

RESOLUTION 2025-33

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH TO APPROVE A LIFT STATION LICENSE AGREEMENT WITH TYPE E CORPORATION FOR THE OPERATION AND MAINTENANCE OF A CITY OF FLAGLER BEACH SANITARY SEWER LIFT STATION; PROVIDING FOR CONFLICT AND AN EFFECTIVE DATE.

WHEREAS, the City of Flagler Beach constructed, operated, and maintained a sanitary sewer lift station on property owned by Type E Corporation; and,

WHEREAS, no easement or other formal documentation provided for the use of the subject property for the construction and operation of the sanitary sewer lift station; and,

WHEREAS, discussions with City staff, the City Attorney, and representatives of the Type E Corporation has resulted in the development of the Lift Station License Agreement (Exhibit A); and,

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, AS FOLLOWS:

SECTION 1. The City Commission Beach hereby authorizes the City Manager to sign the Lift Station License Agreement, attached as Exhibit A to this Resolution.

SECTION 2. The City Commission directs the City Manager to make timely payments as described in the Lift Station License Agreement.

SECTION 3. All resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 4. This Resolution shall become effective immediately upon passage as provided by law.

PASSED AND ADOPTED THIS 27TH DAY OF MARCH 2025.

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION

ATTEST:

Patti King, Mayor

Penny Overstreet, City Clerk

Attachment:
Exhibit A

Prepared by:
D. Andrew Smith, III
Shepard, Smith, Hand, & Brackins PA
2300 Maitland Cntr Pkwy, Suite 100
Maitland, Florida 32751

LIFT STATION LICENSE AGREEMENT

This **Lift Station License Agreement** (“Agreement”) is made this ____ day of _____, 2025 between **Type E Corporation, Inc.** a Florida Corporation (“CORPORATION”), whose address is 2805 South Ocean Shore Blvd, Flagler Beach, FL 32136, and the **City of Flagler Beach**, a Florida municipal corporation, whose address is 105 South 2nd Street, Flagler Beach, FL 32136 (“CITY”).

WITNESSETH

WHEREAS, the CITY has a lift station on the CORPORATION’s property located at 2805 South Ocean Shore Blvd, Flagler Beach, FL 32136; and

WHEREAS, the CITY does not have an easement granting access to the CORPORATION’s property; and

WHEREAS, the CITY is currently engaged in identifying an appropriate property away from the coastline to relocate the CITY’s lift station; and

WHEREAS, until such time that the CITY is able to relocate the lift station, the CORPORATION is willing to allow the CITY’s lift station to remain on the property in exchange for the compensation contemplated herein; and

WHEREAS, to carry out the aim of this agreement, the CITY and CORPORATION have determined that creating a license for the use of the CORPORATION’s property is in the best interest of the parties.

NOW THEREFORE, in consideration of the consideration and mutual covenants described herein, the parties agree as follows:

1. **Recitals.** The recitals set forth above are agreed to be true and correct and are incorporated into the terms and conditions of this Agreement.
2. **Property.** The CORPORATION hereby agrees to allow the CITY to utilize northeast corner portion of the property located at 2805 South Ocean Shore Blvd, Flagler Beach, FL 32136, hereinafter referred to as the “Property” and as shown attached hereto as **Exhibit “A”**, in accordance with the terms and conditions of this Agreement.
3. **License.** The CORPORATION hereby grants a License to the CITY, for the purpose of utilizing the Property as a location for the CITY’s lift station. Use of the Property under

this License shall not cause undue disruption to the general business operations of the Property, and maintenance activities shall be coordinated in such a manner that they do not unduly impact operations of the commercial business located within the Property.

4. **License Fee.** The fee to be paid to the CORPORATION by the CITY for use of the Property shall be as follows: 1) a one-time lump sum of Seventy-five Thousand Dollars (\$75,000.00) upon execution of this Agreement and 2) an annual payment of Five Thousand Five Dollars (\$5,000.00) due annually beginning on the first anniversary of the execution of this Agreement and each year thereafter the licensee granted herein is terminated. Payment shall be made to the CORPORATION at the address specified above.
5. **Ownership Interest.** The provisions of this Agreement do not in any way grant an ownership right, title or leasehold interest to the CITY, in the subject property.
6. **Independent Parties.** It is agreed by the parties hereto that at all times and for all purposes, within the scope of this Agreement, the CITY and CORPORATION are independent of one another and neither the CORPORATION nor any of its officers, directors, employees, or the like, shall be entitled to any of the rights, privileges and/or benefits of a CITY employee.
7. **Insurance.** The CITY shall maintain at all times during the entire term of the Agreement, sufficient liability insurance.
8. **Indemnification.** The CITY agrees to defend, indemnify, and hold harmless the CORPORATION from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses (including reasonable attorneys' fees) arising out of or resulting from any claim of a third party (including, but not limited to, City personnel, officers, agents, or guests) related to bodily injury, death, or property damage allegedly caused by or related to the CITY's licensee, along with costs of compliance with governmental agency actions attributable to use of the Property under this Agreement and the placement of the Lift Station, including compliance with the Florida Department of Environmental Protection. Notwithstanding the foregoing, nothing herein is intended as a waiver of the CITY's sovereign immunity and any duty to defend and indemnify under this Section shall be limited to the same limitations of liability set forth in Section 768.28, *Florida Statutes*, whether any claim sounds in contract or tort. The duty to indemnify provided herein shall survive termination of this Agreement.
9. **Termination.** CORPORATION may terminate this Agreement upon giving the CITY written notice of its intent to terminate at least twelve months prior to any annual anniversary of the execution of this Agreement. The CITY may terminate this Agreement by providing notice of termination after removal of the lift station infrastructure from the Property. Notice of removal of the lift station shall be provided in writing to CORPORATION at least ten (10) days prior to removal activities, including a proposed

schedule for completion of the work and removal. CITY shall take reasonable efforts to coordinate the time of the removal with CORPORATION to ensure that the removal does not unduly disrupt operations within the Property. Removal, as contemplated herein, shall include removal of the current lift station and any associated infrastructure whether currently in place or formerly located within the Property by the City.

10. **Notice.** The parties hereto agree and understand that written notice, mailed or delivered, to the last known mailing address shall constitute sufficient notice. All notice required and/or provided pursuant to this Agreement, shall be given to the CITY and CORPORATION in writing and delivered by way of the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

CITY:

City of Flagler Beach
Attention: City Manager
105 South 2nd Street,
Flagler Beach, FL 32136

CORPORATION:

Type E Corporation, Inc.
Attention: Gail Holt
2805 South Ocean Shore Blvd,
Flagler Beach, FL 32136

WITH COPY TO:

Cobb Cole Law Firm
Attn: Jessica Gow, Esq.
One Daytona Blvd., Ste 600
Daytona Beach, FL 32114

11. **Entire Agreement.** This Agreement, including all referenced Exhibits attached hereto, constitutes the entire agreement between the parties and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatsoever on this Agreement.
12. **Modification.** The Covenants, terms, and conditions set forth in this Agreement may be modified, only by way of a written instrument, mutually accepted by the parties hereto. In the event of a conflict between the covenants, terms, and/or conditions of this Agreement and any written amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

13. **Severability.** It is declared to be the intent of this Agreement, if any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of other remaining portions thereof.
14. **Applicable Law, Venue, Jury Trial.** The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this agreement, venue shall lie in Flagler County, Florida, and the parties hereby waive their right to trial by jury in any action, proceeding or claim, which may be brought by either of the parties hereto, arising out of this Agreement.
15. **Assignment.** The license granted herein the CITY shall be non-assignable.
16. **Agreement to Run With Land.** The license granted herein shall run with the land until terminated as set forth herein.

[Signatures on following pages]

[Rest of this page left intentionally blank]

IN WITNESS WHEREOF, the parties have signed below.

CORPORATION:

Signed, Sealed and Delivered in the
presence of:

Type E Corporation, Inc., a Florida
Corporation
By: Gail Holt

Witness Signature

By: _____
Gail Holt

Print/Typed Witness Name

Witness Address: _____
_____ +

Witness Signature

Print/Typed Witness Name

Witness Address: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [] physical presence or []
online notarization, this ____ day of _____, 2025 by Gail Holt, as _____ of Type E
Corporation, Inc., a Florida Corporation, on behalf of the corporation, who is personally known to
me or [] has produced a driver's license as identification.

Notary Public

My Commission expires:

CITY:

Signed, sealed and delivered
in the presence of:

The City of Flagler Beach, a Florida
municipal corporation

Witness Name: _____

Witness Address: _____

By: _____
Dale Martin, City Manager

Witness Name: _____

Witness Address: _____

Attest:

Penny Overstreet, City Clerk

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this ____ day of _____, 2025 by Dale Martin, as City Manager of The City of Flagler Beach, a Florida municipal corporation, on behalf of the corporation, who is personally known to me or [] has produced a driver's license as identification.

Notary Public
My Commission expires: