

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made and entered into this 20th day of December, 2011, by and between MANATEE COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred as "the County," and the CITY OF HOLMES BEACH, FLORIDA, a Florida municipal corporation, hereinafter referred to as "the City."

WITNESSETH:

WHEREAS, the County owns, operates and maintains a countywide sewer (wastewater) collection and treatment system under the authority of Section 125.01, Florida Statutes, Chapter 153, Florida Statutes, and Chapter 63-1598, Laws of Florida, as amended; and

WHEREAS, the City does not own or operate a sewer (wastewater) system within its corporate limits, but is served by the County-owned system, which the County constructed and presently operates and maintains within the City under a franchise granted by the City; and

WHEREAS, the County operates and maintains the County-owned sewer (wastewater) system within the corporate limits of the City pursuant to a Franchise Agreement dated October 2, 2001, which expires on December 31, 2011; and

WHEREAS, the County is willing to continue to operate and maintain the County-owned sewer (wastewater) system within the corporate limits of the City, subject to execution of a new Franchise Agreement for renewal of the exclusive franchise under reasonable terms and conditions; and

WHEREAS, the City Commission of the City has consented to the County's construction, ownership, operation and maintenance of the sewer (wastewater) system and to the County's furnishing and providing sewer (wastewater) services within the corporate limits of the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other

good and valuable consideration, the parties agree as follows:

1. The City hereby extends to the County the exclusive franchise, right and privilege of furnishing and providing sewer (wastewater) collection and treatment services within the corporate limits of the City. This franchise shall apply to all territory hereinafter incorporated into the City, provided that said newly annexed territory is not then being served with sewer (wastewater) collection and treatment services by any other public or private utility. The franchise shall become effective upon approval and execution of this Franchise Agreement by the City Commission and the Board of County Commissioners. The term of the franchise extended by this Franchise Agreement shall commence upon execution of this Franchise Agreement by both parties and shall continue through December 31, 2026.

2. The County is also herewith granted the right to use the streets, avenues, alleys, sidewalks and bridges of the City, within the present or future corporate limits of the City, for the purpose of constructing, installing, operating, maintaining, repairing, replacing and removing the sewer (wastewater) lines, mains, laterals, pipes, valves, lift stations, pump stations, and related appurtenances and facilities which are necessary or desirable to furnishing the sewer (wastewater) services contemplated herein, provided that any damage done to the City's streets, avenues, alleys, sidewalks, bridges, and/or other property through the exercise of this privilege shall be the responsibility of the County and the County shall promptly repair said streets, avenues, alleys, sidewalks, bridges, and/or other property to substantially the same condition that existed prior to the exercise of the privilege. If the County fails to repair the City's streets, avenues, alleys, sidewalks, bridges, and/or other property as provided herein to the satisfaction of the City, the City shall provide written notice to the County specifying the non-conforming conditions within forty-five (45) days

after completion of the work. Any dispute relating to said repairs or non-conforming conditions shall be resolved informally between the County utilities staff and the City staff responsible for rights-of-way. If the staff of the County and the City fail to resolve the dispute informally, the County Administrator and the Mayor of the City shall be authorized to resolve the dispute. Each year during the term of this Franchise Agreement, the County shall provide written notice to the City regarding any projects listed on the County's Capital Improvement Program for construction, installation, repair, replacement, or removal of sewer (wastewater) lines, mains, laterals, lift stations or pump stations within the corporate limits of the City during the next fiscal year, provided that such notice shall not be required for routine operation or maintenance or any emergency reconstruction or repairs of the sewer (wastewater) system. The County shall provide the City fifteen (15) days written notice prior to commencement of any project listed on the County's Capital Improvement Program and shall obtain all required permits for the project. The County shall develop and implement administrative procedures, which shall be subject to approval by the City, for notification to the City following emergency reconstruction or repair work.

3. The City hereby consents to the County's exercise within the corporate limits of the City of all powers pertaining to provision of sewer (wastewater) services authorized by Section 125.01, Florida Statutes, Chapter 153, Florida Statutes, and Chapter 63-1598, Laws of Florida, as amended. However, the County may not exercise the power of eminent domain for any purpose related to the sewer (wastewater) system against property owned by the City (including property acquired by the City after the execution of this Franchise Agreement) and used by the City for governmental purposes. For the purpose of this Franchise Agreement, the phrase "governmental purposes" shall include lands used or held by the City for park or recreation purposes.

4. The City recognizes that the County financed the acquisition of the sewer (wastewater) system through the sale of revenue bonds and that in order to successfully maintain said bonds the County must covenant with the bondholders that the rates, fees or other charges prescribed by the County will produce revenues sufficient to provide for all expenses of operation, maintenance, renewal and repair of the sewer (wastewater) system, including reserves therefor, to pay when due all bonds and interest thereon for which such revenues have been pledged or encumbered, including reserves therefor, and to provide for any other funds which may be required under the resolution authorizing the issuance of said bonds. Therefore, nothing contained in this Franchise Agreement shall be construed in any way as a limitation upon the County's authority under Section 125.01, Florida Statutes, Chapter 153, Florida Statutes, or Chapter 63-1598, Laws of Florida, as amended, to prescribe and collect rates, fees or other charges for the services and facilities of the sewer (wastewater) system.

5. The County covenants to furnish sewer (wastewater) collection services to all lots or parcels of land in the City upon application of the property owner, agent or occupant in accordance with the County's uniform rules and regulations, and to provide any necessary line extensions which are economically and physically feasible upon payment therefor in accordance with the County's codes, ordinances, resolutions, policies and procedures.

6. The County hereby agrees to furnish sewer (wastewater) collection and treatment services to the City and to customers within the City at the retail sewer (wastewater) rates, fees and charges established by resolutions adopted from time to time by the Board of County Commissioners. Except as otherwise provided in paragraph 7 of this Franchise Agreement, such rates, fees and charges shall be equivalent to the rates, fees and charges for retail sewer (wastewater)

customers located in the unincorporated area of the County.

7. The parties acknowledge that the City may act to impose a franchise fee upon the County, based upon the County's sewer (wastewater) billings within the City on a monthly basis. The County reserves the right, however, to charge customers within the City a prorated portion of any such franchise fees on a monthly basis in order to recover the full amount of such fees imposed by the City. The City shall act to impose such fees, and the County shall act to recover such fees, all in accordance with applicable law. The parties further acknowledge that the City has no authority under federal, state or local law to impose public service taxes, utility taxes, or other taxes on sewer (wastewater) services.

8. All notices required to be given by either party under this Franchise Agreement shall be in writing, addressed to the other party as follows, and delivered by certified mail, return receipt requested, or by hand delivery:

- | | |
|------------|--|
| A. County: | County Administrator
Manatee County
1112 Manatee Avenue West
Bradenton, Florida 34205 |
| B: City: | Mayor
City of Holmes Beach
5801 Marina Drive
Holmes Beach, Florida 34217 |

Either party may, by written notice to the other party as provided above, change the address for subsequent notice.

9. This Franchise Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

10. Should any term, provision, covenant, condition, section, paragraph, sentence or

portion of this Franchise Agreement be held invalid or unenforceable by any court of competent jurisdiction, the remaining terms, provisions, covenants, conditions, sections, paragraphs, sentences and portions shall, nevertheless, remain in full force and effect.

11. This Franchise Agreement sets forth all covenants, promises, agreements and understandings between the parties concerning the subject matter of this Franchise Agreement, and there are no covenants, promises, agreements or understandings, either oral or written, between the parties except as herein set forth. No subsequent alterations, amendments, changes or additions to this Franchise Agreement shall be binding upon the parties unless reduced to writing and approved and executed by the City and the County with the same formality as this Franchise Agreement.

12. This Franchise Agreement shall supersede and replace the Franchise Agreement between the parties dated October 2, 2001. Upon execution of this Franchise Agreement, the Franchise Agreement between the parties dated October 2, 2001, shall be rescinded in its entirety and shall have no further force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Franchise Agreement, by and through their duly authorized representatives, on the respective dates below.

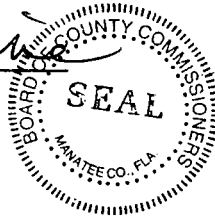
COUNTY

Manatee County, Florida, a political subdivision of the State of Florida, acting by and through the Board of County Commissioners, with a quorum present and voting, hereby approves this Franchise Agreement on the 20th day of December, 2011.

ATTEST: R.B. Shore
Clerk of the Circuit Court

MANATEE COUNTY, FLORIDA,
a political subdivision of the State of Florida

By: [Signature]
Deputy Clerk



By: [Signature]
Chairman
Board of County Commissioners
Date: 12/20/11

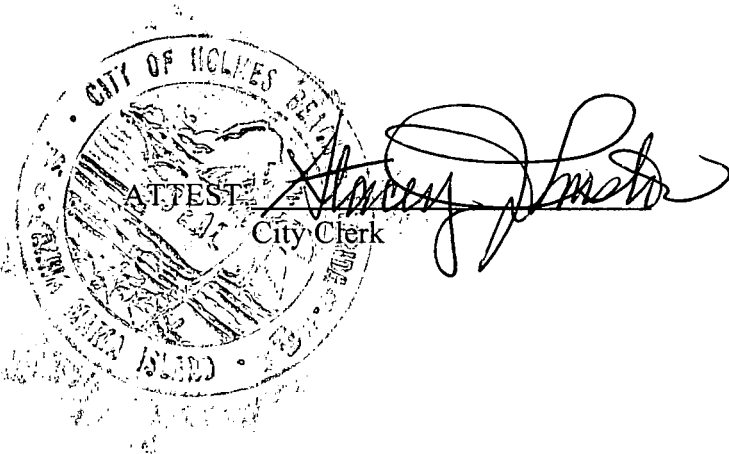
CITY

The City of Holmes Beach, Florida, a Florida municipal corporation, acting by and through the City Commission, with a quorum present and voting, hereby approves this Franchise Agreement on the 22nd day of NOV, 2011.

CITY OF HOLMES BEACH, FLORIDA,
a Florida municipal corporation

By: [Signature]
Mayor

Date: 12/17/11



FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made and entered into this 20th day of December, 2011, by and between MANATEE COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred as "the County," and the CITY OF HOLMES BEACH, FLORIDA, a Florida municipal corporation, hereinafter referred to as "the City."

WITNESSETH:

WHEREAS, the County owns, operates and maintains a countywide potable water supply and distribution system under the authority of Section 125.01, Florida Statutes, Chapter 153, Florida Statutes, and Chapter 63-1598, Laws of Florida, as amended; and

WHEREAS, the City does not own or operate a potable water system within its corporate limits, but is served by the County-owned system, which the County constructed and presently operates and maintains within the City under a franchise granted by the City; and

WHEREAS, the County operates and maintains the County-owned potable water system within the corporate limits of the City pursuant to a Franchise Agreement dated February 4, 1997, which expired on or about February 3, 2012; and

WHEREAS, the County is willing to continue to operate and maintain the County-owned potable water system within the corporate limits of the City, subject to execution of a new Franchise Agreement for renewal of the exclusive franchise under reasonable terms and conditions; and

WHEREAS, the City Commission of the City has consented to the County's construction, ownership, operation and maintenance of the potable water system and to the County's furnishing and providing potable water services within the corporate limits of the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. The City hereby extends to the County the exclusive franchise, right and privilege of furnishing and providing potable water supply and distribution services for public and private use within the corporate limits of the City. This franchise shall apply to all territory hereinafter incorporated into the City, provided that said newly annexed territory is not then being served with potable water supply and distribution services by any other public or private utility. The franchise shall become effective upon approval and execution of this Franchise Agreement by the City Commission and the Board of County Commissioners. The term of the franchise extended by this Franchise Agreement shall commence upon execution of this Franchise Agreement by both parties and shall continue through December 31, 2026.

2. The County is also herewith granted the right to use the streets, avenues, alleys, sidewalks and bridges of the City, within the present or future corporate limits of the City, for the purpose of constructing, installing, operating, maintaining, repairing, replacing and removing the potable water lines, mains, laterals, pipes, valves, hydrants, meters, and related appurtenances and facilities which are necessary or desirable to furnishing the potable water services contemplated herein, provided that any damage done to the City's streets, avenues, alleys, sidewalks, bridges, and/or other property through the exercise of this privilege shall be the responsibility of the County and the County shall promptly repair said streets, avenues, alleys, sidewalks, bridges, and/or other property to substantially the same condition that existed prior to the exercise of the privilege. If the County fails to repair the City's streets, avenues, alleys, sidewalks, bridges, and/or other property as provided herein to the satisfaction of the City, the City shall provide written notice to the County specifying the non-conforming conditions within forty-five (45) days after completion of the work. Any dispute relating to said repairs or non-conforming conditions shall be resolved informally

between the County utilities staff and the City staff responsible for rights-of-way. If the staff of the County and the City fail to resolve the dispute informally, the County Administrator and the Mayor of the City shall be authorized to resolve the dispute. Each year during the term of this Franchise Agreement, the County shall provide written notice to the City regarding any projects listed on the County's Capital Improvement Program for construction, installation, repair, replacement, or removal of potable water lines, mains, laterals or hydrants within the corporate limits of the City during the next fiscal year, provided that such notice shall not be required for routine operation or maintenance or any emergency reconstruction or repairs of the potable water system. The County shall provide the City fifteen (15) days written notice prior to commencement of any project listed on the County's Capital Improvement Program and shall obtain all required permits for the project. The County shall develop and implement administrative procedures, which shall be subject to approval by the City, for notification to the City following emergency reconstruction or repair work.

3. The City hereby consents to the County's exercise within the corporate limits of the City of all powers pertaining to provision of potable water services authorized by Section 125.01, Florida Statutes, Chapter 153, Florida Statutes, and Chapter 63-1598, Laws of Florida, as amended. However, the County may not exercise the power of eminent domain for any purpose related to the potable water system against property owned by the City (including property acquired by the City after the execution of this Franchise Agreement) and used by the City for governmental purposes. For the purpose of this Franchise Agreement, the phrase "governmental purposes" shall include lands used or held by the City for park or recreation purposes.

4. The City recognizes that the County financed the acquisition of the potable water system through the sale of revenue bonds and that in order to successfully maintain said bonds the

County must covenant with the bondholders that the rates, fees or other charges prescribed by the County will produce revenues sufficient to provide for all expenses of operation, maintenance, renewal and repair of the potable water system, including reserves therefor, to pay when due all bonds and interest thereon for which such revenues have been pledged or encumbered, including reserves therefor, and to provide for any other funds which may be required under the resolution authorizing the issuance of said bonds. Therefore, nothing contained in this Franchise Agreement shall be construed in any way as a limitation upon the County's authority under Section 125.01, Florida Statutes, Chapter 153, Florida Statutes, or Chapter 63-1598, Laws of Florida, as amended, to prescribe and collect rates, fees or other charges for the services and facilities of the potable water system.

5. The quality of the potable water furnished by the County shall meet all applicable standards for drinking water established by the United States Environmental Protection Agency and the Florida Department of Environmental Protection, or succeeding regulatory agencies.

6. The County covenants to furnish potable water distribution services to all lots or parcels of land in the City upon application of the property owner, agent or occupant in accordance with the County's uniform rules and regulations, and to provide any necessary line extensions which are economically and physically feasible upon payment therefor in accordance with the County's codes, ordinances, resolutions, policies and procedures.

7. The County hereby agrees to furnish potable water supply and distribution services to the City and to customers within the City at the retail potable water rates, fees and charges established by resolutions adopted from time to time by the Board of County Commissioners. Except as otherwise provided in paragraph 8 of this Franchise Agreement, such rates, fees and

charges shall be equivalent to the rates, fees and charges for retail potable water customers located in the unincorporated area of the County.

8. The parties acknowledge that the City may act to impose a franchise fee upon the County, based upon the County's potable water billings within the City on a monthly basis. The parties further acknowledge that the City has the authority under Section 166.231 or 166.232, Florida Statutes, to levy public service taxes on potable water services. The City shall provide to the County a copy of any ordinance levying, amending, changing or repealing public service taxes on potable water services under Section 166.231 or 166.232, Florida Statutes, at least ninety (90) days prior to the effective date of said ordinance. The County reserves the right, however, to charge customers within the City a prorated portion of any such franchise fees or public service taxes on a monthly basis in order to recover the full amount of such fees or taxes imposed by the City. The City shall act to impose or levy such fees or taxes, and the County shall act to recover such fees or taxes, if authorized by and in accordance with applicable laws.

9. All notices required to be given by either party under this Franchise Agreement shall be in writing, addressed to the other party as follows, and delivered by certified mail, return receipt requested, or by hand delivery:

- | | |
|------------|--|
| A. County: | County Administrator
Manatee County
1112 Manatee Avenue West
Bradenton, Florida 34205 |
| B: City: | Mayor
City of Holmes Beach
5801 Marina Drive
Holmes Beach, Florida 34217 |

Either party may, by written notice to the other party as provided above, change the address for

subsequent notice.

10. This Franchise Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

11. Should any term, provision, covenant, condition, section, paragraph, sentence or portion of this Franchise Agreement be held invalid or unenforceable by any court of competent jurisdiction, the remaining terms, provisions, covenants, conditions, sections, paragraphs, sentences and portions shall, nevertheless, remain in full force and effect.

12. This Franchise Agreement sets forth all covenants, promises, agreements and understandings between the parties concerning the subject matter of this Franchise Agreement, and there are no covenants, promises, agreements or understandings, either oral or written, between the parties except as herein set forth. No subsequent alterations, amendments, changes or additions to this Franchise Agreement shall be binding upon the parties unless reduced to writing and approved and executed by the City and the County with the same formality as this Franchise Agreement.

13. This Franchise Agreement shall supersede and replace the Franchise Agreement between the parties dated February 4, 1997. Upon execution of this Franchise Agreement, the Franchise Agreement between the parties dated February 4, 1997, shall be rescinded in its entirety and shall have no further force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Franchise Agreement, by and through their duly authorized representatives, on the respective dates below.

COUNTY

Manatee County, Florida, a political subdivision of the State of Florida, acting by and through the Board of County Commissioners, with a quorum present and voting, hereby approves this Franchise Agreement on the 20th day of December, 2011.

ATTEST: R.B. Shore
Clerk of the Circuit Court

MANATEE COUNTY, FLORIDA,
a political subdivision of the State of Florida

By: [Signature]
Deputy Clerk

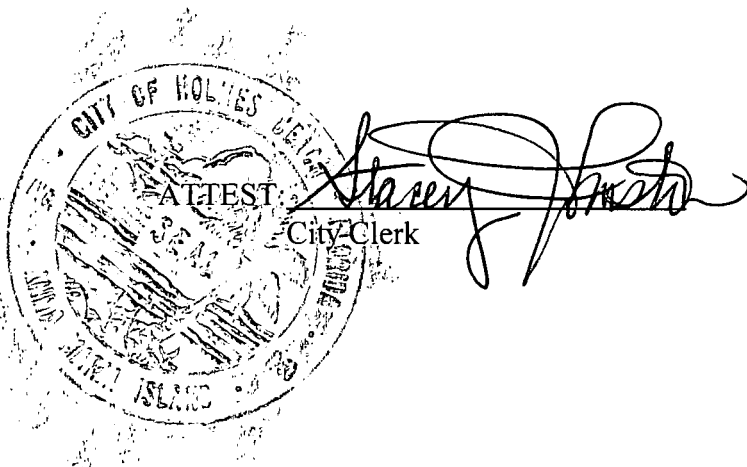


By: [Signature]
Chairman
Board of County Commissioners
Date: 12/20/11

CITY

The City of Holmes Beach, Florida, a Florida municipal corporation, acting by and through the City Commission, with a quorum present and voting, hereby approves this Franchise Agreement on the 22nd day of NOV, 2011.

CITY OF HOLMES BEACH, FLORIDA,
a Florida municipal corporation



By: Rick Bohnenbuey
Mayor

Date: 12/7/11

MANATEE COUNTY GOVERNMENT

AGENDA MEMORANDUM

49

SUBJECT	City of Holmes Beach Water and Wastewater Franchise Agreements	TYPE AGENDA ITEM	Consent
DATE REQUESTED	December 20, 2011	DATE SUBMITTED/REVISED	December 9, 2011
BRIEFINGS? Who?	N/A	CONSEQUENCES IF DEFERRED	Service provided without Water and Wastewater Franchise Agreements
DEPARTMENT/DIVISION	Utilities Department	AUTHORIZED BY TITLE	Daniel T. Gray, Director, Utilities Department <i>Dan Gray 12/7/2011</i>
CONTACT PERSON TELEPHONE/EXTENSION	Renee J. Nordbye, Utilities Contracts Manager, ext. 5480	PRESENTER/TITLE TELEPHONE/EXTENSION	Daniel T. Gray, Director, Utilities Department, ext. 5323
ADMINISTRATIVE APPROVAL		<i>[Signature]</i>	

ACTION DESIRED

INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED

Authorization for Chairman to execute the Water and Wastewater Franchise Agreements for the City of Holmes Beach.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy

Section 125.01, Florida Statutes, Chapter 153, Florida Statutes, and Chapter 63-1598, Laws of Florida, as amended.

BACKGROUND/DISCUSSION

Manatee County has had Water and Wastewater Franchise Agreements with the City of Holmes Beach since September 20, 1966.

The City of Holmes Beach's Water Franchise Agreement expires February 4, 2012 and Wastewater Franchise Agreement expires December 31, 2011.

Each Agreement will commence upon execution by both parties and continue for fifteen (15) years until December 31, 2026.

COUNTY ATTORNEY REVIEW

APPROVED IN OPEN SESSION
DEC 20 2011

Check appropriate box	
<input checked="" type="checkbox"/>	REVIEWED Written Comments: <input type="checkbox"/> Attached <input checked="" type="checkbox"/> Available from Attorney (Attorney's initials: <u>MS</u>)
<input type="checkbox"/>	NOT REVIEWED (No apparent legal issues.)
<input type="checkbox"/>	NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)
<input type="checkbox"/>	OTHER

ATTACHMENTS: (List in order as attached)

- 1). Four (4) Water Franchise Agreements for the City of Holmes Beach; and
- 2). Four (4) Wastewater Franchise Agreements for the City of Holmes Beach.

INSTRUCTIONS TO BOARD RECORDS:

One (1) set of executed Water and Wastewater Franchise Agreements to Board Records and ~~one (1) set of executed Water and Wastewater Franchise Agreements to the City of Holmes Beach.~~ Remainder to Renee Nordbye, Utilities Contracts Manager.
MR 12/21/11

COST:	N/A	SOURCE (ACCT # & NAME):	N/A
COMMENTS:	N/A	AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)	N/A