

# INDIANFIELDS TOWNSHIP

## AMENDED WATER UTILITY FRANCHISE AND CONSENT AGREEMENT

THIS AMENDED AGREEMENT is entered between Indianfields Township, a Michigan general law township, 1633 Mertz Road, Caro, MI 48729 (“Township”), and the City of Caro, a Michigan home rule city, 317 South State Street, Caro, MI 48729 (“Franchisee”), to amend the Limited Water Utility Franchise and Consent Agreement entered into between the Township and Franchisee in 2020.

In consideration of the faithful performance and strict observance by the Franchisee of all the terms, provisions, conditions, obligations, requirements and reservations in this Agreement and in consideration of the Township’s grant to the Franchisee of a Franchise and Consent, the Franchisee and Township mutually agree as follows:

1. Definitions. For purposes of this Agreement, the following terms, phrases, words and their derivations have the following meanings:
  - a. “Agreement” means this Amended Water Utility Franchise and Consent Agreement.
  - b. “City” means the City of Caro.
  - c. “City Council” means the City Council of the City of Caro.
  - d. “Customer” means any person receiving water service from Franchisee within the Franchise Area.
  - e. “Consent” means Franchisee’s right to use and occupy the public right of way of M-81 within the Franchise Area for its public water utility facilities for the purpose of providing public water service to Customers.
  - f. “Franchise” means Franchisee’s right to provide public water service within the Franchise Area.
  - g. “Franchise Area” means the land and premises within the Township that abut or are within 1,000 feet of the public right of way of M-81, between the existing City limits and the Caro Center Hospital, located at 2000 Chambers Road, Caro, MI 48729.
  - h. “Franchisee” means the City of Caro.

- i. "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
  - j. "Township" means Indianfields Township.
  - k. "Township Board" means the Township Board of Indianfields Township.
2. Grant of Nonexclusive Authority.
- a. *Consent.* Subject to the terms and conditions of this Agreement, the Township grants to the Franchisee the Township's nonexclusive Consent to lay, maintain, repair, operate, use and replace water mains and ancillary facilities and equipment within the public right of way of M-81 between the existing City limits and the Caro Center Hospital, located at 2000 Chambers Road, Caro, MI 48729, to maintain and operate a public water utility to convey and deliver public water service to Customer within the Franchise Area.
  - b. *Franchise.* Subject to the terms and conditions of this Agreement, the Township grants to Franchisee a nonexclusive Franchise within the Franchise Area to transact a public water utility business and to provide public water service to Customers within the Franchise Area.
3. Length of the Franchise. This Agreement and the Franchise granted hereunder shall expire 30 years from the Effective Date.
4. Effective Date. The Effective Date of this Agreement is the date on which the last of the following occur: (a) the Franchisee and Township sign this Agreement, (b) the Franchisee receives from the Township a written acceptance of this Agreement, (c) this Agreement (or an appropriate summary) is published in a newspaper of general circulation in the Township within 15 days after the Franchisee and Township sign this Agreement, and (d) the Township receives from the Franchisee a written acceptance of this Agreement.
5. Rights Reserved to the Township. In addition to other rights that this Agreement reserves to the Township, the Franchisee and Township agree that:
- a. *Revocation at will.* The Franchise granted by this Agreement may be revoked at will by a majority vote of the Township Board at any time; provided that, the Township Board will submit to the electors of the Township at the next election the question whether the Franchise should be made irrevocable during the term of this Agreement, in the manner provided by 1909 PA 266, as amended, and if the electors of the Township approve the question, the Franchise will be irrevocable for the term of this Agreement.
  - b. *Procedure after termination or revocation of Franchise.* At the expiration or revocation of the Franchise, the Franchisee may seek a renewal of the Franchise from the Township to continue water utility service to Customers within the Franchise Area.

6. Sale or Transfer. The Franchisee may sell or transfer the portion of its water plant or water system within the Township to another, or transfer its rights under this Agreement to another, with the Township Board's written consent. The Township Board may not withhold its consent to an assignment, sale or transfer unreasonably. This provision may not be construed to bar the Franchisee from selling any portion of its system located outside of the Township.
  
7. Use of Public Rights of Way.
  - a. *No Burden on public rights of way*. Franchisee and its contractors and Franchisee's public water system shall not unduly burden or interfere with the present or future use of any public rights of way within the Township. Franchisee shall install and maintain its public water system with minimum interference with the use of the public rights of way and shall not obstruct public rights of way longer than necessary during the work of construction or repair to the water system. Franchisee's structures and equipment shall not endanger or injure persons or property in the public rights of way. Franchisee shall use its best efforts to not unreasonably interfere with or disrupt any other public utility apparatus or facilities, to the extent Franchisee interferes with or disrupts any such public utility apparatus or facilities, Franchisee shall restore such apparatus or facilities to as good order and condition as when Franchisee commenced work.
  - b. *Restoration of public rights of way*. Franchisee and its contractors shall within a reasonably practical time or a time mutually agreed upon by Franchisee and the Township, restore at Franchisee's sole cost and expense any portion of the public rights of way that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of Franchisee's water system to as good or better condition than that which existed prior to the disturbance.
  - c. *Easements*. Franchisee's use or occupation of any easements over or under property owned by the Township other than the public right of way of M-81 between the existing City limits and the Caro Center Hospital, located at 2000 Chambers Road, Caro, MI 48729, shall be separately negotiated with the Township.
  - d. *Notice*. Before commencing the construction or repair work on its water system which will require excavation in or the closing of any public rights of way, the Franchisee shall provide the Township with notice, including a description of the work to be performed, in advance of such work. This notice requirement shall not apply to the installation of water services on Customer's premises within the Franchise Area. Nothing herein shall preclude the Franchisee from immediately commencing construction or repair work within the public right of way of M-81 between the existing City limits and the Caro Center Hospital, located at 2000 Chambers Road, Caro, MI 48729, when deemed

necessary to prevent danger to life or property, and in such case, the Franchisee shall notify the Township of such work as soon as reasonably practical.

8. Miscellaneous Matters.

- a. *Hold Harmless.* The Franchisee shall at all times keep and save the Township free and harmless from all loss, costs, and expense caused by the Franchisee in its construction, maintenance and operation of the water system hereby authorized. In the event that any loss, cost, or expense is caused by the Township, its employees, or its contractors, this hold harmless obligation shall not apply. In case any action is commenced against the Township on account of this Agreement or the Franchise and Consent herein granted, the Franchisee shall, upon notice, defend the Township and save it free and harmless from all loss, cost and damage. Provided, however, that this shall not apply to any loss, cost, damage or claims caused by the Township, its employees, or contractors. Notwithstanding any provision contained in this Agreement, nothing in this Agreement shall impair any immunity or liability protection afforded the Township pursuant to law.
- b. *Rates.* The Franchisee may charge the Customers such rates, fees and costs as the Franchisee adopts in accordance with the policies of its City Council.
- c. *Publication and election costs.* The Franchisee agrees to pay for the Township's cost of publication of this Agreement pursuant to Section 4 and the Township's costs incurred in connection with any election under Section 5.
- d. *Governing law.* The validity of this Agreement is governed by Michigan law.
- e. *Amendments.* This Agreement amends and supersedes the Limited Water Utility Franchise and Consent Agreement (Caro Center Hospital) entered into between the Township and the Franchisee in 2020. This Agreement may only be amended by the mutual consent of the Township and the Franchisee in writing.
- f. *Waiver of Breach.* The waiver by the Franchisee or Township of a breach of this Agreement is not a waiver of any other breach of this Agreement.
- g. *Severability.* Except as otherwise stated in this Agreement, if any provision of this Agreement is declared by a court of competent jurisdiction to be unenforceable, that declaration does not impair the validity of the remainder of this Agreement, which shall remain in full force and effect.

WITNESSES

INDIANFIELDS TOWNSHIP

\_\_\_\_\_

By: \_\_\_\_\_  
William Campbell, Township Supervisor

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Township Treasurer

Dated: \_\_\_\_\_, 2020

As the Township Acting Clerk of Indianfields Township, I certify that this Agreement was approved and accepted by a majority vote of the Township Board of Indianfields Township at a meeting held on \_\_\_\_\_, 2022.

Dated: \_\_\_\_\_, 2022 By: \_\_\_\_\_  
William Campbell Supervisor

WITNESSES

CITY OF CARO

\_\_\_\_\_

By: \_\_\_\_\_  
Joseph Greene, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Rita Papp, City Clerk

Dated: \_\_\_\_\_, 2022

As the City Clerk of the City of Caro, I certify that this Agreement was approved and accepted by a majority vote of the City Council of the City of Caro at a meeting held on \_\_\_\_\_, 2022, and a summary of its contents was published in the \_\_\_\_\_ newspaper on \_\_\_\_\_, 2022.

Dated: \_\_\_\_\_, 2022 By: \_\_\_\_\_  
Rita Papp, City Clerk

Approved by City Attorney:

Dated: \_\_\_\_\_, 2022 By: \_\_\_\_\_  
Gary Crews, City Attorney