(2), Florida Statutes, for its purported corporate power to provide extra-territorial electric service "outside its corporate limits". However, assuming arguendo that Section 180.02(2) confers the power to provide electric service, that same section further provides that "said corporate powers shall not extend or apply within the corporate limits of another municipality."

14. The City's current authority to provide extra-territorial electric utility service within the Town derives solely from the Town's consent given in a franchise agreement, and the City has no legal right to provide such extra-territorial service absent the Town's consent.

15. The Town was established by Chapter 29163, Laws of Florida (1953).

16. In addition to its expansive Home Rule Powers, the Florida Legislature has given the Town broad powers to:

a. "furnish any and all local public services, including electricity" to its inhabitants;

b. contract "on behalf of the inhabitants of the Town" with other utilities for the provision of electricity;

c. "purchase, construct, maintain, operate, lease or contract for any public utilities, including but not limited to, electric light systems and plants … and distribution systems therefore"; and,

d. grant public utility franchises of all kinds.

Ch. 29163, § 2(e) and (f), Laws of Fla. (1953). That law stands and has not been repealed.

17. Pursuant to those broad powers, in 1968 the Town entered into an agreement with the City which gave the City permission to provide electric service to residents within the corporate limits of the Town for a limited term of 25 years (the "1968 Agreement").

18. In 1986 the Town entered into another agreement which superseded the 1968 Agreement and granted the City an exclusive 30-year franchise (the "Franchise") to provide electric service to certain parts of the Town pursuant to the Town's broad powers to provide electricity to its inhabitants, to contract with others on behalf of its inhabitants in order to provide

electricity to its inhabitants, and to grant or deny public utility franchises. A copy of the 1986 Franchise Agreement (the "Franchise Agreement") is attached hereto as Exhibit "A."

19. The Franchise Agreement is a bargained-for exchange between the Town and the City, and has five fundamental features. First, it is based on the Town's statutory power to provide electric service to its citizens either by providing such service itself or by contracting with other electric utilities, and the correlative police power to ensure that its inhabitants are furnished with reliable and reasonably priced electric service. Second, it calls for the Town to temporarily relinquish its right to provide electric service to its inhabitants residing south of Old Winter Beach Road for a limited period of thirty (30) years. Ex. A, Franchise Agreement, § 8. Third, it calls for the Town to temporarily refrain from exercising its police power to regulate the City's electric rates and services for a limited period of thirty (30) years. *Id.*, § 5. Fourth, it temporarily grants the City the exclusive monopoly franchise and permission to provide extra-territorial electric service within parts of the Town lying south of Old Winter Beach Road for a limited period of thirty (30) years. *Id.*, § 1. Fifth, it grants the City temporary permission to place its electric facilities in the Town's rights-of-way and other public areas for a limited period of thirty (30) years. *Id*.

20. In return for the Town granting the City an exclusive unregulated monopoly Franchise to provide extra-territorial electric service within a certain area of the Town for a limited period of thirty (30) years, the City agreed to provide the Town and its citizens with electric utility service, to operate its electric utility and furnish electric service in accordance with normally accepted electric utility standards, and to charge only reasonable rates for the electric services it provides. Ex. A, Franchise Agreement, §§ 1, 2 and 5.

21. Pursuant to the Franchise, the City provides electric utility service to approximately 3,500 customers within the Town residing south of Old Winter Beach Road. The remainder of the Town (approximately 739 customers) residing north of Old Winter Beach Road are served by Florida Power & Light Company ("FPL").

22. The Franchise Agreement between the Town and the City has a limited term of thirty (30) years, has no automatic or mandatory renewal provisions, and is scheduled to expire on November 6, 2016.

23. The City's power to provide extra-territorial electric service within the Town and occupy, or in any manner use, the Town's rights-of-ways and other public areas is derived from the Franchise Agreement which will expire on November 6, 2016.

24. The City acknowledges that "the Town of Indian River Shores receives utility services from the City of Vero Beach under a franchise". City of Vero Beach, Fla., Code § 2.102(7).

25. There is no legal obligation for the Town to renew the existing Franchise Agreement or enter into new franchise agreement with the City when the City's current Franchise expires.

26. By certified letter dated July 18, 2014, the Town formally provided written notification to the City that the Town will not renew the City's Franchise, and that upon expiration of the Franchise the City will no longer have the Town's permission to furnish electricity to the Town's residents or to occupy or use the Town's rights-of-way and other public areas.

27. The Town has the statutory right to ensure that its residents are provided with reliable electric service, and the corresponding police power to protect its residents from oppressive electric rates and utility practices. Accordingly, the Town has elected not to continue

the Franchise at the expiration of its limited thirty (30) year term because the City continues to mismanage its electric utility and charge the Town and its citizens oppressive electric rates.

The City's Electric Rates and Utility Management Practices

28. Unlike investor-owned electric utilities, the City's electric utility pays no corporate income taxes, no property taxes, and has access to low cost financing subsidized by tax-free bonds. Furthermore, unlike investor-owned electric utilities, the City's electric utility is not subject to the costs of complying with state mandated energy efficiency and conservation requirements. Despite having these cost advantages, the City's electric rates have been some of the highest in the State of Florida over the last ten years, and are substantially higher than the rates charged by FPL, an investor-owned utility that does not have similar cost advantages.

29. The City has used its unregulated electric monopoly to force Plaintiff and other Non-Resident Customers in the Town to pay electric rates that have been consistently and substantially higher than the electric rates paid by Town citizens receiving electric utility service from FPL. For example, according to the comparative rate statistics compiled by the Florida Public Service Commission (the "PSC") and the Florida Municipal Electric Association, the City's residential electric rates for 1000 kWh usage were approximately:

a. 45.01% higher than FPL's rates in December, 2005;

b. 9.56% higher than FPL's rates in December, 2006;

c. 31.12% higher than FPL's rates in December, 2007;

d. 30.23% higher than FPL's rates in December, 2008;

e. 30.63% higher than FPL's rates in December, 2009;

f. 26.46% higher than FPL's rates in December, 2010;

g. 21.57% higher than FPL's rates in December, 2011;

h. 31.45% higher than FPL's rates in December, 2012;

i. 41.19% higher than FPL's rates in December, 2013; and,

j. 25.22% higher than FPL's rates in December, 2014.

30. Upon information and belief, currently the City's residential electric rates for 1000 kWh usage are 31% higher than FPL's rates.

31. Upon information and belief, over the last 10 years, Plaintiff and other Non-Resident Customers in the Town receiving electric service from the City collectively paid approximately $16 million more for electricity than they otherwise would have paid if electric service had been provided by FPL.

32. Because FPL is an investor-owned utility, its electric rates are regulated by the PSC under Chapter 366, Florida Statutes.

33. In contrast, as a municipal electric utility, the City and its electric utility rates are not regulated by the PSC. *See* §§ 366.04 and 366.02(1), Fla. Stat. (2014) (providing the PSC with the jurisdiction to regulate rates and services of a "public utility," but excluding municipalities from the definition of "public utility").

34. Instead, the City's electric utility is managed, and its rates are set, by the City Council. City Charter, § 2.05.

35. The City Council Members are elected by the citizens who reside inside the City's corporate limits. City Charter, § 2.01 (the Council is to be "elected at large by electors of the City."); City Charter, § 4.01 ("[a]ny person who is a resident of the city, who has qualified as an elector of this state, and who registers in the manner prescribed by law shall be an elector of the city.").

36. Under Florida law, the rate levels of a municipal electric utility like the City are not regulated by the PSC because there is an expectation that citizen-ratepayers of a municipal electric utility have an adequate voice in regulating their own electric rates. This expectation is based on the premise that elected municipal officials are ultimately responsible to their citizen-ratepayers for all rate impacts associated with their operation of the municipal utility system. In other words, if a customer believes that an elected official is not properly managing the municipal electric utility, then that customer can vote the elected official out of office.

37. However, because approximately 65% of the City's electric customers are Non-Resident Customers located outside of the City, a significant majority of the City's electric customers cannot vote in City elections, and thus have no voice in electing those officials that manage the City's electric utility system and set their electric rates.

38. Upon information and belief, the City's high electric rates are due to several factors within the City's control, including:

a. The City has abdicated its operational and managerial responsibilities to entities with which it has entered into expensive long-term power supply arrangements without appropriate oversight and due diligence;

b. The long-term power supply arrangements agreed to by the City bind it to above-market power prices for as long as the underlying power plants are capable of operation, which will be well into the latter part of this century;

c. The City has administered its electric utility power supply without appropriate hedging, interest-rate swaps, and other risk management protocols needed to mitigate fuel price volatility and keep electric power costs as low as reasonably possible;

d. The City has diverted electric utility revenues it receives from Plaintiff and other Non-Resident Customers to its general revenue fund as a means to keep ad valorem taxes on property within the City artificially low; and,

e. The City has diverted electric utility revenues from Plaintiff and other Non-Resident Customers to its general revenue fund to cover costs that had nothing to do with the operation of the City's electric utility, including subsidizing the City's unfunded pension obligations to current and former employees whose work was unrelated to the City's electric utility.

These and other instances of mismanagement have caused the City's electric rates to sky-rocket.

39. As a result, the Town and its citizens receiving electric service from the City are being forced to pay electric rates that are significantly higher than the electric rates paid by other Town citizens receiving the same unit of electric service from FPL. All that differentiates these electric customers is whether they reside north of Old Winter Beach Road and are served by FPL, or south of Old Winter Beach Road and are served by the City.

40. The Plaintiff and other Non-Resident Customers have had no voice in electing or replacing the City officials who made, approved and/or ratified utility management decisions that led to the City's high electric rates.

COUNT I

For Declaratory Relief that Upon the Imminent Expiration of the Franchise Agreement the City Does Not Have the Legal Right to Provide Electric Service Within the Town, and that the Town Has the Right to Decide How Electric Service is to be Furnished to Its Inhabitants

41. This count is an action for declaratory relief by the Town against the City regarding the Town's rights and obligations under its Home Rule Powers, under the special act creating the Town, and under the Franchise Agreement.

42. The Town adopts paragraphs 1 through 40 as if set forth fully herein.

43. The City has no inherent Home Rule power to provide extra-territorial electric service within the municipal boundaries of the Town.

44. In order for the Town to exercise extra-territorial powers and provide electric service within the corporate limits of the Town, such extra-territorial powers must have been clearly granted to the City by a general or special law passed by the Florida Legislature.

45. Nothing in the City Charter or in any current general or special law grants the City the power to provide extra-territorial electric service within the Town.

46. The City's power to provide extra-territorial electric utility service within the Town is derived directly from the Town's contractual agreement reflected in the Franchise Agreement.

47. The City acknowledges in its Ordinances that "the Town of Indian River Shores receives utility services from the City of Vero Beach under a franchise." City of Vero Beach, Fla. Code § 2.102.

48. The Franchise Agreement provides the permission under which the City is currently providing extra-territorial electric service in the Town. However, the City will no longer have that permission when its Franchise expires on November 6, 2016.

49. Under Florida law a Franchise is a privilege, not a right, and the City has no right to continue furnishing extra-territorial electric service to the Town's inhabitants after the Franchise Agreement expires unless the Town otherwise grants the City such permission.

50. Although the City has entered into a bi-lateral territorial agreement with FPL that currently envisions that the City will provide electric service to a portion of the Town, and the PSC has approved that territorial agreement pursuant to that agency's regulatory authority under Chapter 366, Florida Statutes, the PSC's administrative order approving the territorial agreement between the City and FPL is not a general or special law passed by the Legislature that grants the City the extra-territorial power to provide extra-territorial electric service within the corporate limits of the Town.

51. Assuming arguendo that the City somehow has been given the power by a current general or special law to provide extra-territorial electric service, it cannot do so in a manner that will encroach on the municipal authority of the Town. As a municipality , the Town has retained the right to provide electric services within its corporate limits as those limits existed on July 1, 1974 without competition. In addition, as a municipality, the Town has retained the authority to decide which electric utilities, if any, may possess a franchise for providing such services.

52. Thus, nothing in the territorial agreement or the PSC approval thereof impedes the prosecution of this Amended Complaint wherein the Town seeks a judgment enforcing the Town's express powers to provide its inhabitants with electric service and deny another municipality permission to furnish extra-territorial electric service within the Town at the expiration of a freely bargained-for franchise agreement.

53. The Town is not seeking to challenge the PSC's authority under Section 366.04, Florida Statutes, to coordinate the statewide electric grid through its consideration and approval of

territorial agreements. Rather, upon the Court's declaration that the City does not have the statutory powers to provide extra-territorial electric service within the Town without the Town's consent and that the Town has the right to decide how electric service is to be furnished to its inhabitants, the PSC's order approving the territorial agreement should simply be conformed to the Court's order. This would be consistent with the territorial agreement which expressly acknowledges the service area boundaries described therein may be terminated or modified by a court of law.

54. The Town has elected not to renew the Franchise Agreement with the City because the City continues to mismanage its electric utility and to charge the Town and its citizens unreasonable and oppressive electric rates.

55. Pursuant to its Home Rule and express statutory powers, the Town has the legal right to decide how electric service should be furnished to its inhabitants when the Franchise Agreement expires on November 6, 2016.

56. There is nothing in the Franchise Agreement or in the Special Act creating the Town that prohibits or in any way restricts the Town's right to furnish electricity itself or by contract with another utility once the Franchise Agreement expires. Quite the opposite, the Town's Special Act gives it the express authority, and the responsibility, to determine how electric service should be provided to its inhabitants, whether by providing the electricity itself or by contracting with another utility to do so.

57. The City has indicated that it will not cease providing electricity to the Town or allow the Town to furnish its own electric service or contract with other utilities for such electric service when the City's Franchise expires.

58. The Town needs to act now to ensure that the Town is able to exercise its statutory authority to determine how electric service will be provided to its inhabitants when the Franchise Agreement expires and that it does so in an orderly and efficient manner so that electric utility service, other than from the City, will be available to serve the Town and its citizens when the City's Franchise expires. Therefore, the Town needs the requested declaratory relief in advance of the Franchise Agreement's actual expiration in order to provide a sufficient transition period and protect its citizens from service interruptions.

59. Thus, there exists a present, actual, and justifiable controversy between Town and the City, requiring a declaration of rights, not merely the giving of legal advice.

WHEREFORE, the Town requests this Court:

(1) Declare that upon expiration of the Franchise Agreement the Town has the right to determine how electric service should be provided to its inhabitants, which includes either through direct provision of service or by contracting with other utility providers of its choosing;

(2) Declare that upon expiration of the Franchise Agreement the City has no legal right to provide extra-territorial electric service to customers residing within the corporate limits of the Town; and

(3) Grant the Town such other and further relief as the Court deems proper under the circumstances.

COUNT II

For Anticipatory Breach of Contract

60. This count is an action by the Town seeking damages in excess of $15,000 from the City for anticipatory breach of contract.

61. The Town adopts paragraphs 1 through 40 as if set forth fully herein.

62. Pursuant to the Franchise Agreement, the City expressly agreed that the term of the Franchise Agreement would be limited to thirty (30) years and that the City's rights under the Franchise Agreement would expire on November 6, 2016.

63. The term of the Franchise Agreement, which was bargained for and agreed to by the City, is not tied to the term of any territorial agreement that the City has entered into with any other entity.

64. The City has breached the Franchise Agreement by repudiating its obligation to recognize the expiration of the Franchise Agreement on November 6, 2016, and asserting that it will continue to exert extra-territorial monopoly powers and extract monopoly profits within the Town following the expiration of the Franchise Agreement.

65. Likewise, the City has repudiated its obligations under the Franchise Agreement and breached the Franchise Agreement by asserting that its electric facilities will continue to occupy the Town's rights-of-way and other public areas after the Franchise Agreement expires.

66. The Town has been harmed by the City's anticipatory breach of the Franchise Agreement's expiration terms because it has been required to take formal action to protect its rights as a franchising municipality from continued service and occupation of the Town's rights of way and public areas by the City without the Town's consent.

WHEREFORE, the Town requests this Court:

(1) Award the Town damages in the amount which the Town has been harmed by the City's refusal to acknowledge the Town's rights upon expiration of the Franchise Agreement; and

(2) Grant the Town such further relief as the Court deems proper under the circumstances.

COUNT III

For Breach of Contract

67. This count is an action for breach of contract by the Town seeking damages in excess of $15,000 from the City for breach of contract.

68. The Town adopt paragraphs 1 through 40 as if set forth fully herein.

69. Pursuant to the Franchise Agreement, the City agreed, among other things, to operate its electric utility and furnish electric services in accordance with normally accepted electric utility standards, and to charge only reasonable rates for the electric services it provides. Ex. A, Franchise Agreement, §§ 1, 2 and 5.

70. The City has not operated its electric utility and furnished its electric services in accordance with normally accepted electric utility standards, but rather has acted imprudently in the management of its utility.

71. The City has not charged reasonable rates for the electric services it provides, but rather has charged unreasonable, excessive rates for those services.

72. The Town and its citizens, on whose behalf it entered the Franchise Agreement, have been harmed by the City's breach of the Franchise Agreement by being required to pay unreasonable rates which are in breach of the Franchise Agreement.

WHEREFORE, the Town requests this Court:

(1) Award the Town damages in an amount reflecting the difference between the amount the City has charged the Town for electric rates and the amount the Town would have paid if such rates were reasonable; and

(2) Grant the Town such further relief as the Court deems proper under the circumstances.

COUNT IV

For Declaratory and Supplemental Relief Relating to the City's Unreasonable and Oppressive Electric Rates

73. This count is an action for declaratory and supplemental relief by the Town against the City relating to the City's unreasonable and oppressive electric utility rates.

74. The Town adopts paragraphs 1 through 40 as if set forth fully herein.

75. The City has a legal duty to the Town and its other customers to charge only reasonable rates for the electric services that the City provides, and to keep those rates as low as possible because the City is a monopoly electric service provider and is only allowed to operate as such in order to provide its customers with electric service at prices that are as low as reasonably possible. Ex. A, Franchise Agreement, § 5.

76. The City also has a legal duty to act prudently in managing its electric utility system in order to protect its customers from unreasonable and oppressive rates.

77. As described in paragraph 38 above, the City has breached its legal duty to charge only reasonable rates by employing improper rate-making practices that require the Town and other Non-Resident Customers to unfairly subsidize City operations that are not related to the furnishing of electric service to customers. These and other improper rate-making practices by the City have resulted in unreasonable and excessive rates, which the Town and other Non-Residential Customers are being forced to pay.

78. As described in paragraph 38 above, the City has breached its duty to prudently operate and manage its electric utility by making a series of ill-advised utility management decisions, which include administering its electric utility power supply without appropriate hedging, interest-rate swaps, and other risk management protocols needed to mitigate fuel price volatility and keep electric power costs as low as reasonably possible. The City has also abdicated

its operational and managerial responsibilities to entities with which it has entered into a number of expensive long-term power supply arrangements without appropriate oversight and due diligence. Those long-term power supply arrangements bind the City to above-market prices for an extended period of years. These and other imprudent management decisions have driven the City's electric power supply costs to excessive levels and resulted in the City charging unreasonable electric rates to the Town and other Non-Resident Customers.

79. The Town is not seeking to invalidate the long-term power supply arrangements that the City has entered into in the past. Rather, the Town seeks a declaration that the City was imprudent in entering into those long-term power supply arrangements in the first place and thus the costs caused by the City's imprudent management decisions should not be borne by the Town and other Non-Resident Customers that had no voice in the management of the City's electric utility.

80. The Town has a clear legal right to pay only those electric rates which are reasonable, just, and equitable, and has been and continues to be harmed by the unreasonable, unjust, and inequitable electric rates charged by the City.

WHEREFORE, the Town requests this Court:

(1) Refer factual questions related to the prudency of the City's utility management practices to a jury for determination pursuant to Section 86.071, Florida Statutes;

(2) Declare that the electric utility rates the Town and its citizens are being charged by the City are unreasonable, oppressive, and inequitable in violation of the special act creating the City and common law;

(3) Award the Town supplemental relief under Section 86.061, Florida Statutes, in the form of a refund of any payment of rates it has made which were in excess of what was reasonable, just, and equitable; and

(4) Grant the Town such other and further relief as the Court deems proper under the circumstances.

JURY DEMAND

The Town demands a trial by jury for all claims or other matters so triable.

Respectfully submitted this 18th day of May, 2015.

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Attorneys for Plaintiff Town of Indian River Shores

CERTIFICATE OF SERVICE

I certify that I electronically filed a copy of the foregoing with the Clerk of the Court, using the E-Portal system, which will automatically transmit a copy of this pleading to John W. Frost, II, and Nicholas T. Zbrezeznj, Frost Van Den Boom, P.A., Post Office Box 2188, Bartow, FL 33831-2188 [Jfrost1985@aol.com; nzbrzeznj@fvdblaw.com; paulaw1954@aol.com; pwilkinson@fvdlaw.com], and that a true and correct copy of the foregoing has been sent by electronic mail to Wayne R. Coment, City Hall, 1053 20th Place, Vero Beach, FL 32960 [cityatty@covb.org] and to Robert Scheffel Wright, Esq., Gardner, Bist, Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright, P.A., 1300 Thomaswood Dr., Tallahassee, FL 32308-7914 [schef@gbwlegal.com], counsel for the City all on this 18th day of May, 2015.

/s/D. Bruce May, Jr.
D. Bruce May, Jr.

EXHIBIT A

RESOLUTION *414*

A RESOLUTION GRANTING TO THE CITY OF VERO BEACH, FLORIDA, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE IN THE INCORPORATED AREAS OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED by the Board of the Town of Indian River Shores , Indian River County, Florida, as follows:

Section 1. That there is hereby granted to the City of Vero Beach, Florida (herein called "Grantee"), its successors and assigns, the sole and exclusive right, privilege or franchise to construct, maintain, and operate an electric system in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places throughout all the incorporated areas of the Town of Indian River Shores, Florida, (herein called the "Grantor"), lying south of Winter Beach Road, as such incorporated limits were defined on January 1, 1986, and its successors, in accordance with established practices with respect to electric system construction and maintenance, for a period of thirty (30) years from the date of acceptance hereof. Such electric system shall consist of electric facilities (including poles, fixtures, conduits, wires, meters, cable, etc., and, for electric system use, telephone lines) for the purpose of supplying electricity to Grantor, and its successors, the inhabitants thereof, and persons and corporations beyond the limits thereof.

Section 2. Upon acceptance of this franchise, Grantee agrees to provide such areas with electric service.

All of the electric facilities of the Grantee shall be constructed, maintained and operated in accordance with the applicable regulations of the Federal Government and the State of Florida and the quantity and quality of electric service delivered and sold shall at all times be and remain not inferior to the applicable standards for such service and other applicable rules, regulations and standards now or hereafter adopted by the Federal

Government and the State of Florida. The Grantee shall supply all electric power and energy to consumers through meters which shall accurately measure the amount of power and energy supplied in accordance with normally accepted utility standards.

Section 3. That the facilities shall be so located or relocated and so constructed as to interfere as little as practicable with traffic over said streets, alleys, bridges, and public places, and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of Grantor may designate for the purpose, but not so as unreasonably to interfere with the proper operation of Grantee's facilities and service. That when any portion of a street is excavated by Grantee in the location or relocation of any of its facilities, the portion of the street so excavated shall, within a reasonable time and as early as practicable after such excavation, be replaced by the Grantee 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 the Grantor liable to the Grantee for any cost or expense in connection with the construction, reconstruction, repair or relocation of Grantee's facilities in streets, highways and other public places made necessary by the widening, grading, paving or otherwise improving by said Grantor, of any of the present and future streets, avenues, alleys, bridges, highways, easements and other public places used or occupied by the Grantee, except, however, Grantee shall be entitled to reimbursement of its costs as may be provided by law.

Section 4. That Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities hereunder, and the acceptance of this Resolution shall be deemed an agreement on the part of Grantee to indemnify Grantor and hold it harmless against any and all liability, loss, cost, damage, or expense, which may accrue to Grantor by reason of the neglect, default or misconduct of Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 5. That all rates and rules and regulations established by Grantee from time to time shall be reasonable and Grantee's rates for electric service shall at all times be subject to such regulation as may be provided by State law. The Outside City Limit Surcharge levied by the Grantee on electric rates is as governed by state regulations and may not be changed unless and until such state regulations are changed and even in that event such charges shall not be increased from the present ten (10%) per cent above the prevailing City of Vero Beach base rates without a supporting cost of service study, in order to assure that such an increase is reasonable and not arbitrary and/or capricious.

The right to regulate electric rates, impact fees, service policies or other rules or regulations or the construction, operation and maintenance of the electric system is vested solely in the Grantee except as may be otherwise provided by applicable laws of the Federal Government or the State of Florida.

Section 6. Prior to the imposition of any franchise fee and/or utility tax by the Grantor, the Grantor shall give a minimum of sixty (60) days notice to the Grantee of the imposition of such fee and/or tax. Such fee and/or tax shall be initiated only upon passage of an appropriate ordinance in accordance with Florida Statutes. Such fee and/or tax shall be a percentage of gross revenues from the sale of electric power and energy to customers within the franchise area as defined herein. Said fee and/or tax, at the option of the Grantee, may be shown as an additional charge on affected utility bills. The franchise fee, if imposed, shall not exceed six (6%) per cent of applicable gross revenues. The utility tax, if imposed, shall be in accordance with applicable State Statutes.

Section 7. Payments of the amount to be paid to Grantor by Grantee under the terms of Section 6 hereof shall be made in monthly installments. Such monthly payments shall be rendered twenty (20) days after the monthly collection period. The Grantor agrees to hold the Grantee harmless from any damages or suits resulting directly or indirectly as a result of the

collection of such fees and/or taxes, pursuant to Sections 6 and 7 hereof and the Grantor shall defend any and all suits filed against the Grantee based on the collection of such moneys.

Section 8. As further consideration of this franchise, the Grantor agrees not to engage in or permit any person other than the Grantee to engage in the business of distributing and selling electric power and energy during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns.

Additionally, the Grantee shall have the authority to enter into Developer Agreements with the developers of real estate projects and other consumers within the franchise territory, which agreements may include, but not be limited to provisions relating to;

(1) advance payment of contributions in aid of construction to finance system expansion and/or extension,

(2) revenue guarantees or other such arrangements as may make the expansion/extension self supporting,

(3) capacity reservation fees,

(4) prorata allocations of plant expansion/line extension charges between two or more developers.

Developer Agreements entered into by the Grantee shall be fair, just and non-discriminatory.

Section 9. That failure on the part of Grantee to comply in any substantial respect with any of the provisions of this Resolution, shall be grounds for a forfeiture of this grant, but no such forfeiture shall take effect, if the reasonableness or propriety thereof is protested by Grantee, until a court of competent jurisdiction (with right of appeal in either party) shall have found that Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six (6) months after final determination of the question, to make good the default, before a forfeiture shall result, with the right in Grantor at its discretion to grant such additional time to Grantee for compliance as necessities in the case require; provided, however, that the

provisions of this Section shall not be construed as impairing any alternative right or rights which the Grantor may have with respect to the forfeiture of franchises under the Constitution or the general laws of Florida or the Charter of the Grantor.

Section 10. That if any Section, paragraph, sentence, clause, term, word or other portion of this Resolution shall be held to be invalid, the remainder of this Resolution shall not be affected.

Section 11. As a condition precedent to the taking effect of this grant, Grantee shall have filed its acceptance hereof with the Grantor's Clerk within sixty (60) days after adoption. This Resolution shall take effect on the date upon which Grantee files its acceptance.

Section 12. The franchise territory may be expanded to include additional lands in the Town or in the vicinity of the Town limits, as they were defined on January 1, 1986, provided such lands are lawfully annexed into the Town limits and the Grantee specifically, in writing, approves of such addition(s) to its service territory and the Public Service Commission of the State of Florida approves of such change(s) in service boundaries.

Section 13. This Franchise supersedes, with respect to electric only, the Agreement adopted December 18, 1968 for providing Water and Electric Service to the Town of Indian River Shores by the City of Vero Beach.

Section 14. This franchise is subject to renewal upon the agreement of both parties. In the event the Grantee desires to renew this franchise, then a five year notice of that intention to the Grantor shall be required. Should the Grantor wish to renew this franchise, the same five year notice to the Grantee from the Grantor shall be required and in no event will the franchise be terminated prior to the initial thirty (30) year period, except as provided for in Section 9 hereof.

Section 15. Provisions herein to the contrary notwithstanding, the Grantee 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, where said

failure or delay is due to causes beyond the Grantee's control including, without limitation, "Acts of God", unavoidable casualties, and labor disputes.

DONE and ADOPTED in regular session, this 30th day of October, 1986.

ACCEPTED:

CITY OF VERO BEACH

By: _____ Mayor

Date: 6 Nov. 1986

Attest _____ City Clerk

TOWN COUNCIL
TOWN OF INDIAN RIVER SHORES

By: _____ Mayor

Attest: _____ Town Clerk

Resolution 414-Electric