

**VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 01-2023**

AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, AMENDING CHAPTER 40, "UTILITIES", OF THE VILLAGE OF INDIANTOWN CODE OF ORDINANCES; ADOPTING ADJUSTED WATER AND WASTEWATER CAPITAL CONNECTION FEES AND RELATED ADJUSTMENTS TO CAPACITY PER EQUIVALENT RESIDENTIAL CONNECTION; RETITLING ARTICLE VII OF CHAPTER 40 FROM "WATER AND SEWER IMPACT FEES" TO "WATER AND WASTEWATER CAPITAL CONNECTION FEES"; REVISING REFERENCES TO "IMPACT FEES" TO READ "CAPITAL CONNECTION FEES"; AND PROVIDING FOR FINDINGS, CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, on September 24, 2020, as a part of the Village's acquisition process relating to the Indiantown Company water and wastewater system, the Village Council adopted Ordinance No. 06-2020, which established regulations governing water and sewer impact fees, and set the initial rates for initial water and sewer impact fees, with such fees having been determined by a methodology and analysis set forth in a water and sewer impact fee report dated May 13, 2020, prepared by Hartman Consultants, LLC; and

WHEREAS, on September 29, 2020, the Village of Indiantown (the "Village") acquired the assets of the Indiantown Company, Inc. water and wastewater system; and

WHEREAS, since that time, the Village of Indiantown has provided, and does provide, public water and wastewater utility services to residential, commercial, and industrial users within the Village of Indiantown and its utility district established pursuant to Chapter 180, Florida Statutes; and

WHEREAS, in light of the extensive new growth coming to the Village of Indiantown, the Village commissioned a water and wastewater capital connection fee study to be performed by Raftelis Financial Consultants, Inc. ("Raftelis"), to recommend adjustments to the Village's water and wastewater impact/capital connection fees; and

WHEREAS, Raftelis has finalized and submitted to the Village its 2022 Water and Wastewater Capital Connection Fee Study dated September 27, 2022; and

WHEREAS, subsequent to Raftelis's completion of the 2022 Water and Wastewater Capital Connection Fee Study dated September 27, 2022, on February 10, 2023, Governor Ron DeSantis awarded the Village, through the FDEP Wastewater Grant Program, a wastewater infrastructure grant in the amount of \$20,000,000, which grant award was not contemplated in the 2022 Water and Wastewater Capital Connection Fee Study dated September 27, 2022; and

WHEREAS, Raftelis subsequently prepared and submitted to the Village a technical memorandum dated March 16, 2023, as well as a table dated March 8, 2023 ("Supplemental Technical Memorandum and Table"), which summarized the connection fee calculations from the 2022 Water and Wastewater Capital Connection Fee Study dated September 27, 2022, modified to reduce the calculated fees in the study commensurate with lower net capital cost after accounting for the expected \$20,000,000 grant (the 2022 Water and Wastewater Capital Connection Fee Study dated September 27, 2022, as supplemented by the Supplemental Technical Memorandum and Table, together referenced herein as the "Study"); and

WHEREAS, the Village Council finds the Study to be in full compliance with Florida Statutes and applicable Florida case law and has approved the Study, and desires to formally adopt and implement capital connection fees based on the recommendations contained in the Study, as reduced by the Village Council in the sound exercise of its legislative discretion; and

WHEREAS, the Village Council finds that its capital connection fees should cover the capital cost of construction and related costs thereto [engineering, legal, financing (to include principal, interest and other costs of bonds), actual administrative costs and such other related costs] for increases in or expansions of capacity or capital requirements due solely as a result of new development, and that said capital connection fees should not unfairly burden new development; and

WHEREAS, the Village Council finds that the capital connection fees assessed hereunder are proportional and reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction; and

WHEREAS, the Village will collect capital connection fees and maintain capital connection fees in a financial fund separate from its general fund operations and

separate from other fees, if any; and the Village will provide for accounting and reporting of capital connection fee collections and expenditures; and

WHEREAS, the Village Council finds that the capital connection fees required herein are proportional and reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by new residential or commercial construction; and

WHEREAS, the Village Council finds that the Study prepared by Raftelis sets forth a reasonable methodology and analysis for determining the impact of new development on the necessity for and costs of capital improvements for water and wastewater utilities in the Village, and finds that the calculation of the capital connection fees is based on the most recent and localized data; and

WHEREAS, the Village Council is authorized by Ch. 166, Florida Statutes, and other applicable law to enact legislation and implement capital connection fees; and

WHEREAS, the Village Council finds that the water and wastewater capital connection fees imposed herein are "water and sewer connection fees" under applicable Florida law, and as such, the adoption and imposition of such water and wastewater capital connection fees is subject to the statutory exemption provided in Sec. 163.31801(12), Fla. Stat., as adopted by Ch. 2019-106, Laws of Florida; and

WHEREAS, the Planning, Zoning and Appeals Board sitting as the Local Planning Agency held a duly noticed public hearing on March 2, 2023, and recommended that the Village Council adopt this Ordinance, with a finding that the Ordinance is consistent with the adopted Comprehensive Plan; and

WHEREAS, the Village Council considered this Ordinance at its duly noticed meeting of March 9, 2023, and voted to approve the proposed Ordinance on first reading; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and ~~strikethrough~~ shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF INDIANTOWN, FLORIDA, AS FOLLOWS:

SECTION 1. RECITALS. The above recitals and “Whereas” clauses are hereby included as legislative findings by the Village Council of the Village of Indiantown, and are otherwise fully incorporated herein, and upon codification of this Ordinance, such findings shall be codified under this section.

SECTION 2. AMENDMENT OF ARTICLE VII OF CHAPTER 40, “UTILITIES”. The Village of Indiantown hereby amends the following portions of Article VII of Chapter 40, “Utilities”, of the Village of Indiantown Code of Ordinances to read as follows:

ARTICLE VII. – WATER AND WASTEWATER CAPITAL CONNECTION SEWER IMPACT FEES

Sec. 40-200. – Imposition.

Water and wastewater capital connection sewer impact fees are hereby imposed and levied on all development requesting capacity from the Village's water system and/or wastewater sewer system to provide service to their properties and on all properties presently connected to the Village's water system or wastewater sewer collection system when structural changes, additions, or changes in permitted use result in an additional impact to the Village's water system or wastewater sewer system. The water and wastewater capital connection sewer impact fees will be charged based on water meter size to be installed in accordance with the fee schedule adopted in this article. Water and wastewater capital connection sewer impact fees shall be paid for each individual water meter to be installed; provided however, wastewater capital connection sewer impact fees shall not be charged for the installation of an irrigation meter. When an existing development increases its water meter size, the development shall pay additional water and wastewater capital connection sewer impact fees equal to the difference between the current capital connection impact fees charged for the desired increased water meter size and the existing water meter size. The capital connection impact fees will be charged over and above any service connection fee, lateral charge, inspection fee, monthly user charge, and monthly service charge as may be established by the Village from time to time.

Sec. 40-201. – Rates of capital connection impact fees; time of payment.

Water and wastewater capital connection sewer impact fees shall be paid in accordance with this section; provided, however, in the event that the Village

provides a connection for only water or wastewater sewer service to a development, only the capital connection impact fees applicable to the service provided shall be paid. The amounts of such capital connection impact fees shall be in accordance with the schedule set forth in Exhibit "A". Water and wastewater capital connection sewer impact fees shall be due on the date of issuance of a building permit related thereto.

Sec. 40-202. – Use of capital connection impact fees.

The Village shall specifically earmark funds collected for capital connection impact fees for use in acquiring, constructing, or improving capital facilities to benefit new users. Revenues generated by the capital connection impact fee may not be used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction. In particular, all capital connection impact fee revenues collected pursuant to this article, shall be expended from the capital connection impact fee capital fund and shall be used for the purpose of providing growth necessitated capital improvements and extending, oversizing, or separating existing water and/or wastewater sewer system improvements, or constructing new additions to the water and/or wastewater plant, distribution, transmission or collection systems or part thereof as authorized by the Village Council, including, but not limited to expenses for: (i) design or construction plan preparation; (ii) permitting and related fees; (iii) land or utility system acquisition, including acquisition or condemnation costs; (iv) construction and design of water and/or wastewater sewer systems buildings, facilities, or improvements and additions thereto; (v) design and construction of drainage facilities reasonably required by, or convenient to, the construction of water and/or wastewater sewer systems buildings, facilities, or improvements and additions thereto; (vi) relocating utilities required by the construction of water and/or wastewater sewer systems buildings, facilities, or improvements and additions thereto; (vii) construction management, inspection, or both; (viii) surveying, soils and material testing, and the evaluation and development of raw water, alternative water, and reuse water resources and supplies; (ix) acquisition of plant or equipment necessary or convenient to expand the water and/or wastewater sewer system; and (x) payment of principal and interest, reserves and costs of issuance under any bonds or other indebtedness issued by the Village to fund growth impacted improvements, and additions to the water and/or wastewater sewer system. No part of such water and/or wastewater

capital connection ~~sewer impact~~ fee revenues shall be budgeted or used for the operating expenses of the water and/or wastewater ~~sewer~~ system.

Sec. 40-203. – Disposition of funds not expended.

If capital connection ~~impact~~ fees collected under this article have not been expended or encumbered by the end of the calendar quarter immediately following six years after the date the fees were paid, upon application of the fee payer of proof of payment or the development for which the fees were paid was never begun, the fees shall be returned with interest at the rate determined by the Village based upon the average interest earning rate incurred by the Village in accordance with the following procedure:

- (a) The then present owner must petition the Village Council for the refund within one year following the end of the calendar quarter immediately following six years after the date on which the fee was received.
- (b) The petition must be submitted to the Village Manager and must contain:
 - (1) A notarized sworn statement that the petitioner is the current owner of the property;
 - (2) A copy of the dated receipt issued for payment of the fee;
 - (3) A certified copy of the latest recorded deed; and
 - (4) A copy of the most recent ad valorem tax bill.
- (c) If reimbursement is approved, the Village shall remit such unspent and unencumbered capital connection ~~impact~~ fees to the present owner of the property within 60 days after approval.

Sec. 40-204. – Disposition of funds not expended.

Any funds on deposit in the water and wastewater ~~sewer~~ utilities capital connection ~~impact~~ fee fund not immediately necessary for expenditure shall be invested in interest-bearing accounts up to and including interfund loans. Interfund loans shall be made by resolution by the Village Council payable in full over time at the prevailing interest rate. Applicants shall not receive a credit for or be entitled to interest from the investment of funds except as provided in Sec. 40-203 above.

Sec. 40-205. – Collection of past due capital connection impact fees.

In the event that the water and/or wastewater capital connection sewer impact fee, or any portion thereof, is not paid when due for any reason, including by mistake or inadvertence, the Village may proceed to collect the capital connection impact fee as follows:

- (a) The Village shall serve, by certified mail, return receipt requested, ~~an~~ capital connection impact fee statement notice upon the applicant at the address set forth in the application for the building permit, and the owner at the address appearing on the most recent records maintained by the property appraiser of Martin County. Service of the capital connection impact fees statement notice shall be deemed notice of the capital connection impact fees due and service shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner or the date said notice was attached to the building permit, whichever occurs first.
- (b) The capital connection impact fee statement notice shall contain a description of the property and shall advise the applicant and the owner as follows:
 - (1) The amount due and the general purpose for which the capital connection impact fee was imposed.
 - (2) That a hearing before the Village Council to challenge the capital connection impact fee assessed may be requested within 30 calendar days from the date of receipt of the capital connection impact fee statement notice, by filing a written application to the office of the Village Manager. The written application shall state with specificity the basis of the challenge.
 - (3) That the capital connection impact fee shall be delinquent if not paid and received by the Village within 30 calendar days after the date the capital connection impact fee statement notice, or if a hearing is not requested pursuant to subsection (b)(2) above and, upon becoming delinquent, shall be subject

to the imposition of a delinquent fee and interest on the unpaid amount until paid.

- (4) That in the event the capital connection impact fee becomes delinquent, a lien against the applicable property for which the building permit was secured shall be recorded in the official records book of Martin County.
- (c) The capital connection impact fee shall be delinquent if, within 30 calendar days after the date of the capital connection impact fee statement notice, or the date said notice was attached to the building permit, neither the capital connection impact fees have been paid and received by the Village, nor a hearing requested pursuant to subsection (b)(2) above. In the event a hearing is requested pursuant to subsection (b)(2), the capital connection impact fees shall become delinquent if not paid within 30 calendar days after the date the Village Council ~~commission~~ determines the amount of capital connection impact fees due upon the conclusion of such hearing. Said time periods shall be calculated on a calendar day basis, including Sundays and legal holidays, but excluding the date of said capital connection impact fee statement notice or the hearing date of the Village Council's decision in the event of an appeal. In the event the last day falls on a Sunday or legal holiday, the last due date prior to becoming delinquent shall be the next business day. Upon becoming delinquent, a delinquency fee equal to ten percent (10%) of the total capital connection impact fee imposed shall be assessed. Such total capital connection impact fee, plus delinquency fee, shall bear interest at the statutory rate for final judgments calculated on a calendar day basis, until paid.
- (d) Should the capital connection impact fee become delinquent, the Village shall serve, by certified mail, return receipt requested, a "notice of lien" upon the delinquent applicant at the address indicated in the application for the building permit, and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of Martin County. The notice of lien shall notify the delinquent applicant and owner that due to their failure to pay the capital connection impact fee, the Village shall record a claim of lien in the official public records of Martin County.

- (e) Upon mailing of the notice of lien, the Village Clerk shall cause the recording of a claim of lien in the official public records of Martin County. The claim of lien shall describe the property, the amount of the delinquent capital connection ~~impact~~ fees and the date of their imposition. Once recorded, the claim of lien shall constitute a lien against the property described therein.
- (f) After the expiration of three months after the date of recording of the claim of lien, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. §§ 173.04 through 173.12, inclusive, which provisions are hereby incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim. If requested by the Village Council, the Village Attorney shall proceed to collect or otherwise enforce said lien as deemed appropriate.
- (g) The liens for delinquent capital connection ~~impact~~ fees imposed hereunder shall remain liens, coequal with the liens of all state, county, district and municipal taxes, superior in priority to all other recorded liens and claims whether recorded prior to or after the Village's lien, except as otherwise provided by law, until paid as provided herein.
- (h) The applicant and owner shall be responsible for and the Village shall be entitled to reimbursement for the payment of all administrative expenses and costs, including attorney's fees and litigation costs and recording and filing fees, incurred by the Village in the collection of capital connection ~~impact~~ fees, filing of liens and in actions to foreclose such liens or actions for a monetary judgment.
- (i) The applicant and owner shall be jointly and severally liable to the Village for unpaid capital connection ~~impact~~ fees. The Village may take any and all actions at law or in equity to collect unpaid capital connection ~~impact~~ fees from the applicant and owner, including but not limited to, the Village withholding issuance of subsequent

permits sought by applicant and/or owner until the capital connection impact fees are paid.

- (j) The collection and enforcement procedures set forth in this section shall be cumulative with, supplemental to and in addition to, any applicable procedures provided in any other ordinance or administrative regulations of the Village or any applicable law or administrative regulation of the state. Failure of the Village to follow the procedure set forth in this section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the Village or any applicable law or administrative regulation of the state.

Sec. 40-206. - Capital connection Impact fee protest and appeals.

- (a) A person may protest or challenge the imposition of or a decision on an capital connection impact fee imposed pursuant to this article by filing with the Village Manager, within 30 days after the occurrence of the decision, event, or imposition of an capital connection impact fee sought to be challenged, a written notice of protest containing the following minimum information:

- (1) The name and address of the person protesting and property owner;
- (2) The legal description of the property at issue;
- (3) If issued, the date of the building permit(s) issued for the property at issue;
- (4) If paid, the date of and the amount of the capital connection impact fee paid; and
- (5) A full statement of the reasons why the person is protesting.

The person who files the protests bears the burden of proof to demonstrate that the fee, decision or matter challenged is improper and/or should be modified.

- (b) Upon receipt of such protest, including all the information required pursuant to subsection (a), the Village Manager or designee shall review the protest, and within 45 days after the receipt of the complete request, approve or deny the request. If the person making the protest disagrees with the determination of the Village Manager or designee, such person

may appeal the decision to the Village Council, provided a written appeal is filed with the Village Clerk within ten (10) days after the issuance of the Village Manager's decision.

- (c) Upon receipt of an appeal, a hearing shall be scheduled before the Village Council at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the person who filed the appeal written notice of the time and place of the hearing. Such hearing shall be held within 60 days after the date the appeal was filed. The determination of the Village Council shall be final.
- (d) Any judicial action or proceeding to attack, review, set aside or annul the reasonableness, legality, or validity of any capital connection impact fee or decision related thereto must be filed within 30 days following the date of the imposition of the capital connection impact fee or the final determination of the Village Council on an appeal, which occurs later.
- (e) Failure to timely file a protest, appeal or judicial action in accordance with these procedures shall constitute a waiver and invalidation of any protest, appeal or challenge to the applicable imposition of an capital connection impact fee or decision concerning an capital connection impact fee.

Sec. 40-207. - Administrative rules and policies.

The Village Manager is hereby authorized to adopt administrative rules and policies to implement the provisions of this article as the Village Manager deems necessary and appropriate.

SECTION 3. SEVERABILITY. The provisions of this Ordinance are deemed severable. In the event that any word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or section(s) of this Ordinance is for any reason whatsoever held to be invalid, illegal, unconstitutional, contrary to law, or against public policy, by any court, administrative agency, or other body with competent jurisdiction, such word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or section(s) of this Ordinance shall be null and void, and shall be deemed severed, and a separate, distinct, and independent provision from the remaining provisions of this Ordinance, and such holding shall in no manner affect the validity of the remaining words, phrases, portions, sub-sub-sections, sub-sections, or sections of this Ordinance, which shall remain in full force and effect. This Ordinance shall be construed in a manner to accomplish, to the greatest extent legally possible, the purposes of this Ordinance as expressed herein.

SECTION 4. CODIFICATION. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Village of Indiantown, and the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections 3 through 6 of this Ordinance shall not be codified. The codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 5. CONFLICTS. All ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect upon adoption.

PASSED on first reading on the 9th day of March, 2023.

ADOPTED on second reading on the 23rd day of March, 2023.

ATTEST:


Daren Hamberger
Deputy Village Clerk

Village of Indiantown, Florida


Susan Gibbs Thomas
Mayor

REVIEWED FOR FORM
AND CORRECTNESS:

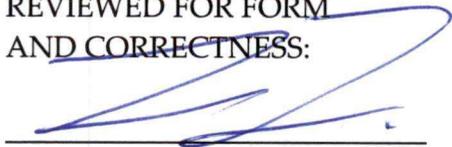

Wade C. Vose,
Village Attorney



Exhibit "A"

Water and Wastewater Capital Connection Fees
(Per ERC)

<u>System</u>	<u>Fee Per ERC</u>
<u>Water</u>	<u>\$2,790</u>
<u>Wastewater</u>	<u>\$1,500</u>
<u>ERC Water (ADF)</u>	<u>250 gpd</u>
<u>ERC Wastewater (MTMADF)</u>	<u>250 gpd</u>

Table 1
~~Water and Wastewater Capacity Charges(Per ERC)~~

<u>System</u>	<u>Recommended (FY 2021)</u>	
	<u>Inside</u>	<u>Outside</u>
Water	\$620	\$620
Wastewater	\$580	\$580
ERC Water (ADF)		300 gpd
ERC Wastewater (MTMADF)		250 gpd