

INFRASTRUCTURE COST SHARING AGREEMENT

THIS INFRASTRUCTURE COST SHARING AGREEMENT (hereinafter “Agreement”), is made by and between **IFP Merritt Island, LLC**, a Florida Limited Liability Company, with offices located at 4760 N. US1, 201, Melbourne, Florida 32935, and the **Brevard County Board of County Commissioners**, a political subdivision of the State of Florida, 2725 Judge Fran Jamieson Way, Viera, FL 32940 (hereinafter “**County**”).

WHEREAS, **IFP Merritt Island, LLC** is the owner of certain real property located in Brevard County, Florida as depicted in Exhibit “A” attached hereto (hereinafter the “Property”); and

WHEREAS, **IFP Merritt Island, LLC** proposes to construct a development on the Property to be known as the Island Forest Preserve Development; and

WHEREAS, pursuant to Section 110-308 of the Brevard County Code of Ordinances since the Property is located within the North Merritt Island Reuse District, **IFP Merritt Island, LLC** is required to construct a reuse line; and

WHEREAS, the **County** has adopted Ordinance No. 20-06, establishing the North Merritt Island Transmission System, allowing the **County** to construct and recover charges for construction of wastewater collection and transmission facilities, and has estimated that the Equivalent Residential Connection (ERC) in the system area will be 1598 and the capital recovery charge per unit shall be established based on the final cost of the improvements which has an initial contract amount of \$1,086,230.00; and

WHEREAS, the **County** desires **IFP Merritt Island, LLC** to construct its reuse line and a sewer force main (“force main”) as per the engineering plans to be submitted by **IFP Merritt Island, LLC** and approved by the County and all pertinent permitting agencies and pursuant to the terms of this Agreement (hereinafter “Improvements”); and

WHEREAS, the **County** and **IFP Merritt Island, LLC** agree to share in the cost of the reuse line and force main as set forth more fully below.

NOW THEREFORE in consideration of the forgoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. WHEREAS CLAUSES.** The “WHEREAS” clauses set forth above are incorporated herein by reference and made a part of this Agreement.
- 2. SCOPE OF WORK: IFP Merritt Island, LLC** shall construct and install a 6-inch reuse line and 6-inch force main, including, but not limited to, valves, air release valves and all accessories, from the west side of the North Courtenay Parkway right-of-way, along or under East Crisafulli Road, to the Island Forest Preserve Development. **IFP Merritt Island, LLC** shall submit proposed engineering plans to the County for review and approval prior to beginning any work. All work required under this section shall be pursuant to the engineering plans approved by the County and all pertinent permitting agencies and shall occur in the North Courtenay Parkway and East Crisafulli Road right of way.
- 3. COST:** The cost for the Improvements contemplated under this Agreement shall not exceed **One Million Four Hundred and Eighty Thousand Dollars**. The **County** and **IFP Merritt Island, LLC** agree to share in the cost of the Improvements as follows:
 - a. IFP Merritt Island, LLC’s Cost:** **IFP Merritt Island, LLC** shall be responsible for and shall pay for all engineering and permitting costs for the work described in the Scope of Work. In addition to all engineering and permitting costs, **IFP Merritt Island, LLC** shall contribute **Eight Hundred and Forty Thousand Dollars** or **approximately 56.8%** of the costs of the Improvements described in the Scope of Work as contained in Section 2.
 - b. County’s Cost:** The **County** shall contribute an amount not to exceed **Six Hundred and Forty Thousand Dollars** or **approximately 43.2%** of the costs of the Improvements described in the Scope of Work as contained in Section 2, unless additional costs are incurred due to changes or modifications requested or caused by the County. If the **County** makes any changes to the Scope of Work of the Improvements

as provided for in the approved engineering plans which results in the increase of cost of the Improvements then the **County** shall pay the additional cost incurred due to the changes requested by the **County**. Notwithstanding the above, if the change or modification is as a result of a design flaw or defect then such change or modification shall not be construed as caused by the **County** and the **County** shall not be responsible for any additional costs incurred due to the changes requested by the **County**.

- c. **Cost Adjustment:** If the overall cost of the Scope of Work is greater than **One Million Four Hundred and Eighty Thousand Dollars**, and said increase is not a result of the **County** modifying the Scope of Work as contained in Section 3. b above, then the **County** shall not be responsible for the additional increase of cost but **IFP Merritt Island, LLC** shall be responsible for the additional increase of cost. If the overall cost of the Scope of Work is less than **One Million Four Hundred and Eighty Thousand Dollars**, the parties agree that the amount of the cost owed by each party in subsections a. and b. above shall be reduced proportionately by the percentages of each party.

- 4. **PAYMENT.** **County** and **IFP Merritt Island, LLC** agree that **IFP Merritt Island, LLC** shall have the option to be reimbursed by the **County** either (1) as set forth in subsection a. below upon final completion of the construction and acceptance by the **County** of the Improvements or (2) as set forth in subsection b. below in progress payments. **IFP Merritt Island, LLC** shall notify **County** of which payment option that **IFP Merritt Island, LLC** has selected no later than sixty days prior to **IFP Merritt Island, LLC's** commencement of the Improvements.

- a. **Payment at Final Completion of Improvements.** Upon completion of the construction and within thirty (30) days of the submission of proof of payments for the Improvements to **County** and upon final completion of the construction and acceptance by the **County** of the Improvements, the **County** shall reimburse **IFP Merritt Island, LLC** the amount of the

Improvements as may be adjusted pursuant to Section 3 c. of this Agreement.

b. Payment in Progress Payments.

1. **Performance, Payment and Maintenance Bond.** Within thirty (30) days of **IFP Merritt Island, LLC** notifying the **County** of **IFP Merritt Island, LLC's** request to be reimbursed in progress payments, **IFP Merritt Island, LLC** shall deliver to **County** executed performance and payment bonds each in an amount of one-hundred twenty-five percent (125%) of the total amount of the Improvements as security for the faithful performance of the Improvements under this Agreement and for the payment of all persons performing labor or furnishing materials in connection therewith. Said performance and payments bonds shall be in favor of the **County**, issued by an insurance company acceptable to the **County**, in a form and substance acceptable to the **County** in the **County's** sole discretion. Bond forms for the aforementioned securities are a part of this Agreement and **IFP Merritt Island, LLC** shall ensure that each executed copy of the bond form is completed and sealed. A Maintenance Bond in the amount of 25% of the total amount of the Improvements, including change orders, shall be submitted at the completion of Improvements with the request for final payment. The Performance and Payment Bonds shall remain in force for one (1) year and the Maintenance Bond for two (2) years from the date of final acceptance of the Improvements as a protection to **County** against losses resulting from latent defects in materials or improper performance of work under this Agreement, which may appear or be discovered during that period. All Bonds signed by an agent must be accompanied by a certified copy of the Power of Attorney. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Performance and Payment Bonds hereto attached for its faithful performance, the

County shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the Improvements, **IFP Merritt Island, LLC** shall, at **IFP Merritt Island, LLC's** expense, and within three days after the receipt of Notice from the **County** to do so, furnish an additional bond or bonds, in such form and amount, and with such sureties as shall be satisfactory to the **County**. In such event, no further payment to **IFP Merritt Island, LLC** shall be deemed due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the **County**. The **County** shall not make any payment to **IFP Merritt Island, LLC** until **IFP Merritt Island, LLC** has complied with this subsection.

2. **Payment Schedule.** Upon acceptance of the performance and payment bonds by the **County**, **IFP Merritt Island, LLC** shall submit monthly contractor invoices to **County** for all Improvements completed. Upon receipt and approval by the **County** of the contractor invoices, the **County** shall make payments.

- c. No payment by the **County** pursuant to this Agreement shall constitute a waiver of any capital recovery charges or any other fees as required by the Brevard County Code of Ordinances.

5. **DEVELOPER'S RESPONSIBILITIES:** **IFP Merritt Island, LLC** shall obtain and manage an underground contractor in order to construct and install the Improvements as described in Scope of Work as contained in Section 2. **IFP Merritt Island, LLC** shall manage and coordinate all construction and installation of the Improvements hereunder. **IFP Merritt Island, LLC** shall complete the Improvements no later than 180 days following the commencement of construction, which deadline shall be extended upon request to the **County** and for good cause shown due to acts of God as determined in the sole discretion of the **County**.

6. **COUNTY'S RESPONSIBILITIES:** The **County** shall provide construction

observations of the work performed as described in the Scope of Work. The **County** shall pay for and install a tee and valve on the reuse line and force main transmission line along North Courtenay Parkway for ease of connecting the Crisafulli Road reuse line and force main.

7. TERMINATION:

a. **Termination by IFP Merritt Island, LLC:** IFP Merritt Island, LLC shall have the right to terminate this Agreement at any time prior to the award of a contract for construction of the reuse line and force main as described in the Scope of Work, to a third-party contractor, provided however, should IFP Merritt Island, LLC exercise said right, the **County** shall not be obligated to pay IFP Merritt Island, LLC the amounts identified in Section 3 of this Agreement.

b. **Termination by the County:** The **County** may terminate this agreement in the event that IFP Merritt Island, LLC fails to complete the Improvements within the time set forth in Section 5 or any extension of this Agreement.

8. DEDICATION AND MAINTENANCE: Upon completion of construction and all requirements for **County** ownership, IFP Merritt Island, LLC shall dedicate the Improvements located on IFP Merritt Island, LLC's Property within the right of way to the **County**. Also, IFP Merritt Island, LLC shall provide a Bill of Sale to Brevard County for the Improvements so dedicated. The parties agree that the **County** shall provide no sewer or water service prior to dedication to, and acceptance of the Improvements by, the **County**.

9. REPRESENTATIONS: Each party represents to the other that the consent of any person, entity, lender or creditor to this Agreement is not required and that there are no matters, which would otherwise interfere with the parties entering into this Agreement.

10. INDEMNIFICATION: IFP Merritt Island, LLC hereby agrees to indemnify, defend and save the **County** harmless from and against any and all claims or causes of action by or on behalf of any person or entity arising from any incident, injury or damage resulting from IFP Merritt Island, LLC constructing

and installing the Improvements herein provided for in or about the Property, excluding the tee and valve referenced in Section 6, above. Except as limited by law and subject to the limits as set forth in Section 768.28, Florida Statutes, the **County** hereby agrees to indemnify, defend and save **IFP Merritt Island, LLC** harmless from any claims or causes of action by or on behalf of any person or entity caused by the **County** in or about the subject Improvements, for any negligent or intentional acts of the **County**. The indemnification and agreement to defend herein provided for shall run to the benefit of the party to be indemnified and defended and its officers, employees, agents, contractors, licensees or invitees.

- 11. GOVERNING LAW; VENUE:** This Agreement shall be governed in accordance with the laws of the State of Florida. Venue shall be in Brevard County, Florida.
- 12. ENTIRE AGREEMENT:** This Agreement is the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
- 13. MODIFICATION OF AGREEMENT:** Any modification of this Agreement shall be binding only if evidenced in writing and signed by each party hereto.
- 14. SEVERABILITY:** In the event that any provision of this Agreement shall be construed as or declared to be invalid, unenforceable or unconstitutional, then such invalidity, unenforceability or unconstitutionality shall not affect the remaining provision of this Agreement and the remaining provisions shall be given full force and effect as if the invalid, unenforceable or unconstitutional provision did not exist.
- 15. NO WAIVER:** The failure of either party to enforce any provision of this Agreement at any time shall in no way be construed to be a waiver of such provision nor in any way affect the validity of this Agreement or any part thereof, nor the right of any party thereafter to enforce each and every such provision.
- 16. NO PARTNERSHIP OR JOINT VENTURE:** No provision hereof shall be

deemed to have created a partnership or joint venture between the parties hereto.

17. NOTICES: All notices to be given pursuant to the terms of this Agreement shall be deemed to have been given if personally delivered (on the day of such delivery), or sent by facsimile or by private mail carrier such as Federal Express, (on the day of faxing or one day after mailing via private mail carrier) to the attention of the following persona at the following facsimile number and/or address:

TO COUNTY:

Brevard County Board of County Commissioners

Attention: Utility Services Director

2575 Judge Fran Jamieson Way

Viera, Florida 32940

Telephone: 321-633-2091

Facsimile: 321-633-2095

TO IFP MERRITT ISLAND, LLC:

Attention: Chad Genoni

4760 N. US 1, Suite 201

Melbourne, Florida 32935

18. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[The remainder of this page left intentionally blank.]

IN WITNESS THEREOF and intending to be legally bound, the parties have executed this Agreement on the date last written below.

IFP Merritt Island, LLC

Witness

BY:

DATE

Witness

Brevard County Board of County Commissioners

Scott Ellis, Clerk

Chair

As approved by the Board on _____

EXHIBIT “A”