

ORDINANCE: 2014 -21

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF WALTON COUNTY, FLORIDA, RECOGNIZING AND FORMALIZING INLET BEACH WATER SYSTEM, INC'S EXCLUSIVE FRANCHISE TO OPERATE AND MAINTAIN A PUBLIC WATER SUPPLY AND SEWAGE COLLECTION AND DISPOSAL SYSTEM IN WALTON COUNTY, FLORIDA; SETTING FORTH CONDITIONS AND PRIVILEGES ACCOMPANYING THE GRANT OF FRANCHISE; REQUIRING MANDATORY SEWER AND WATER CONNECTIONS CONSISTENT WITH STATE LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Walton County, Florida, has the power and authority to grant public water and public sanitary sewage franchises to applicants therefor who desire to operate public water supply and sanitary sewage systems within its territorial limits; and

WHEREAS, several potable water and sanitary sewage franchises have been granted in Walton County, Florida (hereinafter referred to as the "County"); and

WHEREAS, consumer owned non-profit utilities are not subject to regulation by the County under Chapter 21, Walton County Ordinance, nor by the Florida Public Service Commission; and

WHEREAS, Inlet Beach Water System, Inc. (hereinafter referred to as "IBWS"), is a consumer owned Florida not-for-profit corporation utility company with its principal place of business being located in the County; and

WHEREAS, pursuant to a Settlement Agreement in Walton County Circuit Court Case No. 2003-CA-000468 (hereinafter referred to as the "Settlement Agreement"), IBWS has been the exclusive franchisee for the operation of a public water supply system and public sanitary sewage system in a geographic area located within the County and commonly known as "Inlet Beach" that

is depicted in Exhibit A attached hereto; and

WHEREAS, the Board of County Commissioners of Walton County, Florida, finds it to be in the best interests of the people of Walton County to pass this ordinance in order to formalize and better define its exclusive franchisor/franchisee relationship with IBWS;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Walton County, Florida, that:

Section 1: Definitions:

For purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meanings set forth below. When not inconsistent with the context, words using the present tense include the future, words in the plural include the singular and vice versa.

- (a) “Developer” and “Owner” mean a property owner within the Franchise Territory requesting service.
- (b) “Franchise” means this Ordinance of the County.
- (c) “Franchisee” means IBWS, a consumer owned not-for-profit corporation organized and existing under and pursuant to the provisions of the laws of the State of Florida for the purposes of providing public water and sewer services and facilities in the Franchise Territory.
- (d) “Franchise Territory” means the area located wholly within the County and outside the corporate limits of any municipality as more particularly described by the boundaries of the Bay-Walton County line to the East, the community of Rosemary Beach and Westshore Drive on the West, Lake Powell on the North, and the Gulf of Mexico on the South, as depicted in Exhibit A attached hereto, wherein potable water

and sanitary sewer services may be exclusively provided by IBWS.

- (e) “Hook-up” and “Connection” mean the connection of a Developer or Owner’s property to IBWS’s potable water transmission system and/or its sanitary sewer collection, transmission and disposal system.
- (f) “Connection Fees” and “Tap-on Fees” and “Impact Fees” mean the reasonable fees that IBWS may charge Developers and Owners (its members/customers) to connect to IBWS’s Public Water and Sewer System.
- (g) “Use Fees” and “Service Fees” mean a reasonable fee that IBWS may regularly charge to Developers and Owners (its members/customers) for their continued use of IBWS’s Public Water and Sewer System.
- (h) “Rates” means any and all charges imposed for services or service availability, including Service Fees, Use Fees, Connection Fees, Tap-on Fees, Impact Fees, installation fees and service availability charges.
- (i) “Person” is any person, firm, partnership, association, corporation, limited liability company or other organization of any kind.
- (j) “Public Water and Sewer System” means the wells, potable water and sewer treatment facilities, fire hydrants, potable water mains, sewer mains, service parts, lift stations, meters, plants, pipes, valves, fittings, holding tanks, surge tanks, pumps, reservoirs, ponds, systems, facilities and all other property and equipment, real and personal, used or useful or having the present future capacity for use in connection with the pumping, treatment and transmission of potable water and the collection, transmission, treatment or disposal of sewage effluent, whether treated or raw,

whether created by a business, residential, or industrial operations, including wash down equipment, and without limiting the generality of the foregoing, shall include all necessary apparatuses and equipment and shall include all property, rights, easements, licenses and franchises relating to the any such system and deemed necessary or convenient for the operation thereof.

Section 2: Reaffirmance and Continued Grant of Franchise:

The County acknowledges and reaffirms that pursuant to the Settlement Agreement, IBWS has continuously been the County's exclusive Franchisee for the operation of the Public Water and Sewer System in the Franchise Territory and the County hereby acknowledges and reaffirms IBWS's exclusive Franchise, and its rights and privileges to construct, operate and maintain its Public Water and Sewer System within the Franchise Territory, subject to such rates, rules and regulations as IBWS may reasonably adopt and impose from time to time, and further subject to the terms, covenants and conditions of this Franchise.

Section 3: Acceptance:

By its acceptance of this Franchise, IBWS has agreed and continues to agree to comply with all local, state and federal laws and rules that may apply to IBWS and its business activities, as well as the terms, covenants and conditions of this Franchise.

Section 4: Franchise Term:

This Franchise shall be for a term of thirty (30) years commencing on the date this Franchise is approved and adopted by the County's Board of County Commissioners and becomes law. Upon the expiration of this 30 year term, IBWS shall have an option to renew this Franchise for an additional 30 year term provided IBWS is not in default under any material terms, covenants or

conditions of this Franchise and provided IBWS provides the County with written notice of its intent to exercise this option at least ninety (90) days prior to the expiration of the original 30 year term. The renewal term shall be on the same terms and conditions as this Franchise unless the parties mutually agree in writing to change any of the renewal terms or conditions.

Section 5: Excavation Privileges:

IBWS is authorized to make all necessary excavations in roads, streets, alley ways and public grounds situated within the Franchise Territory. Excavations shall be so located or relocated and facilities so erected as to mitigate as reasonably as possible interference with traffic flow over said streets, alleys, bridges and public places, and with reasonable ingress and egress to and from adjoining property. The location or relocation of all facilities shall be made in compliance with Walton County's Comprehensive Plan and Land Development Code and other such rules and regulations as are now or hereafter be imposed by the County, the State and the Northwest Florida Management District, but not so unreasonably as to interfere or disrupt the reasonable and proper operation of IBWS's Public Water and Sewer System. When any portion of a road or street is excavated, IBWS shall, within a reasonable period of time, and as early as possible after such excavation, replace the excavation at IBWS's expense and in substantially the same condition as it was immediately prior to the time of such excavation. If the County becomes involved in construction along any of the County right-of-ways over which IBWS has located any of its water or sewer facilities, IBWS shall be responsible for relocating such facilities at the reasonable request of the County at IBWS's sole expense.

Section 6: Service Requirements:

IBWS shall continue to provide reasonably adequate service in the operation of its Public

Water and Sewer System to every Developer, Owner and Person applying for service within the Franchise Territory. However, if the furnishing of water and sewer services by IBWS to any Developer, Owner or Person within its Franchise Territory would require the extension of or addition to its existing facilities, IBWS, as a condition precedent to furnishing such services, may require the Developer, Owner or Person seeking such services to pay reasonable deposits guaranteeing compensatory revenues from the property to be served, or to pay the costs of construction of the additional facilities which will be used or useful in furnishing water and sewer service to the property, or to pay other advances evidenced by refundable or non-refundable agreements, or payment of additional reasonable Connection Fees or Tap-on Fees, or any combination thereof, all of which shall be in addition to IBWS's regular Connection Fees.

Section 7: Rules and Regulations:

IBWS shall continue to have the authority to promulgate and shall reasonably make available to its customers/members such rules, regulations, terms and conditions, and rates covering the conduct of its business as shall be reasonably necessary to enable IBWS to exercise its rights and perform its obligations under this Franchise, to operate its Public Water and Sewer Service and to furnish water and sewer services to its customers/members. All such rules, regulations, terms and conditions of IBWS shall conform to and be in compliance with reasonable and generally accepted water and sewer utility practices. IBWS shall have authority to enter into agreements with Developers and Owners within the Franchise Territory, which agreements may include, but not be limited to, provisions relating to:

- (a) Owner's payment of construction costs for expansion and/or extension of IBWS's facilities; and

- (b) Allocations of planned expansion/main extension charges, including provisions for cost sharing between two or more Developers or Owners, if appropriate.

Section 8: Expansion of Franchise Territory; Camp Helen:

Upon application by IBWS and approval by the County, which approval shall not be unreasonably withheld, the Franchise Territory may be expanded to include additional lands adjacent to and/or in the vicinity of the Franchise Territory and within Walton County; however, this provision shall not limit IBWS's right to construct facilities, dispose of effluent or offer water and sewer service outside of the County's jurisdiction. The County acknowledges that IBWS furnishes public water and sewer services to customers in the geographic area generally known as "Camp Helen" in Bay County, Florida, which is outside of the Franchise Territory and outside of the County's jurisdiction. IBWS's furnishing of water and sewer services to its Camp Helen customers or to any other customers outside of the County's jurisdiction, shall not be considered a breach of this Franchise.

Section 9: Individual Sewage Disposal Systems:

The use of individual sewage disposal systems, septic tanks, grease traps and dry wells by any Person in the Franchise Territory where sewer collection service is available is hereby prohibited, and the Developers and Owners of all such properties shall connect to IBWS's Public Water and Sewer System and shall pay all Connection Fees, Tap-on Fees and Service Fees as IBWS may reasonably require. All individual sewage disposal systems, septic tanks, grease traps and dry wells in the Franchise Territory that pre-existed this Franchise and that have not connected to IBWS's sewer system are grandfathered in, and these properties shall not be required to connect to IBWS's Public Water and Sewer System unless or until such time as the County, State or Federal

governments adopt any laws, rules or regulations requiring such connections; and, in such event, the Developer or Owner of any such property shall be required to pay all such Connection Fees, Tap-on Fees and Service Fees as IBWS reasonably requires. If an onsite sewer disposal system that has been grandfathered in fails, then the County shall not issue any permits for repair of the onsite sewer system and the Owner shall then be required to connect to IBWS's sewer system. IBWS shall be entitled to charge Owners who have grandfathered onsite sewer systems such fees as may be allowed by applicable law, including, but not limited to, regular Service Fees and Use Fees.

Section 10: Individual Water Systems:

The use of individual water systems, other than for irrigation purposes, by any person within the Franchise Territory where potable water distribution services are available from IBWS is hereby prohibited, and the Developers and Owners of all such properties shall connect to IBWS's Public Water and Sewer System and shall pay all Connection Fees, Tap-on Fees and Service Fees as IBWS may reasonably require. All individual water systems in the Franchise Territory that pre-existed this Franchise and that have not connected to IBWS's water system are grandfathered in and these properties shall not be required to connect to IBWS's Public Water and Sewer System unless or until such time as the County, State or Federal governments adopt any laws, rules or regulations requiring such connections; and, in such event, the Developer or Owner of any such property shall be required to pay all such Connection Fees, Tap-on Fees and Service Fees as IBWS reasonably requires.

Section 11: No Competing Facilities:

To the fullest extent permitted by law, during the term of this Franchise and any renewal term thereof, the County shall not grant a Franchise to any other person, firm, corporation, limited liability company, agency or any instrumentality whatsoever, for the furnishing of water or sewer services

within the Franchise Territory; it being the express intent of this Franchise that IBWS shall have the exclusive Franchise for owning and operating a Public Water and Sewer System within the Franchise Territory.

Section 12: Additional Ordinances:

The County agrees to pass all ordinances reasonably necessary or suitable both for the reasonable protection of the rights and property of IBWS and to enable IBWS to enforce any of its rules and regulations for the management, operation and control of the water and sewer services provided by IBWS pursuant to this Franchise and to pass any reasonable ordinance or ordinances that will be necessary or suitable in order to fully confirm unto IBWS the rights and privileges herein or hereby granted or intended so to be.

Section 13: Eminent Domain

The County recognizes that IBWS may require utilization of eminent domain powers of the County in order to carry out and complete the purposes and intents of this Franchise. Therefore, the County shall allow, assist and hereby authorizes IBWS to exercise eminent domain authority on behalf of the County when reasonably necessary to accomplish or further the intents and purposes of this Franchise, including, but not limited to, complaining for condemnation on behalf of the County in order to secure land use rights necessarily appurtenant to the accomplishment of the purposes and intents of this Franchise.

Section 14: Abandonment:

If IBWS abandons its Public Water and Sewer System within the Franchise Territory, or if IBWS is in substantial and material default under the material terms, covenants or conditions of this Franchise, the County shall be entitled to take over and assume all ownership, maintenance and

operation of this Public Water and Sewer System and, should the County elect to do so, then IBWS shall be relieved of all of its rights, privileges and obligations under this Franchise. Notwithstanding the foregoing, in order for the County to declare a forfeiture under this provision, the County shall first provide IBWS with reasonable written notification describing and itemizing with specificity the alleged defaults and providing IBWS with a reasonable period of not less than 45 days within which to cure the alleged defaults. Notwithstanding the foregoing, IBWS shall have the right to challenge the County's determination of a substantial and material default by filing an appropriate legal action in a court of competent jurisdiction, and during the pendency of any such legal action, no temporary or permanent forfeiture shall take place, unless otherwise determined by the court.

Section 15: Transfer of Franchise:

Except as otherwise set forth herein, IBWS shall not transfer ownership of its Public Water and Sewer System or any property relating thereto, or its rights under this Franchise, to any person, firm, corporation, or LLC without receiving the prior consent of the County. IBWS may sell, transfer or assign its Public Water and Sewer System and its rights under this Franchise to a not-for-profit transferee that is qualified to operate under this Franchise, and the County shall not unreasonably withhold its consent to any such transfer. The showing by the proposed transferee that it is qualified to operate under this Franchise shall be conclusive evidence of the right of IBWS to secure the County's consent to such a transfer. If IBWS transfers its Public Water and Sewer System or its rights under this Franchise to any for-profit entity, then this Franchise shall immediately terminate and the transferee shall be subject to regulation under Chapter 21, Walton County Ordinances. Any transfer or forfeiture of IBWS's public water system or its franchise rights shall be made in strict compliance with all Federal Internal Revenue Service rules and regulations relating

to consumer owned not-for-profit utility companies.

Section 16: Rates:

As a not-for-profit consumer/member owned utility company IBWS's Rates are exempt from regulation by the County under its ordinances and by the State under Chapter 367, Florida Statutes. IBWS shall establish and maintain reasonable Rates which shall be reasonably consistent within the range of Rates charged by comparable water and sewer franchises within the County. Notwithstanding the foregoing, the County recognizes that IBWS may have unique needs and face unique challenges and issues that are different from other water and sewer franchisees within the County. Therefore, this provision shall not be construed as requiring IBWS to strictly adhere to other franchisees' Rate schedules and the mere fact that IBWS' Rates may, at any particular time, exceed the Rates charged by any other water and sewer franchisee shall not, in and of itself, be considered a substantial or material default under this Franchise.

Section 17: Adequacy and Safety of Service:

IBWS shall maintain adequacy and safety of service consistent with the rules and regulations of all applicable governmental regulatory agencies and authorities.

Section 18: Limitation of Cost to Non-Users:

All costs of operation and expansion of IBWS's Public Water and Sewer System shall be borne by its members and by other persons or entities who have contracted with IBWS to utilize its water and/or sewer utility services.

Section 19: Hold Harmless:

IBWS shall, at all times, protect and save the County harmless from all damages and losses, including attorney's fees and court costs, arising out of or by reason of the construction, operation

or maintenance of IBWS's Public Water and Sewer System.

Section 20: Insurance Requirement:

IBWS shall obtain and maintain all insurance coverages (such as coverages for automobile, liability, comprehensive general liability, hazard, windstorm, machinery, underground facilities) in such amounts as can reasonably be obtained and as are reasonably advisable in accordance with prudent business practices as determined by reasonable business standards. All insurance recoveries shall be applied by IBWS to pay for the losses or casualties giving rise to the recoveries.

Section 21: Previous Ordinances:

All ordinances and parts of ordinances in conflict with this Franchise and the previous Franchise Agreement are hereby repealed to the extent of any such conflicts.

Section 22: Interpretation:

All words, terms and conditions contained herein are to be read in concert, each with the other, and a provision contained under one heading shall be considered to be equally applicable under another in the interpretation and enforcement of this Franchise.

Section 23: Severability Clause:

It is the legislative intent of the County that, if any section, subsection, sentence, clause or provision of this Franchise is held or determined to be invalid, such section shall be severed from this Franchise and the remainder of this Franchise shall not be affected and shall remain in full force and effect.

Section 24: Effective Date:

The provisions of this Franchise shall become effective immediately upon the approval and adoption of this Franchise by the Board of County Commissioners of Walton County, Florida.

DONE, at a public hearing of the Board of County Commissioners of Walton County,
Florida, this 28th day of October, 2014.

Will Chappin
_____, Chairman
Board of County Commissioners
Walton County, Florida

ATTEST:
Alex Alford

Alex Alford, Clerk of Court



ACCEPTANCE OF FRANCHISE

The Inlet Beach Water System, Inc., a Florida Non-Profit Corporation, does hereby accept the foregoing Franchise, and hereby covenants and agrees to comply with and abide by all of the terms, conditions and provisions herein set forth.

INLET BEACH WATER SYSTEM, INC.

By: James E. Kelly Jr.
_____, Its President

ATTEST:
By: Robin J. Haynes
_____, Its Secretary

