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VIA FEDERAL EXPRESS

120060 - SU

March 22, 2012

Florida Public Service Commission
Commission Clerk and Administrative Services
Room 110, Easley Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED-FPSC
12 MAR 23 AM 10:00
COMMISSION
CLERK

RE: KW Resort Utilities Corp. v. Monroe County - Complaint:

Dear Clerk,

Please find enclosed on behalf of KW Resort Utilities Corp. ("KWRU"), an original and seven copies of KWRU's Complaint against Monroe County. Please indicate receipt of this document by stamping the enclosed extra copy of this letter head and returning same to me with the self addressed envelope.

If you should have any questions, comments or concerns, or required additional information, please do not hesitate to contact me.

Sincerely,



Barton W. Smith, Esq.
For the Firm

COM _____
APA _____
ECR 6 _____
GCL 1 _____
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SRC _____
ADM _____
OPC _____
CLK _____

DOCUMENT NUMBER-DATE
01729 MAR 23 09
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: PETITION OF KW RESORT
UTILITIES CORPORATION FOR
DECLARATORY STATEMENT
REGARDING CAPACITY RESERVATION
CHARGES AND UNPAID INVOICES

120060-50

Filed: March 22, 2012.

**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

KW RESORT UTILITIES CORPORATION ("KWRU"), by and through undersigned counsel and pursuant to Fla. Stat. §120.565 and Rules 28-105.001 through 28-105.004, Fla. Admin. Code, petitions the Commission for a declaratory statement and in support thereof states:

1. The name and address of the Petitioner are:

KW Resort Utilities Corporation
6630 Front Street
Key West, Florida 33040

2. The name, address, telephone number and facsimile number of Petitioner's counsel is:

Barton W. Smith, Esq.
BARTON SMITH, P.L.
624 Whitehead Street
Key West, Florida 33040
Telephone: (305) 296-7227
Facsimile: (305) 296-8448

3. The Commission's disposition of the instant petition will affect KWRU by determining (1) whether KWRU is entitled to collect certain capacity reservation fees from Monroe County for excess capacity used by Monroe County as provided for in the Parties' Utility Agreement or Bulk Services Agreement entered into on August 16, 2001. A copy of which is attached hereto and incorporated herein as Exhibit A; (2) whether KWRU is entitled to collect unpaid amounts for services rendered in the treatment of wastewater as provided for in

DOCUMENT NUMBER / DATE

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FPSC-COMMISSION CLERK

the Parties' Utility Agreement or Bulk Services Agreement entered into on August 16, 2001. See Exhibit A; (3) the ownership of three (3) lift stations located on Monroe County Property and, if there was a transfer of ownership, the date the ownership transferred; See Exhibit A; (4) whether KWRU is entitled to collect construction costs associated with the South Stock Island Sewer Expansion project which were borne by KWRU even after KWRU has repaid the capacity reservation fees to Monroe County pursuant to the Capacity Reservation and Infrastructure Contract (the "CRI Contract") with the County. A copy of which is attached hereto and incorporated herein as Exhibit B; (5) whether KWRU is entitled to collect amounts unpaid by the County for the installation of a Buffer Tank at the County's request.

4. KWRU believes Fla. Stat. §367.081, Fla. Stat. §367.101, and Fla. Stat. §367.111 apply to its particular set of circumstances.

5. KWRU provides wastewater service to the public in an area of Monroe County, Florida known as Stock Island pursuant to Certificate of Authority No. 168-5, which service territory is more specifically set forth in First Revised Sheets 3.0 and 3.1 of its Commission-approved Wastewater Tariff.

6. Monroe County, Florida ("County") is a political subdivision of the State of Florida, who owns and operates the Monroe County Detention Center, Monroe County Sheriff's Station, Public Service Building, owns and leases Bayshore Manor and an Animal Shelter on Stock Island, Florida ("Property"), and currently receives wastewater service from KWRU's sewage treatment and disposal system pursuant to a PSC approved and regulated wastewater bulk service Utility Agreement dated August 16, 2001. The County's business address is 1100 Simonton Street, Key West, Florida 33040.

KWRU BULK SERVICE AGREEMENT WITH MONROE COUNTY

7. On August 16, 2001, KWRU entered into a Utility Agreement with the County for (1) the purchase of wastewater treatment plant capacity reservation for the Monroe County Detention Center, Public Service Building, Bayshore Manor, and the Animal Shelter; (2) the conveyance of the County's wastewater collection treatment system to KWRU; and (3) the delivery of reuse water to the Monroe County Detention Center on North Stock Island.

8. The City of Key West ("City") is a municipal corporation of the State of Florida which leases a parcel of land situated on the Monroe County Jail Property ("Jail Property") from the County pursuant to a Homeless Safe Zone Interlocal Agreement ("Lease"). The City's business address is 3132 Flagler Avenue, Key West, Florida 33040. Keys Overnight Temporary Shelter ("KOTS") is situated in its entirety on the Property.¹ On March 22, 2004, the City entered into the Lease with the County for use of KOTS as a homeless safe zone. On March 22, 2009, the City and County renewed the Lease under identical conditions and terms. A copy of both agreements are attached hereto and incorporated herein as Exhibits C and D respectively;

9. As part of the Lease and its renewal, the City agreed to pay for all utility connection fees, impact fees, effluent discharge units, or any other costs associated with the placement of utility infrastructure to provide utility services to KOTS. The City paid KWRU for eight (8) Equivalent Residential Connections ("ERC") and Monroe County agreed to the amount of ERCs paid for by the City of Key West. A copy of the City's capacity reservation agreement with KWRU is attached hereto and incorporated herein as Exhibit E.

¹ KWRU acknowledges and understands that the City runs a homeless shelter/safe zone on the Jail Property, and that the City is a separate and distinct entity from the County. However, the County and the City share a single meter for the Jail Property, and the usage attributable to the County cannot be separated from the usage attributable to the City's homeless shelter. The County is contractually obligated to pay for all consumption of KWRU's services that occurs on the Jail Property, and must pay KWRU for the City's use of KWRU's services. The County may have a right to indemnification from the City, but that is part of the Lease by and between the County and City that is not subject to the PSC's jurisdiction.

CAPACITY RESERVATION FEE

10. The Utility Agreement provides for the County to pay KWRU to reserve capacity at KWRU's wastewater treatment plant for the Property. The Utility Agreement provides that the capacity reservation fee is \$2,700.00 for each ERC. The Utility Agreement further provides that an ERC is equivalent to 205 gallons per day per residential connection. The initial reservation was for 454 ERCs, which was based upon an estimated average daily flow of 83,000 gallons per day from the Monroe County Detention Center and an estimated daily flow of 10,045 gallons per day from the juvenile detention center.² The cost for this connection totaled \$1,225,800.00. The County remitted payment for the initial capacity reservation according to the terms of the Utility Agreement.

11. The Utility Agreement also provides that "Any additional flows of wastewater from the Detention Facility, Public Buildings, or expansions thereof, animal shelter or in excess of the estimated flow shall require additional capacity fee, which shall be based upon Florida Code Statute 64E-6."

12. Pursuant to the Utility Agreement and Florida Code Statute 64E-6, the amount of ERCs required to be reserved at a wastewater utility is derived by taking the average daily flows of the three months highest daily flows and dividing by 205 gallons to obtain the amount of ERCs, which is then multiplied by \$2,700.00 to obtain the amount owed for capacity reservation.

13. Starting in 2008 and continuing through July 2009, the County's flows from its facilities increased to a peak three month average daily flow of 133,620 gallons per day. This

² It is important to note that the Utility Agreement states in section 6(b) Rates, Fees and Charges. that the capacity reserved was specifically for the Monroe County Jail and Monroe County Juvenile Detention Center, and no capacity reservation is mentioned for the Public Service Building, Bayshore Manor, or the Animal Shelter along College Road. This appears to be an oversight, but does explain a portion of the excess capacity being used by Monroe County.

equates to an average daily flow of 39,375 gallons or 192.073 ERCs above and beyond the initial capacity reservation paid by the County.

14. On July 15, 2009, KWRU sent its demand letter for payment of the additional capacity reservation fee. A true and correct copy of the letter dated July 15, 2009 from KWRU to the County is attached hereto and incorporated herein as Exhibit F.

15. On July 31, 2009, the County sent a letter requesting additional information pertaining to the increased flows. On August 5, 2009, KWRU responded to the County's request for additional information by letter, explaining the numbers and formula used to quantify wastewater flows generated by the County's facilities.

16. On October 15, 2009, KWRU made another demand to the County for payment of the contracted for and used additional capacity reservation.

17. The County has consistently failed and refused to pay for the extra capacity.

18. After October 15, 2009, the County informed KWRU that the County was using less water and therefore it should not be charged the additional ERCs. Recently, the Florida Keys Aqueduct Authority ("FKAA"), the local water utility, has ascertained that the County's Property was not using less water, but rather, the water meter was broken and had been broken since March 19, 2009.

19. Currently, the County's peak three month average flows are 139,401 gallons per day for its three facilities, which is a difference of 45,156 gallons or 220.27 ERCs above and beyond the initial capacity reservation paid by the County. At \$2,700.00 per connection, the County owes \$594,729.00 to KWRU in additional capacity.³

³ These numbers are based on the water meter readings for the three month average daily peak flows for the Monroe County Jail facilities, Bayshore Manor, and Animal Shelter. All three entities are on County owned property subject to the Utility Agreement. If all three entities were to use their full capacity at once, KWRU would have to have sufficient capacity to cover such consumption, which is the purpose of capacity reservation fees.

20. The County has not cured its monetary default within fifteen days of written demand as required pursuant to their agreement with KWRU.⁴

UNPAID AMOUNTS DUE TO CORRECTED CONSUMPTION NUMBERS

21. The County's consumption of KWRU's wastewater service is, and always has been, measured via a meter maintained and reviewed by the FKAA for potable water readings, which then provides reports of the consumption to KWRU.

22. KWRU has no right to inspect, repair, or maintain FKAA's meter, and must rely upon FKAA's consumption reports.

23. For the period of time beginning on or about March 19, 2009 and continuing until on or about April 13, 2011, the meter FKAA used to formulate the County's consumption report for KWRU was malfunctioning, which led to incorrect calculations of the County's consumption. The corrected consumption figures are attached hereto and incorporated herein as Exhibit G.

24. Upon learning of the malfunctioning meter and receiving a corrected Meter Consumption Report from FKAA for the period of time beginning on March 19, 2009 and continuing to April 13, 2011, KWRU requested payment in full of the undercharged amounts, which totaled \$36,470.92. A copy of the demand letter is attached hereto and incorporated herein as Exhibit H.

25. KWRU also discovered billing errors in the amount of \$6,965.24.

⁴ The County has previously claimed it may be entitled to some offset due to KWRU failing to provide water during KWRU's Advanced Wastewater Treatment ("AWT") conversion project. However, pursuant to Paragraph 13(b) and (c) of the Utility Agreement and Paragraph 5 of the CRI Contract, Monroe County required KWRU to convert its plant to AWT in 2007, the time at issue, and was unable to provide gray water that met (FDEP) governmental standards during the AWT conversion. Under the aforementioned agreements, providing gray water was therefore excused during this time period.

26. As of the date of this Petition, the County has failed and/or refused to pay KWRU for its actual consumption of KWRU's services in the amount of \$43,436.15 due to the errors stated in ¶¶ 23 – 24 of this Petition.

COUNTY LIFT STATIONS

27. The Utility Agreement also provides that the "County owns and operates the following facilities, which it agrees convey at no charge to the Service Company: A. Lift station serving the Detention Facility Treatment Plant." The Utility Agreement states further that the County would also convey a lift station serving the Public Buildings and sewer main from the lift station to the Detention Facility Treatment Plant to KWRU free of charge, and would construct a second lift station to serve the Public Buildings located at the Animal Shelter. All conveyances would be completed by a bill of sale from the County to KWRU.

28. In 2005, the County, by and through then-County Attorney Richard Collins, began efforts to ensure that the existing lift station and newly constructed lift station would not be conveyed to KWRU, but would instead remain wholly owned and maintained by the County.

29. KWRU and the County entered into the Utility Agreement, which, among other provisions, provided for the conveyance of the County's lift stations at the Monroe County Detention Center to KWRU. The County initially refused to convey said lift stations, and actively took steps to retain possession, custody and control of said lift stations. Notwithstanding the County's attempts to not convey the lift stations, KWRU maintains the lift stations daily at no charge to the County.

30. Despite the County's refusal to convey the lift stations, the County has routinely hired Keys Environmental, Inc. ("KEI") to provide labor, services, and materials to maintain, repair, and monitor said lift stations. KEI has regularly performed maintenance and repair work

for the County's lift stations at the Monroe County Detention Center pursuant to the County's numerous requests. It has been the regular practice of KEI to provide an invoice for any work done pursuant to such requests to the County's Public Works Department, and to receive payment from the County for any such work performed and materials used.

31. However, starting in 2008, the County has refused and continues to refuse to pay outstanding sums due to KEI that total \$37,199.71. At certain times, KWRU has informed KEI that emergency repairs to the County's lift stations were required, and KEI has performed the repairs and sent invoices to the County, which the County has refused to pay. The County has now asserted that KWRU has owned the lift stations since 2001 and therefore it is responsible for the maintenance of the lift stations, including payments to KEI. True and correct copies of all invoices are attached hereto and incorporated herein as composite Exhibit I.

32. On January 20, 2010, the County attempted to convey the lift stations to KWRU. A copy of the Board of County Commissioners' Agenda Item and Minutes indicating approval of the conveyance is attached hereto and incorporated herein as Exhibit J. The Utility Agreement's Paragraph 8 requires KWRU to accept conveyance and once it has accepted, acceptance is absolute. However, due to the County's refusal to pay outstanding invoices to KWRU for capacity reservation fees, KWRU has refused to accept the conveyance of the lift stations to date. KWRU believes that the County refused to properly convey the lift stations until January 20, 2010, at which time, the County had not paid all amounts due under the agreement that would mandate KWRU's acceptance of the conveyance.

33. KWRU and the County are unsure as to the ownership of the lift stations at this time, and if conveyed, when the conveyance of the lift stations was effectuated. The

determination of ownership will determine who is responsible for payment of the invoices to KEI.⁵

SOUTH STOCK ISLAND CAPACITY RESERVATION AND INFRASTRUCTURE CONTRACT

34. KWRU entered into the Capacity Reservation and Infrastructure Contract (the “CRI Contract”) with the County, for the purchase of wastewater treatment plant capacity reservation and the installation and expansion of the wastewater collection treatment system on South Stock Island.

35. The CRI Contract includes various elements such as Collection system infrastructure (\$3,500,000), Contingency amount (\$380,000),⁶ Engineering and engineering inspection (\$279,000), Construction administration and legal fees (\$347,000), and Testing (\$100,000) for a total of \$4,606,000 in construction costs.

36. The CRI Contract sets out a system for the submission of invoices by KWRU, as well as a procedure for the review by the County of those invoices submitted by KWRU.

37. First, the CRI Contract provides that

[T]he Utility shall submit to the County Engineer an invoice, in a form satisfactory to the County Clerk, for payment for the work completed, or materials delivered, during the prior month. The invoice must contain:

- a) An engineer’s certificate that the percentage of work requested for payment has been completed in a good workmanlike manner and the amount requested represents the percentage of work completed . . .

38. The CRI Contract also requires the following review process for invoices submitted by KWRU:

⁵ The Utility Agreement states in Paragraph 10 that any repairs to the lift stations because of material damage caused by the “County, or its agents, representatives, employees, invitees, licensees, detainees or inmates” is the sole cost and expense of the County. Therefore, KWRU if determined owner of the lift stations, may still require reimbursement for damages caused by detainees and/or inmates at the detention facility.

⁶ KWRU points to the Commission that no contingency money was spent and Monroe County derived the benefit from this cost savings.

The County Engineer must review the invoice and within 5 business days, inspect the work completed and materials delivered, and inform the Utility in writing of any error or omission in the invoice and what must be done to correct the deficiency. If the invoice is satisfactory he shall forward the invoice to the County Clerk for payment. The Clerk must then promptly review the invoice. If the Clerk determines there is an error or omission in the invoice, he must inform the Utility in writing. If the invoice is not returned to the Utility by the Engineer or Clerk for correction, the Clerk must make the payment to the Utility within 20 business days of the County Engineer's receipt of the invoice. A corrected invoice need only be returned to the officer who noted the deficiency, with a copy to the County Engineer and, if satisfactorily corrected, shall be paid by the Clerk within 20 days of the officer's receipt of a corrected invoice.

39. Finally, the CRI Contract provides that if the County's auditor "determines that money paid by the County to the Utility was not spent as authorized by this contract . . . then the Utility must repay to the County the amounts not spent or remitted as required by this contract, together with interest calculated at the rate set forth in Sec. 55.03, Fla. Stat., from the date the auditor determines that the funds were improperly spent or withheld."

40. The CRI Contract does not authorize the County to withhold from payments amounts that the County disputes from earlier payments made by the County to KWRU.

41. KWRU submitted to the County KWRU's first invoice, Invoice #SSI001⁷ in the amount of \$250,530.84, which invoice included an amount of \$40,000 for Construction administration and legal fees.

42. Invoice #SSI001 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract.

43. On information and belief, the County reviewed invoice #SSI001 according to the process required by the CRI Contract and described in ¶37 above. After reviewing invoice #SSI001, the County requested additional documents from KWRU.

⁷ A copy of a summary of all invoices, the invoices, and receipt of payment are attached hereto as Composite Exhibit K. KWRU is missing invoice #SSI0011, but believes the County may be in possession of the original invoice.

44. KWRU provided the documents requested by the County in support of KWRU's invoice #SSI001. After receiving those documents, the County paid invoice #SSI001 by check 204005 in the amount of \$250,530.84.

45. Prior to paying invoice #SSI001, the County did not inform KWRU in writing that the County otherwise disputed or found errors with regard to the sufficiency of the supporting documents provided for invoice #SSI001, including those documents provided to support the amount billed as Construction administration and legal fees.

46. Subsequently, KWRU submitted to the County KWRU's Invoice #SSI002 in the amount of \$295,255.25, which invoice included an amount of \$26,400 for Construction administration and legal fees.

47. Invoice #SSI002 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract.

48. On information and belief, the County reviewed invoice #SSI002 according to the process required by the CRI Contract and described in ¶37 above.

49. After reviewing invoice #SSI002, the County paid the invoice by check 076937 in the amount of \$295,255.25.

50. Prior to paying invoice #SSI002, the County did not inform KWRU in writing that the County disputed or otherwise found errors with regard to the sufficiency of the supporting documents provided for invoice #SSI002, including those documents provided to support the amount billed as Construction administration and legal fees.

51. Subsequent to the submissions and payments for Invoice #SSI001 and Invoice #SSI002, KWRU submitted to the County KWRU's invoice #SSI003 in the amount of

\$344,809.20, which invoice included an amount of \$33,600 for Construction administration and legal fees.

52. Invoice #SSI003 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract.

53. On information and belief, the County reviewed Invoice #SSI003 according to the process required by the CRI Contract and described in ¶37 above.

54. After reviewing Invoice #SSI003, the County paid the invoice by check 78653 in the amount of \$344,809.20.

55. Prior to paying invoice #SSI003, the County did not inform KWRU in writing that the County disputed or otherwise found errors with regard to the sufficiency of the supporting documents provided for invoice #SSI003, including those documents provided to support the amount billed as Construction administration and legal fees.

56. Subsequent to the submissions and payments for Invoices #SSI001, #SSI002, and #SSI003, KWRU submitted to the County KWRU's invoice #SSI004 in the amount of \$345,807.80, which invoice included an amount of \$28,500 for Construction administration and legal fees.

57. Invoice #SSI004 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract.

58. On information and belief, the County reviewed Invoice #SSI004 according to the process required by the CRI Contract and described in ¶37 above.

59. After reviewing Invoice #SSI004, the County paid the invoice by check 79869 in the amount of \$345,807.80.

60. Prior to paying Invoice #SSI004, the County did not inform KWRU in writing that the County disputed or otherwise found errors with regard to the sufficiency of the supporting documents provided for Invoice #SSI004, including those documents provided to support the amount billed as Construction administration and legal fees.

61. Next, KWRU submitted to the County KWRU's Invoice #SSI005 in the amount of \$752,877.41, which invoice included an amount of \$20,710 for Construction administration and legal fees.

62. Invoice #SSI005 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract.

63. On information and belief, the County reviewed Invoice #SSI005 according to the process required by the CRI Contract and described in ¶37 above.

64. After reviewing Invoice #SSI005, the County paid the invoice by check 81242 in the amount of \$752,877.41.

65. Prior to paying Invoice #SSI005, the County did not inform KWRU in writing that the County disputed or otherwise found errors with regard to the sufficiency of the supporting documents provided for Invoice #SSI005, including those documents provided to support the amount billed as Construction administration and legal fees.

66. Next, KWRU submitted to the County KWRU's Invoice #SSI006 in the amount of \$607,311.58, which invoice included an amount of \$39,558.00 for Construction administration and legal fees.

67. Invoice #SSI006 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract.

68. On information and belief, the County reviewed Invoice #SSI006 according to the process required by the CRI Contract and described in ¶37 above.

69. After reviewing Invoice #SSI006, the County paid the invoice by check 82301 in the amount of \$607,311.58.

70. Prior to paying Invoice #SSI006, the County did not inform KWRU in writing that the County disputed or otherwise found errors with regard to the sufficiency of the supporting documents provided for Invoice #SSI006, including those documents provided to support the amount billed as Construction administration and legal fees.

71. KWRU submitted to the County KWRU's Invoice #SSI007 in the amount of \$141,802.40, which invoice included an amount of \$33,463.40 for Construction administration and legal fees.

72. Invoice #SSI007 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract.

73. On information and belief, the County reviewed invoice #SSI007 according to the process required by the CRI Contract and described in ¶37 above.

74. After reviewing invoice #SSI007, the County paid the invoice by check 83613 in the amount of \$141,802.40.

75. Prior to paying invoice #SSI007, the County did not inform KWRU in writing that the County disputed or otherwise found errors with regard to the sufficiency of the supporting documents provided for invoice #SSI007, including those documents provided to support the amount billed as Construction administration and legal fees.

76. Next, KWRU submitted to the County KWRU's invoice #SSI008 in the amount of \$115,310.05, which invoice included an amount of \$36,018.60 for Construction administration and legal fees.

77. Invoice #SSI008 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract.

78. On information and belief, the County reviewed invoice #SSI008 according to the process required by the CRI Contract and described in ¶37 above.

79. After reviewing invoice #SSI008, the County paid the invoice by check 85490 in the amount of \$115,310.05.

80. Prior to paying invoice #SSI008, the County did not inform KWRU in writing that the County disputed or otherwise found errors with regard to the sufficiency of the supporting documents provided for invoice #SSI008, including those documents provided to support the amount billed as Construction administration and legal fees.

81. KWRU then submitted to the County KWRU's invoice #SSI009 in the amount of \$461,959.62, which invoice included an amount of \$21,756.90 for Construction administration and legal fees.

82. Invoice #SSI009 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract.

83. On information and belief, the County reviewed invoice #SSI009 according to the process required by the CRI Contract and described in ¶37 above.

84. After reviewing invoice #SSI009, the County paid the invoice by check 87731 in the amount of \$461,959.62.

85. Prior to paying invoice #SSI009, the County did not inform KWRU in writing that the County disputed or otherwise found errors with regard to the sufficiency of the supporting documents provided for invoice #SSI009, including those documents provided to support the amount billed as Construction administration and legal fees.

86. KWRU then submitted to the County KWRU's invoice #SSI010 in the amount of \$323,046.74, which invoice included an amount of \$44,173.10 for Construction administration and legal fees.

87. Invoice #SSI010 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract.

88. On information and belief, the County reviewed invoice #SSI010 according to the process required by the CRI Contract and described in ¶37 above.

89. After reviewing invoice #SSI010, the County paid the invoice by check 92811 in the amount of \$155,849.92, and check 92812 in the amount of \$129,480.16.

90. Prior to paying invoice #SSI010, the County did not inform KWRU in writing that the County disputed or otherwise found errors with regard to the sufficiency of the supporting documents provided for invoice #SSI010, including those documents provided to support the amount billed as Construction administration and legal fees.

91. Finally, KWRU submitted to the County KWRU's amended invoice #SSI011 in the amount of \$445,521.36.

92. On information and belief, the County reviewed amended invoice #SSI011 according to the process required by the CRI Contract and described in ¶37 above.

93. After reviewing amended invoice #SSI011, the County partially paid the invoice by check 96959 in the amount of \$137,038.36.

94. Instead of paying the full amount of amended invoice #SSI011, the County indicated that it was withholding \$308,483.00 from payment for amended invoice #SSI011.

95. Amended invoice #SSI011 represented amounts due and owed to KWRU for work performed and services provided by KWRU to the County under the CRI Contract, including work for line items such as Collection System Infrastructure, Engineering & Engineering Inspection, and Testing.

96. The County then contracted with URS Corporation, an independent engineer which conducted an audit and a technical evaluation of the installed vacuum system as prescribed in ¶38 above.

97. Afterwards, the County was sent the Final Engineering Report and the County Commission voted to approve the findings contained in the Final Engineering Report. The Final Engineering Report found the required work was performed under amended invoice #SSI011.

98. Since the County approved URS' Final Engineering Report, the County has not disputed that KWRU performed the work indicated on amended invoice #SSI011.

99. The County has not disputed the amount of work performed under amended invoice #SSI011.

100. The County has not disputed the sufficiency of the documentation KWRU provided to URS or the County support amended invoice #SSI011.

101. The County has not requested that KWRU repay any amounts to the County from previous invoices.

102. The County withheld, and continues to withhold payment in the amount of \$308,483.00 for work performed by KWRU.

103. As can be readily observed from amended invoice #SSI011, \$423,781.36 was paid to E.T. Mackenzie of Florida Inc. (“Mackenzie”) for Collection Infrastructure, which KWRU paid to Mackenzie as provided for in KWRU’s agreement with Mackenzie.

104. In stark contrast to the County’s refusal to pay valid costs in aid of construction, KWRU has repaid all amounts collected pursuant to the CRI Contract, yet the County has failed to pay for work performed by KWRU after conducting its audit report.

**UNPAID PURCHASE ORDER FOR INSTALLATION OF THE HARBOR SHORES
BUFFER TANK**

105. On or about January 20, 2007, the County approved and requested KWRU install a buffer tank for use in the connection to the sewer system operated by Harbor Shores Condominium, Inc. to the vacuum system of KWRU. The County submitted Purchase Order #0016743 (the “P.O.”) for the materials and labor to be performed by KWRU.

106. Pursuant to the County’s P.O., KWRU, with the assistance of the County’s chosen contractor, Bee Brothers, purchased and installed the buffer tank at the requested location and submitted Invoice #SSI015 to the County for payment. Bee Brothers was not the low bidder, but was specifically selected by the County.⁸

107. The invoice was for a total of \$ 31,150.00 for the labor and services provided pursuant to the P.O. See a copy of Invoice # SSI0015 and corresponding back-up documentation, attached hereto as Exhibit L.

108. To the present date, the County has refused or ignored the invoice and made no payments on the amount due for the buffer tank cost, the services, and the labor provided by KWRU pursuant to the County’s P.O. for purchase and installation of the buffer tank.

⁸ The Purchase Order attached is for \$23,500, which matches the original proposal by KWRU. However, due to County approved changes, including selection of a higher bidder, the total amount was \$31,150.00. KWRU believes the County has an approved Purchase Order for the revised amount of \$31,150.00 in its possession.

COUNT I
DECLARATORY STATEMENT FOR CAPACITY RESERVATION

109. KWRU hereby re-alleges each and every allegation contained in paragraphs 1 through 20, inclusive, as if fully set forth herein.

110. KWRU provided additional available capacity for increased flows from the County pursuant to the Utility Agreement.

111. KWRU demanded payment for the additional capacity reservation and the County has either refused or ignored the demand for payment past the requisite 15 day grace period.

112. The County has no contractual right to withhold payment for the additional capacity.

113. Pursuant to the Utility Agreement, the County must pay for additional available capacity it reserves.

WHEREFORE, KWRU respectfully requests that the Commission:

- (1) Grant this Petition for Declaratory Statement;
- (2) Permit Petitioner and County to address the Commission at a regularly scheduled Agenda Conference in support of their respective positions;
- (3) Issue a Declaratory Statement determining as a matter of law that KWRU is entitled to payment of \$594,729.00;
- (4) Issue a Declaratory Statement determining as a matter of law that the County is in breach of the Utility Agreement by withholding such payment from KWRU;
- (5) Award reasonable attorney's fees and costs; and
- (6) Grant such other relief as may be just and appropriate.

COUNT II
DECLARATORY STATEMENT FOR CORRECTED CONSUMPTION

114. KWRU hereby re-alleges each and every allegation contained in paragraphs 1 – 9, and 21 -26 inclusive, as if fully set forth herein.

115. Pursuant to the Utility Agreement, the County must pay KWRU for all the services the County receives.

116. The County consumed more of KWRU's services during the period of time beginning on March 19, 2009 and continuing until April 13, 2011 than it paid KWRU to consume.

117. Specifically, the corrected Meter Consumption Report prepared by FKAA shows that between March 19, 2009 and April 13, 2011, the County consumed \$43,436.16 more in services than it paid KWRU to consume.

118. Upon receipt of the corrected Meter Consumption Report, KWRU contacted the County and requested payment for the excess services the County received due to the malfunctioning meter.

119. As of the date of this Petition, the County has failed and/or refused to pay for the \$43,436.16 in excess services it received from KWRU.

WHEREFORE, KWRU respectfully requests that the Commission:

- (1) Grant this Petition for Declaratory Statement;
- (2) Permit Petitioner and the County to address the Commission at a regularly scheduled Agenda Conference in support of their respective positions;
- (3) Issue a Declaratory Statement determining as a matter of law that KWRU is entitled to payment of \$43,436.16;

(4) Issue a Declaratory Statement determining as a matter of law that the County is responsible for compensating KWRU for the corrected consumption;

(5) Award reasonable attorney's fees and costs; and

(6) Grant such other relief as may be just and appropriate.

COUNT III
DECLARATORY STATEMENT FOR WORK PERFORMED

120. KWRU hereby re-alleges each and every allegation contained in paragraphs 1 - 9, and 27 - 32 inclusive, as if fully set forth herein.

121. KWRU and County are unsure as to the current ownership of three (3) lift stations located on the Jail Property.

122. The County has refused payment on the amounts due and owing pursuant to KEI's invoices.

123. KWRU and County are unsure as to who is responsible for the unpaid amount of \$37,199.71 due and owing to KEI.

WHEREFORE, KWRU respectfully requests that the Commission:

(1) Grant this Petition for Declaratory Statement;

(2) Permit Petitioner and County to address the Commission at a regularly scheduled Agenda Conference in support of their respective positions;

(3) Issue a Declaratory Statement determining as a matter of law who is the current owner of the lift station, and if there was a conveyance of the lift stations, when that conveyance took place;

(5) Award reasonable attorney's fees and costs; and

(6) Grant such other relief as may be just and appropriate.

COUNT IV
DECLARATORY STATEMENT FOR CRI CONTRACT PAYMENT

124. KWRU hereby re-alleges each and every allegation contained in paragraphs 1 - 9, and 33 - 104 inclusive, as if fully set forth herein.

125. KWRU performed and paid for construction work, including Collection System Infrastructure, Engineering & Engineering Inspection, and Testing as required by the County pursuant to the CRI Contract, and submitted an invoice to the County for said work.

126. The County has refused payment on the amounts due and owing pursuant to the invoice.

127. The County has no contractual right to withhold payment.

128. Pursuant to the CRI Contract, the invoice must be paid in full.

129. KWRU has returned all capacity reservation fees to the County pursuant to the CRI Contract that has paid for the construction to date.

130. KWRU is entitled to payment in full of the unpaid amount, \$308,483.00, because KWRU performed and paid for the work indicated in invoice #SSI011 and the County does not now dispute the work performed.

WHEREFORE, KWRU respectfully requests that the Commission:

(1) Grant this Petition for Declaratory Statement;

(2) Permit Petitioner and County to address the Commission at a regularly scheduled Agenda Conference in support of their respective positions;

(3) Issue a Declaratory Statement determining as a matter of law that KWRU is entitled to payment of \$308,483.00;

(4) Issue a Declaratory Statement determining as a matter of law that the County is in breach of the CRI Contract by withholding such payment from KWRU; and

- (5) Award reasonable attorney's fees and costs; and
- (6) Grant such other relief as may be just and appropriate.

COUNT V
DECLARATORY JUDGMENT

131. KWRU realleges each and every allegation made in paragraphs 1 – 9 and 105 - 108, inclusive.

132. KWRU performed work as required by the P.O., and submitted Invoice #SSI015 to the County for that work, as required by the ordinary course of conduct between the County and KWRU.

133. The County has refused payment of the amount due and owing.

134. The County has no contractual right to withhold payment.

135. Pursuant to the P.O., the County must pay the invoice in full.

136. Because KWRU performed work and provided services according to the P.O., and submitted Invoice #SSI015 for such work and services according to the ordinary course of conduct between the County and KWRU, and because the County does not dispute Invoice #SSI015, KWRU is entitled to payment in full of Invoice #SSI015, including the unpaid amount of \$ 31,150.00.

WHEREFORE, KWRU respectfully requests that the Commission:

- (1) Grant this Petition for Declaratory Statement;
- (2) Permit Petitioner and County to address the Commission at a regularly scheduled Agenda Conference in support of their respective positions;

(3) Issue a Declaratory Statement determining as a matter of law that KWRU is entitled to payment of \$31,500.00;

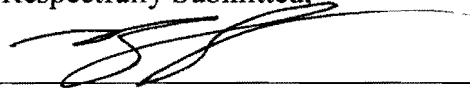
(4) Issue a Declaratory Statement determining as a matter of law that the County is in breach of the CRI Contract by withholding such payment from KWRU;

(5) Award reasonable attorney's fees and costs; and

(6) Grant such other relief as may be just and appropriate.

Dated: March 22, 2012.

Respectfully Submitted,



Barton W. Smith, Esq.
Florida Bar No. 20169
BARTON SMITH, P.L.
624 Whitehead Street
Key West, Florida 33040
Telephone: 305-296-7227
Facsimile: 305-296-8448
E-mail: bart@bartonsmithpl.com

EXHIBIT A

UTILITY AGREEMENT

THIS UTILITY AGREEMENT ("Agreement"), dated as of the 16th day of August, 2001, by and between KW Resort Utilities Corp., a Florida corporation, having its office(s) at 6450 Junior College Road, Key West, Florida, 33040 ("Service Company"), and The County of Monroe, Florida, a Florida County having its office(s) at 5100 College Road, Key West, FL 33040, ("County").

RECITALS

- A. County is the owner of certain real property more particularly described on Exhibit "A", attached hereto and made a part hereof (the "Property").
- B. County currently operates a jail and detention center on the Property ("Detention Facility"), which requires sanitary sewer service.
- C. County currently operates public facilities at the Public Service Building, Bayshore Manor, and the Animal Shelter, all along College Road ("Public Buildings"), which requires sanitary sewer service.
- D. County requests that Service Company provide central sewage collection services in and upon the Property.
- E. Service Company owns, operates, manages and controls a central sewage system and is willing to provide sanitary sewer services pursuant to this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), and the mutual covenants and agreements hereinafter set forth, and intending to be legally bound thereby, it is agreed as follows:

1. On-Site Facilities

The County owns and operates the following facilities, which it agrees to convey at no charge to the Service Company:

- A. Lift station serving the Detention Facility Treatment Plant.
- B. Lift station serving the Public Buildings and sewer main from the lift station to the Detention Facility Treatment Plant.

The County shall construct the following facilities, which it agrees to convey at no charge to the service company at the time of connection to the Service Company's system:

- A. A second lift station serving the Public Buildings located at the Animal Shelter.
- B. A sewer main from the second lift station to the existing sewer main serving the Detention Facility.

The three County lift stations and appurtenant facility to be conveyed to Service Company are hereinafter referred to as "On-Site Facilities". All On-Site Facilities, laterals and Property Installations shall be in good working order upon connection to Service Company's system. Prior to commencing construction on the second lift station serving the Public Buildings, County shall provide Service Company with construction plans for approval by

Service Company, which approval shall not be unreasonably withheld. If the Service Company discontinues service to the County property for whatever reason (other than nonpayment or default by County) then the on-site facilities will be reconveyed by the Service Company to the County at no charge.

Service Company shall construct a reuse ("graywater") line to Detention Facility, and agrees to make available a minimum of 32,000 gallons per day ("gpd") of graywater to County, but no more than 60,000 gallons per day. Graywater shall meet all reuse water quality standards required by law.

2. Definitions

"Business Day" - shall mean any day of the year in which commercial banks are not required or authorized to close in New York, New York.

"Central Sewage System" - shall mean the central sewage system owned and operated by the Service Company.

"Customer" - shall mean the County.

"Equivalent Residential Connections" - (ERC), shall be defined as one individual residential connection or, for commercial and other uses, the estimated flow based on the use and Chapter 64E-6 F.A.C., divided by the most recently approved "Capacity Analysis" rate per residential connection (currently 205 gallons per day per residential connection).

"Point of Delivery" - shall mean the point at which the county lines enter the three-lift station conveyed to the Service Company.

"Property Installations" - shall mean any service lines located on individual lots or parcels of the Property, on the County side of the Point of Delivery.

"Service Company's Affiliates" - shall mean any disclosed or undisclosed officer, director, employee, trustee shareholder, partner, principal, parent, subsidiary or other affiliate of Service Company.

"System" - shall mean all pipes, lines, manholes, lift or pump stations, reservoirs or impoundments constructed or installed on the Property in public rights-of-way or easements dedicated to Service Company, or on lands conveyed to Service Company by deed in fee simple, including, without limitation, Central Connection Lines.

"Tariff" - shall mean Service Company's existing and future schedules of rates and charges for sewer service.

3. System Construction

Service Company shall design and construct at its sole expense offsite facilities to connect the county lift station at the Detention Facility to the Central Sewage System (the "Project"). Said Project shall commence 30 days after execution hereof and be completed 180 days after commencement. County upon completion shall immediately provide all of its domestic wastewater to Service Company for treatment at Service Company's applicable tariff. The Service Company's current tariff is \$605.52

for a 4" meter base facility charge per month and \$2.92 per 1000 gallons measured off of water consumption. Additional wastewater services at the Public Service Building, Bay Shore Manor, the Animal Shelter and other shall pay the applicable tariffs. For instance if the Detention Center uses a 4" meter and the Public Service Building has a 2" meter then the County's rate shall be \$605.62 + \$196.35 plus \$2.92 per thousand gallons per month. Notwithstanding Utility's Tariff, Utility agrees to treat all of County's re-use water, including air conditioning re-use water. County agrees to pay Utility for treating re-use water based upon a four-inch meter and Utility's current tariff, the re-use meter shall be read daily. The County represents that no re-use water is disposed via shallow injection well.

4. System Decommissionary

County currently operates a .105 MGD wastewater treatment plant on the property. After commencement of service by Service Company, County at its sole expense may at its option decommission and remove said plant. Notwithstanding the foregoing, Service Company agrees to assist County in said decommissionary by contributing to the cost of the engineering, permitting, and removing the existing plant the lesser of \$10,000 or the sum of said costs.

5. Property Rights

Prior to Service Company's construction of the Project, County shall convey

- a) A non-exclusive easement in the form attached hereto as Exhibit "B" in and to any and all portions of the On-Site Facilities not located in public rights-of-way, of sufficient size to enable Service Company ingress and egress and to operate, maintain and replace such portions of the On-Site Facilities not located within public rights-of-way for Service Company, other uses of Service Company's system and its successor and assigns. If the Service Company discontinues service to the County property for whatever reason, then the easements granted to this section will lapse and expire and the County property so encumbered will be free and clear of such easements. Language similar to the foregoing must appear in the easements filed for record. The Service Company agrees to provide and execute the documents necessary to extinguish such easements.
- b) Service Company at its sole discretion shall be permitted to pump other customer's wastewater through said lift station and force main and County shall provide easements for said connections at request of Service Company without any additional charge.
- c) A bill of sale conveying title to On-Site Facilities free and clear of all liens and encumbrances.

6. Rates, Fees, Charges

- a) All Customers will pay the applicable fees, rates and charges as set forth in the Tariff. Nothing contained in this Agreement shall serve to prohibit Service Company's right to bill or collect its rates and charges from Customers, nor to require compliance with any provision of its Tariff.

- b) County shall pay to Service Company a reservation fee ("Capacity Reservation Fee"), in the amount of Two Thousand Seven Hundred (\$2,700.00) dollars per E.R.C. connections to be reserved by County to serve the Property (individually, a "Connection", collectively, the "Connections").

The Initial reservation shall be for 454 ERC's based upon an average flow of 83,000 gallons per day from the county jail and an estimated flow from the addition to the juvenile detention center of 10,045 gallons per day. Cost for said hook-ups is \$1,225,800. Any additional flows of wastewater from the Detention Facility, Public Buildings, or expansions thereof, animal shelter or in excess of the estimated flow shall require additional capacity fee, which shall be based upon Florida Code Statute 64E-6.

- c) The Capacity Reservation Fee for each connection shall be payable by County to Service Company as follows:
- (i) 1/3, upon completion of the connection (estimated at this time to be \$408,600).
 - (ii) 1/3, one year after connection completion.
 - (iii) 1/3, two years after connection completion.
- d) Service Company hereby agrees to reserve such capacity for the benefit for County subject to the provisions of this Section 5, provided, however, that such reservations shall not be effective until Service Company has received the initial installment of the Capacity Reservation Fee in accordance with Section 6 © (I) hereof, and provided, further, that Service Company shall have the right to cancel such reservations in the event of County's failure to comply with the terms of this Agreement
- e) In addition to the above charges, upon delivery hereof, County shall also pay Service Company \$.40 per thousand gallons for "graywater" provided to County pursuant to Paragraph 1 herein.
- f) In the event of default by County in the payment of Capacity Reservation Fee hereunder, which default is not cured as provided in paragraph 12, hereof, Service Company may cancel this agreement by giving thirty (30) days written notice of default and retain all payments hereunder as liquidated damages.

7. The capacity reservation fee described in paragraph 6(c)(i), hereafter 6(c)(i) funds (minus the cost incurred by Service Company to complete the Project including the graywater line), when due, must be deposited in an interest bearing escrow account with a federally insured financial institution that has an office in Key West, Florida. The mention of 6(c)(i) funds includes all accumulated interest. The terms of the escrow are as follows:
- a) When the Service Company begins substantial physical construction to expand the capacity of its wastewater treatment plant or to extend its wastewater collection infrastructure to serve additional areas in South Stock Island or other islands then the escrow agent will release the 6(c)(i) funds to the Service Company in the following manner: the payments will be made monthly equal amounts based

on the expected completion date of the expansion as set forth in the Service Company's construction documents. Release of said funds shall be made by escrow agent upon presentation of construction invoices (including costs of real estate acquisition, purchase or installation of pipes and lift stations, and professional services; provided that such costs are exclusively attributable to such expansion of capacity or extension of collection infrastructure) to be paid by Service Company along with a statement from Service Company describing the construction for which the invoices seek payment. County hereby agrees to enforce, through Code Enforcement proceedings, its ordinance requiring all property owners located within Service Company's service area to connect to Service Company's System and to pay the tariff applicable to such connection. In the event of breach hereof by County which breach continues after notice and reasonable opportunity to cure as provided in Paragraph 12, below, all escrowed funds shall be released to Service Company.

- b) However, if the Service Company agrees to sell its wastewater treatment plant and collection infrastructure to the FCAA before the Service company completes the construction just described, then the 6(c)(i) funds (or the balance then remaining undisbursed) must be transferred to the FCAA upon the completion of the actions needed to consummate the sale of the wastewater treatment plant and collection infrastructure to the FCAA. For the purposes of this paragraph 7, *sale* means the sale of physical assets, an equity purchase (and/or debt assumption or purchase) resulting in the FCAA acquiring a controlling interest in the Service Company, a long-term lease of the physical assets, or any other transaction that results in the FCAA assuming the obligation to operate the Service Company's wastewater treatment plant and current collection infrastructure.
- c) If the Service company has not commenced expansion of the wastewater treatment plant or collection infrastructure by the year 2006 or, if the FCAA has not purchased the Service Company's assets as described above by the year 2006, then the escrow agent must release the 6(c)(i) funds to the Service Company.

8. **Absolute Conveyance**

Except as provided elsewhere in this contract regarding the reconveyance of property and the extinguishment of easements if service is discontinued, County understands, agrees and acknowledges that County's conveyance of the On-Site Facilities and any and all easements, real property or personal property, or payment of any funds hereunder (including, without limitation, the Capacity Reservation Fee), shall, upon acceptance by Service Company, be absolute, complete and unqualified, and that neither County nor any party claiming by or through County shall have any right to such easements, real or personal property, or funds, or any benefit which Service Company may derive from such conveyance or payments in any form or manner.

9. **Delivery of Service: Maintenance**

- a) Upon connection as provided in section 1, Service Company shall provide service to the Point of Delivery in accordance with the terms

of this Agreement and all applicable laws and regulations and shall operate and maintain the System in accordance with the terms and provisions of this Agreement. Service Company shall use its best efforts to provide service prior to February 15, 2002. In the event that Service Company is unable to provide service on February 15, 2002 thru no fault of Service Company, then all cost of alternative sewage disposal shall be County's until service is provided. Service means that the Service Company will process, treat and dispose of wastewater and will operate its system: in compliance with the quality and process standards required by DEP and the Service Company; in accordance with industry standards as they develop and any FCAA, County, or City of Key West requirements; and, in a manner that does not pose or cause health or environmental risk or damage (provided, that should any violation of health or environmental rule or law occur, service company shall be in compliance herewith if service company promptly undertakes and completes any necessary remedial action). Service also means the furnishing of graywater, described in section 1, meeting industry standards.

- b) County shall, at its sole cost and expense, own, operate and maintain all Property Installations, which have not been conveyed to Service Company pursuant to the terms and conditions of this Agreement.
- c) In the event County desires additional services over and above that reserved herein and provided Service Company has additional uncommitted capacity, Service Company shall provide said additional capacity provided County pays the additional connection fees required under Chapter 64E-6 F.A.C.
- d) County shall pay for any extra expense of operating the Detention Center lift station resulting from prisoner or staff disposal of debris into the system or failure to maintain its grease trap. Service Company shall have the right to inspect the grease traps in order to insure their continued maintenance by County.
- e) County shall only provide domestic waste water for treatment by Service Company. No water from air conditioning systems or swimming pools shall flow into the wastewater disposal system.
- f) The Service Company agrees to keep its system in good repair, in full operating condition in compliance with applicable law and to promptly remedy all breakdowns, spills, contaminations and other acts of environmental damage or pollution.

10. **Repair of System**

In the event of any material damage to or destruction of any of the lift stations located on County property operated or maintained by Service Company due to any acts or omissions by County, or its agents, representatives, employees, invitees, licensees, detainees or inmates, Service Company shall repair or replace such damaged or destroyed portion of the System at the sole cost and expense of County. County shall pay all costs and expenses associated with such repair or replacement within thirty

(30) days after receipt of any invoice from Service Company setting forth any such costs and expenses.

11. Term

This Agreement shall become effective as of the 15th day of Aug, 2001, and shall continue for 99 years so long as Service Company, its successor or assignees, provides sewer service to the County, and the County's successors and assigns. WJH

12. Default

In the event of a default by either party of its duties and obligations hereunder, the non-defaulting party shall provide written notice to the defaulting party specifying the nature of the default and the defaulting party shall have fifteen (15) days to cure any default of a monetary nature and thirty (30) days for any other default. If the default has not been cured within the applicable period (time being of the essence), the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, including but not limited to, the right to damages, injunctive relief and specific performance. Service Company may, at its sole option, discontinue and suspend the delivery of service to the System in accordance with all requirements of applicable law and the Tariff, if County fails to timely pay all fees, rates and charges pursuant to the terms of this Agreement. The County, however, may withhold payment, without default, if the Service Company through no fault of the County: fails to provide consistent minimum wastewater and graywater services as required by section 9; causes or permits unexcused delays or interruptions in service or commencing service; cause or permits repeated or chronic failures to maintain quality standards; causes or permits damage to County property; causes or permits adverse health effects to the public or system users; causes or permits environmental damage; or, exposes the County or its officials and employees to suits or liability attributable to the Service Company's conduct.

13. Excuse from Performance

a) Force Majeure

If Service Company is prevented from or delayed in performing any act required to be performed by Service Company hereunder, and such prevention or delay is caused by strikes, labor disputes, inability to obtain labor, materials or equipment, storms, earthquakes, electric power failures, land subsidence, acts of God, acts of public enemy, wars, blockades, riots, acts of armed forces, delays by carriers, inability to obtain rights-of-way, acts of public authority, regulatory agencies, or courts, or any other cause, whether the same kind is enumerated herein, not within the control of Service Company ("Force Majeure"), the performance of such act shall be excused for a period equal to the period of prevention or delay. If the Service Company intends to claim force majeure as an excuse for nonperformance, then it must so notify the County in writing within ten business days of the force majeure event. The Service Company must also undertake all reasonable measures, at its expense, to restore full service at the earliest practical date. The

County is not obligated to pay any Service Company tariff, charge or fee until service is restored.

b) Governmental Acts

If for any reason during the term of this Agreement, other than for due conduct of the Service Company and its agents and representatives, and except for the lawful actions and decisions of the County in the exercise of its governmental powers, any federal, state or local authorities or agencies fail to issue necessary permits, grant necessary approvals or require any change in the operation of the Central Sewage System or the System ("Governmental Acts"), then, to the extent that such Governmental Acts shall affect the ability of any party to perform any of the terms of this Agreement in whole or in part, the affected party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible, by the parties hereto in conformity with such permits, approvals or requirements. Notwithstanding the foregoing, neither County nor Service Company shall be obligated to accept any new agreement if it substantially adds to its burdens and obligations hereunder.

c) Emergency Situations

Service Company shall not be held liable for damages to County and County hereby agrees not to hold Service Company liable for damages for failure to deliver service to the Property upon the occurrence of any of the following events provided that service is restored within 24 hours:

1. A lack of service due to loss of flow or process or distribution failure;
2. Equipment or material failure in the Central Sewage System or the System, including storage, pumping and piping provided the Service Company has utilized its best efforts to maintain the Central Sewage System in good operating condition; and
3. Force Majeure, unforeseeable failure or breakdown of pumping, transmission or other facilities, any and all governmental requirements, acts or action of any government, public or governmental authority, commission or board, agency, agent, official or officer, the enactment of any statute, ordinance, resolution, regulation, rule or ruling, order, decree or judgment, restraining order or injunction of any court, including, without limitation, Governmental Acts.

14. Successors and Assigns

This Agreement and the easements granted hereby, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15 Indemnification

- a) To the extent authorized by Section 768.28, FS, the County agrees to indemnify and hold harmless the Service Company for claims, demands,

causes of action, losses, damages, and liabilities that arise out of the negligent act(s) or omission(s) of any County officer, employee, contractors (including subcontractors employed by a County contractor) and agents, in connection with the use of the system, the operation of the system, or the occupancy of the Property.

b) The Service Company agrees to indemnify and hold harmless the County for claims, demands, causes of action, losses, damages and liabilities that arise out of the negligent act(s) or omission(s) of any Service Company officer, employee, contractors (including subcontractors employed by a Service Company contractor) and agents in connection with the maintenance, expansion and operation of the system, including those acts or omissions that result in environmental damage or pollution.

16. Notices

All notices, demands, requests or other communications by either party under this Agreement shall be in writing and sent by (a) first class U.S. certified or registered mail, return receipt requested, with postage prepaid, or (b) overnight delivery service or courier, or (c) telefacsimile or similar facsimile transmission with receipt confirmed as follows:

If to Service Company: KW Resort Utilities Corp.
6450 Junior College Road
Key West, Florida 33040
Fax (305)294-1212

With a copy to: W. Smith
11 E. Adams, Suite 1400
Chicago, Illinois 60603
Fax (312)939-7765

If to County: County Administrator
Public Service Building
5100 College Road
Key West, FL 33040

With a copy to: County Attorney
PO Box 1026
Key West, FL 33041

18. Tariff

This Agreement is subject to all of the terms and provision of the Tariff. In the event of any conflict between the Tariff and the terms of this Agreement, the Tariff shall govern and control.

19. Miscellaneous Provisions

a) This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by or on behalf of the party to be charged.

- b) All prior statements, understandings, representations and agreements between the parties, oral or written, are superseded by and merged in this Agreement, which alone fully and completely expresses the agreement between them in connection with this transaction and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement. This Agreement shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto, and without regard to or aid of canons requiring construction against Service Company or the party drafting this Agreement.
- c) No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.
- d) This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. It shall not be necessary for the same counterpart of this Agreement to be executed by all of the parties hereto.
- e) Each of the exhibits and schedules referred to herein and attached hereto is incorporated herein by this reference.
- f) The caption headings in this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be construed to modify, explain or alter any of the terms, covenants or conditions herein contained.
- g) This Agreement shall be interpreted and enforced in accordance with the laws of the state in which the Property is located without reference to principles of conflicts of laws. In the event that the Florida Public Service commission loses or relinquishes its authority to regulate Service Company, then all references to such regulatory authority will relate to the agency of government or political subdivision imposing said regulations. If no such regulation exists, then this Agreement shall be governed by applicable principles of law.
- h) Each of the parties to this Agreement agrees that at any time after the execution hereof, it will, on request of the other party, execute and deliver such other documents and further

assurances as may reasonably be required by such other party in order to carry out the intent of this Agreement.

- i) If any provision of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of this Agreement and to this end the provisions of this Agreement are intended to be and shall be severed. Notwithstanding the foregoing sentence, if (i) any provision of this Agreement is finally determined by a court of competent jurisdiction to be unenforceable or invalid in whole or in part, (ii) the opportunity for all appeals of such determination have expired, and (iii) such unenforceability or invalidity alters the substance of this Agreement (taken as a whole) so as to deny either party, in a material way, the realization of the intended benefit of its bargain, such party may terminate this Agreement within thirty (30) days after the final determination by notice to the other. If such party so elects to terminate this Agreement, then this Agreement shall be terminated and neither party shall have any further rights, obligations or liabilities hereunder, except for any rights, obligations or liabilities which by this specific terms of this Agreement survive the termination of this Agreement.
- j) The parties hereto do hereby knowingly, voluntarily, intentionally, unconditionally and irrevocably waive any right any party may have to a jury trial in every jurisdiction in any action, proceeding or counterclaim brought by either of the parties hereto against the other or their respective successors or assigns in respect of any matter arising out of or in connection with this agreement or any other document executed and delivered by either party in connection therewith (including, without limitation, any action to rescind or cancel this agreement, and any claim or defense asserting that this agreement was fraudulently induced or is otherwise void or voidable). This waiver is a material inducement for the parties hereto to enter into this agreement.
- k) In the event of any litigation arising out of or connected in any manner with this Agreement, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable counsel and paralegal fees incurred in connection therewith through and including all other legal expenses and the costs of any appeals and appellate costs relating thereto. Wherever in this Agreement it is stated that one party shall be responsible for the attorneys' fees and expenses of another party, the same shall automatically be deemed to include the fees and expenses in connection with all appeals and appellate proceedings relating or incidental thereto. This subsection (k) shall survive the termination of this Agreement.
- l) This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status.

IN WITNESS WHEREOF, Service Company and Developer have executed this Agreement as of the day and year first above written.

KW RESORT UTILITIES CORP.

By: William L. Smith Jr
Title: PRESIDENT

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

By: George P. Rapp
Mayor/Chairman



William L. Smith Jr
450 Jr College Rd
West, Fla 33040

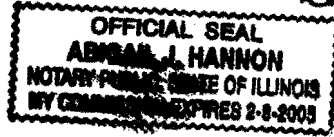
By: Fanny L. Kolhage
Deputy Clerk

STATE OF ILLINOIS)
COUNTY OF COOK) ss:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.
By: Robert N. Wolfe
DATE 8-28-01

The foregoing instrument was acknowledged before me this 23rd day of August, 2001, by William L. Smith Jr. as President of KW Resort Utilities Florida corporation, on behalf of said corporation. He/she is personally known to me or who has produced Driver's License as identification.

My Commission Expires:



Abigail J. Hannon

STATE OF FLORIDA)
COUNTY OF MONROE) ss:

The foregoing instrument was acknowledged before me this _____ day of July, 2001, by _____, as Mayor of Monroe County, a political subdivision of the State of Florida. He is personally known to me.

My Commission Expires:

JdconKWUtilities2

FOR RECORD
01 AUG 30 PM 4: 53
FANNY L. KOLHAGE
CLK. CIR. CT.
MONROE COUNTY, FLA.

B.E.P. Jr.
M.M.P.
[Signature]

Addendum A

A parcel of land, formerly submerged in the Bay of Florida, and being a part of Trustee of the Internal Improvement Trust Fund of the State of Florida (TIF) Deed Number 19725, and said parcel being in Section 27, Township 87 South, Range 25 East and in Monroe County, Florida; and said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the center line of the right of way of U. S. Highway No. 1, also known as the center line of the Florida East Coast Railroad; and the center line of the right of way of "Old Country Club Road" (OCCR), also known as Junior College Road (JCR) as these two center lines exist as of May 16, 1999, said intersection being known as Point #1 and having coordinates of N-86909.76' & E-251292.03' based on the Mercator Projection for the East Zone of Florida; and run thence N 20° 11' 57" W (all bearings in this legal description are also based on the said Mercator Projection) along the center line of the OCCR for a distance of 230.44 feet to Point #2 (N-87205.96' & E-251215.267'); thence N 52° 51' 57" W along the center line of the OCCR for a distance of 330.00 feet to Point #3 (N-87405.16' & E-250950.187'); thence N 39° 36' 57" W along the center line of the OCCR for a distance of 200.00 feet to Point #4 (N-87636.17' & E-250758.787'); thence N 30° 49' 57" W along the center line of the OCCR for a distance of 265.00 feet to Point #5 (N-87865.72' & E-250622.837'); thence N 03° 33' 57" W along the center line of the OCCR for a distance of 152.00 feet to Point #6 (N-88015.42' & E-250613.407'); thence N 19° 47' 03" E along the center line of the OCCR for a distance of 122.56 feet to Point #7 (N-88130.75' & E-250654.967'); thence N 60° 20' 57" W for a distance of 200.00 feet to Point #8 (N-88229.59' & E-250481.187') and the SE7/4 corner of the lands described in the said TIF Deed No. 19725; thence N 29° 39' 05" E along the SE7/4 boundary line of the lands described in the said TIF Deed No. 19725 for a distance of 962.72 feet to Point #9 (N-89066.35' & E-250967.427') and the POINT OF BEGINNING of the parcel of land being described herein said Point of Beginning being marked by an iron pipe; thence N 63° 32' 06" W for a distance of 206.48 feet to Point #10 (N-89159.37' & E-250772.577'); thence S 40° 23' 19.5" W for a distance of 100.00 feet to Point #11 (N-89076.04' & E-250702.547'); thence S 56° 13' 32" W for a distance of 241.24 feet to Point #12 (N-89941.93' & E-250502.017') and the Approximate Mean High Tide Line of Florida Bay (MHTL); thence S 27° 02' 03" W and along the said MHTL for a distance of 179.70 feet to Point #13 (N-89781.97' & E-250420.337'); thence S 31° 02' 03" W and along the said MHTL for a distance of 137.17 feet to Point #14 (N-89664.35' & E-250349.527'); thence S 41° 02' 02" W and along the said MHTL for a distance of 103.25 feet to Point #15 (N-89586.44' & E-250281.837'); thence S 51° 32' 03" W and along the said MHTL for a distance of 146.23 feet to Point #16 (N-89495.48' & E-250167.337'); thence N 52° 27' 57" W and along the said MHTL for a distance of 193.38 feet to Point #17 (N-89613.29' & E-250013.997'); thence N 30° 27' 57" W and along the said MHTL for a distance of 315.40 feet to Point #18 (N-89385.14' & E-249854.977'); thence N 20° 27' 57" W and along the said MHTL for a distance of 280.40 feet to Point #19 (N-89147.84' & E-249756.037'); thence N 01° 32' 03" E along the said MHTL for a distance of 155.00 feet to Point #20 (N-89312.78' & E-249760.457'); thence N 16° 27' 56" E and along the said MHTL for a distance of 77.52 feet to Point #21 (N-89387.22' & E-249782.457'); thence N 18° 46' 52" W and along the said MHTL for a distance of 57.66 feet to Point #22 (N-89441.81' & E-249763.917'); thence N 14° 57' 57.5" W and along the said MHTL for a distance of 128.46 feet to Point #23 (N-89366.90' & E-249730.787'); thence N 30° 26' 33" E and along the said MHTL for a distance of 165.00 feet to Point #24 (N-89495.14' & E-249835.327'); thence S 82° 04' 36" E for a distance of 195.00 feet to Point #25 (N-89575.29' & E-249987.147') and a concrete monument; thence S 13° 16' 39" W for a distance of 22.30 feet to Point #26 (N-89553.89' & E-249982.027') and a concrete monument; thence S 44° 52' 02" E for a distance of 269.00 feet to Point #27 (N-89362.88' & E-250171.867') and a concrete monument; thence N 74° 46' 08" E for a distance of 80.25 feet to Point #28 (N-89383.96' & E-250249.307') and a concrete monument; thence S 56° 50' 29" E for a distance of 483.59 feet to Point #29 (N-89119.46' & E-250654.147') and a concrete monument; thence N 40° 25' 19" E for a distance of 157.23 feet to Point #30 (N-89239.22' & E-250756.027') and a concrete monument; thence S 63° 32' 06" E for a distance of 315.58 feet to Point #31 (N-89090.13' & E-251039.427') to the Westerly and curved right of way line of the said Junior College Road and a concrete monument, said curve being concave to the Southeast and having a radius of 954.84 feet; thence SWly along the said curved right of way line for an arc distance of 66.04 feet to Point #32 (N-89045.11' & E-251000.807') and a concrete monument; thence N 63° 32' 06" W for a distance of 47.56 feet back to Point #9 and the POINT OF BEGINNING, said parcel containing 13.943 acres (607,263 square feet), more or less.

EXHIBIT A

Exhibit B

THIS INSTRUMENT PREPARED BY:

John R. Jenkins, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555

GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made this ____ day of _____, 200__, by _____ (AGrantor@), whose address is _____ to K. W. Resort Utilities Corp., (AGranatee@), whose address is 6450 Junior College Road, Key West, Florida 33040.

WITNESSETH, that Grantor, its successors and assigns, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, grants and conveys a utility easement, in perpetuity, over, in, through and under the property described in Exhibit AA@ attached hereto and made a part hereof (Property@). Notwithstanding the foregoing, in the event Grantee discontinues service for any event other than non-payment or default by Grantor then the easement granted shall lapse and expire.

1. Grantor permanently grants, sets over, conveys and delivers to Grantee, its successors and assigns, the nonexclusive right, privilege and easement to construct, reconstruct, lay and install, operate, maintain, relocate, repair, reconnect, replace, improve, remove and inspect sewer transmission and collection facilities, reuse transmission and distribution facilities and all appurtenances thereto, and all appurtenant equipment in, under, upon, over and across the Property with full right to ingress and egress through the Property for the accomplishment of the foregoing rights.

2. This Grant of Easement is a reservation and condition running with the Property and shall be binding upon the successor and assigns of Grantor, all purchasers of the Property and all those persons or entities acquiring right, title or interest in the Property by, through or under Grantor.

3. The Grantor warrants that it is lawfully seized in fee simple of the land upon which the above-described easement is situated, and that it has good and lawful authority to convey said land or any part thereof or interest therein, and said land is free from all encumbrances and that Grantor will warrant and defend the title thereto against the lawful claims of all persons whomsoever.

4. All easements and grants herein shall be utilized in accordance with established generally accepted practices of the water and sewer industry and all rules, regulations, ordinances, and laws established by governmental authorities having jurisdiction over such matters.

5. Grantor retains, reserves and shall continue to enjoy the use of the surface of the above described property for any and all purposes that do not interfere with Grantee's use of the subject easement, including the right to grant easements for other public utility purposes. Grantor, its successors or assigns, may change the grade above Grantee's installed facilities, or perform any construction on the surface of the above described property which is permitted hereunder; however, if the change in grade and/or construction requires the lowering relocation and/or protection of Grantee's installed facilities (such

protection to include but not limited to the construction of a vault to protect the pipes), such lowering, relocation and/or protection shall be performed at the sole cost and expense of Grantor, its successors or assigns.

6. If in the future any portion of any driveways, sodded areas, gardens or plantings shall be destroyed, removed, damaged or disturbed in any way by Grantee as a result of Grantee installing, excavating, repairing, maintaining, replacing, reconnecting or attaching any underground sewer mains, lines or related facilities within the foregoing described easement, Grantee's sole obligation to restore the surface of the easement area shall be limited to the replacement of sod and/or pavement, and Grantee shall have no obligation, nor be responsible or liable for any expense incurred in the replacement of gardens, plantings or trees or any boundary wall, building or structure located in the said easement area which may have been destroyed, removed, damaged or disturbed.

IN WITNESS WHEREOF, the undersigned has executed this instrument this ____ day of ___, 200__.

ed, and delivered in our presence.

S:

Print Name: _____
Print Name:

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____ who is personally know to me or who has produced _____ as identification.

My Commission Expires:
NOTARY PUBLIC

EXHIBIT B

CAPACITY RESERVATION AND INFRASTRUCTURE CONTRACT

KW Resort Utilities Corporation

THIS CONTRACT is entered into this 31st day of July, 2002, by and between Monroe County, a political subdivision of the State of Florida, whose address is Gato Building, 1100 Simonton Street, Key West, FL 33040 (County), and KW Resort Utilities Corp., a Florida corporation whose address is 6450 College Road, Key West, FL 33040 (Utility), for the purchase of wastewater treatment plant capacity reservation to serve South Stock Island and the installation and expansion for the wastewater collection treatment system on South Stock Island. Whereby the County agrees to provide initial funding for the installation and expansion of the Utility wastewater treatment system and the Utility agrees to provide wastewater treatment services to the residences and businesses of South Stock Island.

IN CONSIDERATION of the mutual promises and benefits set forth below, the parties agree as follows:

1. A. The County agrees to purchase from the Utility, and the Utility agrees to sell, capacity at its wastewater treatment plant sufficient to treat 1500 e.d.u.'s. The Utility agrees that the capacity purchased is to serve the South Stock Island area. As consideration for the purchase the County agrees to fund the Utility's construction of the wastewater collection system on South Stock Island, in an amount not to exceed \$4,606,000, pursuant to the plans dated May 30, 2002 from Weiler Engineering Corporation. The plans are attached to this contract as Exhibit A and made a part of it. The Utility's completion of the system must be done in 16 months from the commencement date of this contract unless delayed by acts of war, legal challenges, acts of God, or lack of funding from the government.

B. The Utility agrees that the County will make monthly partial payments of the construction costs of \$4,606,000 to the Utility in amounts equal to the percentage of South Stock Island Infrastructure work satisfactorily completed during the previous month. The parties agree that the construction costs of \$4,606,000 is allocated as follows:

i.	Collection system Infrastructure	\$3,500,000
ii.	Contingency amount	380,000
iii.	Engineering and engineering inspection	279,000
iv.	Construction administration and legal fees	347,000
v.	Testing	<u>100,000</u>
	Total	\$4,606,000

The Utility agrees that the maximum amount due it from the County under this contract is \$4,606,000. If the construction of the South Stock Island Infrastructure expansion described in paragraph one costs in excess of \$4,606,000, the excess costs are solely the responsibility of the Utility and do not operate in any way to relieve the Utility of its obligation to complete the Infrastructure so that it satisfactorily collects wastewater in South Stock Island and transports it to the Utility's plant for treatment. In order to insure that the collection Infrastructure is satisfactorily completed and that all contractors (in any tier) and materialmen are paid, the Utility agrees to purchase, or require its contractors to purchase, performance and payment bonds in a form and amount satisfactory to the County. No payment will be made by the County until the bonds are purchased. The Utility must also supply the County with the names of all contractors before payment can be made.

C. Payments to the Utility will be made as follows:

- i. On the first business day of each month the Utility shall submit to the County Engineer an invoice, in a form satisfactory to the County Clerk, for payment for the work completed, or materials delivered, during the prior month. The invoice must contain:
 - a) An engineer's certificate that the percentage of work requested for payment has been completed in a good workmanlike manner and the amount requested represents the percentage of work completed, or materials delivered to the Utility for incorporation into the work provided they are kept separate from other materials at the Utility's site(s) and are identifiable as materials for incorporation in the work authorized by this contract, together with any supporting documentation requested by the County Engineer.
 - b) Partial lien waivers for interim payments from the contractors, materialmen, and Utility. Final waivers are necessary for final payment. An engineer's certificate that the South Stock Island infrastructure expansion is functioning satisfactorily and in accordance with the design and performance criteria of Ex. A is also required for final payment.
- ii. The County Engineer must review the invoice and within 5 business days, inspect the work completed and materials delivered, and inform the Utility in writing of any error or omission in the invoice and what must be done to correct the deficiency. If the invoice is satisfactory he shall forward the invoice to the County Clerk for payment. The Clerk must then promptly review the invoice. If the Clerk determines there is an error or omission in the invoice, he must inform the Utility in writing. If the invoice is not returned to the Utility by the Engineer or Clerk for correction, the Clerk must make the payment to the Utility within 20 business days of the County Engineer's receipt of the invoice. A corrected invoice need only be returned to the officer who noted the deficiency, with a copy to the County Engineer and, if satisfactorily corrected, shall be paid by the Clerk within 20 days of the officer's receipt of a corrected invoice.
- iii. If there is a dispute between the Utility and one of its contractors which disrupts, delays or stops the work, the County reserves the right to withhold payment(s) until the dispute is resolved.

D. The Utility agrees to keep its financial records pertaining to this contract according to generally accepted accounting principles. The records must be kept three years after the date of the County Clerk's, or County's issuance of an audit for this contract.

The Utility must make its financial records pertaining to this contract available to an auditor employed by the County or Clerk during regular business hours (Monday-Friday, 9 AM - 5 PM, holidays excepted). If the auditor determines that money paid by the County to the Utility was not spent as authorized by this contract, or that the \$600 portion of the capacity reservation fees collected from property owners was not spent on AWT conversion and operating costs as required by this contract, or that capacity reservation fees collected from property owners were not remitted to the County as required by this contract, then the Utility must repay to the County the amounts not spent or remitted as required by this contract, together with interest calculated at the rate set forth in Sec. 55.03, Fla. Stat., from the date the auditor determines that the funds were improperly spent or withheld.

E. The parties agree that nothing in this contract may be construed to create privity, or any other contractual or legal relationship however described, between the County and

any contractors, subcontractors, design professionals and administrative personnel, and materialmen, of the Utility. Such persons may not seek payment from the County but only from the Utility or the Utility's sureties.

F. The South Stock Island wastewater collection infrastructure constructed pursuant to this contract is, and will remain, the sole property of the Utility. Nothing in this contract may be construed as creating any County obligation or liability to the Utility or any third parties to construct, maintain, repair or operate the infrastructure.

G. The payments due the Utility pursuant to this contract may be paid out of County non-ad valorem revenue sources only. The Utility agrees that it may not seek to compel the County to pay any amount out of ad valorem funds that may be due the Utility under this contract.

3. Utility agrees to reimburse County, to the extent of its collection of capacity reservation fees from all new customers connecting to the vacuum sewer system to be constructed pursuant to the plans of Ex. A. and funded by this contract. Utility shall account and pay to the County on a monthly basis all amounts due. The capacity reservation fee is \$2,700 per EDU (equivalent dwelling unit) as set forth in the Utility's tariff filed with the Public Service Commission, which fee shall remain at \$2,700 until January 1, 2007. Notwithstanding, the foregoing Utility shall not be required to repay the County the advanced funds unless there are monies generated by connections to the South Stock Island wastewater collection infrastructure project and only to the extent of collections from that project.

4. Utility agrees to repay the funds advanced by County for the construction of the South Stock Island wastewater collection infrastructure project. Utility's obligation of repayment is limited to the capacity reservation fees collected by the Utility from new customers connecting to the project. Utility shall account for the collection of new customer capacity reservation fees on a monthly basis. Utility shall pay to the County the total sum of the new customer capacity reservation fees collected during any month by the fifth business day of the succeeding month. Utility has neither the authority nor the obligation to enforce the mandate of the State of Florida or to require the owners of residences and businesses of South Stock Island to abandon their current wastewater treatment system and connect to the wastewater collection infrastructure project.

5. Utility further agrees to convert its wastewater treatment system to Advanced Waste Water Treatment (5-5-3-1), hereafter AWT, by January 1, 2007 provided that the County so requests and that Utility is allowed to recapture the costs of its conversion to AWT and increased operating costs by a resolution of the County Commission. Such resolution requesting that the Utility convert to AWT and that allows Utility to recapture the costs of its conversion to AWT and increased operating costs must be adopted before January 1, 2003. Any repayment of funding by the County to construct the project from the collection of new capacity reservation fees shall be proportionally discounted and reduced by the Utility's cost of conversion to AWT standards. Utility shall be allowed to retain a fixed fee of \$600 per capacity reservation fee (EDU) from the project to cover the incremental cost of conversion and initial AWT operation. The net amount due to the County from the collection of any new capacity reservation fees would be equal to \$2,100 (capacity reservation fee \$2,700 per EDU less discount for AWT conversion \$600). Any connection fees collected from users of the existing wastewater collection system who connected to that system prior to the effective date of this contract, and which fees were reserved for AWT, must be spent on AWT. The Utility agrees to complete the AWT upgrade at its own expense if the fees collected for the upgrade under this paragraph do not cover the total cost of the upgrade. The Utility agrees to use its best efforts to require the property owners of South Stock Island to connect to the new collection infrastructure. If the owner of a property required to connect to the new collection system refuses to do so, the Utility shall refer the refusal to the County which may use any available legal or equitable remedy to compel connection.

6. Utility agrees not to add the construction cost funded by the County to its cost basis utilized by the Public Service Commission to calculate a reasonable return on invested capital. Utility

further agrees not to use the advances in calculating any impact fees, connection charges or any like charges imposed on Utility's customers, i.e., that the advances will be applied as a credit against such fees otherwise charged.

7. The Utility agrees to indemnify and hold harmless the County, members of the County Commission, County officers and employees, and County contractors, from any acts or omission committed by the Utility's officers, employees, and contractors (of any tier) during the course of performing the work required by this contract. This paragraph will survive the completion of the work. The purchase of the insurance required by paragraph 8 does not vitiate this indemnification/hold harmless paragraph.

8. During the term of this contract the Utility must keep in full force and effect the insurance set forth in Exhibit B. Exhibit B is attached to this contract and made a part of it.

9. The Utility warrants that he/it has not employed, retained or otherwise had act on his/its behalf any former County officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision the County may, in its discretion, terminate this contract without liability and may also, in its discretion, deduct from the contract or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former County officer or employee.

10. This contract is governed by the laws of the State of Florida. Venue for any litigation arising under this contract must be in a court of competent jurisdiction in Monroe County, Florida. In the case of litigation, the prevailing party is entitled to costs plus a reasonable fair market value attorney's fees.

11. The parties agree that this written contract represents their final mutual understanding and replaces any prior communications or representations between the parties, whether written or oral. This contract may only be modified in a writing agreed to, and executed by, both parties.

12. County hereby agrees to grant perpetual R.O.W. easements to Utility for the wastewater collection infrastructure contemplated by Exhibit A, as long as such easements are used for wastewater collection infrastructure. The County agrees to provide the Utility access to existing County Stock Island rights-of-way necessary for construction. The County also agrees to and hereby does permit this project without any additional permitting requirements.

13. Because County will repave the following streets following project completion, after installation of the pipes and other subterranean infrastructure under the streets and R.O.W. County will only require that Utility or its contractors to backfill, compact and level street trenches for the following streets.

<u>STREET</u>	<u>FROM</u>	<u>TO</u>
Front	Utility	End
Cross Street	US 1	12 th Avenue
5 th Street	US 1	12 th Avenue
5 th Avenue	End (radio station)	4 th Avenue
4 th Avenue	5 th Avenue	Maloney Ave. (excluding Maloney intersection)
3 rd Avenue	End past Sunshine	4 th Avenue
Sunshine (B)	3 rd Avenue	2 nd Avenue
2 nd Avenue	Sunshine (B)	3 rd Street (excluding 3 rd St. Intersection)
2 nd Avenue	3 rd Street	Maloney Avenue
2 nd Terrace	3 rd Avenue	2 nd Avenue
2 nd Street	3 rd Avenue	1st Avenue
Peninsula Avenue	End Peninsula Marine	Maloney Ave. (excluding Maloney Intersection)
Peninsula Avenue	Maloney Avenue	End by Hickory House

14. This contract is binding on the heirs, successors, and assigns of the parties and shall bind such heirs, successors and assigns as if they were the original parties to this contract.

15. The Utility warrants and represents that:

A. its existing facilities, and facilities to be constructed, are, and will be, in compliance with all applicable environmental permits, laws, rules, and orders;

B. the contract is Utility's legal and binding obligation, enforceable against it in accordance with its terms;

C. Utility has taken all necessary corporate actions to approve, enter into, become bound by, and perform the Contract;

D. Utility holds all necessary permits, certificates, licenses, and authorizations from the PSC and any environmental regulatory agency with jurisdiction over the Utility and the new South Stock Island Infrastructure; and

E. Utility's current rates, including its capacity reservation fees, have been duly approved by the PSC.

16. The Utility shall be deemed in default under this Contract in the event that, and as soon as, any of the following occurs:

A. Utility fails to perform any obligation to the County under this Contract as and when due;

B. Utility fails to reimburse or pay to the County, as and when due, any amount to which the County is or becomes entitled under this Contract or otherwise;

C. Utility breaches any representation or warranty to the County in this Contract or in any related agreement or instrument;

D. Utility fails to obtain any license, permit certificate, or order that it needs to construct and operate, as planned, the expansion of its system contemplated by this Contract, or any such license, permit, certificate, or order is rescinded, revoked, suspended, or nullified, or is modified in a materially adverse respect;

E. The Florida PSC declines or refuses to approve any rate, rate plan, or rate change that Utility proposes, requests, or needs to construct and operate the Stock Island Infrastructure or to operate profitably;

F. Utility becomes insolvent, or ceases to pay its debts and obligations as and when due, or becomes the subject of a petition filed under the United States Bankruptcy Code; or

G. a receiver or similar custodian is appointed for Utility, its Stock Island facilities, or any substantial part of its business or properties.

17. In the event that Utility is in default under this Contract and fails to remove or cure such default within 30 business days after written notice thereof by the County, then the County may take any or all of the following actions, in any combination and order, all in the County's sole discretion and without limiting any other rights or remedies that the County may have under this Contract or applicable law in the circumstances:

A. terminate this Contract and the County's performance, duties, and obligations hereunder;

B. suspend or refuse to make any or all further payments to Utility that otherwise might or would be or become due or payable to Utility under this Contract;

C. exercise its rights under any performance, payment, or surety bond or similar agreement or policy that Utility or the County may have;

D. assume responsibility for and control over completion of construction of the Stock Island Infrastructure and facilities;

E. require Utility to furnish collateral satisfactory in form and amount to the County;

F. file a complaint or initiate a proceeding with the Florida PSC;

G. initiate a suit for any and all available monetary damages and injunctive and equitable relief and remedies in any court of competent jurisdiction; and

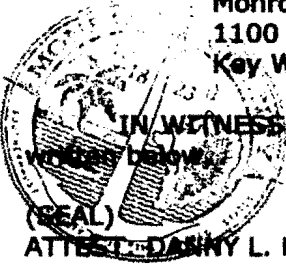
H. file a petition with any such court for appointment of a receiver for some or all of Utility's facilities and properties, and recommend a person or entity to serve in such capacity.

18. This contract commences on the signature date of the last party to sign it.

19. All communication of the parties required by this contract shall be in writing and addressed to:

Monroe County Administrator
1100 Simonton Street
Key West, FL 33040

KW Resort Utilities Corp.
6450 College Road
Key West, FL 33040



IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By *Isabel C. De Santis*
Deputy Clerk

By _____
Mayor Chairperson

(SEAL)
ATTEST:

KW RESORT UTILITIES CORP.

By *Adrie N. Guardo*
Title Assistant Secretary

By *[Signature]*
Title President

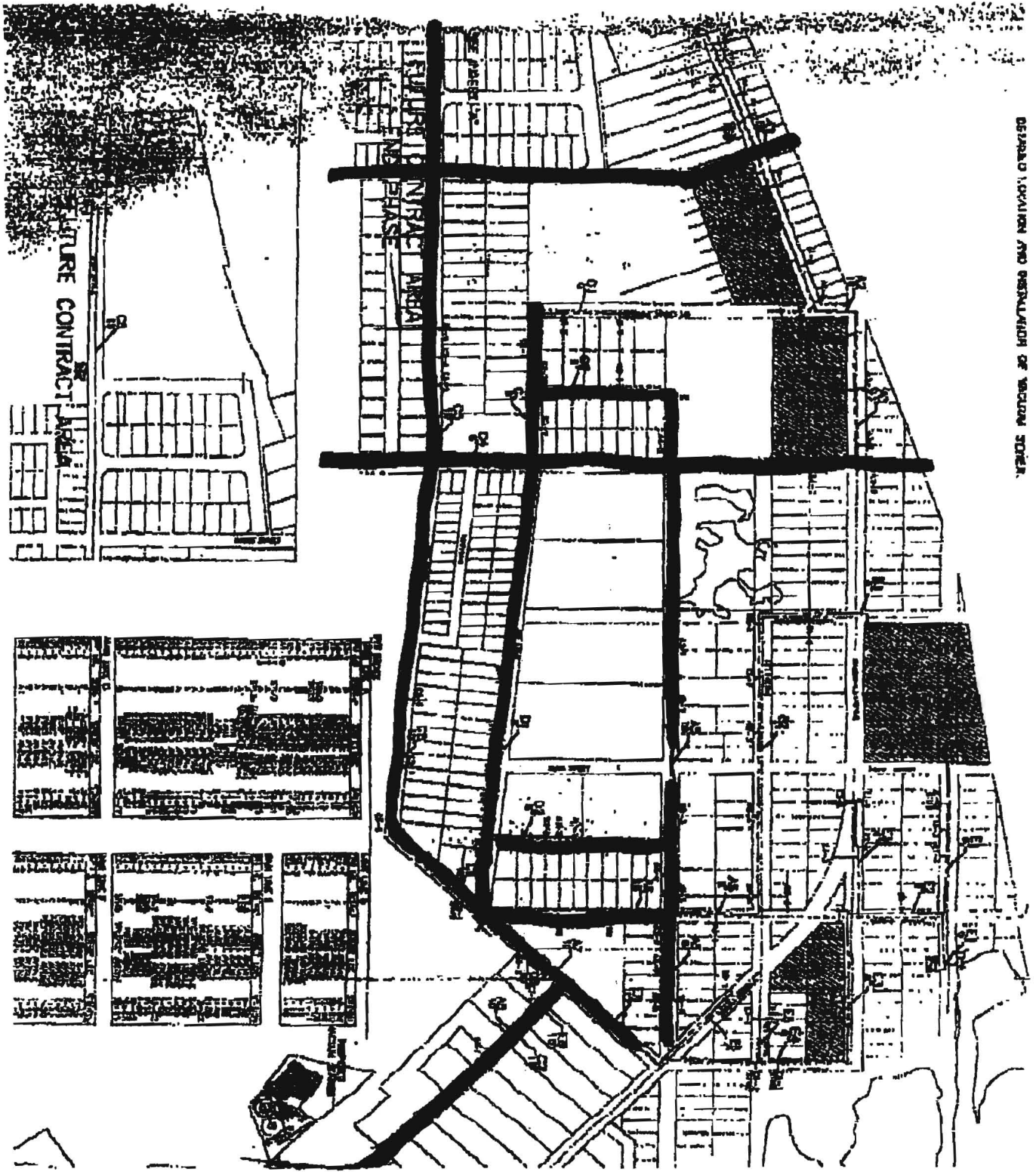
JdconKWRU702B

FILED FOR RECORD

2002 SEP 10 AM 10: 28

DANNY L. KOLHAGE
CLK. CIR. CT.
MONROE COUNTY, FLA.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.
BY *[Signature]*
ROBERT N. WELPE
DATE 7-30-02



19/07 2002 FRI 13:03 [TX/RX NO 6000] 003

COMPLETE SET OF EXHIBIT A PLANS ARE ON FILE IN THE CLERK'S OFFICE

1996 Edition

**VEHICLE LIABILITY
INSURANCE REQUIREMENTS
FOR
CONTRACT _____**

**BETWEEN
MONROE COUNTY, FLORIDA
AND
_____**

Recognizing that the work governed by this contract requires the use of vehicles, the Contractor, prior to the commencement of work, shall obtain Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum, liability coverage for:

- Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

- \$ 500,000 per Person
- \$1,000,000 per Occurrence
- \$ 100,000 Property Damage

The Monroe County Board of County Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.

VL3

Administration Instruction
84709.3

82

1996 Edition

**INSTALLATION FLOATER
INSURANCE REQUIREMENTS
FOR
CONTRACT _____**

**BETWEEN
MONROE COUNTY, FLORIDA
AND
_____**

The Contractor shall be required to purchase and maintain throughout the life of the contract, and until the project is accepted by the County, Installation Insurance providing coverage for machinery and equipment, governed by this contract, while being transported, installed and tested.

As a minimum, coverage shall include:

Fire
Explosion
Civil Commotion
Aircraft

Lightning
Collapse
Vandalism
Flood

Windstorm
Strikes
Malicious Mischief

Hail
Riots
Vehicles

The policy limits shall be no less than the amount of the machinery or equipment being installed.

The Monroe County Board of County Commissioners shall be named as Additional Insured and Loss Payee as their interest may appear.

IF

Administration Instruction
#4709.3

65

1996 Edition

**BUILDER'S RISK
INSURANCE REQUIREMENTS
FOR
CONTRACT _____**

**BETWEEN
MONROE COUNTY, FLORIDA
AND
_____**

The Contractor shall be required to purchase and maintain, throughout the life of the contract, and until the project is accepted by the County, Builder's Risk Insurance on an All Risk of Loss form. Coverage shall include:

- | | |
|-----------------|----------|
| Theft | Aircraft |
| Hail | Smoke |
| Explosion | Fire |
| Riot | Collapse |
| Civil Commotion | Flood |
| Vehicles | |

The policy limits shall be no less than the amount of the finished project and coverage shall be provided on a completed value basis.

Property located on the construction premises, which is intended to become a permanent part of the building, shall be included as property covered.

The policy shall be endorsed permitting the County to occupy the building prior to completion without effecting the coverage.

The Monroe County Board of County Commissioners shall be named as Additional Insured and Loss Payee.

BR2

Administration Instruction
#4709.3

43

1986 Edition

**WORKERS' COMPENSATION
INSURANCE REQUIREMENTS
FOR
CONTRACT _____

BETWEEN
MONROE COUNTY, FLORIDA
AND
_____**

Prior to the commencement of work governed by this contract, the Contractor shall obtain Workers' Compensation Insurance with limits sufficient to respond to the applicable state statutes.

In addition, the Contractor shall obtain Employers' Liability Insurance with limits of not less than:

- \$1,000,000 Bodily Injury by Accident
- \$1,000,000 Bodily Injury by Disease, policy limits
- \$1,000,000 Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of the contract.

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida.

If the Contractor has been approved by the Florida's Department of Labor, as an authorized self-insurer, the County shall recognize and honor the Contractor's status. The Contractor may be required to submit a Letter of Authorization issued by the Department of Labor and a Certificate of Insurance, providing details on the Contractor's Excess Insurance Program.

If the Contractor participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the Contractor may be required to submit updated financial statements from the fund upon request from the County.

WC3

Administration Instruction
#4709.3

89

1996 Edition

**GENERAL LIABILITY
INSURANCE REQUIREMENTS
FOR
CONTRACT _____**

**BETWEEN
MONROE COUNTY, FLORIDA
AND
_____**

Prior to the commencement of work governed by this contract, the Contractor shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum:

- Premises Operations
- Products and Completed Operations
- Blanket Contractual Liability
- Personal Injury Liability
- Expanded Definition of Property Damage

The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

- \$ 500,000 per Person
- \$ 1,000,000 per Occurrence
- \$ 100,000 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the County.

The Monroe County Board of County Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.

GL3

Administration Instruction
#4709.3

55

**MONROE COUNTY, FLORIDA
INSURANCE CHECKLIST
FOR
VENDORS SUBMITTING PROPOSALS
FOR WORK**

To assist in the development of your proposal, the insurance coverages marked with an "X" will be required in the event an award is made to your firm. Please review this form with your insurance agent and have him/her sign it in the place provided. It is also required that the bidder sign the form and submit it with each proposal.

**WORKERS' COMPENSATION
AND
EMPLOYERS' LIABILITY**

	<u> X </u>		
WC1	<u> </u>	Workers' Compensation	Statutory Limits
WC2	<u> </u>	Employers Liability	\$100,000/\$500,000/\$100,000
WC3	<u> X </u>	Employers Liability	\$500,000/\$500,000/\$500,000
WCUSLH	<u> </u>	Employers Liability	\$1,000,000/\$1,000,000/\$1,000,000
	<u> </u>	US Longshoremen &	Same as Employers'
	<u> </u>	Harbor Workers Act	Liability
WCJA	<u> </u>	Federal Jones Act	Same as Employers'
			Liability

INSCKLST

GENERAL LIABILITY

As a minimum, the required general liability coverages will include:

- Premises Operations
- Blanket Contractual
- Expanded Definition of Property Damage
- Products and Completed Operations
- Personal Injury

Required Limits:

GL1	_____	\$100,000 per Person; \$300,000 per Occurrence \$50,000 Property Damage or \$300,000 Combined Single Limit
GL2	_____	\$250,000 per Person; \$500,000 per Occurrence \$50,000 Property Damage or \$500,000 Combined Single Limit
GL3	<u> X </u>	\$500,000 per Person; \$1,000,000 per Occurrence \$100,000 Property Damage or \$1,000,000 Combined Single Limit
GL4	_____	\$5,000,000 Combined Single Limit

Required Endorsement:

GLXCU	_____	Underground, Explosion and Collapse (XCU)
GLLIQ	_____	Liquor Liability
GLS	_____	Security Services

All endorsements are required to have the same limits as the basic policy.

INSCKLST

VEHICLE LIABILITY

As a minimum, coverage should extend to liability for:

- Owned; Non-owned; and Hired Vehicles

Required Limits:

VL1	_____	\$50,000 per Person; \$100,000 per Occurrence \$25,000 Property Damage or \$100,000 Combined Single Limit
VL2	_____	\$100,000 per Person; \$300,000 per Occurrence \$50,000 Property Damage or \$300,000 Combined Single Limit
VL3	<u> X </u>	\$500,000 per Person; \$1,000,000 per Occurrence \$100,000 Property Damage or \$1,000,000 Combined Single Limit
VL4	_____	\$5,000,000 Combined Single Limit

MISCELLANEOUS COVERAGES

BR1	<u> X </u>	Builders' Risk	Limits equal to the completed project.
MVC	_____	Motor Truck Cargo	Limits equal to the maximum value of any one shipment.
PRO1	_____	Professional Liability	\$ 250,000 per Occurrence/\$ 500,000 Agg.
PRO2	_____		\$ 500,000 per Occurrence/\$1,000,000 Agg.
PRO3	_____		\$1,000,000 per Occurrence/\$2,000,000 Agg.
POL1	_____	Pollution Liability	\$ 500,000 per Occurrence/\$1,000,000 Agg.
POL2	_____		\$1,000,000 per Occurrence/\$2,000,000 Agg.
POL3	_____		\$5,000,000 per Occurrence/\$10,000,000 Agg.
ED1	_____	Employee Dishonesty	\$ 10,000
ED2	_____		\$100,000
GK1	_____	Garage Keepers	\$ 300,000 (\$ 25,000 per Veh)
GK2	_____		\$ 500,000 (\$100,000 per Veh)
GK3	_____		\$1,000,000 (\$250,000 per Veh)

INSCKLST

MED1	_____	Medical	\$ 250,000/\$ 750,000 Agg.
MED2	_____	Professional	\$ 500,000/\$ 1,000,000 Agg.
MED3	_____		\$1,000,000/\$ 3,000,000 Agg.
MED4	_____		\$5,000,000/\$10,000,000 Agg.
IF	<u> X </u>	Installation Floater	Maximum value of Equipment Installed
VLP1	_____	Hazardous	\$ 300,000 (Requires MCS-90)
VLP2	_____	Cargo	\$ 500,000 (Requires MCS-90)
VLP3	_____	Transporter	\$1,000,000 (Requires MCS-90)
BLL	_____	Bailee Liab.	Maximum Value of Property
HKL1	_____	Hangarkeepers	\$ 300,000
HKL2	_____	Liability	\$ 500,000
HKL3	_____		\$ 1,000,000
AIR1	_____	Aircraft	\$ 1,000,000
AIR2	_____	Liability	\$ 5,000,000
AIR3	_____		\$50,000,000
AEO1	_____	Architects Errors & Omissions	\$ 250,000 per Occurrence/\$ 500,000 Agg.
AEO2	_____		\$ 500,000 per Occurrence/\$1,000,000 Agg.
AEO3	_____		\$ 1,000,000 per Occurrence/\$3,000,000 Agg.
EO1	_____	Engineers Errors & Omissions	\$ 250,000 per Occurrence/\$ 500,000 Agg.
EO2	_____		\$ 500,000 per Occurrence/\$1,000,000 Agg.
EO3	_____		\$ 1,000,000 per Occurrence/\$3,000,000 Agg.

INSCKLST

INSURANCE AGENT'S STATEMENT

I have reviewed the above requirements with the bidder named below. The following deductibles apply to the corresponding policy.

POLICY	DEDUCTIBLES
_____	_____
_____	_____
_____	_____

Liability policies are ___ Occurrence ___ Claims Made

_____	_____
Insurance Agency	Signature

BIDDERS STATEMENT

I understand the insurance that will be mandatory if awarded the contract and will comply in full with all the requirements.

_____	_____
Bidder	Signature

INSCKLST

1 **AMENDMENT NUMBER ONE TO THE KW RESORT UTILITIES CORPORATION**
2 **CAPACITY RESERVATION AND INFRASTRUCTURE CONTRACT**
3
4

5 This is an amendment to the Capacity Reservation and Infrastructure Contract
6 between Monroe County, a political subdivision of the State of Florida, hereafter
7 County, and KW Resort Utilities Corporation, a Florida corporation, hereafter Utility.

8 **RECITATIONS**

9 A. On July 31, 2002, the parties entered a contract whereby the County
10 purchased a reservation of wastewater treatment capacity from the Utility in an
11 amount deemed sufficient to treat ^{1500 e.d.u.s} ~~the wastewater~~ generated on south Stock Island. *LSJ*

12 B In consideration for the County's purchase of the reserved wastewater
13 treatment capacity the Utility agreed to extend its collection system through out
14 south Stock Island and to collect \$2700 per EDU (equivalent dwelling unit) from
15 each property owner required by County ordinance to connect to south Stock Island
16 wastewater collection system when the system is complete.

17 C. As provided for in the parties' July 31, 2002 contract, the \$2700 is
18 intended to repay the County for the County's purchase of the wastewater
19 treatment capacity reservation and to pay for the upgrade of the Utility's Stock
20 Island wastewater treatment plant to AWT.

21 D. Pursuant to the parties' July 31, 2002 contract and the current
22 provision of the Monroe County Code, the \$2700 is due in full from each property
23 owner upon notification of availability for connection of the south Stock Island
24 wastewater collection system.

25 E. In recognition of the financial hardship to some property owners that
26 payment of the \$2700 in full might cause the Board of County Commissioners has

1 adopted an ordinance (Ordinance No. 027-2003) that would allow a property
2 owner to elect to pay the \$2700 per EDU (plus) over a period of up to 20 years
3 with annual payments collected as non-ad valorem assessments under Sec.
4 197.3632, FS.

5 F. As a result of Ordinance No. 027-2003, an amendment to the Capacity
6 Reservation and Infrastructure Contract is necessary.

7 In consideration of the mutual promises and consideration set forth below,
8 the parties agree as follows:

9 1. The parties' July 31, 2002 contract (the original contract) is attached
10 to this contract amendment as Exhibit A and made a part of this amendment. The
11 parties acknowledge that the County in Resolution No. 595-2002 directed that the
12 Utility upgrade its Stock Island wastewater treatment plant to AWT by January 1,
13 2007 pursuant to paragraph 5 of the original contract. A copy of Resolution No.
14 595-2002 is attached to this contract amendment as Exhibit B and made a part of
15 this amendment.

16 2. Subparagraph 4A is hereby added to the original contract to read as
17 follows:

18 "A. Notwithstanding paragraphs 3 and 4, as a result of the adoption
19 of Ordinance No. 017-2003, the Utility shall:

20 (1) collect from a property owner so electing 5% of the total
21 capacity reservation that would otherwise be due and remit the 5% collected
22 to the County by the 10th day of the month following the month of collection;
23 and

1 (2) obtain a written consent to payment of the capacity reservation fee
2 through the non-ad valorem collection method (on the form furnished by the
3 County) and deliver the written consent to the County.

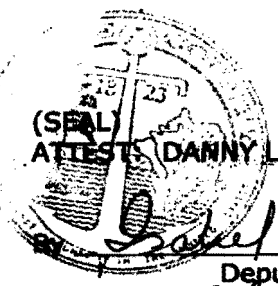
4 The County must by June 1, 2005, determine whether the south Stock
5 Island capacity reservation fee revenue collected through the non-ad valorem
6 assessment method can legally be pledged for the repayment of bonds. If
7 the revenue is pledged, then the \$600 per EDU for AWT must be paid to the
8 Utility out of the bond proceeds within 30 days of the County's receipt of
9 such proceeds (except for the \$600 per EDU collected from property owners
10 who paid the \$2700 in full). If the County chooses not to pledge the capacity
11 reservation fee revenue for the repayment of bonds, then the County agrees
12 in fiscal year 2005-2006 to levy a non-ad valorem assessment on property
13 owners electing the non-ad valorem assessment option that is sufficient to
14 generate \$600 per EDU in revenue. That \$600 per EDU will then be paid to
15 the Utility for the AWT upgrade. Alternatively, the County may pay the
16 Utility in fiscal year 2005-2006 the \$600 per EDU (except for property
17 owners who paid their capacity reservation fees in full), out of any lawfully
18 available revenue source."

19 3. Except as provided in this amendment, in all other respects the
20 parties' original contract remains in full force and effect.

21 4. This contract amendment will take effect on the signature date of the
22 last party to execute this amendment.

23 IN WITNESS WHEREOF, the parties hereto have set their hands and seals as
24 indicated below.

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(SEAL)
ATTESTS DANNY L. KOLHAGE, CLERK

By Robert C. DeSantis
Deputy Clerk
Date 9/10/03

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By Dejane M. Spiker
Mayor/Chairman

(SEAL)
Attest:

By Wm Smith
Secretary
Date 11-14-03

KW RESORT UTILITIES CORPORATION

By Wm Smith
President

jconKWRUA

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
WITH CHANGE ON PAGE ONE.
John R. Collins
JOHN R. COLLINS
COUNTY ATTORNEY
Date 12/09/03

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
John R. Collins
JOHN R. COLLINS
COUNTY ATTORNEY
Date 09/10/03

REVIEWED			
JRC	<u>09/10/03</u>	JEH	<u>1/1</u>
RNW	<u>1/1</u>	SNS	<u>1/1</u>
SAH	<u>1/1</u>	DCT	<u>1/1</u>
RBS	<u>1/1</u>		<u>1/1</u>

FILED FOR RECORD
2003 DEC 16 AM 11:14
DANNY L. KOLHAGE
CLK, CIR. CT.
MONROE COUNTY, FLA.

EXHIBIT C

HOMELESS SAFE ZONE
INTERLOCAL AGREEMENT

This Agreement is made and entered into by MONROE COUNTY, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL, 33040, ("COUNTY"), and the City of Key West, a municipal corporation of the State of Florida, whose address is 525 Angela Street, Key West, Florida 33040 (the "CITY").

WHEREAS, the COUNTY, in general, and the CITY of Key West, in particular, have a significant population of homeless people; and

WHEREAS, CITY and COUNTY have determined that this agreement is in the best interests of the public; and

WHEREAS, the COUNTY owns a parcel of land situated on Norman Key that includes the Premises used hereunder and more particularly described in Exhibit "A"; and

WHEREAS, the parties desire to enter into an interlocal agreement for the CITY's use of the COUNTY's Premises as a homeless persons safe zone.

1. **PROPERTY.** The COUNTY agrees to let City have the exclusive use of that portion of the land designated "Homeless Safe Zone" as shown on Exhibit A, hereafter "the Premises". Exhibit A is attached and made a part of this Agreement.

2. **TERM.**

- A. Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force for a term of five years commencing as of the 22nd day of March, 2009 and ending on the 21st day of March, 2014.
- B. There shall be no option to renew this agreement after the expiration of the term described herein.

3. **USE AND CONDITIONS.**

- A. The Premises shall be used solely for the purposes of providing a homeless safe zone. No signs of any kind shall be permitted except within the footprint of the Premises. If the Premises are used for any other purpose, the COUNTY shall have the option of immediately terminating this Agreement. The CITY shall not permit any use of the Premises in any manner that would obstruct or interfere with any COUNTY functions and duties, or would, in any way, devalue, destroy or otherwise injure the COUNTY property.
- B. The CITY will further use and occupy the Premises in a careful and proper manner, and not commit any waste thereon. The CITY shall not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the

Premises. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any State or Federal laws or regulations or as those terms are understood in common usage, are specifically prohibited. The CITY shall not use or occupy the Premises for any unlawful purpose and will, at the CITY's sole cost and expense, conform to and obey any present or future ordinance and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of the Premises.

- C. The CITY shall establish a "No Smoking" zone for that portion of the Premises which is adjacent to the Sheriff's Office propane tanks, according to the requirements of the Fire Marshals of the COUNTY and the CITY. This "No Smoking" zone shall be strictly enforced by the CITY. Any violations shall be cause for immediate termination of the Agreement by the COUNTY.
- D. The CITY shall, through its agents and employees, prevent the unauthorized use of the Premises or the common areas, or any use thereof not in conformance with this Agreement. The CITY shall not permit the Premises to be used or occupied in any manner that will violate any laws or regulations of any applicable governmental authority or entity.
- E. The CITY, its officers, employees, agents, contractors, volunteers, and invitees shall have the same rights of ingress and egress along the right-of-way routes to the Premises as do other members of the general public. The CITY shall be responsible for ensuring that these common ways of ingress and egress are used by their officers, employees, agents, contractors, volunteers, and invitees in a reasonable, orderly, and sanitary manner in cooperation with all other occupants and their officers, employees, agents and invitees. The CITY shall conduct itself and will cause its officers, employees, agents, and invitees to conduct themselves with full regard for the rights, convenience, and welfare of all other users of the public property of which the Premises is a sub-part.
- F. The CITY shall be solely responsible for operating the homeless safe zone, including all maintenance, security, enforcement of rules and regulations, programs, transportation and any and all other aspects of operations.

4. **RENT.** For the use of the Premises, the CITY must pay the COUNTY the sum of ten dollars (\$10.00) per year, due on the first day of the contract year, payable in advance and remitted to the Monroe County Clerk's Office, 500 Whitehead Street, Key West, FL 33040.

5. **UTILITIES.** The CITY shall be provided monthly water, electrical and sewerage utilities at the Premises at no cost to the CITY, the water and electrical utility costs to be borne by the Sheriff of Monroe County and the sewerage cost to be borne by the COUNTY. Any other utilities, such as telephone or cable television, shall be provided, if at all, at the expense of the CITY. CITY shall be responsible for paying any and all costs of

utility connection fees, impact fees, effluent discharge units, or any other costs associated with the placement of utility infrastructure to provide utility services to the Premises.

6. **ALTERATIONS AND IMPROVEMENTS.**

- A. No structure or improvements of any kind, whether temporary or permanent, shall be placed upon the land without prior approval in writing by the COUNTY's Administrator, a building permit issued by CITY and any permits required by law by any other agency, federal or state. Any such structure or improvements shall be constructed in a good and workmanlike manner at the CITY's sole cost and expense, except as otherwise agreed herein. Subject to any landlord's lien, any structures or improvements constructed by the CITY shall be removed by the CITY at its sole cost and expense, by midnight on the day of termination of this Agreement or extension hereof, and the land restored as nearly as practical to its condition at the time this agreement is executed, unless the Board of County Commissioners accepts, at the time delivery is tendered in writing delivery of the Premises together with any structures or improvements constructed by the CITY. The CITY shall be solely responsible for obtaining all necessary permits and paying impact fees required by any agency and any connection fees required by any utility.
- B. COUNTY reserves the right to inspect the area and to require whatever adjustment to structures or improvements as COUNTY, in its sole discretion, deems necessary. Any adjustments shall be done at the CITY's sole cost and expense. Any building permits sought by the CITY shall be subject to permit fees, unless waived.
- C. Portable or temporary advertising signs are prohibited.

7. **MECHANIC'S LIENS.** The CITY shall not permit any mechanic's lien or liens to be placed on the Premises or on improvements on it. If a mechanic's lien is filed, it shall be the sole responsibility of the CITY or its officer, employee, agent, contractor or other representative causing the lien to be filed to discharge the lien and to hold harmless and defend the Department of Juvenile Justice, Monroe County Sheriff's Office, and Monroe County against enforcement of such lien. Pursuant to Section 713.01, Florida Statutes, the liens authorized in Chapter 713, Florida Statutes, do not apply to the COUNTY.

8. **RECORDS – ACCESS AND AUDITS.** The CITY shall maintain adequate and complete records for a period of four years after termination of this Agreement. The COUNTY, its officers, employees, agents and contractors shall have access to the CITY's books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the COUNTY shall occur at any reasonable time.

9. **RELATIONSHIP OF PARTIES.** The CITY is, and shall be an independent contractor and not an agent or servant of the COUNTY. The CITY shall exercise control, direction, and supervision over the means and manner that its personnel, contractors and volunteers perform the work for which purpose this Agreement is entered. The CITY shall have no authority whatsoever to act on behalf and/or as agent for the COUNTY in any promise, agreement or representation other than specifically provided for in this Agreement. The COUNTY shall at no time be legally responsible for any negligence on the part of the CITY, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

10. **TAXES.** The CITY must pay all taxes and assessments, if any, including any sales or use tax, levied by any government agency with respect to the CITY's operations on the Premises.

11. **INSURANCE.** The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, arising out of the activities governed by this agreement.

To the extent allowed by law, each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

The CITY agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this lease are canceled, terminated or reduced in coverage, then the LESSEE must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the COUNTY whenever acquired or amended.

12. **CONDITION OF PREMISES.** The CITY must keep the Premises in good order and condition. The CITY must promptly repair damage to the Premises. At the end of the term of this Agreement, the CITY must surrender the Premises to the COUNTY in the same good order and condition as the Premises were on the commencement of the term of this agreement, normal wear and tear excepted. The CITY is solely responsible for any improvements to land and appurtenances placed on the Premises. The CITY shall not commit waste on the Premises, nor maintain or permit a nuisance on the Premises. After termination or expiration of this Agreement, the CITY shall pay the COUNTY the cost of any repairs and clean-up necessary to restore the Premises to its condition at the commencement of this Agreement.

13. **HOLD HARMLESS.** To the extent allowed by law, the CITY is liable for and must fully defend, release, discharge, indemnify and hold harmless the COUNTY, the members of the County Commission, COUNTY officers and employees, and the Sheriff's Office, its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type – including investigation and witness costs and expenses and attorney's fees and costs – that arise out of or are attributable to the CITY's operations on the Premises except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the negligence of the COUNTY. The CITY's purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph. The CITY does not waive any of its sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

14. **NON-DISCRIMINATION.** The CITY for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Premises or in the contracting for improvements to the Premises.

15. **TERMINATION.** The COUNTY may treat the CITY in default and terminate this Agreement immediately, without prior notice, upon failure of the CITY to comply with any provision related to compliance with all laws, rules and regulations. This Agreement may be terminated by COUNTY due to breaches of other provisions of this Agreement if, after written notice of the breach is delivered to the CITY, the CITY does not cure the breach within 7 days following delivery of notice of breach. The COUNTY may terminate this Agreement upon giving sixty (60) days prior written notice to the CITY. Any waiver of any breach of covenants herein contained shall not be deemed to be a continuing waiver and shall not operate to bar either party from declaring a forfeiture for any succeeding breach either of the same conditions or covenants or otherwise.

16. **CESSATION OF HOMELESS SAFE ZONE OPERATIONS.** Upon the natural expiration or early termination of this agreement, the operation of a homeless safe zone shall immediately be ceased and all improvements, equipment, and other personalty of the CITY, its officers, employees, contractors, agents, volunteers and invitees shall immediately be removed from the Premises. Any damage to the Premises which has occurred due to the use contemplated under this Agreement shall be immediately repaired and the Premises restored to its original condition. Should the CITY determine to cease operation of the homeless safe zone prior to the natural termination of this agreement, the CITY shall give COUNTY prior written notice of such intended cessation sixty (60) days before the effective date of the cessation of operation. The purpose of this Agreement is to provide the LESSEE with a solution to its homeless situation and the COUNTY shall not operate a homeless safe zone at this site upon the expiration or termination of this lease.

17. **ASSIGNMENT.** The CITY may not assign this Agreement or assign or subcontract any of its obligations under this Agreement without the approval of the COUNTY's Board of County Commissioners. All the obligations of this Agreement will

extend to and bind the legal representatives, successors and assigns of the CITY and the COUNTY.

18. **SUBORDINATION.** This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, and the COUNTY, whether in effect on commencement of this Agreement or adopted after that date.

19. **INCONSISTENCY.** If any item, condition or obligation of this Agreement is in conflict with other items in this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limit the County's responsibility and liability.

20. **GOVERNING LAWS/VENUE.** This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

21. **ETHICS CLAUSE.** The CITY warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the COUNTY may, in its discretion, terminate this Agreement without liability and may also, in its discretion, deduct from the Agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift or consideration paid to the former County officer or employee.

22. **CONSTRUCTION.** This Agreement has been carefully reviewed by the CITY and the COUNTY. Therefore, this Agreement is not to be construed against any party of the basis of authorship.

23. **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:
County Administrator
1100 Simonton Street
Key West, FL 33040

CITY:
City Manager
525 Angela Street
Key West, FL 33040

24. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

25. **EFFECTIVE DATE.** This Agreement will take effect on March 22, 2009.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representatives.

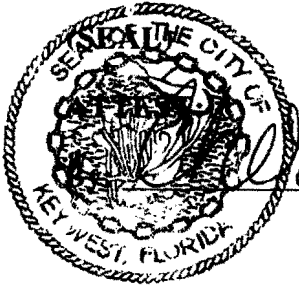
(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

By: Gamely Hancock D.C.
Clerk

By: George R. Neugebaur
Mayor/Chairman

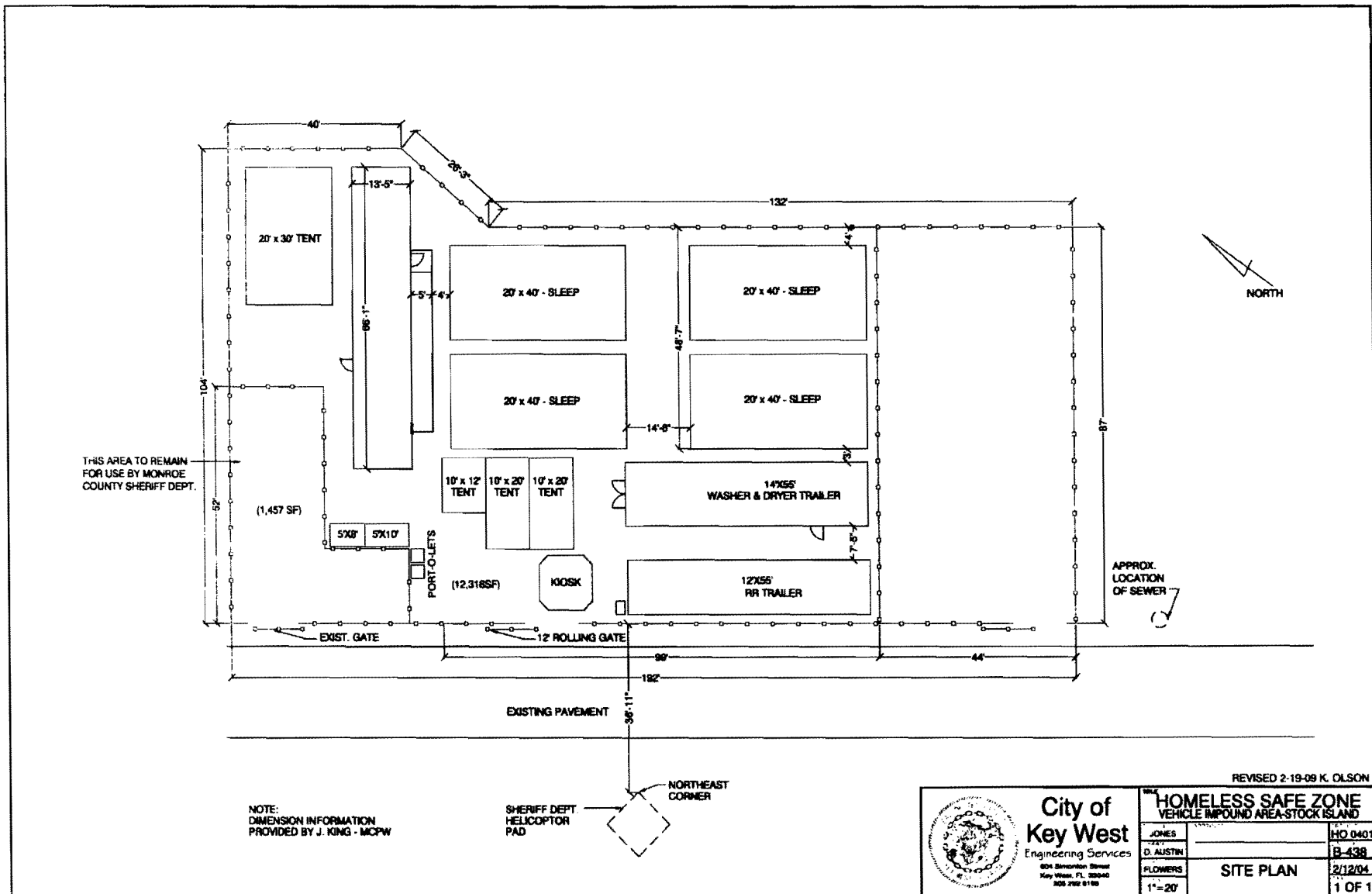


Ray Smith
Clerk

CITY OF KEY WEST
By: [Signature]
Mayor

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
[Signature]
PEDRO J. MERCADO
ASSISTANT COUNTY ATTORNEY
Date 3/12/09

FILED FOR RECORD
2009 MAR 19 AM 11:54
DANNY L. KOLHAGE
CLERK CIR. CT.
MONROE COUNTY, FL



THIS AREA TO REMAIN FOR USE BY MONROE COUNTY SHERIFF DEPT.

NOTE: DIMENSION INFORMATION PROVIDED BY J. KING - MCPW

SHERIFF DEPT HELICOPTOR PAD

City of Key West
Engineering Services
604 S. Harrison Street
Key West, FL 33040
305.262.8188

REVISED 2-19-09 K. OLSON		
HOMELESS SAFE ZONE VEHICLE IMPOUND AREA-STOCK ISLAND		
JONES		HO 0401
D. AUSTIN		B-438
FLOWERS	SITE PLAN	2/12/04
1"=20'		1 OF 1

EXHIBIT D

INTERIM HOMELESS SAFE ZONE
INTERLOCAL AGREEMENT

This Agreement is made and entered into by MONROE COUNTY, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL 33040, ("COUNTY"), and the City of Key West, a municipal corporation of the State of Florida, whose address is 525 Angela Street, Key West, Florida 33040 (the "CITY").

WHEREAS, the COUNTY, in general, and the CITY of Key West, in particular, have a significant population of homeless people; and

WHEREAS, CITY and COUNTY have determined that this agreement is in the best interests of the public; and

WHEREAS, the COUNTY owns a parcel of land situated on Norman Key that includes the premises used hereunder and more particularly described in Exhibit "A;" and

WHEREAS, the parties desire to enter into an interlocal agreement for the CITY's use of the COUNTY's premises as an interim homeless persons safe zone.

1. **PROPERTY.** The COUNTY agrees to let City have the exclusive use of that portion of the land designated "Homeless Safe Zone" as shown on Exhibit A, hereafter "the Premises." Exhibit A is attached and made a part of this Agreement.

2. **TERM.**

A. Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force for a term of five years commencing as of the 22nd day of MARCH, 2004 and ending on the 21st day of MARCH, 2009.

B. There shall be no option to renew this agreement after the expiration of the term described herein.

3. **USE AND CONDITIONS.**

A. The Premises shall be used solely for the purposes of providing a homeless safe zone. No signs of any kind shall be permitted except within the footprint of the Premises. If the Premises are used for any other purpose, the COUNTY shall have the option of immediately terminating this Agreement. The CITY shall not permit any use of the Premises in any manner that would obstruct or interfere with any COUNTY functions and duties, or would, in any way, devalue, destroy or otherwise injure the COUNTY property.

B. The CITY will further use and occupy the Premises in a careful and proper manner, and not commit any waste thereon. The CITY shall not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the Premises. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations or as those terms are

Homeless Safe Zone

understood in common usage, are specifically prohibited. The CITY shall not use or occupy the Premises for any unlawful purpose and will, at the CITY's sole cost and expense, conform to and obey any present or future ordinance and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of the Premises.

- C. The CITY shall establish a "No Smoking" zone for that portion of the Premises which is adjacent to the Sheriff's Office propane tanks, according to the requirements of the Fire Marshals of the COUNTY and the CITY. This "No Smoking" zone shall be strictly enforced by the CITY. Any violations shall be cause for immediate termination of the Agreement by the COUNTY.
- D. The CITY shall, through its agents and employees, prevent the unauthorized use of the Premises or the common areas, or any use thereof not in conformance with this Agreement. The CITY shall not permit the Premises to be used or occupied in any manner that will violate any laws or regulations of any applicable governmental authority or entity.
- E. The CITY, its officers, employees, agents, contractors, volunteers, and invitees shall have the same rights of ingress and egress along the right-of-way routes to the Premises as do other members of the general public. The CITY shall be responsible for ensuring that these common ways of ingress and egress are used by their officers, employees, agents, contractors, volunteers, and invitees in a reasonable, orderly, and sanitary manner in cooperation with all other occupants and their officers, employees, agents and invitees. The CITY shall conduct itself and will cause its officers, employees, agents, and invitees to conduct themselves with full regard for the rights, convenience, and welfare of all other users of the public property of which the Premises is a sub-part.
- F. The CITY shall be solely responsible for operating the homeless safe zone, including all maintenance, security, enforcement of rules and regulations, programs, transportation and any and all other aspects of operations.

4. **RENT.** For the use of the Premises, the CITY must pay the COUNTY the sum of ten dollars (\$10.00) per year, due on the first day of the contract year, payable in advance and remitted to Monroe County Clerk's Office, 500 Whitehead Street, Key West, FL 33040.

5. **UTILITIES.** The CITY shall be provided monthly water, electrical and sewerage utilities at the Premises at no cost to the CITY, the water and electrical utility costs to be borne by the Sheriff of Monroe County and the sewerage cost to be borne by the COUNTY. Any other utilities, such as telephone or cable television, shall be provided, if at all, at the expense of the CITY. CITY shall be responsible for paying any and all costs of utility connection fees, impact fees, effluent discharge units, or any other costs associated with the placement of utility infrastructure to provide utility services to the premises.

6. ALTERATIONS and IMPROVEMENTS.

- A. No structure or improvements of any kind, whether temporary or permanent, shall be placed upon the land without prior approval in writing by the COUNTY's Administrator, a building permit issued by CITY and any permits required by law by any other agency, federal or state. Any such structure or improvements shall be constructed in a good and workmanlike manner at the CITY's sole cost and expense, except as otherwise agreed herein. Subject to any landlord's lien, any structures or Improvements constructed by the CITY shall be removed by the CITY at its sole cost and expense, by midnight on the day of termination of this Agreement or extension hereof, and the land restored as nearly as practical to its condition at the time this agreement is executed, unless the Board of County Commissioners accepts, at the time delivery is tendered, in writing delivery of the Premises together with any structures or improvements constructed by the CITY. The CITY shall be solely responsible for obtaining all necessary permits and paying impact fees required by any agency and any connection fees required by any utility.
- B. The CITY shall perform, at its sole expense, all work required in the preparation of the property or Premises hereby used for occupancy by the CITY except as otherwise provided in this agreement.
- C. COUNTY reserves the right to inspect the area and to require whatever adjustment to structures or improvements as COUNTY, in its sole discretion, deems necessary. Any adjustments shall be done at the CITY's sole cost and expense. Any building permits sought by the CITY shall be subject to permit fees, unless waived.
- D. Portable or temporary advertising signs are prohibited.
- E. COUNTY shall provide the following assistance to the CITY in the establishment of the homeless safe zone :
 - 1) COUNTY will move the existing fence from its current location and relocate and install it at the location proposed in Exhibit "A".
 - 2) COUNTY shall participate on an equal basis with the CITY in providing manpower for tent erection, providing sleeping platforms, and in the provision of a bathroom, as more particularly described below:
 - (a) CITY and COUNTY public works personnel shall provide equal manpower for fabrication and installation of the elevated sleeping platforms, for which CITY shall furnish all the materials.
 - (b) CITY and COUNTY public works personnel shall provide equal manpower for the erection of tents.
 - (c) CITY shall furnish all materials for the conversion, retrofit, or renovation of an existing 11' x 55' trailer to a bathroom facility and COUNTY will provide the manpower for the conversion, retrofit, or renovation, or, in the alternative, CITY and COUNTY shall share equally in the cost of procuring and installing a prefabricated facility

with the equivalent amenities. The amenities required under either alternative shall be nine (9) standard bathrooms containing a shower, toilet and sink, and one handicapped bathroom with a shower, toilet and sink. Other than establishing appropriate budget allocations, neither party shall be required to have the determination as to which alternative to use approved by its respective Commission; provided that this decision is made jointly by the County Administrator and City Administrator.

- (d) COUNTY shall remove the existing gate to a more appropriate location and install a gate appropriate or foot traffic only into the Premises.

7. MECHANIC'S LIENS

The CITY shall not permit any mechanic's lien or liens to be placed on the Premises or on improvements on it. If a mechanic's lien is filed, it shall be the sole responsibility of the CITY or its officer, employee, agent, contractor or other representative causing the lien to be filed to discharge the lien and to hold harmless and defend Department of Juvenile Justice, Monroe County Sheriff's Office, and Monroe County against enforcement of such lien. Pursuant to Section 713.01, F.S. the liens authorized in ch. 713, F.S., do not apply to the COUNTY.

8. RECORDS - ACCESS AND AUDITS. The CITY shall maintain adequate and complete records for a period of four years after termination of this Agreement. The COUNTY, its officers, employees, agents and contractors shall have access to the CITY's books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the COUNTY shall occur at any reasonable time.

9. RELATIONSHIP OF PARTIES. The CITY is, and shall be an independent contractor and not an agent or servant of the COUNTY. The CITY shall exercise control, direction, and supervision over the means and manner that its personnel, contractors and volunteers perform the work for which purpose this Agreement is entered. The CITY shall have no authority whatsoever to act on behalf and/or as agent for the COUNTY in any promise, agreement or representation other than specifically provided for in this Agreement. The COUNTY shall at no time be legally responsible for any negligence on the part of the CITY, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

10. TAXES. The CITY must pay all taxes and assessments, if any, including any sales or use tax, levied by any government agency with respect to the CITY's operations on the Premises.

11. INSURANCE. The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, arising out of the activities governed by this agreement, as well as any .

To the extent allowed by law, each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

The CITY agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this lease are canceled, terminated or reduced in coverage, then the LESSEE must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the COUNTY whenever acquired or amended.

12. **CONDITION OF PREMISES.** The CITY must keep the Premises in good order and condition. The CITY must promptly repair damage to the Premises. At the end of the term of this Agreement, the CITY must surrender the Premises to the COUNTY in the same good order and condition as the Premises were on the commencement of the term, normal wear and tear excepted. The CITY is solely responsible for any improvements to land and appurtenances placed on the Premises. The CITY shall not commit waste on the Premises, nor maintain or permit a nuisance on the Premises. After termination or expiration of this Agreement, the CITY shall pay the COUNTY the cost of any repairs and clean-up necessary to restore the Premises to its condition at the commencement of the Agreement ~~lease period.~~

13. **HOLD HARMLESS.** To the extent allowed by law, the CITY is liable for and must fully defend, release, discharge, indemnify and hold harmless the COUNTY, the members of the County Commission, COUNTY officers and employees, COUNTY agents and contractors, and the Sheriff's Office, its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to the CITY's operations on the Premises except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of the COUNTY. The CITY's purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph. The CITY does not waive any of its sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

14. **NON-DISCRIMINATION.** The CITY for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Premises or in the contracting for improvements to the Premises.

15. **TERMINATION.** The COUNTY may treat the CITY in default and terminate this Agreement immediately, without prior notice, upon failure of the CITY to comply with any provision related to compliance with all laws, rules and regulations. This Agreement may be terminated by COUNTY due to breaches of other provisions of this Agreement if, after written notice of the breach is delivered to the CITY, the CITY does not cure the breach within 7 days following delivery of notice of breach. The COUNTY may terminate this Agreement upon giving sixty (60) days prior written notice

Homeless Safe Zone

to the CITY. Any waiver of any breach of covenants herein contained shall not be deemed to be a continuing waiver and shall not operate to bar either party from declaring a forfeiture for any succeeding breach either of the same conditions or covenants or otherwise.

16. **CESSATION OF HOMELESS SAFE ZONE OPERATIONS.** Upon the natural expiration or early termination of this agreement, the operation of a homeless safe zone shall immediately be ceased and all improvements, equipment, and other personalty of the CITY, its officers, employees, contractors, agents, volunteers and invitees shall immediately be removed from the Premises. Any damage to the Premises which has occurred due to the use contemplated under this Agreement shall be immediately repaired and the Premises restored to its original condition. Should the CITY determine to cease operation of the homeless safe zone prior to the natural termination of this agreement, the CITY shall give COUNTY prior written notice of such intended cessation sixty (60) days before the effective date of the cessation of operation. The purpose of this Agreement is to provide the LESSEE with a temporary solution to its homeless situation and the COUNTY shall not operate a homeless safe zone at this site upon the expiration or termination of this lease.

17. **ASSIGNMENT.** The CITY may not assign this Agreement or assign or subcontract any of its obligations under this Agreement without the approval of the COUNTY's Board of County Commissioners. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the CITY and the COUNTY.

18. **SUBORDINATION.** This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, and the COUNTY, whether in effect on commencement of this Agreement or adopted after that date.

19. **INCONSISTENCY.** If any item, condition or obligation of this Agreement is in conflict with other items in this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limit the County's responsibility and liability.

20. **GOVERNING LAWS/VENUE.** This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

21. **ETHICS CLAUSE.** The CITY warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the COUNTY may, in its discretion, terminate this Agreement without liability and may also, in its discretion, deduct from the Agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift or consideration paid to the former County officer or employee.

22. **CONSTRUCTION.** This Agreement has been carefully reviewed by the CITY and the COUNTY. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

Homeless Safe Zone

23. **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

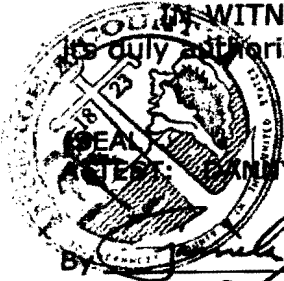
COUNTY:
County Administrator
1100 Simonton Street
Key West, FL 33040

CITY
City Manager
525 Angela Street
Key West, FL 33040

24. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

25. **EFFECTIVE DATE.** This Agreement will take effect on March 22, 2004

WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

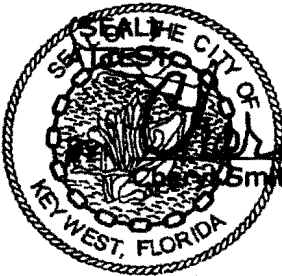


DANNY L. KOLHAGE, CLERK

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By Murray & Nelson
Mayor/Chairman



Daryl Smith, City Clerk

CITY OF KEY WEST

By Jimmy Weekley
Jimmy Weekley, Mayor

FILED FOR RECORD
2004 MAR 29 AM 11:12
DANNY L. KOLHAGE
CLERK
MONROE COUNTY, FLA.

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

Suzanne A. Hutton
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 3/22/04

EXHIBIT "A"

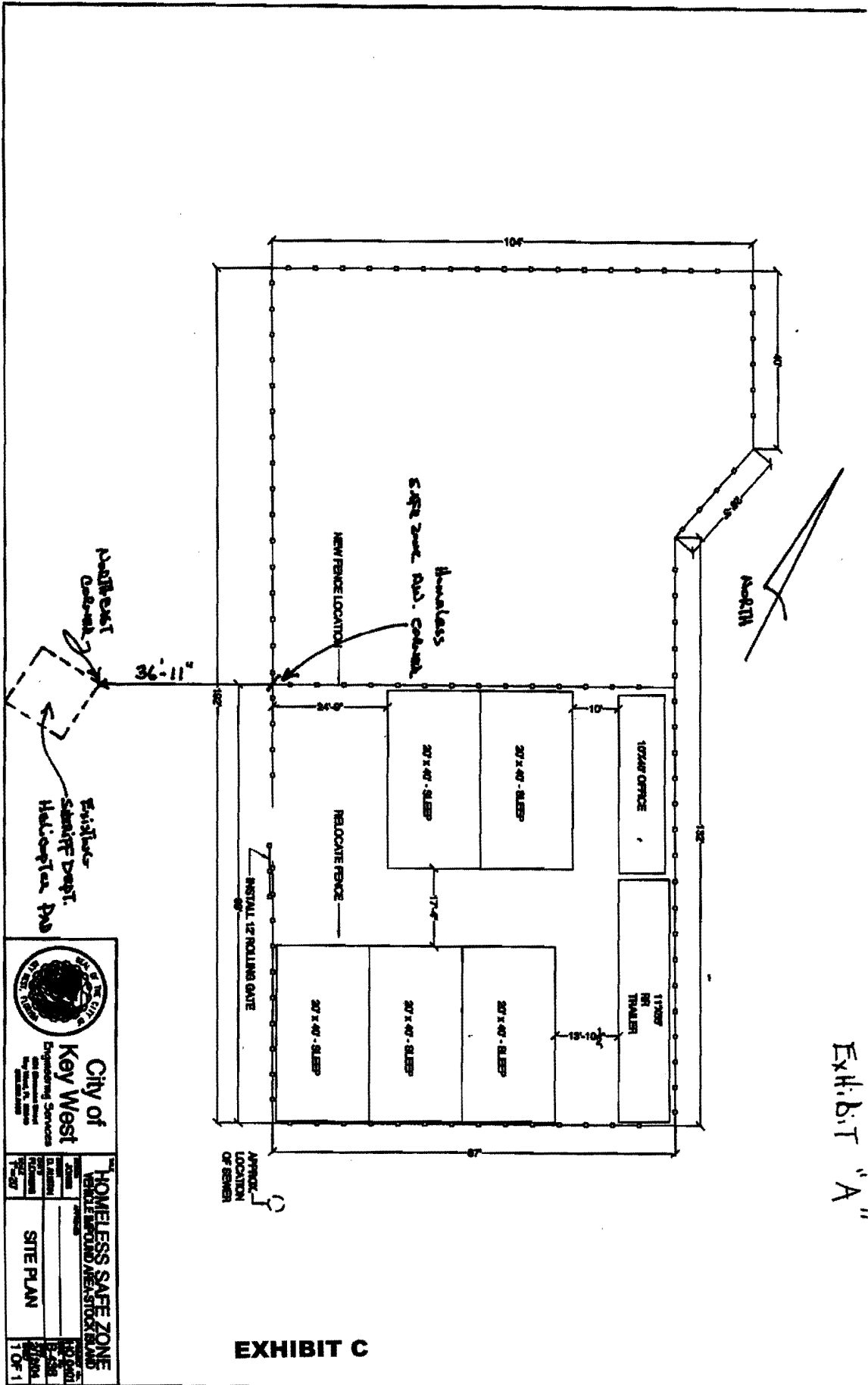



EXHIBIT C



 City of Key West

 Engineering Services

 1000 Duval Street, Suite 200

 Key West, FL 33441

 Phone: 305.291.2300

 Fax: 305.291.2301

 Email: info@cityofkeywest.com

PROJECT NAME	HOMELESS SAFE ZONE
PROJECT LOCATION	VEHICLE IMPOUND AREA, STOCK ROAD
DATE	08/20/2018
SCALE	AS SHOWN
SITE PLAN	
1 OF 1	

M2

MONROE COUNTY COSTS

SUMMARY

Preliminary

1) Move fence	\$ 260
2) Relocate gate	260
3) Platform fabrication	3,120
4) Tent erection	2,080
5) Utilities connection	4,000
6) Purchase trailer	<u>22,955</u>

Total Preliminary **\$ 32,675**

Annual Operating Cost for 5 Years

7) Sewage treatment	\$ 5,490
8) Sheriff – water	14,994
9) Sheriff – electricity	<u>4,800</u>

Operating Cost per Year at Current Rates and Estimate Usage **\$ 25,284**

Operating Cost for 5 Year Term of Agreement **\$126,420**

Total Preliminary and Operating Costs **\$159,095**

M2
Add'l. Info.

INTERIM HOMELESS SAFE ZONE SUMMARY OF COSTS AND RESPONSIBILITIES

MONROE COUNTY'S RESPONSIBILITY:

- Move fence - \$260
- Existing gate relocation - \$260
- Sewage – \$5,490 annually

SHARED RESPONSIBILITY BETWEEN CITY AND COUNTY:

- Sleeping platform fabrication – County's share \$3,120
- Tent erection – County's share \$2,080
- Utilities Connection – sewer, water, & electric tie-in – County's share \$4,000
- Existing trailer conversion – County's share labor \$22,828, **OR**
(Labor to convert trailer will severely impact daily maintenance activities).
- Purchase a prefabricated restroom trailer – County's share \$22,955 (**Recommended Option**).

SHERIFF'S OFFICE RESPONSIBILITY:

- Water - \$14,994 annually
- Electricity - \$4,800 annually

CITY OF KEY WEST RESPONSIBILITY:

- Permits, connection fees, etc.

TOTAL ESTIMATED COST:

- Monroe County BOCC - \$38,038 (convert existing trailer), \$38,165 (purchase new trailer)
- Sheriff's Office - \$19,794

EXHIBIT C

M-2
add'l. info.

RESOLUTION NO. 04-130

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED INTERIM HOMELESS SAFE ZONE INTERLOCAL AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Interlocal Agreement is hereby approved, conditioned upon like approval by the Board of County Commissioners of Monroe County; and authorizing the City Manager to conduct final negotiations, if necessary.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 16 day of March, 2004.

Authenticated by the presiding officer and Clerk of the Commission on March 17, 2004.

Filed with the Clerk March 17, 2004.

ATTEST:

Cheryl Smith
CHERYL SMITH, CITY CLERK

Jimmy Weekley
JIMMY WEEKLEY, MAYOR

EXHIBIT C

EXHIBIT E

UTILITY AGREEMENT

THIS UTILITY AGREEMENT (Agreement), dated as of the 6 day of June 2004, by and between KW Resort Utilities, a Florida corporation, having its office(s) at 6450 College Road, Key West Florida 33040, (Service Company) and The County of Monroe, Florida, a Florida County having its office(s) at 5100 College Road, Key West FL 33040 ("County"), and, The City of Key West, a Florida City having its office(s) at 525 Angela St, Key West Florida (Developer).

RECITALS

- A. Developer is the owner of certain real property more particularly described on Exhibit A, attached hereto and made a part hereof (the Property).
- B. ~~Developer proposes to construct, own, operate and maintain sewage collection system on the Property to service new construction located on the Property (Homeless Safe Zone).~~
- C. Service Company owns, operates, manages and controls a Central Sewage System and is willing to provide sanitary sewer services pursuant to this Agreement.
- D. Developer requests that Service Company provide central wastewater service to the Property as indicated on the plans prepared by The City of Key West. (Exhibit A)

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), and the mutual covenants and agreements hereinafter set forth, and intending to be legally bound thereby, it is agreed as follows:

1. Definitions

Business Day shall mean any day of the year in which commercial banks are not required or authorized to close in New York, New York.

Capacity Reservation Fee as such term is defined in Section 6 hereof.

Central Sewage System shall mean the central collection, transmission, treatment and disposal system and appurtenant facilities owned and operated by the Service Company.

Connection as such term is defined in Section 6 hereof.

Customer shall mean any residential or commercial customer of Service Company.

Equivalent Residential Connections (ERC), shall be defined as one individual residential connection or, for commercial and other uses, the estimated flow based on the use and Chapter 64E-6 F.A.C., divided by the most recently approved Capacity Analysis rate per residential connection (currently 250 gallons per day per residential connection) also known as E.D.U.

Plans and Specifications as such term is defined in Section hereof.

Point of Delivery shall mean the point where the pipes connect to the Monroe County Sheriff's lift station. The Service Company shall own the lift station out to the remaining sewer lines down stream. The customer shall own the pipes connecting the bathhouse to the lift station.

Property as such term is defined in the Recitals hereof.

Property Installations or System shall mean any service lines located on individual lots or parcels of the Property or to buildings located on the Property that connect to the Central-Sewage System, and may include facilities located outside the Property, required to be installed by Developer, to connect facilities on the Property to the Central Sewage System.

Service Company's Affiliates shall mean any disclosed or undisclosed officer, director, employee, trustee shareholder, partner, principal, parent, subsidiary or other affiliate of Service Company.

Tariff shall mean Service Company's existing and future schedules of rates and charges for sewer service.

2. New System Construction

- (a) ~~Prior to the construction and installation of the System, Developer shall, at its sole cost and expense, cause to be prepared and provide to Service Company plans and specifications of the system (Plans and specifications), which Plans and Specifications shall be prepared by engineers reasonably acceptable to Service company, and in accordance with all policies and practices of Service Company and all applicable laws and regulations and standards adopted by the Department of Environmental Protection and Monroe County.~~
- (b) Service Company shall approve or disapprove of the Plans and Specifications within thirty days (30) of receipt thereof by written notice to Developer.
- (c) Upon Developer's receipt of Service Company's written notice of disapproval of the Plans and Specifications, Developer shall promptly revise the Plans and Specifications in accordance with any requirements set forth by Service Company in its written notice of disapproval, and re-submit such revised Plan and specifications to Service Company for approval or disapproval. Service Company shall approve or disapprove of any revised Plans and Specifications with five (5) business days of receipt thereof by written notice to Developer.
- (d) Upon Developer's receipt of Service Company's written notice of approval of the Plans and Specifications, Developer may proceed with the construction and installation of the System. Developer shall notify Service Company seventy-two (72) hours prior to beginning construction. Construction and Installation shall be completed within six (6) months of Service Company's written notice of approval of the Plans and Specifications. All work shall be inspected by licensed and insured contractors and engineers reasonably acceptable to Service Company. In accordance with Chapter 62-604 F.A.C., Developer shall provide, at its sole cost, a Professional Engineer Registered in Florida to provide on-site observation during construction and testing and to certify that the System is constructed in compliance with the approved Plans and Specifications. All materials employed by Developer for the System shall be reasonably acceptable to Service Company. No portion or element of the System shall be covered or concealed until inspected by Service Company. Developer shall notify Service Company of Developer's readiness for inspection of the System, and Service Company shall inspect the System within two (2) business days after each such notice. Any portion of the System not inspected by Service Company within said time period, shall be deemed to have been accepted by Service Company. In the event that Service Company determines through any such inspection that any portion of the System does not fully comply with the Plans and specific conditions or applicable laws and regulations, Service Company shall notify Developer in writing of such noncompliance not more than two (2) business days after any such inspection and Developer shall immediately modify the System to insure that the System fully complies with the Plans and Specifications and applicable laws and regulations.

- (e) In the event Service Company discovers that any portion or element of the System has been installed, covered or concealed without the prior approval of Service Company, Developer shall, upon written demand by Service Company, immediately dismantle or excavate such portion of the System at its sole cost and expense.

3. System Records

Prior to Service Company's acceptance of all or any portion of the System for service, operation and maintenance or for service only, Developer shall deliver the following records and documents to Service Company:

- (a) Copies of all invoices and/or contracts for the construction and installation.
- (b) An affidavit signed by the Developer stating that there are no parts or portions of the System which are not included in the invoices and contracts noted in subsection (a) above, that said invoices and contracts accurately and fully reflect the total cost of the System and that the System is free and clear of all liens and encumbrances.
- (c) Lien waivers from all contractors, subcontractors, material people, and any other parties that provided labor, services or materials in connection with the construction of the System.
- (d) A reproducible Mylar and two (2) sets of blue line copies, accurately depicting all of the System as constructed and installed, and signed and sealed by the engineer and surveyor of record for the System.
- (e) Copies of the results of all tests conducted on the System.
- (f) Any other records or documents required by applicable law or required under the Tariff.
- (g) A certificate of completion of the System signed and sealed by the engineer of record.
- (h) A copy of the Department of Environmental Protection permit to construct the System and all inspection reports and approvals issued by the Engineer and the Department of Environmental Protection and any other applicable governmental authority or agency.

4. Property Rights

In those cases in which Service Company accepts all or any portion of the System for service, operation and maintenance, Developer shall convey the following property rights and interests for that portion of the System to Service Company:

- (a) A non-exclusive easement, in the form attached as Exhibit "B", for that portion of the Property of sufficient size to enable Service Company ingress and egress and to operate, maintain and replace such portions of the System not located within public rights-of-way. The foregoing easement shall be in effect for a period of time not less than the period during which the Service Company shall use the System to provide service to Customers.
- (b) A non-exclusive easement, in the form attached as Exhibit "B", of sufficient size to enable ingress, egress and access by Service company personnel or vehicles to any lift or pump station located on the Property. The foregoing easement shall be in effect for a period of time not less than the period during which the Service Company shall use the System to provide service to Customers.

- (c) Notwithstanding the foregoing easements, Developer retains all rights and privileges to utilize the Property in any manner it deems appropriate provided such use is not inconsistent with the purposes intended for such easements.

5. Existing Systems

Developer may connect an existing gravity or low pressure system (Existing System) to Service Company's system provided the Existing System meets the following criteria:

- (a) The Existing System must meet all county plumbing codes and have in full force and effect a Department of Environmental Protection permit to operate said system, if required by Department of Environmental Protection. Developer agrees to maintain said permit if any, at its cost and expense.
-
- (b) The Existing System must be free from any intrusion of water from ground or surface resources.
- (c) Developer must make a non-refundable deposit with Service Company of N/A to pay for the inspection and testing of the Existing System by Service Company's agents and engineers.
- (d) Provision for Existing Systems requiring hydraulic lift to Right-of-Way – The Developer, at its discretion, may propose to utilize an existing gravity system that delivers sewage flows to the County Right-of-Way via a hydraulic system with the following conditions: Total flow from any one source that is delivered via hydraulic assistance shall not exceed 3 GPM. Where an Existing System proposes to transmit flows in excess of 3 GPM, the Existing System must be designed with multiple output points not to exceed 3 GPM each to be separated by a horizontal distance of 100 feet or greater as measured along the Service Company's vacuum main. The Developer's hydraulic system must be configured with an electronic shut-off to ensure that flows do not continue during an emergency failure of the Service Company's vacuum system. The Developer agrees to maintain a gravity system that does not incur excessive amounts of infiltration and inflow (I/I). An excessive amount of I/I is defined as flows exceeding 150% of the average daily flows for a 12-hour period. The utility reserves the right to discontinue service to the Developer in the event that the utility determines that excessive amounts of I/I are being received from the Developer.
- (e) In the event that an Existing System, after connection to the Central Sewage System, needs repair (other than non-emergency repairs) then Developer agrees to make said repairs within 30 days of notice by Service Company. In the event of failure by Developer to make repairs to its system within said time period the Service Company shall be permitted to discontinue service to the Existing System.

In the event of the need for emergency repairs to an Existing System, Service Company shall be authorized to make said repairs (but shall not be obligated) and upon presentation of a bill to Developer for said repairs said bill shall be immediately due and payable.

- (f) Developer agrees to provide Service Company with:
- (1) A copy of its Department of Environmental Protection Permit, if required;
 - (2) A survey accurately depicting the location of the Existing System as constructed and installed and signed and sealed by a surveyor; and,

Service Company shall have the right, but not the obligation, to accept ownership of the Existing System. Should Service Company accept ownership, Developer shall comply with the Property Rights requirements set forth in § 4 herein.

Upon acceptance by Service Company, Developer agrees that Service Company, or its agents, shall have access at all reasonable hours to the Existing System on the Property for the purpose of inspection, repair, meter reading, disconnecting service, reconnecting service, and in doing so will not be liable for trespass. This shall include the right of access to areas outside individual units on the Property.

6. Rates, Fees, Charges

- (a) All Customers will pay the applicable fees, rates and charges as set forth in the Tariff. Nothing contained in this Agreement shall serve to prohibit Service Company's right to bill or collect its rates and charges from Customers, nor to require compliance with any provision of its Tariff.
- (b) Developer shall pay to Service Company a reservation fee (Capacity Reservation Fee), in the amount of Two Thousand Seven Hundred (\$2,700.00) dollars per E.R.C. connection to be reserved by Developer to serve the residential or commercial structures to be constructed in or upon the Property (individually, a Connection, collectively, the Connections). Prior to execution of this agreement, Developer shall supply Service Company access and information necessary to determine number of ERC's proposed. Information may include plans, occupational licenses, etc. for: the Monroe County Homeless Safe Zone, located at the Monroe County Detention Center, 5100 College Road Key West FL, 33040. Property includes five 20' x 20' sleep shelters, one 10' x 40' office, and one 11' x 55' bathhouse trailer. There will be a total of 8 ERC's for the property (120 person capacity @ 10 gallons per day). Capacity Reservation Fee for 4.8 ERC's is \$12,900.00, which does not include inspection fees, monthly wastewater bill, or deposit. The Capacity Reservation Fee can be paid as referenced in paragraph 6 (c).
- (c) The Capacity Reservation Fee for each connection shall be payable by Developer to Service Company as follows:
- (i) 1/3 (\$4,320.00) upon execution of this agreement
 - (ii) 2/3 (\$8,640.00) upon connection of the first house or office building to the system

In the event of additional development on the property or a change in use Developer shall provide Service Company with a site plan and schedule of proposed development of the Property setting forth the amount of Connections for which capacity shall be additionally reserved under this Agreement. Service Company hereby agrees to reserve such capacity for the benefit for Developer subject to the provisions of this Section 6, provided, however, that such reservations shall not be effective until Service Company has received the initial installment of the Capacity Reservation Fee in accordance with Section 6(c)(i) hereof, and provided, further, that Service Company shall have the right to cancel such reservations in the event of Developer's failure to comply with the terms of this Agreement. In the event there is additional water usage over and above the amount reserved in paragraph 6b above, (based on an annual review) the developer shall remit additional capacity reservation fees to Service Company 30 days after notice by Service Company of additional fees due.

- (d) Developer shall pay to Service Company, for engineering services and applicable administrative fees necessary to review and approve construction plans and documents and for periodic inspection during construction and testing in the amount of \$600.00. Said payment is to be made upon submission of plans and documents.

- (e) In the event of default by Developer and the payment of fees hereunder, Service Company may cancel this agreement by giving 30 (thirty) days written notice of default and retain all payments hereunder as liquidated damages.
- (f) Developer agrees that in the event of a change of use or any change that might affect the flows (i.e. Addition of a restaurant) Service Company will be notified and the applicable Capacity Reservation fees will be paid prior to discharge to the Central Sewage System.

7. Payment Options:

- (a) The Property Owner must pay the Utility the entire cost of the Capacity Reservation Fee \$12,960 as provided for in Paragraph 6(c) above.
- ~~(b) The payment referenced in this paragraph is only to pay the balance of the Capacity Reservation Fee and is separate and distinct from monthly costs for sewer service, which remain the sole responsibility of the Property Owner.~~

8. Delivery of Service; Operation and Maintenance

- (a) Upon Developers full performance of its obligations under this Agreement, Service Company shall provide service to the Point of Delivery in accordance with the terms of this Agreement, all applicable laws and regulations and shall operate and maintain the Central Sewage System to the Point of Delivery in accordance with the terms and provisions of this Agreement.
- (b) Developer shall, at its sole cost and expense, own, operate and maintain any part of the System that has not been conveyed to Service Company pursuant to the terms and conditions of this Agreement.
- (c) Developer acknowledges that certain water quality standards must be met prior to influent entering the wastewater treatment plant (primarily chloride levels and excessive flows) and agrees to allow Service Company to monitor flows and water quality at Service Company's discretion at a point on the Developers side of the Point of Delivery. If it is determined that substandard influent or excessive flows are entering the Central Sewage System via Developers System, Developer agrees to isolate the source and to repair or replace the portion or portions of the faulty System in a manner acceptable to Service Company in accordance with this agreement.
- (d) In the event any portion of the Property is developed as a condominium, the condominium association shall be required to execute a maintenance agreement with respect to any portion of the System not conveyed to Service Company. Such maintenance agreement shall provide that if the condominium association fails to adequately maintain and repair the System, Service Company shall have the right to maintain and repair such System at the sole cost and expense of the condominium association.

9. Repair of System

In the event of any damage to or destruction of any portion of the Central Sewage System due to any acts or omissions by Developer, any Customer or their respective agents, representatives, employees, invitees or licensees, Service Company shall repair or replace such damaged or destroyed facilities at the

sole cost and expense of responsible party. Developer shall operate, maintain and repair all other portions of the System not conveyed to Service Company at its sole cost and expense.

10. **Term**

This Agreement shall become effective as of the date first written above, and shall continue for so long as Service Company provides sewer service to the public.

11. **Default**

In the event of a default by either party of its duties and obligations hereunder, the non-defaulting party shall provide written notice to the defaulting party specifying the nature of the default and the defaulting party shall have five (5) days to cure any default of a monetary nature and thirty (30) days for any other default. If the default has not been cured within the applicable period (time being of the essence), the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, including but not limited to, the right to damages, injunctive relief and specific performance. Service Company may, at its sole option, discontinue and suspend the delivery of service to the System in accordance with all requirements of applicable law and the Tariff if Developer fails to timely pay all fees, rates and charges pursuant to the terms of this Agreement.

12. **Excuse from Performance**

- (a) **Force Majeure.** If Service Company is prevented from or delayed in performing any act required to be performed by Service Company hereunder, and such prevention or delay is caused by strikes, labor disputes, inability to obtain labor, materials or equipment, storms, earthquakes, electric power failures, land subsidence, acts of God, acts of public enemy, wars, blockades, riots, acts of armed forces, delays by carriers, inability to obtain rights-of-way, acts of public authority, regulatory agencies, or courts, or any other cause, whether the same kind is enumerated herein, not within the control of Service Company (Force Majeure), the performance of such act shall be excused for a period equal to the period of prevention or delay.
- (b) **Governmental Acts** If for any reason during the term of this Agreement, other than the fault of Developer, any federal, state or local authorities or agencies fail to issue necessary permits, grant necessary approvals or require any change in the operation of the Central Sewage System or the System (Governmental Acts), then, to the extent that such Governmental Acts shall affect the ability of any party to perform any of the terms of this Agreement in whole or in part, the affected party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible, by the parties hereto in conformity with such permits, approvals or requirements. Notwithstanding the foregoing, neither Developer nor Service Company shall be obligated to accept any new agreement if it substantially adds to its burdens and obligations hereunder.
- (c) **Emergency Situations** Service Company shall not be held liable for damages to Developer and Developer hereby agrees not to hold Service Company liable for damages for failure to deliver service to the Property upon the occurrence of any of the following events:
1. A lack of service due to loss of flow or process or distribution failure;
 2. Equipment or material failure in the Central Sewage System or the System, including storage, pumping and piping provided the Service Company has utilized its best efforts to maintain the Central Sewage System in good operating condition; and

3. Force Majeure, unforeseeable failure or breakdown of pumping, transmission or other facilities, any and all governmental requirements, acts or action of any government, public or governmental authority, commission or board, agency, agent, official or officer, the enactment of any statute, ordinance, resolution, regulation, rule or ruling, order, decree or judgment, restraining order or injunction of any court, including, without limitation, Governmental Acts.

(d) Notwithstanding any excuse of performance due to the occurrence of any of the foregoing events, Developer shall not be excused from payment of any fees, charges and rates due to Service Company under the terms of this Agreement (including without limitation, the Capacity Reservation Fee and Connection Charges).

13. Successors and Assigns

~~This Agreement and the easements granted hereby, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.~~

14. Indemnification

Developer shall indemnify, defend and hold Service Company and Service Company's Affiliates harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and reasonable expenses, including, without limitation, attorneys fees and disbursements, suffered or incurred by Service Company or any of Service Company's Affiliates and arising out of or in connection with use, occupancy, or operation of the System, the Property, or the activities, errors, or omissions of Developer, its agents, employees, servants, licensees, invitees, or contractors on or about the Property, pursuant to terms and conditions of this Agreement. Developer's duty to indemnify shall also include, but not be limited to, indemnification from and against any fine, penalty, liability, or cost to Service Company arising out of Developers violation or breach of any law, ordinance, governmental regulation, this Agreement requirement or permit applicable to the System or Developers activities on or about the Property. The provisions of this Section 13 shall survive the termination of this Agreement. Developers civil engineering firm shall maintain errors and omission^e insurance in an amount of \$1,000,000.

Nothing contained herein is intended to be a waiver of the limitation placed upon the city's liability as set forth in Section 768.28, Florida Statutes.

15. Insurance

Developer is self-insured.

For up to one year following conveyance of the System to Service Company Developer shall maintain or cause to be maintained a policy of commercial general liability insurance with a broad form contractual liability endorsement covering Developers indemnification obligations contained in this Agreement, and with a combined single limit of not less than \$1,000,000 general liability, insuring Service Company and Service Company's Affiliates, as additional insured in such forms and with an insurance company reasonably acceptable to Service Company, and shall deliver a copy of such insurance policy together with a certificate of insurance to Service Company prior to or upon execution of this Agreement. All such insurance shall be written on an occurrence form.

Assign any and all warranties, and maintenance, completion and performance bonds and the right to enforce same to the Service Company which Developer obtains from any contractor constructing the System. Developer shall obtain a written warranty, completion, and performance and maintenance bonds from its contractor for a minimum period of twenty four (24) months. If Developer does not obtain such written warranty and performance and maintenance bonds from its contractor and deliver same to Service Company, then in such event, Developer agrees to warrant the construction of the System for a period of twenty four (24) months from the date of acceptance by the Service Company.

16. Notices

All notices, demands, requests or other communications by either party under this Agreement shall be in writing and sent by (a) first class U.S. certified or registered mail, return receipt requested, with postage prepaid, or (b) overnight delivery service or courier, or (c) telefacsimile or similar facsimile transmission with receipt confirmed as follows:

If to Service Company:

Mr. Doug Carter, General Manager
6450 Junior College Road
Key West, Florida 33040
Fax (305) 294-1212

If to City:

City Manager
525 Angela Street
Key West FL 33040

With a copy to:

Mr. Jeff Weiler, P.E.
Weiler Engineering
20020 Veterans Blvd.
Port Charlotte, Florida 33954
Fax (941) 764-8915

If to County:

County Administrator
Public Service Building
5100 College Road
Key West FL 33040

17. Tariff

This Agreement is subject to all of the terms and provision of the Tariff. In the event of any conflict between the Tariff and the terms of this Agreement, the Tariff shall govern and control.

18. Miscellaneous Provisions

- (a) This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by or on behalf of the party to be charged.
- (b) All prior statements, understandings, representations and agreements between the parties, oral or written, are superseded by and merged in this Agreement, which alone fully and completely expresses the agreement between them in connection with this transaction and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement. This Agreement shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto, and without regard to or aid of canons requiring construction against Service Company or the party drafting this Agreement.
- (c) No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by either party

of any breach hereunder or failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

- (d) This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. It shall not be necessary for the same counterpart of this Agreement to be executed by all of the parties hereto.
- (e) Each of the exhibits and schedules referred to herein and attached hereto is incorporated herein by this reference.
- (f) The caption headings in this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be construed to modify, explain or alter any of the terms, covenants or conditions herein contained.
- (g) This Agreement shall be interpreted and enforced in accordance with the laws of the state in which the Property is located without reference to principles of conflicts of laws. In the event that the Florida Public Service commission loses or relinquishes its authority to regulate Service Company, then all references to such regulatory authority will relate to the agency of government or political subdivision imposing said regulations. If no such regulation exists, then this Agreement shall be governed by applicable principles of law.
- (h) Each of the parties to this Agreement agrees that at any time after the execution hereof, it will, on request of the other party, execute and deliver such other documents and further assurances as may reasonably be required by such other party in order to carry out the intent of this Agreement.
- (i) If any provision of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of this Agreement and to this end the provisions of this Agreement are intended to be and shall be severed. Notwithstanding the foregoing sentence, if (I) any provision of this Agreement is finally determined by a court of competent jurisdiction to be unenforceable or invalid in whole or in part, (ii) the opportunity for all appeals of such determination have expired, and (iii) such unenforceability or invalidity alters the substance of this Agreement (taken as a whole) so as to deny either party, in a material way, the realization of the intended benefit of its bargain, such party may terminate this Agreement within thirty (30) days after the final determination by notice to the other. If such party so elects to terminate this Agreement, then this Agreement shall be terminated and neither party shall have any further rights, obligations or liabilities hereunder, except for any rights, obligations or liabilities which by this specific terms of this Agreement survive the termination of this Agreement.
- (j) In the event of any litigation arising out of or connected in any manner with this Agreement, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable counsel and paralegal fees incurred in connection therewith through and including all other legal expenses and the costs of any appeals and appellate costs relating thereto. Wherever in this Agreement it is stated that one party shall be responsible for the attorneys fees and expenses of another party, the same shall automatically be deemed to include the fees and expenses in connection with all appeals and appellate proceedings relating or incidental thereto. This subsection (j) shall survive the termination of this Agreement.
- (k) This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third-party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status.

- (1) Developer agrees that Service Company may, at its sole discretion, require certain allocations to the proposed collection and transmission systems for future connections. Developer further agrees that Service Company may, at its sole discretion, extend the sewer line for any reason. It is understood that there will be no reimbursement or additional credit.

IN WITNESS WHEREOF, Service Company and Developer have executed this Agreement as of the day and year first above written.

SERVICE COMPANY:

KW Resort Utilities Corporation
 By: [Signature]
 Print Name: [Signature]
 Title: [Signature]
 Address: KW Resort Utilities Corporation
 6450 Junior College Road
 Key West, Florida 33040

MONROE COUNTY
 By: [Signature]
 Print Name: DENT PIERCE
 Title: ACTING COUNTY ADMINISTRATOR

City of Key West:
 By: [Signature]
 Print Name: [Signature]
 Title: 1907 CITY MANAGER

STATE OF FLORIDA)
) ss:
 COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 27th day of May, 2004, by John Jones, as [Signature], a Florida corporation, on behalf of said corporation. ~~He/she~~ is personally known to me ~~or who has produced~~ as identification.



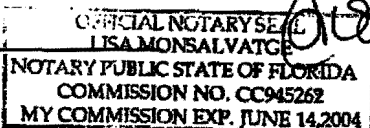
Susan P. Harrison
 MY COMMISSION # DD184772 EXPIRES
 April 8, 2007
 BONDED THROUGH FARM INSURANCE, INC.

[Signature]

My Commission Expires: _____

STATE OF FLORIDA)
) ss:
 COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 28 day of May, 2004, by Dent Pierce, as [Signature], a Florida corporation, on behalf of said corporation. He/she is personally known to me or who has produced as identification.



[Signature]


My Commission Expires: _____

EXHIBIT F

KW RESORT UTILITIES, CORP.

6630 Front Street
Key West, FL 33040
(305)295-3301
FAX (305) 295-0143

FILE COPY

7/15/09


Monroe County Office of the Administrator
County Administrator Roman Gastesi
Historic Gato Building
1100 Simonton Street
Key West, FL 33040

July 15, 2009

Dear Mr. Administrator,

Please be advised that pursuant to the Utility Agreement dated August 16, 2001 by and between Monroe County and KW Resort Utilities, Corp (KWRU), Monroe County has exceeded the reserved capacity pursuant to paragraph 6(b) by 39,375 GPD. This figure is based upon the average of the highest 3 months flows within the last 3 years, which is the industry standard. Therefore, Monroe County is required to pay an additional capacity fee for its use equal to \$518,597. The calculations are as follows:

$$(39,375 \text{ gallons/day}) / (205 \text{ gallons/connection}) = 192.073 \text{ connections}$$
$$(192.073 \text{ connections}) \times \$2700/\text{connection} = \$518,597$$

I respectfully ask that you please remit payment at your earliest convenience.

Sincerely,

Christopher A. Johnson
President, KW Resort Utilities, Corp.

CJ/cj

EXHIBIT G

Florida Keys Aqueduct Authority
Meter Consumption Report
For Location: 042774
For Meter: 1462276862

Reading Date	Document Number	Begin Reading	End Reading	Consumption (1 = 100 gallons)
3/19/2009	READ00002013718		3000	-
4/14/2009	READ00002046483	3000	3360	360.00
5/13/2009	READ00002097570	3360	6150	2,790.00
6/15/2009	READ00002152574	6150	10500	4,350.00
7/14/2009	READ00002204343	10500	14190	3,690.00
8/17/2009	READ00002275318	14190	17930	3,740.00
9/15/2009	READ00002330523	17930	21070	3,140.00
10/15/2009	READ00002378303	21070	21710	640.00
11/16/2009	READ00002429753	21710	24510	2,800.00
12/10/2009	READ00002479904	24510	26920	2,410.00
1/14/2010	READ00002535238	26920	29520	2,600.00
2/16/2010	READ00002591441	29520	32830	3,310.00
3/15/2010	READ00002642228	32830	34900	2,070.00
4/15/2010	READ00002695589	34900	36590	1,690.00
5/17/2010	READ00002750942	36590	39530	2,940.00
6/15/2010	READ00002802878	39530	42590	3,060.00
7/15/2010	READ00002853828	42590	46800	4,210.00
8/16/2010	READ00002908241	46800	50950	4,150.00
9/15/2010	READ00002956848	50950	55230	4,280.00
10/18/2010	READ00003017386	55230	59770	4,540.00
11/16/2010	READ00003074924	59770	62920	3,150.00
12/15/2010	READ00003121524	62920	66250	3,330.00
1/13/2011	READ00003171131	66250	69960	3,710.00
2/14/2011	READ00003226987	69960	79800	9,840.00
3/15/2011	READ00003281563	79800	84200	4,400.00
4/13/2011	READ00003329262	84200	85660	1,460.00

EXHIBIT H




KW RU
KW RESORT UTILITIES

KW Resort Utilities Corp
P. O. Box 2125
Key West, FL 33045
Telephone: 305.295.3301
Facsimile: 305.295.0143

March 1, 2012

To: Finance Department
Monroe County
P.O. Box 1980
Key West, FL 33041

From: Judi Irizarry 
Accounts Manager

Re: Wastewater Collection and Treatment
Account M066

Enclosed is the February 28, 2012 bill for the above account.

Please note that in addition to the monthly charge, \$4080.82, there is a billing adjustment for corrected consumption, as provided by the Florida Keys Aqueduct Authority, \$43,436.16. Refer to the enclosed correspondence to Bob Stone.

Payment is due March 21, 2012.

Thank you for your attention to this matter.

KW RESORT UTILITIES CORP
P.O. BOX 2125
KEY WEST, FL 33045-2125 305-3301

**ADDRESS SERVICE
REQUESTED**

FIRST CLASS MAIL
PERMIT NO. 1480
KEY WEST, FL 33045
POSTAGE WILL BE PAID BY ADDRESSEE

Bill Date	Due Date	Account #
02-28-12	03-21-12	M066
Svc Addr: 5501 COLLEGE ROAD		
Previous :		0
Current:	02-14-12	381000
Consumption:		381000

Sewer Bill

Please detach and return with payment.

Sewer 4080.82

Bill Date	Account #	Amount Due
02-28-12	M066	47516.98

BILLING ADJUSTMENT 43436.16

**MONROE COUNTY
ATTN: FINANCE DEPARTMENT
P.O. BOX 1980
KEY WEST, FL 33041**

Total Amount Due 47516.98

ACH WILL BE MARCH 21

KW RESORT UTILITIES CORP



Judi Irizarry <judikwru@gmail.com>

Corrected Meter Consumption Report - KW Resort Utilities Account M066

1 message

Judi Irizarry <judikwru@gmail.com>

Mon, Feb 13, 2012 at 2:35 PM

To: stone-bob@monroecounty-fl.gov

Cc: chriskw <chriskw@bellsouth.net>, Greg Wright <gregkwru@yahoo.com>, bart@bartonsmithpl.com

Mr. Stone:

Attached is the corrected Meter Consumption Report the Florida Keys Aqueduct Authority has provided to KW Resort Utilities in reference to Account M066.

Please note that the FCAA corrected consumption numbers match the information previously submitted to you by KW Resort Utilities.

Therefore, KW Resort Utilities request payment in full, \$43,436.16, by March 21, 2012.

Thank you for your attention to this matter.

—
Judi Irizarry
Accounts Manager

T: 305/295-3301
F: 305/295-0143

KW Resort Utilities Corp
P. O. Box 2125
Key West FL 33045

VIEW OR PAY YOUR BILL ON-LINE AT WWW.KWRU.COM

 [KMBT25020120213134952.pdf](#)
49K

Florida Keys Aqueduct Authority

Meter Consumption Report

For Location: 042774

For Meter: 1462276862

Reading Date	Document Number	Begin Reading	End Reading	Consumption (1 = 100 gallons)
3/19/2009	READ00002013718		3000	-
4/14/2009	READ00002046483	3000	3360	360.00
5/13/2009	READ00002097570	3360	6150	2,790.00
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12/10/2009	READ00002479904	24510	26920	2,410.00
1/14/2010	READ00002535238	26920	29520	2,600.00
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9/15/2010	READ00002956848	50950	55230	4,280.00
10/18/2010	READ00003017386	55230	59770	4,540.00
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1/13/2011	READ00003171131	66250	69960	3,710.00
2/14/2011	READ00003226987	69960	79800	9,840.00
3/15/2011	READ00003281563	79800	84200	4,400.00
4/13/2011	READ00003329262	84200	85660	1,460.00

Monroe County Detention Center Erroneous FKA A Readings

Read Date	FKA A Reading in gallons	Amount Billed usage only	MCDC Amount Paid	Actual Usage in gallons	Amount Should Have Billed	Amount Owed
4/14/2009	3,600	\$ 17.24	\$ 17.24	36,000	\$ 172.44	\$ 155.20
5/13/2009	27,900	\$ 133.64	\$ 133.64	279,000	\$ 1,336.41	\$ 1,202.77
6/15/2009	43,500	\$ 208.37	\$ 208.37	435,000	\$ 2,083.65	\$ 1,875.28
7/14/2009	36,900	\$ 176.75	\$ 176.75	369,000	\$ 1,767.51	\$ 1,590.76
8/17/2009	37,400	\$ 184.01	\$ 184.01	374,000	\$ 1,840.08	\$ 1,656.07
9/15/2009	31,400	\$ 154.49	\$ 154.49	314,000	\$ 1,544.88	\$ 1,390.39
10/15/2009	6,400	\$ 31.49	\$ 31.49	64,000	\$ 314.88	\$ 283.39
11/16/2009	28,000	\$ 137.76	\$ 137.76	280,000	\$ 1,377.60	\$ 1,239.84
12/10/2009	24,100	\$ 118.57	\$ 118.57	241,000	\$ 1,185.72	\$ 1,067.15
1/14/2010	26,000	\$ 127.92	\$ 127.92	260,000	\$ 1,279.20	\$ 1,151.28
2/16/2010	33,100	\$ 162.85	\$ 162.85	331,000	\$ 1,628.52	\$ 1,465.67
3/15/2010	20,700	\$ 101.84	\$ 101.84	207,000	\$ 1,018.44	\$ 916.60
4/15/2010	16,900	\$ 83.15	\$ 83.15	169,000	\$ 831.48	\$ 748.33
5/17/2010	29,400	\$ 144.65	\$ 144.65	294,000	\$ 1,446.48	\$ 1,301.83
6/15/2010	30,600	\$ 150.55	\$ 150.55	306,000	\$ 1,505.52	\$ 1,354.97
7/15/2010	42,100	\$ 207.13	\$ 207.13	421,000	\$ 2,071.32	\$ 1,864.19
8/16/2010	41,500	\$ 204.18	\$ 204.18	415,000	\$ 2,041.80	\$ 1,837.62
9/15/2010	42,800	\$ 210.58	\$ 210.58	428,000	\$ 2,105.76	\$ 1,895.18
10/18/2010	45,400	\$ 223.37	\$ 223.37	454,000	\$ 2,233.68	\$ 2,010.31
11/16/2010	31,500	\$ 154.98	\$ 154.98	315,000	\$ 1,549.80	\$ 1,394.82
12/15/2010	33,300	\$ 163.84	\$ 163.84	333,000	\$ 1,638.36	\$ 1,474.52
1/13/2011	37,100	\$ 182.53	\$ 182.53	371,000	\$ 1,825.32	\$ 1,642.79
2/14/2011	98,400	\$ 484.13	\$ 484.13	984,000	\$ 4,841.28	\$ 4,357.15
3/15/2011	44,000	\$ 216.48	\$ 216.48	440,000	\$ 2,164.80	\$ 1,948.32
4/13/2011	14,600	\$ 71.83	\$ 71.83	146,000	\$ 718.32	\$ 646.49
					Subtotal =	\$ 36,470.92

KWRU New Billing System Error / No FKA A Read

Read Date	FKA A Reading in gallons	Amount Billed usage only	MCDC Amount Paid	Actual Usage	Amount Should Have Billed	Amount Owed
5/12/2011	No Read *	\$ 71.83	\$ 71.83	431,500 *	\$ 2,122.98	\$ 2,051.15
6/14/2011	421,200	\$ 71.83	\$ 71.83	421,200	\$ 2,072.30	\$ 2,000.47
7/13/2011	606,800	\$ 71.83	\$ 71.83	606,800	\$ 2,985.45	\$ 2,913.62

Subtotal = \$ 6,965.24

Total = \$ 43,436.16

* No FKA read and KWRU was told there will not be one. Usage for May is previous 6 month average (11/10 thru 4/11)
For May, June and July, KWRU's new billing system was not taking new reads. Corrected bills with consumption from FKA shown above.

Based upon \$4.79 per 1,000 gallons per the Florida Public Service Commission

Based upon \$4.92 per 1,000 gallons per the Florida Public Service Commission



judi irizarry <judikwru@gmail.com>

Monroe County Detention Center Incorrect Consumption Information

1 message

judi irizarry <judikwru@gmail.com>

Fri, Jan 27, 2012 at 1:15 PM

To: khernandez@fkaa.com

Cc: chriskw <chriskw@bellsouth.net>, Greg Wright <gregkwru@yahoo.com>

Ms. Hernandez:

Please refer to the attached correspondence and FCAA Document History by Location regarding incorrect consumption information for the Monroe County Detention Center that was submitted to KW Resort Utilities Corp.

If possible, please provide the corrected information to KW Resort Utilities Corp by Friday, February 3.

Thank you.

--
Judi Irizarry
Accounts Manager

T: 305/295-3301

F: 305/295-0143

KW Resort Utilities Corp
P. O. Box 2125
Key West FL 33045

VIEW OR PAY YOUR BILL ON-LINE AT WWW.KWRU.COM

 **KMBT25020120127123821.pdf**
96K

KW Resort Utilities Corp
P. O. BOX 2125
Key West, FL 33045
Telephone 305-295-3301
Facsimile 305-295-0143

On November 14, 2011 in discussing the Monroe County Detention Center, Location 042774 and Customer 531587, consumption information with Juliette Torres, Ms. Torres informed me that the consumption information 04/14/2009 - 04/13/2011 was incorrect. Please refer to the attached FCAA Document History by Location.

I was informed in order to correct the consumption information 2 additional zeroes were to be added, that the stated 14.6 gallons on 04/13/2011 is incorrect and 146.00 gallons is the correct consumption.

Monroe County has requested the corrected information from KW Resort Utilities Corp. Please provide the corrected consumption from 04/14/2009 – 04/13/2011. It is not necessary for the corrected information to be generated by the FCAA billing system. A spreadsheet or any form that verifies the correct consumption is acceptable.

Thank you for your assistance. Do not hesitate to contact me if necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "Judi Irizarry", with a long horizontal flourish extending to the right.

Judi Irizarry
Accounts Manager

judikwru@gmail.com

System Date: 11/9/2011 9:12:25 AM
 User Date 11/9/2011

Florida Keys Aqueduct Authorit
 Document History by Location

Page: 0
 User: jtorres

1

Location: 042774 Address: COLLEGE ROAD STOCK ISLAND FL 33040
 Customer: 531587 MONROE COUNTY DETENTION CENTER
 Including: Work, Open, History, Voided

Last Bill Date 10/14/2011 Last Bill Balance \$15791.41
 Last Payment Date 11/8/2011 Current Balance \$13397.34

Date	Document	Type	Connection	Consumption	Amount	Running Balance
10/13/2011	READ00003641861	History METER	4 W NONRES		2,471	
9/13/2011	READ00003610918	History METER	3		7,039	
9/13/2011	READ00003610920	History METER	4 W NONRES			
8/12/2011	READ00003542912	History METER	3		10,080	
7/13/2011	READ00003485808	History METER	3		6,068	
6/14/2011	READ00003438399	History METER	3			
6/14/2011	READ00003438401	History METER	3		4,212	
5/12/2011	READ00003380947	History METER	3			
4/13/2011	READ00003329262	History METER	3		146	
3/15/2011	READ00003281563	History METER	3		440	
2/14/2011	READ00003226987	History METER	3		984	
1/13/2011	READ00003171131	History METER	3		371	
12/15/2010	READ00003121524	History METER	3		333	
11/16/2010	READ00003074924	History METER	3		315	
10/18/2010	READ00003017386	History METER	3		454	
9/15/2010	READ00002956848	History METER	3		428	
8/16/2010	READ00002908241	History METER	3		415	
7/15/2010	READ00002853828	History METER	3		421	
6/15/2010	READ00002802878	History METER	3		306	
5/17/2010	READ00002750942	History METER	3		294	
4/15/2010	READ00002695589	History METER	3		169	
3/15/2010	READ00002642228	History METER	3		207	
2/16/2010	READ00002591441	History METER	3		331	
1/14/2010	READ00002535238	History METER	3		260	
12/10/2009	READ00002479904	History METER	3		241	
11/16/2009	READ00002429753	History METER	3		280	
10/15/2009	READ00002378303	History METER	3		64	
9/15/2009	READ00002330523	History METER	3		314	
8/17/2009	READ00002275318	History METER	3		374	
7/14/2009	READ00002204343	History METER	3		369	
6/15/2009	READ00002152574	History METER	3		435	
5/13/2009	READ00002097570	History METER	3		279	
4/14/2009	READ00002046483	History METER	3		36	
3/19/2009	READ00002013717	History METER	2		1,050	
3/19/2009	READ00002013718	History METER	3			
3/12/2009	READ00001992864	History METER	2		3,210	
2/12/2009	READ00001942862	History METER	2		2,968	
1/14/2009	READ00001886801	History METER	2		3,952	
12/11/2008	READ00001834447	History METER	2		2,990	
11/13/2008	READ00001787776	History METER	2		3,980	
10/10/2008	READ00001739067	History METER	2		4,340	
9/12/2008	READ00001681424	History METER	2		4,030	
8/12/2008	READ00001631595	History METER	2		3,860	
7/9/2008	READ00001573324	History METER	2		3,880	
6/17/2008	READ00001527629	History METER	2		3,270	
5/8/2008	READ00001472681	History METER	2		3,260	
4/8/2008	READ00001414194	History METER	2		3,722	
3/10/2008	READ00001338141	History METER	2		4,528	
2/8/2008	READ00001278679	History METER	2		6,140	
1/7/2008	READ00001244967	History METER	1			
1/7/2008	READ00001244968	History METER	2			
12/31/2007	READ00001244965	History METER	1		4,410	
12/10/2007	READ00001187834	History METER	1		4,470	
11/9/2007	READ00001122993	History METER	1		4,120	
10/16/2007	READ00001064572	History METER	1		3,230	
9/21/2007	READ00001009996	History METER	1		4,740	
8/21/2007	READ00000963993	History METER	1		4,600	
7/23/2007	READ00000914602	History METER	1		4,080	
6/22/2007	READ00000867781	History METER	1		4,600	

System Date: 11/9/2011 9:12:25 AM
 User Date 11/9/2011

Florida Keys Aqueduct Authorit
 Document History by Location

Page: 0
 User: jtorres

2

Location: 042774 Address: COLLEGE ROAD STOCK ISLAND FL 33040
 Customer: 531587 MONROE COUNTY DETENTION CENTER
 Including: Work, Open, History, Voided

Last Bill Date 10/14/2011 Last Bill Balance \$15791.41
 Last Payment Date 11/8/2011 Current Balance \$13397.34

Date	Document	Type	Connection	Consumption	Amount	Running Balance
5/21/2007	READ00000816353	History METER	1		2,700	
4/23/2007	READ00000766497	History METER	1		5,450	
3/23/2007	READ00000720160	History METER	1		4,090	
2/23/2007	READ00000668054	History METER	1		2,437	
1/23/2007	READ00000620208	History METER	1		5,390	
12/21/2006	READ00000571940	History METER	1		5,543	
11/20/2006	READ00000519064	History METER	1		3,610	
10/23/2006	READ00000472875	History METER	1		5,600	
9/25/2006	READ00000426104	History METER	1		5,100	

EXHIBIT I

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
2/28/2012	5274

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
2	Helper Regular Business Hours 7:30A.M.-4:30P.M.	55.00	110.00
2	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.	75.00	150.00
	Pumps 1 & 2 not pumping sewerage. Removed each pump and cleared plugs of cloth towels, rags, fabric twine and plastic bags. Reinstalled and tested ok Both pumps now pulling 14 amps, instead of 23 amps Florida State Sales Tax with County Tax	7.50%	0.00
We appreciate your prompt payment.		Total	\$260.00

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143
 www.keysenvironmental.com

Invoice

Date	Invoice #
2/25/2012	5273

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
2.5	Helper Outside Regular Business Hours	79.75	199.38
2.5	Mechanic Outside of Regular Business Hours.	102.00	255.00
	Saturday, February 25, 2012 received a call from the answering service the Sheriffs Department reported the high level alarm was going off. Found Pump #1 tripped @ contractor, thermal overload. Reset-system backed-up, cleaned floats, amped motors, pulled manhole and opened check valve pit. #2 pump/motor reading high amps, 23a, rated @ 21.9 F.C.L.		
	Florida State Sales Tax with County Tax	7.50%	0.00
We appreciate your prompt payment.		Total	\$454.38

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
2/21/2012	5272

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
2	Helper Regular Business Hours 7:30A.M.-4:30P.M.	55.00	110.00
2	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.	75.00	150.00
February 21, 2012 #2 sewerage pump hours (running) excessive, not pumping well, low amperage. Pulled cover plate on check valve to remove clog, debris (plastic, rags, paper etc) from inside and around valve flapper disk. Re-assembled, tested OK *Check valve or Pump # 1 will require some work soon Florida State Sales Tax with County Tax		7.50%	0.00
We appreciate your prompt payment.		Total	\$260.00

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
2/17/2012	5271

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
2	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.	75.00	150.00
2	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.	75.00	150.00
	One Poly.8" Round Float	33.72	33.72
<p>February 17, 2012 MCDC Water Storage tanks - found the tank overflowing as float for portable water valve snapped off. Replaced float and tested OK. Mark Burkemper called Ski to observe the completed work.</p>			
	Tax Exemption #85-8013825294C-7 Florida State Sales Tax with County Tax	7.50%	0.00
We appreciate your prompt payment.		Total	\$333.72

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
2/7/2012	5270

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
5.5	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.	75.00	412.50
5.5	Helper Regular Business Hours 7:30A.M.-4:30P.M.	55.00	302.50
	Alarm horn	135.77	135.77
	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.- Returned to project on 2/15/2012 to install alarm horn	75.00	75.00
	On February 7, 2012 received a high level alarm @ MCDC Main lift station. The floats were tangled due to high levels. Re arranged float cords, removed and cleaned debris from both pumps. Tested ok High level alarm defective, only the light is operational. "Ski" was made aware of the problem and was on site when this work was done. A new alarm was ordered and was installed on 2/15/2012.		
	Tax Exemption # 85-8013825294C-7 Florida State Sales Tax with County Tax	7.50%	0.00
We appreciate your prompt payment.		Total	\$925.77

Keys Environmental, Inc.

6630 Front Street
Key West, FL 33040

305-295-3301

FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
11/10/2011	5232

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
	Myers pump model 4REH150M2-43 SN S00139177 Back up pump for MCDC	5,949.26	5,949.26
	Tax Exemption ##85-8013825294C-7 Florida State Sales Tax with County Tax	7.50%	0.00
We appreciate your prompt payment.		Total	\$5,949.26

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
9/15/2011	5206

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
8	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.	75.00	600.00
8	Helper Regular Business Hours 7:30A.M.-4:30P.M.	55.00	440.00
7	Helper Regular Business Hours 7:30A.M.-4:30P.M.	55.00	385.00
	Thermal block 3 pole	42.77	42.77
	2 split bolts	5.16	5.16
<p>On September 2, 2011 Pierre reported no electrical power to MCDC Panel. Attached is the breakdown off all the work and findings of September 2, 2011. We installed the new Myers Pump as invoice on August 15, 2011.</p> <p>A PO number is needed in order to ship the old one out for repair. This is the only back up pump for your system and should a failure occur it could be catastrophic.</p> <p>We have not finished this work as BRIAN,Inc needs to clean the Muffin Monster and the above parts need to be installed</p> <p>Tax Exemption #85-8013825294C-7 Florida State Sales Tax with County Tax</p>			
		7.50%	0.00
We appreciate your prompt payment.		Total	\$1,472.93

Keys Environmental, Inc.

6630 Front Street
Key West, FL 33040

305-295-3301
FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
6/14/2011	5176

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
	Purchased Myers Non Clog Pump model #4RH150M2-43-35	5,949.26	5,949.26
	Tax Exemption # 85-8013825294C-7 Florida State Sales Tax with County Tax	7.50%	0.00
We appreciate your prompt payment.		Total	\$5,949.26

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
3/16/2011	5146

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
2	Electrician Regular Business Hours 7:30 A.M.-4:30 P.M.	95.00	190.00
2	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.	75.00	150.00
1	Square "D" motor starter #8536SC03V02H205	515.89	515.89
Installed on February 16, 2011 a new motor starter for main lift Station MCDC			
Tax Exemption #85-8013825294C-7			
Florida State Sales Tax with County Tax		7.50%	0.00

We appreciate your prompt payment.		Total	\$855.89
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Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
1/12/2011	5121

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
2	Mechanic Outside of Regular Business Hours.	102.00	204.00
2	Helper Outside Regular Business Hours	79.75	159.50
	Called by Bob Stone on January 11, 2011, 4:42 PM. Problem with MCDC #1 Pumps not responding to automatic system. Turned on pumps by hand to pump down. Found floats entangled with debris.		
	Florida State Sales Tax with County Tax	7.50%	0.00
		Total	\$363.50

Keys Environmental, Inc.

6630 Front Street
Key West, FL 33040

305-295-3301
FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
12/5/2010	5105

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
	Mayer Non Clog Pump Model 4RH150M2-43-35 Serial Number 500118910	5,575.47	5,575.47
	Tax exemption #85-8013825294C-7 Florida State Sales Tax with County Tax	7.50%	0.00
We appreciate your prompt payment.		Total	\$5,575.47

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
12/1/2010	5102

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
2.5	Helper Regular Business Hours 7:30A.M.-4:30P.M.	55.00	137.50
2.5	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.	75.00	187.50
	Repair of equipment - Repair of Myers Pump MD#RH1150M2 15HP3450RPM 460V-3PH Complete rewind, bearings, 0-rings, new impeller,new mechanical seal, machine shaft seal area re-assemble and test	3,705.00	3,705.00
	Tax Exemption #85-8013825294C-7 Florida State Sales Tax with County Tax	7.50%	0.00
We appreciate your prompt payment.		Total	\$4,030.00

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
1/28/2010	4974

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
	Repair of Myers Pump #4RH150M2-43, water intrusion found needs rewind, bearings, seal, gasket, O-rings, machining of shaft, cut and re-pot power cable. See Invoice #4969 in regard to the removal of this pump.	2,347.80	2,347.80
	Florida State Sales Tax with County Tax	7.50%	0.00
We appreciate your prompt payment.		Total	\$2,347.80

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
1/18/2010	4970

Bill To
Monroe County Detention Center Attn: Gina 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
4	Helper Regular Business Hours 7:30A.M.-4:30P.M.	55.00	220.00
8	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.	75.00	600.00
1	Seal	66.43	66.43T
1	Pump Oil	13.00	13.00T
1	Impeller	210.21	210.21T
	Shipping	23.94	23.94
	This work was from the proposal dated August 2009. This was for repair of the pump in the main lift station. The impeller was added as it was needed. I am attaching the original proposal with the impeller added. This work was completed on 12/16/09		
	Florida State Sales Tax with County Tax	7.50%	21.72
		Total	\$1,155.30

Keys Environmental, Inc.

6630 Front Street
Key West, FL 33040

305-295-3301

FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
1/2/2010	4969

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
0.5	Mechanic Outside of Regular Business Hours. 11/28/09 Tech discovered a short called in electrician and Mechanic who trouble shot panel and discovered Phase Monitor component was Bad, jumped the circuit and ordered a new Phase Monitor. Saturday emergency call out	102.00	51.00
3.5	Helper Outside Regular Business Hours	79.50	278.25
3.5	Mechanic Outside of Regular Business Hours.	102.00	357.00
2	Jet Rodder On 11/28/09 Cleaned due to the pump failure, short in Phase Monitor	135.00	270.00
5	Mechanic outside of Regular Business Hours. Sunday emergency call out	102.00	510.00
5	Helper Outside Regular Business Hours On 11/29/09 pulled pump and installed spare, took pump to shop to inspect and pallet for shipping to mainland.	79.75	398.75
0.5	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M. 12/1/09 installed Phase Monitor	75.00	37.50
	Phase Monitor	123.76	123.76T
2	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M. Hired pump truck subcontractor to clean grease out of the lift station. Keys Environmental used jet rodder which was needed to stir up grease in lift station and to blast grease off of the wall of the wet well and rails, etc. 12/4/09	75.00	150.00
2	Jet Rodder	135.00	270.00
	Pump Truck	715.00	715.00
1	Helper Regular Business Hours 7:30A.M.-4:30P.M.	55.00	55.00
1	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M. Call out on 12/17/09 Pump # 1 not moving water, pulled pump and disassembled checked valve, valve was clogged, cleared and restored controls.	75.00	75.00
	Florida State Sales Tax with County Tax	7.50%	9.28

We appreciate your prompt payment.	Total	\$3,300.54
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Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
7/13/2008	4427

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
Waiting for PO	Net 30	

Quantity	Description	Rate	Amount
	Transfer of wastewater from MCDC to KW Resort Utilities plant	1,235.00	1,235.00
	Waived tipping fee KW Resort Utilities Florida State Sales Tax with County Tax	7.50%	0.00
See itemized JI attached		Total	\$1,235.00

Keys Environmental, Inc.

6630 Front Street
Key West, FL 33040

305-295-3301
FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
7/13/2008	4426

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
Waiting for PO	Net 30	

Quantity	Description	Rate	Amount
	Electrician to correct the problem with Pump 2. Pumps would not run on auto. Pump 2 shorted to ground which then blew control fuses.	214.50	214.50
2	Materials used - Three phase monitors Florida State Sales Tax with County Tax	226.23 7.50%	452.46T 33.93
See itemized JI attached		Total	\$700.89

Keys Environmental, Inc.

6630 Front Street
Key West, FL 33040

305-295-3301

FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
7/13/2008	4421

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
Waiting of PO		

Quantity	Description	Rate	Amount
12	Helper Outside Regular Business Hours	72.50	870.00
4.5	Helper Regular Business Hours 7:30A.M.-4:30P.M.	50.00	225.00
	Emergency Call Out July 13th, Sunday Stayed on site through out the night to make sure the system stayed up and running. Remained Monday morning to assist the Mechanic Florida State Sales Tax with County Tax	7.50%	0.00
See itemized JI attached		Total	\$1,095.00

Keys Environmental, Inc.

6630 Front Street
Key West, FL 33040

305-295-3301

FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
8/1/2008	4420

Bill To
Monroe County Detention Center Attn: Public Works 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
Waiting for PO	Net 30	

Quantity	Description	Rate	Amount
4.5	Mechanic Outside of Regular Business Hours. Call out July 13th (Sunday) Found panel without power, fuse from automatic control damaged, corrected restarted and pumped down.	95.00	427.50
7	Helper Outside Regular Business Hours	72.50	507.50
	Call out Sunday, July 13th Panel without power, fuse from automatic control damaged, corrected and restarted. Pump down and hauled wastewater		
	Florida State Sales Tax with County Tax	7.50%	0.00
See itemized IJ attached		Total	\$935.00

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
1/18/2010	4970

Bill To
Monroe County Detention Center Attn: Gina 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
4	Helper Regular Business Hours 7:30A.M.-4:30P.M.	55.00	220.00
8	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M.	75.00	600.00
1	Seal	66.43	66.43T
1	Pump Oil	13.00	13.00T
1	Impeller	210.21	210.21T
	Shipping	23.94	23.94
	 This work relates to an original proposal dated August 2009. This was for repair of the pump in the main lift station. The impeller was added as it was discovered upon doing the seal repair that it was needed. I am attaching the original proposal that did not have the impeller as it was not known at that time that it was in need of replacement. The work was completed on 12/16/09. Please note that there was no additional labor charged to install the impeller since the unit was disassembled to make the seal repair anyway there was no time involved in swapping the impellers. Florida State Sales Tax with County Tax	7.50%	21.72
		Total	\$1,155.30

Keys Environmental, Inc.

6630 Front Street
 Key West, FL 33040
 305-295-3301
 FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
1/22/2010	4969

Bill To
 Monroe County Detention Center
 Attn: Ghis
 5301 College Road
 Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
0.5	Mechanic Outside of Regular Business Hours. 11/28/09 Tech discovered a short called in electrician and Mechanic who trouble shot panel and discovered Phase Monitor component was Bad, jumped the circuit and ordered a new Phase Monitor. Saturday emergency call out	102.00	51.00
3.5	Helper Outside Regular Business Hours	79.50	278.25
3.5	Mechanic Outside of Regular Business Hours	102.00	357.00
2	Jet Rodder On 11/28/09 Cleaned due to the pump failure, short in Phase Monitor	135.00	270.00
5	Mechanic outside of Regular Business Hours, Sunday emergency call out Helper Outside Regular Business Hours On 11/29/09 pulled pump and installed spare, took pump to shop to inspect and pullet for shipping to mainland.	102.00 79.75	510.00 398.75
0.5	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M. 12/1/09 Installed Phase Monitor Phase Monitor	75.00 133.04	37.50 133.04
2	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M. Hired pump truck subcontractor to clean grease out of the lift station. Keys Environmental used jet rodder which was needed to stir up grease in lift station and to blast grease off of the wall of the wet well and rails, etc. 12/4/09	75.00	150.00
2	Jet Rodder Pump Truck	135.00 715.00	270.00 715.00
1	Helper Regular Business Hours 7:30A.M.-4:30P.M.	55.00	55.00
1	Hourly rate for Mechanic during Regular Business Hours 7:30 A.M.-4:30P.M. Call out on 12/17/09 Pump # 1 not moving water, pulled pump and disassembled checked valve, valve was clogged, cleared and restored controls. Florida State Sales Tax with County Tax	75.00 7.50%	75.00 0.00
Total			\$3,300.54

We appreciate your prompt payment.

Keys Environmental, Inc.

6630 Front Street
Key West, FL 33040

305-295-3301

FAX 305-295-0143

www.keysenvironmental.com

Invoice

Date	Invoice #
1/28/2010	4974

Bill To
Monroe County Detention Center Attn: Gina 5501 College Road Key West, FL 33040

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
	Repair of Myers Pump #4RH150M2-43, water intrusion found needs rewind, bearings, seal, gasket, O-rings, machining of shaft, cut and re-pot power cable. See Invoice #4969 in regard to the removal of this pump. Florida State Sales Tax with County Tax	2,347.80	2,347.80
		7.50%	0.00
We appreciate your prompt payment.		Total	\$2,347.80

EXHIBIT J

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: January 20, 2010

Division: Public Works

Bulk Item: Yes No

Department: Facilities Maintenance

Staff Contact Person/Phone#: Bob Stone/289-6077

AGENDA ITEM WORDING: Approval of Bill of Sale, Absolute, transferring four (4) facilities (lift stations/sewer mains) to KW Resort Utilities, Inc.

ITEM BACKGROUND: The four facilities are being transferred in accordance with Sec. 1 of the attached Utility Agreement dated August 16, 2001.

PREVIOUS RELEVANT BOCC ACTION: Approval of Utility Agreement on 8/16/01.

CONTRACT/AGREEMENT CHANGES: n/a

STAFF RECOMMENDATION: Approval.

TOTAL COST: \$0

BUDGETED: Yes NO

Cost to County: same

SOURCE OF FUNDS: _____

REVENUE PRODUCING: YES NO AMOUNT PER MONTH _____ YEAR _____

APPROVED BY: County Atty. OMB/Purchasing n/a Risk Management n/a

DOCUMENTATION: Included Not Required _____

DISPOSITION: _____

AGENDA ITEM # _____

BILL OF SALE, ABSOLUTE

KNOW ALL MEN BY THESE PRESENTS, that the COUNTY OF MONROE, FLORIDA, a political subdivision of the State of Florida, party of the first part, pursuant to an agreement entered on August 16, 2001, between the party of the first part and KW Resort utilities, Inc., party of the second part, does grant, bargain, sell, transfer and deliver unto KW Resort utilities, Inc., party of the second part, the following:

Description:

- 1) Lift Station serving the Monroe County Detention Facility Treatment Plant, on Stock Island;
- 2) Lift Station serving the Public Buildings and sewer main from the lift station to the Monroe County Detention Facility Treatment Plant, on Stock Island;
- 3) Lift Station constructed after August 16, 2001, and serving the Public Buildings at the Animal Shelter on College Road, Stock Island; and
- 4) The sewer main constructed after August 16, 2001, from the second lift station described above to the previously existing sewer main serving the Detention Facility, on Stock Island.

The four facilities described above are further described by depiction on the attached Sketch, incorporated herein by reference.

TO HAVE AND TO HOLD the same unto the said, forever.

And it does covenant to and with the said party of the second part that it is the lawful owner of said facilities; that they are free from all encumbrances; that it has good right to transfer ownership of the same as aforesaid; that said facilities are transferred to the party of the second part in "AS IS" condition with no warranties, express or implied, of any kind concerning the safety, working condition, or any other aspect of merchantability.

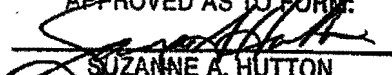
IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed in its name by its Chairperson and its seal to be affixed, attested to by its Clerk, the ___th day of _____, 20__.

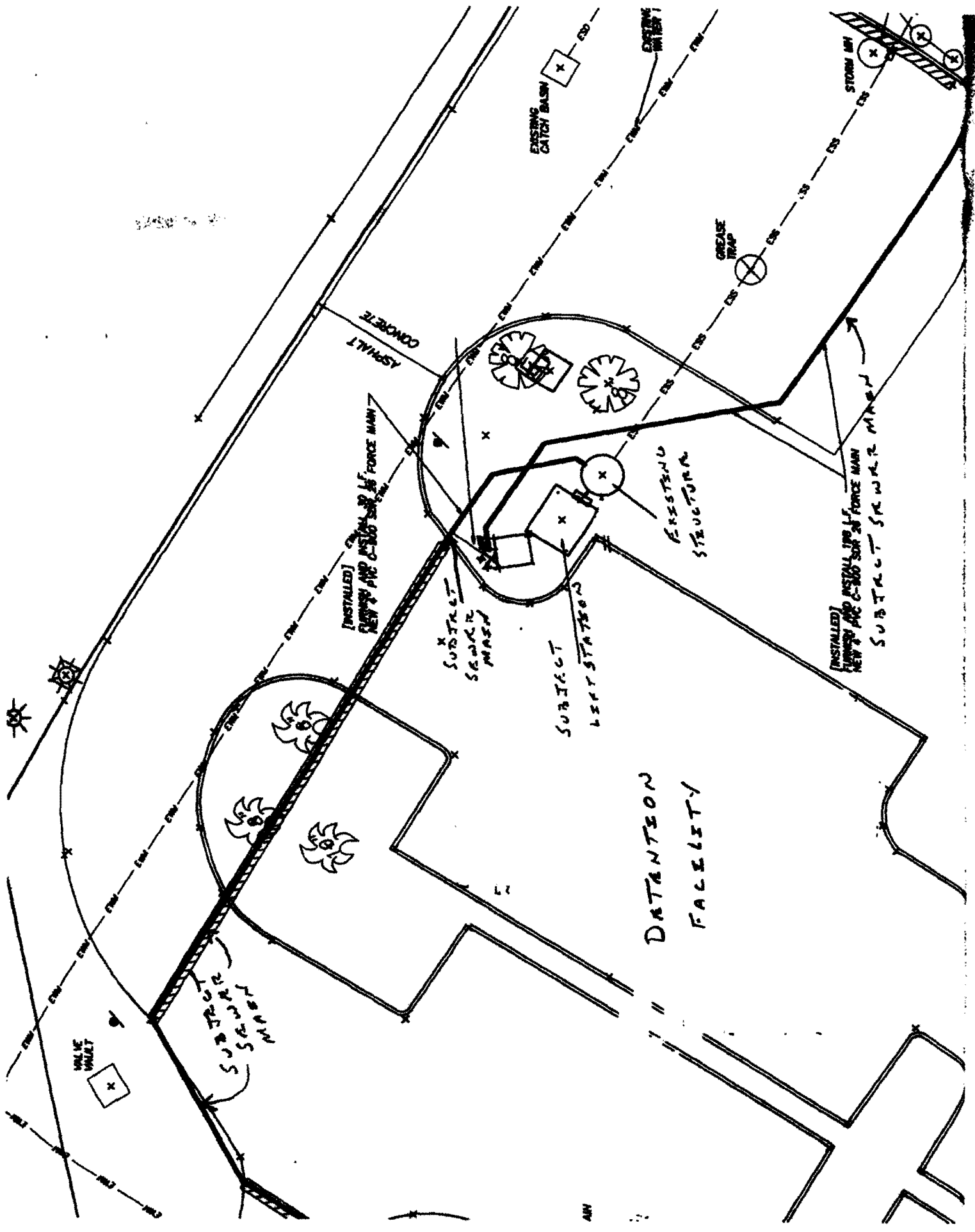
(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By _____
Mayor/Chairperson

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

SUZANNE A. HUTTON
COUNTY ATTORNEY
Date 12/30/09



DATANTON FACILITY

CONCRETE
ASPHALT

EXISTING CATCH BASIN

STORM MH

GREASE TRAP

EXISTING STRUCTURE

[INSTALLED] PUMP AND INSTALL 30 LF FORCE MAIN
SUBJECT SEWER MASH

SUBJECT SEWER MASH

SUBJECT LEFT STATIONS

[INSTALLED] PUMP AND INSTALL 30 LF FORCE MAIN

VALVE VAULT

SUBJECT SEWER MASH

JUNIOR COLLEGE ROAD

50' R/W

EXISTING 4" DIA. SEWER MAIN

EXISTING WATER MAIN

SUBJECT SEWER MAIN

SUBJECT LEFT STATION

I. E. (0.65)

EXISTING DRAIN FIELD TO BE RETAINED

EXISTING SEWER MAIN TO BE RETAINED

EXISTING SEWER MAIN TO BE RETAINED

CLEANOUT (TYPICAL)

(3.44)

(3.5)

ANIMAL

FIELD (5' x 10') OFFICE

SHALTER

EXISTING DRAIN FIELD TO BE RETAINED

EXISTING DRAIN FIELD TO BE RETAINED

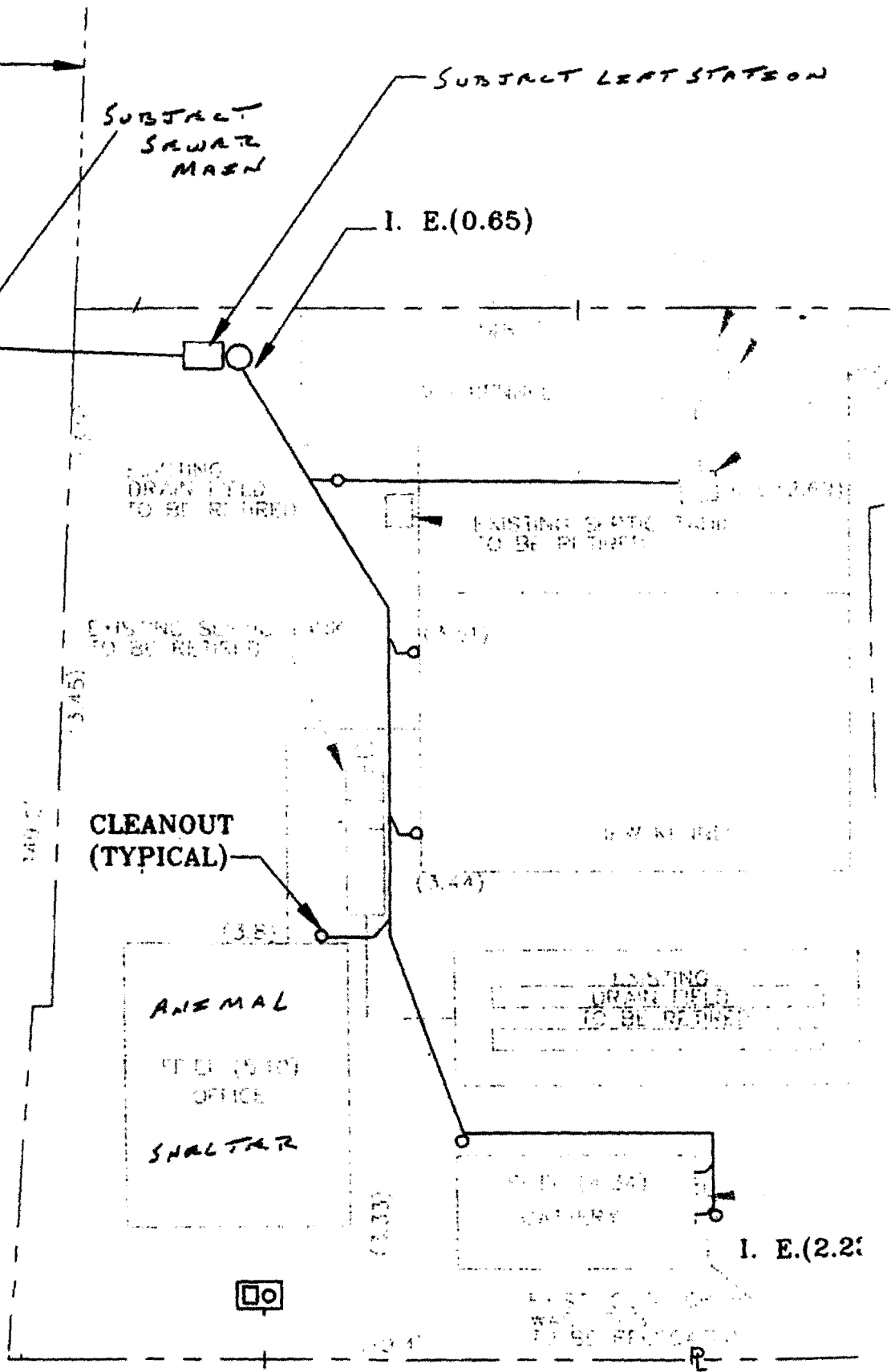
EXISTING DRAIN FIELD TO BE RETAINED

I. E. (2.2)



24'

PAVEMENT



UTILITY AGREEMENT

THIS UTILITY AGREEMENT ("Agreement"), dated as of the 16th day of August, 2001, by and between KW Resort Utilities Corp., a Florida corporation, having its office(s) at 6450 Junior College Road, Key West, Florida, 33040 ("Service Company"), and The County of Monroe, Florida, a Florida County having its office(s) at 5100 College Road, Key West, FL 33040, ("County").

R E C I T A L S

- A. County is the owner of certain real property more particularly described on Exhibit "A", attached hereto and made a part hereof (the "Property").
- B. County currently operates a jail and detention center on the Property ("Detention Facility"), which requires sanitary sewer service.
- C. County currently operates public facilities at the Public Service Building, Bayshore Manor, and the Animal Shelter, all along College Road ("Public Buildings"), which requires sanitary sewer service.
- D. County requests that Service Company provide central sewage collection services in and upon the Property.
- E. Service Company owns, operates, manages and controls a central sewage system and is willing to provide sanitary sewer services pursuant to this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), and the mutual covenants and agreements hereinafter set forth, and intending to be legally bound thereby, it is agreed as follows:

1. On-Site Facilities

The County owns and operates the following facilities, which it agrees to convey at no charge to the Service Company:

- A. Lift station serving the Detention Facility Treatment Plant.
- B. Lift station serving the Public Buildings and sewer main from the lift station to the Detention Facility Treatment Plant.

The County shall construct the following facilities, which it agrees to convey at no charge to the service company at the time of connection to the Service Company's system:

- A. A second lift station serving the Public Buildings located at the Animal Shelter.
- B. A sewer main from the second lift station to the existing sewer main serving the Detention Facility.

The three County lift stations and appurtenant facility to be conveyed to Service Company are hereinafter referred to as "On-Site Facilities". All On-Site Facilities, laterals and Property Installations shall be in good working order upon connection to Service Company's system. Prior to commencing construction on the second lift station serving the Public Buildings, County shall provide Service Company with construction plans for approval by

Service Company, which approval shall not be unreasonably withheld. If the Service Company discontinues service to the County property for whatever reason (other than nonpayment or default by County) then the on-site facilities will be reconveyed by the Service Company to the County at no charge.

Service Company shall construct a reuse ("graywater") line to Detention Facility, and agrees to make available a minimum of 32,000 gallons per day ("gpd") of graywater to County, but no more than 60,000 gallons per day. Graywater shall meet all reuse water quality standards required by law.

2. Definitions

"Business Day" - shall mean any day of the year in which commercial banks are not required or authorized to close in New York, New York.

"Central Sewage System" - shall mean the central sewage system owned and operated by the Service Company.

"Customer" - shall mean the County.

"Equivalent Residential Connections" - (ERC), shall be defined as one individual residential connection or, for commercial and other uses, the estimated flow based on the use and Chapter 64E-6 F.A.C., divided by the most recently approved "Capacity Analysis" rate per residential connection (currently 205 gallons per day per residential connection).

"Point of Delivery" - shall mean the point at which the county lines enter the three-lift station conveyed to the Service Company.

"Property Installations" - shall mean any service lines located on individual lots or parcels of the Property, on the County side of the Point of Delivery.

"Service Company's Affiliates" - shall mean any disclosed or undisclosed officer, director, employee, trustee shareholder, partner, principal, parent, subsidiary or other affiliate of Service Company.

"System" - shall mean all pipes, lines, manholes, lift or pump stations, reservoirs or impoundments constructed or installed on the Property in public rights-of-way or easements dedicated to Service Company, or on lands conveyed to Service Company by deed in fee simple, including, without limitation, Central Connection Lines.

"Tariff" - shall mean Service Company's existing and future schedules of rates and charges for sewer service.

3. System Construction

Service Company shall design and construct at its sole expense offsite facilities to connect the county lift station at the Detention Facility to the Central Sewage System (the "Project"). Said Project shall commence 30 days after execution hereof and be completed 180 days after commencement. County upon completion shall immediately provide all of its domestic wastewater to Service Company for treatment at Service Company's applicable tariff. The Service Company's current tariff is \$605.52

for a 4" meter base facility charge per month and \$2.92 per 1000 gallons measured off of water consumption. Additional wastewater services at the Public Service Building, Bay Shore Manor, the Animal Shelter and other shall pay the applicable tariffs. For instance if the Detention Center uses a 4" meter and the Public Service Building has a 2" meter then the County's rate shall be \$605.62 + \$196.35 plus \$2.92 per thousand gallons per month. Notwithstanding Utility's Tariff, Utility agrees to treat all of County's re-use water, including air conditioning re-use water. County agrees to pay Utility for treating re-use water based upon a four-inch meter and Utility's current tariff, the re-use meter shall be read daily. The County represents that no re-use water is disposed via shallow injection well.

4. System Decommissionary

County currently operates a .105 MGD wastewater treatment plant on the property. After commencement of service by Service Company, County at its sole expense may at its option decommission and remove said plant. Notwithstanding the foregoing, Service Company agrees to assist County in said decommissionary by contributing to the cost of the engineering, permitting, and removing the existing plant the lesser of \$10,000 or the sum of said costs.

5. Property Rights

Prior to Service Company's construction of the Project, County shall convey

- a) A non-exclusive easement in the form attached hereto as Exhibit "B" in and to any and all portions of the On-Site Facilities not located in public rights-of-way, of sufficient size to enable Service Company ingress and egress and to operate, maintain and replace such portions of the On-Site Facilities not located within public rights-of-way for Service Company, other uses of Service Company's system and its successor and assigns. If the Service Company discontinues service to the County property for whatever reason, then the easements granted to this section will lapse and expire and the County property so encumbered will be free and clear of such easements. Language similar to the foregoing must appear in the easements filed for record. The Service Company agrees to provide and execute the documents necessary to extinguish such easements.
- b) Service Company at its sole discretion shall be permitted to pump other customer's wastewater through said lift station and force main and County shall provide easements for said connections at request of Service Company without any additional charge.
- c) A bill of sale conveying title to On-Site Facilities free and clear of all liens and encumbrances.

6. Rates, Fees, Charges

- a) All Customers will pay the applicable fees, rates and charges as set forth in the Tariff. Nothing contained in this Agreement shall serve to prohibit Service Company's right to bill or collect its rates and charges from Customers, nor to require compliance with any provision of its Tariff.

- b) County shall pay to Service Company a reservation fee ("Capacity Reservation Fee"), in the amount of Two Thousand Seven Hundred (\$2,700.00) dollars per E.R.C. connections to be reserved by County to serve the Property (individually, a "Connection", collectively, the "Connections").

The initial reservation shall be for 454 ERC's based upon an average flow of 83,000 gallons per day from the county jail and an estimated flow from the addition to the juvenile detention center of 10,045 gallons per day. Cost for said hook-ups is \$1,225,800. Any additional flows of wastewater from the Detention Facility, Public Buildings, or expansions thereof, animal shelter or in excess of the estimated flow shall require additional capacity fee, which shall be based upon Florida Code Statute 64E-6.

- c) The Capacity Reservation Fee for each connection shall be payable by County to Service Company as follows:
- (i) 1/3, upon completion of the connection (estimated at this time to be \$408,600).
 - (ii) 1/3, one year after connection completion.
 - (iii) 1/3, two years after connection completion.
- d) Service Company hereby agrees to reserve such capacity for the benefit for County subject to the provisions of this Section 5, provided, however, that such reservations shall not be effective until Service Company has received the initial installment of the Capacity Reservation Fee in accordance with Section 6 © (I) hereof, and provided, further, that Service Company shall have the right to cancel such reservations in the event of County's failure to comply with the terms of this Agreement
- e) In addition to the above charges, upon delivery hereof, County shall also pay Service Company \$.40 per thousand gallons for "graywater" provided to County pursuant to Paragraph 1 herein.
- f) In the event of default by County in the payment of Capacity Reservation Fee hereunder, which default is not cured as provided in paragraph 12, hereof, Service Company may cancel this agreement by giving thirty (30) days written notice of default and retain all payments hereunder as liquidated damages.

7. The capacity reservation fee described in paragraph 6(c)(i), hereafter 6(c)(i) funds (minus the cost incurred by Service Company to complete the Project including the graywater line), when due, must be deposited in an interest bearing escrow account with a federally insured financial institution that has an office in Key West, Florida. The mention of 6(c)(i) funds includes all accumulated interest. The terms of the escrow are as follows:
- a) When the Service Company begins substantial physical construction to expand the capacity of its wastewater treatment plant or to extend its wastewater collection infrastructure to serve additional areas in South Stock Island or other islands then the escrow agent will release the 6(c)(i) funds to the Service Company in the following manner: the payments will be made monthly equal amounts based

on the expected completion date of the expansion as set forth in the Service Company's construction documents. Release of said funds shall be made by escrow agent upon presentation of construction invoices (including costs of real estate acquisition, purchase or installation of pipes and lift stations, and professional services; provided that such costs are exclusively attributable to such expansion of capacity or extension of collection infrastructure) to be paid by Service Company along with a statement from Service Company describing the construction for which the invoices seek payment. County hereby agrees to enforce, through Code Enforcement proceedings, its ordinance requiring all property owners located within Service Company's service area to connect to Service Company's System and to pay the tariff applicable to such connection. In the event of breach hereof by County which breach continues after notice and reasonable opportunity to cure as provided in Paragraph 12, below, all escrowed funds shall be released to Service Company.

- b) However, if the Service Company agrees to sell its wastewater treatment plant and collection infrastructure to the FKAA before the Service company completes the construction just described, then the 6(c)(1) funds (or the balance then remaining undisbursed) must be transferred to the FKAA upon the completion of the actions needed to consummate the sale of the wastewater treatment plant and collection infrastructure to the FKAA. For the purposes of this paragraph 7, *sale* means the sale of physical assets, an equity purchase (and/or debt assumption or purchase) resulting in the FKAA acquiring a controlling interest in the Service Company, a long-term lease of the physical assets, or any other transaction that results in the FKAA assuming the obligation to operate the Service Company's wastewater treatment plant and current collection infrastructure.
- c) If the Service company has not commenced expansion of the wastewater treatment plant or collection infrastructure by the year 2006 or, if the FKAA has not purchased the Service Company's assets as described above by the year 2006, then the escrow agent must release the 6(c)(1) funds to the Service Company.

8. **Absolute Conveyance**

Except as provided elsewhere in this contract regarding the reconveyance of property and the extinguishment of easements if service is discontinued, County understands, agrees and acknowledges that County's conveyance of the On-Site Facilities and any and all easements, real property or personal property, or payment of any funds hereunder (including, without limitation, the Capacity Reservation Fee), shall, upon acceptance by Service Company, be absolute, complete and unqualified, and that neither County nor any party claiming by or through County shall have any right to such easements, real or personal property, or funds, or any benefit which Service Company may derive from such conveyance or payments in any form or manner.

9. **Delivery of Service; Maintenance**

- a) Upon connection as provided in section 1, Service Company shall provide service to the Point of Delivery in accordance with the terms

of this Agreement and all applicable laws and regulations and shall operate and maintain the System in accordance with the terms and provisions of this Agreement. Service Company shall use its best efforts to provide service prior to February 15, 2002. In the event that Service Company is unable to provide service on February 15, 2002 thru no fault of Service Company, then all cost of alternative sewage disposal shall be County's until service is provided. Service means that the Service Company will process, treat and dispose of wastewater and will operate its system: in compliance with the quality and process standards required by DEP and the Service Company; in accordance with industry standards as they develop and any FCAA, County, or City of Key West requirements; and, in a manner that does not pose or cause health or environmental risk or damage (provided, that should any violation of health or environmental rule or law occur, service company shall be in compliance herewith if service company promptly undertakes and completes any necessary remedial action). Service also means the furnishing of graywater, described in section 1, meeting industry standards.

- b) County shall, at its sole cost and expense, own, operate and maintain all Property Installations, which have not been conveyed to Service Company pursuant to the terms and conditions of this Agreement.
- c) In the event County desires additional services over and above that reserved herein and provided Service Company has additional uncommitted capacity, Service Company shall provide said additional capacity provided County pays the additional connection fees required under Chapter 64E-6 F.A.C.
- d) County shall pay for any extra expense of operating the Detention Center lift station resulting from prisoner or staff disposal of debris into the system or failure to maintain its grease trap. Service Company shall have the right to inspect the grease traps in order to insure their continued maintenance by County.
- e) County shall only provide domestic waste water for treatment by Service Company. No water from air conditioning systems or swimming pools shall flow into the wastewater disposal system.
- f) The Service Company agrees to keep its system in good repair, in full operating condition in compliance with applicable law and to promptly remedy all breakdowns, spills, contaminations and other acts of environmental damage or pollution.

10. **Repair of System**

In the event of any material damage to or destruction of any of the lift stations located on County property operated or maintained by Service Company due to any acts or omissions by County, or its agents, representatives, employees, invitees, licensees, detainees or inmates, Service Company shall repair or replace such damaged or destroyed portion of the System at the sole cost and expense of County. County shall pay all costs and expenses associated with such repair or replacement within thirty

(30) days after receipt of any invoice from Service Company setting forth any such costs and expenses.

11. Term

This Agreement shall become effective as of the 15th day of Aug, 2001, and shall continue for 99 years so long as Service Company, its successor or assignees, provides sewer service to the County, and the County's successors and assigns. WJH

12. Default

In the event of a default by either party of its duties and obligations hereunder, the non-defaulting party shall provide written notice to the defaulting party specifying the nature of the default and the defaulting party shall have fifteen (15) days to cure any default of a monetary nature and thirty (30) days for any other default. If the default has not been cured within the applicable period (time being of the essence), the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, including but not limited to, the right to damages, injunctive relief and specific performance. Service Company may, at its sole option, discontinue and suspend the delivery of service to the System in accordance with all requirements of applicable law and the Tariff, if County fails to timely pay all fees, rates and charges pursuant to the terms of this Agreement. The County, however, may withhold payment, without default, if the Service Company through no fault of the County: fails to provide consistent minimum wastewater and graywater services as required by section 9; causes or permits unexcused delays or interruptions in service or commencing service; cause or permits repeated or chronic failures to maintain quality standards; causes or permits damage to County property; causes or permits adverse health effects to the public or system users; causes or permits environmental damage; or, exposes the County or its officials and employees to suits or liability attributable to the Service Company's conduct.

13. Excuse from Performance

a) Force Majeure

If Service Company is prevented from or delayed in performing any act required to be performed by Service Company hereunder, and such prevention or delay is caused by strikes, labor disputes, inability to obtain labor, materials or equipment, storms, earthquakes, electric power failures, land subsidence, acts of God, acts of public enemy, wars, blockades, riots, acts of armed forces, delays by carriers, inability to obtain rights-of-way, acts of public authority, regulatory agencies, or courts, or any other cause, whether the same kind is enumerated herein, not within the control of Service Company ("Force Majeure"), the performance of such act shall be excused for a period equal to the period of prevention or delay. If the Service Company intends to claim force majeure as an excuse for nonperformance, then it must so notify the County in writing within ten business days of the force majeure event. The Service Company must also undertake all reasonable measures, at its expense, to restore full service at the earliest practical date. The

County is not obligated to pay any Service Company tariff, charge or fee until service is restored.

b) Governmental Acts

If for any reason during the term of this Agreement, other than for due conduct of the Service Company and its agents and representatives, and except for the lawful actions and decisions of the County in the exercise of its governmental powers, any federal, state or local authorities or agencies fail to issue necessary permits, grant necessary approvals or require any change in the operation of the Central Sewage System or the System ("Governmental Acts"), then, to the extent that such Governmental Acts shall affect the ability of any party to perform any of the terms of this Agreement in whole or in part, the affected party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible, by the parties hereto in conformity with such permits, approvals or requirements. Notwithstanding the foregoing, neither County nor Service Company shall be obligated to accept any new agreement if it substantially adds to its burdens and obligations hereunder.

c) Emergency Situations

Service Company shall not be held liable for damages to County and County hereby agrees not to hold Service Company liable for damages for failure to deliver service to the Property upon the occurrence of any of the following events provided that service is restored within 24 hours:

1. A lack of service due to loss of flow or process or distribution failure;
2. Equipment or material failure in the Central Sewage System or the System, including storage, pumping and piping provided the Service Company has utilized its best efforts to maintain the Central Sewage System in good operating condition; and
3. Force Majeure, unforeseeable failure or breakdown of pumping, transmission or other facilities, any and all governmental requirements, acts or action of any government, public or governmental authority, commission or board, agency, agent, official or officer, the enactment of any statute, ordinance, resolution, regulation, rule or ruling, order, decree or judgment, restraining order or injunction of any court, including, without limitation, Governmental Acts.

14. Successors and Assigns

This Agreement and the easements granted hereby, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15 Indemnification

a) To the extent authorized by Section 768.28, FS, the County agrees to indemnify and hold harmless the Service Company for claims, demands,

causes of action, losses, damages, and liabilities that arise out of the negligent act(s) or omission(s) of any County officer, employee, contractors (including subcontractors employed by a County contractor) and agents, in connection with the use of the system, the operation of the system, or the occupancy of the Property.

b) The Service Company agrees to indemnify and hold harmless the County for claims, demands, causes of action, losses, damages and liabilities that arise out of the negligent act(s) or omission(s) of any Service Company officer, employee, contractors (including subcontractors employed by a Service Company contractor) and agents in connection with the maintenance, expansion and operation of the system, including those acts or omissions that result in environmental damage or pollution.

16. Notices

All notices, demands, requests or other communications by either party under this Agreement shall be in writing and sent by (a) first class U.S. certified or registered mail, return receipt requested, with postage prepaid, or (b) overnight delivery service or courier, or (c) telefacsimile or similar facsimile transmission with receipt confirmed as follows:

If to Service Company: KW Resort Utilities Corp.
6450 Junior College Road
Key West, Florida 33040
Fax (305)294-1212

With a copy to: W. Smith
11 E. Adams, Suite 1400
Chicago, Illinois 60603
Fax (312)939-7765

If to County: County Administrator
Public Service Building
5100 College Road
Key West, FL 33040

With a copy to: County Attorney
PO Box 1026
Key West, FL 33041

18. Tariff

This Agreement is subject to all of the terms and provision of the Tariff. In the event of any conflict between the Tariff and the terms of this Agreement, the Tariff shall govern and control.

19. Miscellaneous Provisions

a) This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by or on behalf of the party to be charged.

- b) All prior statements, understandings, representations and agreements between the parties, oral or written, are superseded by and merged in this Agreement, which alone fully and completely expresses the agreement between them in connection with this transaction and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement. This Agreement shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto, and without regard to or aid of canons requiring construction against Service Company or the party drafting this Agreement.
- c) No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.
- d) This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. It shall not be necessary for the same counterpart of this Agreement to be executed by all of the parties hereto.
- e) Each of the exhibits and schedules referred to herein and attached hereto is incorporated herein by this reference.
- f) The caption headings in this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be construed to modify, explain or alter any of the terms, covenants or conditions herein contained.
- g) This Agreement shall be interpreted and enforced in accordance with the laws of the state in which the Property is located without reference to principles of conflicts of laws. In the event that the Florida Public Service Commission loses or relinquishes its authority to regulate Service Company, then all references to such regulatory authority will relate to the agency of government or political subdivision imposing said regulations. If no such regulation exists, then this Agreement shall be governed by applicable principles of law.
- h) Each of the parties to this Agreement agrees that at any time after the execution hereof, it will, on request of the other party, execute and deliver such other documents and further

assurances as may reasonably be required by such other party in order to carry out the intent of this Agreement.

- i) If any provision of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of this Agreement and to this end the provisions of this Agreement are intended to be and shall be severed. Notwithstanding the foregoing sentence, if (i) any provision of this Agreement is finally determined by a court of competent jurisdiction to be unenforceable or invalid in whole or in part, (ii) the opportunity for all appeals of such determination have expired, and (iii) such unenforceability or invalidity alters the substance of this Agreement (taken as a whole) so as to deny either party, in a material way, the realization of the intended benefit of its bargain, such party may terminate this Agreement within thirty (30) days after the final determination by notice to the other. If such party so elects to terminate this Agreement, then this Agreement shall be terminated and neither party shall have any further rights, obligations or liabilities hereunder, except for any rights, obligations or liabilities which by this specific terms of this Agreement survive the termination of this Agreement.
- j) The parties hereto do hereby knowingly, voluntarily, intentionally, unconditionally and irrevocably waive any right any party may have to a jury trial in every jurisdiction in any action, proceeding or counterclaim brought by either of the parties hereto against the other or their respective successors or assigns in respect of any matter arising out of or in connection with this agreement or any other document executed and delivered by either party in connection therewith (including, without limitation, any action to rescind or cancel this agreement, and any claim or defense asserting that this agreement was fraudulently induced or is otherwise void or voidable). This waiver is a material inducement for the parties hereto to enter into this agreement.
- k) In the event of any litigation arising out of or connected in any manner with this Agreement, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable counsel and paralegal fees incurred in connection therewith through and including all other legal expenses and the costs of any appeals and appellate costs relating thereto. Wherever in this Agreement it is stated that one party shall be responsible for the attorneys' fees and expenses of another party, the same shall automatically be deemed to include the fees and expenses in connection with all appeals and appellate proceedings relating or incidental thereto. This subsection (k) shall survive the termination of this Agreement.
- l) This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status.

IN WITNESS WHEREOF, Service Company and Developer have executed this Agreement as of the day and year first above written.

KW RESORT UTILITIES CORP.

By: William L Smith Jr
Title: PRESIDENT

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

By: George P. Rapp
Mayor/Chairman



William L Smith Jr
150 Jr College Rd
West, Fla 33040

FANNY L. KOLHAGE, Clerk
By: Jamela Hancock
Deputy Clerk

STATE OF ILLINOIS)
COUNTY OF COOK) SS:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.
By: Robert N. Wolfe
DATE 8-28-01

The foregoing instrument was acknowledged before me this 23rd day of August, 2001, by William L Smith, Jr. as President of KW Resort Utilities Florida corporation, on behalf of said corporation. He/she is personally known to me or who has produced Driver's License as identification.

My Commission Expires:



STATE OF FLORIDA)
COUNTY OF MONROE) SS:

The foregoing instrument was acknowledged before me this _____ day of July, 2001, by _____, as Mayor of Monroe County, a political subdivision of the State of Florida. He is personally known to me.

My Commission Expires:

JdconKWUtilities2

FOR RECORD
AUG 30 PM 4:53
FANNY L. KOLHAGE
CLERK, CIR. CL.
MONROE COUNTY, FLA.

Addendum A

AB

Miss D.E.P. Jr.
M. M. P. Jr.

A parcel of land, formerly submerged in the Bay of Florida, and being a part of Tract one of the lateral improvement Trunk Road of the State of Florida (TIR) Deed Number 18725, and said parcel being in Section 27, Township 87 South, Range 25 East, and in Hernando County, Florida; and said parcel being more particularly described by notes and between as follows: CORNER of the intersection of the center line of the right of way of U. S. Highway No. 1, also known as the center line of the Florida East Coast Railroad; and the center line of the right of way of "Old Country Club Road" (OCCR), also known as Junior College Road (JCR) as these two center lines exist as of May 15, 1998, said intersection being known as Point #1 and having coordinates of N-88809.70' & E-251292.35' based on the Fortescue Projection for the East Zone of Florida; and run thence N 20° 11' 57" W (all bearings in this legal description are also based on the said Fortescue Projection) along the center line of the OCCR for a distance of 230.44 feet to Point #2 (N-87205.90' & E-251213.267); thence N 82° 51' 57" W along the center line of the OCCR for a distance of 330.00 feet to Point #3 (N-87405.15' & E-250950.157); thence N 39° 26' 57" W along the center line of the OCCR for a distance of 300.00 feet to Point #4 (N-87636.17' & E-250758.757); thence N 30° 49' 57" W along the center line of the OCCR for a distance of 205.00 feet to Point #5 (N-87845.72' & E-250622.587); thence N 05° 33' 57" W along the center line of the OCCR for a distance of 152.00 feet to Point #6 (N-88015.42' & E-250613.467); thence N 19° 47' 05" E along the center line of the OCCR for a distance of 122.55 feet to Point #7 (N-88130.75' & E-250654.967); thence N 60° 30' 57" W for a distance of 200.00 feet to Point #8 (N-88329.59' & E-250491.187) and the S&TJ corner of the lands described in the said TIR Deed No. 18725; thence N 59° 20' 03" E along the S&TJ boundary line of the lands described in the said TIR Deed No. 18725 for a distance of 982.72 feet to Point #9 (N-88966.35' & E-250997.427) and the POINT OF BEGINNING of the parcel of land being described herein said Point of Beginning being marked by an iron pipe; thence N 63° 32' 06" W for a distance of 206.48 feet to Point #10 (N-89188.37' & E-250772.577); thence S 40° 25' 19.5" W for a distance of 108.68 feet to Point #11 (N-89076.04' & E-250782.547); thence S 86° 15' 32" W for a distance of 241.24 feet to Point #12 (N-89441.85' & E-250502.017) and the Approximate True High Tide Line of Florida Bay (NHTL); thence S 27° 02' 03" W and along the said NHTL for a distance of 179.70 feet to Point #13 (N-89781.97' & E-250420.337); thence S 31° 02' 03" W and along the said NHTL for a distance of 157.17 feet to Point #14 (N-89864.35' & E-250349.427); thence S 41° 02' 02" W and along the said NHTL for a distance of 103.25 feet to Point #15 (N-89886.44' & E-250281.837); thence S 81° 32' 03" W and along the said NHTL for a distance of 146.23 feet to Point #16 (N-89896.48' & E-250167.357); thence N 52° 27' 57" W and along the said NHTL for a distance of 193.38 feet to Point #17 (N-89905.127' & E-250013.997); thence N 30° 27' 57" W and along the said NHTL for a distance of 315.40 feet to Point #18 (N-89935.14' & E-249864.077); thence N 20° 27' 57" W and along the said NHTL for a distance of 290.40 feet to Point #19 (N-899147.84' & E-249756.057); thence N 01° 32' 03" E along the said NHTL for a distance of 165.80 feet to Point #20 (N-899312.78' & E-249750.467); thence N 16° 27' 56" E and along the said NHTL for a distance of 77.82 feet to Point #21 (N-899387.22' & E-249782.457); thence N 18° 46' 53" W and along the said NHTL for a distance of 57.66 feet to Point #22 (N-89441.81' & E-249785.917); thence N 14° 57' 57.5" W and along the said NHTL for a distance of 138.45 feet to Point #23 (N-89506.50' & E-249730.757); thence N 30° 26' 33" E and along the said NHTL for a distance of 165.00 feet to Point #24 (N-89496.14' & E-249835.377); thence N 82° 04' 36" E for a distance of 195.00 feet to Point #25 (N-89575.29' & E-249787.147) and a concrete monument; thence S 15° 16' 39" W for a distance of 22.39 feet to Point #26 (N-89583.59' & E-249582.027) and a concrete monument; thence S 44° 57' 02" E for a distance of 209.00 feet to Point #27 (N-89382.88' & E-249171.867) and a concrete monument; thence N 74° 48' 09" E for a distance of 80.25 feet to Point #28 (N-89383.96' & E-250249.307) and a concrete monument; thence S 56° 50' 20" E for a distance of 482.59 feet to Point #29 (N-89119.46' & E-250064.147) and a concrete monument; thence N 40° 25' 19" E for a distance of 157.23 feet to Point #30 (N-89239.22' & E-250758.027) and a concrete monument; thence S 63° 32' 06" E for a distance of 316.80 feet to Point #31 (N-89098.15' & E-251039.427) to the westerly and curved right of way line of the said Junior College Road and a concrete monument, said curve being convex to the southeast and having a radius of 984.84 feet; thence S&TJ along the said curved right of way line for and arc distance of 66.04 feet to Point #32 (N-89046.11' & E-251049.067) and a concrete monument; thence N 63° 32' 06" W for a distance of 47.56 feet back to Point #9 and the POINT OF BEGINNING, said parcel containing 13,945 acres (607,285 square feet), more or less.

EXHIBIT A

Exhibit B

THIS INSTRUMENT PREPARED BY:

John R. Jenkins, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555

GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made this ____ day of _____, 200__, by _____ (AGrantor@), whose address is _____ to K. W. Resort Utilities Corp., (AGranatee@), whose address is 6450 Junior College Road, Key West, Florida 33040.

WITNESSETH, that Grantor, its successors and assigns, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, grants and conveys a utility easement, in perpetuity, over, in, through and under the property described in Exhibit AA@ attached hereto and made a part hereof (Property@). Notwithstanding the foregoing, in the event Grantee discontinues service for any event other than non-payment or default by Grantor then the easement granted shall lapse and expire.

1. Grantor permanently grants, sets over, conveys and delivers to Grantee, its successors and assigns, the nonexclusive right, privilege and easement to construct, reconstruct, lay and install, operate, maintain, relocate, repair, reconnect, replace, improve, remove and inspect sewer transmission and collection facilities, reuse transmission and distribution facilities and all appurtenances thereto, and all appurtenant equipment in, under, upon, over and across the Property with full right to ingress and egress through the Property for the accomplishment of the foregoing rights.

2. This Grant of Easement is a reservation and condition running with the Property and shall be binding upon the successor and assigns of Grantor, all purchasers of the Property and all those persons or entities acquiring right, title or interest in the Property by, through or under Grantor.

3. The Grantor warrants that it is lawfully seized in fee simple of the land upon which the above-described easement is situated, and that it has good and lawful authority to convey said land or any part thereof or interest therein, and said land is free from all encumbrances and that Grantor will warrant and defend the title thereto against the lawful claims of all persons whomsoever.

4. All easements and grants herein shall be utilized in accordance with established generally accepted practices of the water and sewer industry and all rules, regulations, ordinances, and laws established by governmental authorities having jurisdiction over such matters.

5. Grantor retains, reserves and shall continue to enjoy the use of the surface of the above described property for any and all purposes that do not interfere with Grantee=s use of the subject easement, including the right to grant easements for other public utility purposes. Grantor, its successors or assigns, may change the grade above Grantee=s installed facilities, or perform any construction on the surface of the above described property which is permitted hereunder; however, if the change in grade and/or construction requires the lowering relocation and/or protection of Grantee=s installed facilities (such

protection to include but not limited to the construction of a vault to protect the pipes), such lowering, relocation and/or protection shall be performed at the sole cost and expense of Grantor, its successors or assigns.

6. If in the future any portion of any driveways, sodded areas, gardens or plantings shall be destroyed, removed, damaged or disturbed in any way by Grantee as a result of Grantee installing, excavating, repairing, maintaining, replacing, reconnecting or attaching any underground sewer mains, lines or related facilities within the foregoing described easement, Grantee's sole obligation to restore the surface of the easement area shall be limited to the replacement of sod and/or pavement, and Grantee shall have no obligation, nor be responsible or liable for any expense incurred in the replacement of gardens, plantings or trees or any boundary wall, building or structure located in the said easement area which may have been destroyed, removed, damaged or disturbed.

IN WITNESS WHEREOF, the undersigned has executed this instrument this ____ day of ___, 200__.

ed, and delivered in our presence.

S:

Print Name:

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____ who is personally know to me or who has produced _____ as identification.

My Commission Expires:
NOTARY PUBLIC

Carruthers and seconded by Commissioner DiGennaro granting approval of the item. Motion carried unanimously.

The Board discussed the approval of Bills of Sale Absolute, transferring four (4) facilities (lift stations/sewer mains) to KW Resort Utilities, Inc. After discussion, motion was made by Mayor Murphy and seconded by Commissioner DiGennaro granting approval of the items. Motion carried unanimously.

TOURIST DEVELOPMENT COUNCIL

The Clerk officially announced a vacancy of one position on the Tourist Development Council District V Advisory Committee for an "At Large" appointment.

STAFF REPORTS

Peter Horton, Airports Director discussed the following matters: passenger rates at the Key West International Airport for 2009 which increased by 2.4% over 2008; flight statistics for AirTran; financial/revenue information for the first quarter of Fiscal Year 2010 (October 2009 through December 2009); and responded to an inquiry from Commissioner DiGennaro concerning the need to add a heater to the current A/C system at the Florida Keys Marathon Airport.

COUNTY ATTORNEY

Bob Shillinger, Chief Assistant County Attorney discussed the matter of *Monroe County v. Key Largo Ocean Resorts (KLOR) Co-op., Inc. CA P 96-260*. The following individuals addressed the Board: Ken Harris, Esq., representing KLOR, Inc.; Tim Koenig, Esq., representing Pedro Salva; and Diane Beruldsen. Mr. Shillinger requested that the Board hold a closed attorney client session to discuss this matter and read the required information into the record. After discussion, motion was made by Commissioner DiGennaro and seconded by Commissioner Wigington to hold a closed attorney session with the Board at the February 17, 2010 BOCC meeting in Key Largo at 1:30 p.m. Motion carried unanimously.

WASTEWATER ISSUES

Judith S. Clarke, Director of Engineering Services referred the Board to the written Engineering Division - Wastewater Projects - December 2009 Status Report - dated January 20, 2010.

Motion was made by Commissioner Neugent and seconded by Commissioner DiGennaro granting approval of the rescission of Agreement between Monroe County and Outdoor Resorts at Long Key, Inc. (OR) approved December 16, 2009 and reapproved the execution of the same Agreement with plans attached as Exhibit "A". Motion carried unanimously.

COUNTY ADMINISTRATOR

The Board discussed a 1951 Resolution and June 2007 legislation allowing Keys Energy Services to utilize County rights of way and bridges to provide electrical service to No Name Key, and reaffirmation of Resolution, provided that any obstruction, whether permanent or temporary, to said bridges and right of way, or any physical changes there are coordinated with the Engineering Department in compliance with County ordinances regarding its roads and bridges and that Keys Energy will maintain lines and whatever structural support lines. The following individuals addressed the Board: Robert DeHaven, Victoria Weaver, representing Last Stand; Hallett Douville, Alicia Putney, representing the Solar Community of No Name Key; Donald Craig, representing the No Name Key Property Owner's Association; and Diane Beruldsen. Suzanne Hutton, County Attorney discussed the matter. After discussion, motion was made by Commissioner Carruthers and seconded by Commissioner Neugent to table the item until a determination has been made by the United States Department of the Interior Fish and Wildlife Service. Motion carried unanimously.

COMMISSIONERS' ITEMS

Commissioner Carruthers discussed her item concerning tolling of US1 as an alternative funding source for wastewater mandates. A video presentation was shown. The following individuals addressed the Board: Jackie Harder, representing the Key Largo Chamber of Commerce; Mike Collins, Diane Beruldsen, and Leon Moyer. No official action was taken.

COUNTY ATTORNEY

Bob Shillinger, Chief Assistant County Attorney discussed the latest decision from Judge Audlin in the matter of *Sandra L. Carter v. Monroe County*, Case No. 44-2007-CA-882 (the downstairs enclosure case). The following individual addressed the Board: Diane Beruldsen. After discussion, motion was made by Commissioner Neugent and seconded by Mayor Murphy authorizing the County Attorney's Office to file an appeal (Petition for Writ of Certiorari) to the 3rd DCA). Roll call vote was taken with the following results:

Commissioner Carruthers	No
Commissioner DiGennaro	Yes
Commissioner Neugent	Yes
Commissioner Wigington	Yes
Mayor Murphy	Yes

Motion carried.

Mr. Shillinger also addressed the Board concerning a new lawsuit for Declaratory Judgment in the matter of Christopher Dewey, et al. v. Monroe County and Craig Fugate, as FEMA Director, Case No. 44-2010-CA-000021A001PK. After discussion, motion was made by Commissioner DiGennaro and seconded by Commissioner Wigington authorizing staff the discretion and authority to seek removal to Federal Court. Mr. Shillinger indicted there is a filing fee \$350. Motion carried unanimously.

PUBLIC HEARINGS

A Public Hearing was held to consider adoption of an Ordinance implementing a Monroe County Lobbyist Registry, utilizing lobbyist registration fees and financial reporting. The Board accepted public input with the following individuals addressing the Board: Jackie Harder, representing The Key Largo Chamber of Commerce and Diane Beruldsen. Suzanne Hutton, County Attorney and Roman Gastesi, County Administrator discussed the matter. After discussion, motion was made by Commissioner Carruthers and seconded by Commissioner DiGennaro to continue the public hearing to the Board's scheduled meeting in Key Largo on February 17, 2010 at 3:00 P.M. Motion carried unanimously.

A Public Hearing was held to consider adoption of an Ordinance amending Section 18-27 of the Monroe County Code relating to Burr Beach/Park hours. There was no public input. Motion was made by Commissioner DiGennaro and seconded by Commissioner Carruthers to adopt the following Ordinance. Motion carried unanimously.

ORDINANCE NO. 001-2010

Said Ordinance is incorporated herein by reference.

STAFF REPORTS

Teresa Aguiar, Employee Services Director reported to the Board concerning one of the County Administrator's initiatives for 2010 which is to look at the County's overall health benefits plan. Ms. Aguiar informed the Board that a Health Benefits Volunteer Review and Recommendations Team has been newly formed and that their first meeting is scheduled for January 27, 2009.

Christine Hurley, Growth Management Director updated the Board concerning the Evaluation and Appraisal Report Process which is scheduled to begin in the Spring and the Tier System Committee which plans to meet in February.

GROWTH MANAGEMENT

Christine Hurley, Growth Management Director discussed the matter. The following individual addressed the Board: Diane Beruldsen. Motion was made by Commissioner Neugent and seconded by Commissioner Wigington granting approval to advertise an Ordinance amending the Monroe County Code Section 6-108, defining waivers and exemptions from Building Permit Fees for affordable housing construction or renovation, for affordable, low, or very low income housing as defined by State Statutes or Monroe County Code. Motion carried unanimously.

Christine Hurley, Growth Management Director discussed the matter. After discussion, motion was made by Commissioner DiGennaro and seconded by Commissioner Wigington granting approval of the waiver of building permit fees in the amount not to exceed \$10,000.00 for four units to be renovated and site modification for a Habitat for Humanity of Key West and Lower Keys project located at Stock Island Apartments, owned by Monroe County and under 99 Year Lease to the Habitat. Motion carried unanimously.

Christine Hurley, Growth Management Director discussed the matter. The following individual addressed the Board: Diane Beruldsen. After discussion, motion was made by Commissioner DiGennaro and seconded by Commissioner Carruthers to adopt the following Resolution authorizing the continued waiver of building permit fees for entities applying for Low Income Housing Credit Financing in the 2009 application cycle. Motion carried unanimously.

RESOLUTION NO. 025-2010

Said Resolution is incorporated herein by reference.

COMMISSIONERS' ITEMS

The Board discussed Commissioner DiGennaro's item regarding the outside legal counsel opinion requested by the Board on the proposal to utilize the \$1.8 million impact fee road funds from the canceled Card Sound/905 curve project to repair and resurface existing roadways trenched during wastewater projects. The following individual addressed the Board: Jackie Harder, representing The Key Largo Chamber of Commerce. Suzanne Hutton, County Attorney discussed the matter. No official action was taken.

COUNTY ADMINISTRATOR

Roman Gastesi, County Administrator referred the Board to the written County Divisions' Monthly Activity Report for December, 2009.

Connie Cyr, Administrative Assistant discussed for clarification purposes the Boards and Committees appointments on the Value Adjustment Board as an alternate had not been selected. Motion was made by Commissioner Wigington and seconded by Commissioner DiGennaro appointing Commissioner Neugent as the alternate. Motion carried unanimously.

COUNTY ATTORNEY

Suzanne Hutton, County Attorney discussed a request to schedule an Attorney-Client Closed Session of the Board of County Commissioners and read the required information into the record in the matter of Donald Barton v. Monroe County, CA K 09-917 and the consolidated matter of Donald Barton v. Stewart Andrews, CA K 03-1107. Motion was made by Commissioner DiGennaro and seconded by Commissioner Carruthers to hold the Closed Session at 2:00 p.m. at the regularly scheduled meeting in Key Largo on February 17, 2010. Motion carried unanimously.

Suzanne Hutton, County Attorney discussed a request to schedule a Closed Executive Session of the Board of County Commissioners and read the required information into the record in the matter of Roy's Trailer Park, Inc. v. Monroe County, CA K 07-1505. Motion was made by Commissioner DiGennaro and seconded by Commissioner Neugent to hold the Closed Session at 2:15 p.m. at the regularly scheduled meeting in Key Largo on February 17, 2010. Motion carried unanimously.

Suzanne Hutton, County Attorney discussed a request to schedule an Attorney-Client Closed Session of the Board of County Commissioners and read the required information into the record in the matter Key West HMA, LLC d/b/a Lower Keys Medical Center and as DePoo Hospital v. Monroe County, Board of County Commissioners, Case No. CA K 09-2158. Motion was made by Commissioner DiGennaro and seconded by Commissioner Carruthers to hold the Closed Session at 2:30 p.m. at the regularly scheduled meeting in Key Largo on February 17, 2010. Motion carried unanimously.

MISCELLANEOUS

Commissioner Carruthers announced that her Administrative Aide - Carol Schreck was nominated for an Unsung Heroes Award from The Friends of Higgs Beach Community Group.

Commissioner Carruthers also announced she will be holding a Town Hall Meeting on Thursday, January 28, 2010 at the Harvey Government Center in Key West from 5:30 p.m. - 7:30 p.m.

Commissioner DiGennaro announced the birth of his first grandson - Hershall Mario.

There being no further business, the meeting of the Board of County Commissioners was adjourned.

Danny L. Kolhage, Clerk
and ex-officio Clerk to the
Board of County Commissioners
Monroe County, Florida


Isabel C. DeSantis, Deputy Clerk

EXHIBIT K

KW RESORT UTILITIES

P.O. Box 2125
Key West, Florida 33045
Telephone (305) 294-9578
Facsimile (305) 294-1212

Exhibit C & I

*Delivered by hand
10/15/02*

October 10, 2002

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

Re: Reimbursement – Capacity Reservation & Infrastructure Contract

The following is a summary of the enclosed Invoice #SSI001 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract:

<u>INVOICE #SS1001:</u>	<u>Amt Due</u>	<u>Contract Amt</u>	<u>Balance Due</u>
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc.	\$192,975.84	\$3,500,000.00	\$3,307,024.16
ii) <u>Contingency Amount</u>	0.00	\$ 380,000.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspection</u> Weiler Engineering Corp (#31536)	\$ 12,555.00	\$ 279,000.00	\$ 266,445.00
iv) <u>Construction Admin & Legal Fees</u> Smith, Hemmesch, Burke & Brannigan (#K39-02216) Green Fairways	\$ 25,000.00 \$ 15,000.00	\$ 347,000.00	\$ 307,000.00
v) <u>Testing</u> Weiler Engineering Corp (#31537)	\$ 5,000.00	\$ 100,000.00	\$ 95,000.00
	<u>\$ 250,530.84</u>	<u>\$4,606,000.00</u>	<u>\$4,355,469.16</u>

Also enclosed, per the Contract:

Two Engineers' Certificates certifying that:

- a) 4.50% of the Contract has been completed for Engineering & Inspection
- b) 5.00% of the Contract has been completed for Testing
- & c) 100% Mobilization & 15% construction stake out and as-builts on the
Collection System Infrastructure

KW RESORT UTILITIES
 P.O. BOX 2128
 KEY WEST, FL 33045
 305 294-8578

Delivered by Hand 10/15
 to Mr. Koppels office

INVOICE

INVOICE NO.	PAGE
SS1001	
DATE	
10/11/02	
DUE DATE	

Monroe County Board of Commissioners
 Finance Department
 500 Whitehead Street
 Key West, FL 33040

**CAPACITY RESERVATION
 & INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i. <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc. (Application for Payment #1)	\$192,975.84
ii. <u>Contingency Amount</u>	\$ 00.00
iii. <u>Engineering and Engineering Inspection</u> Weiler Engineering Corporation (invoice #31536)	\$ 12,555.00
iv. <u>Construction Administration and Legal Fees</u> Smith, Hemmesch, Burke & Brannigan (inv #K39-02216) Green Fairways (invoice dated October 8, 2002)	\$ 25,000.00 \$ 15,000.00
v. <u>Testing</u> Weiler Engineering Corporation (invoice #31537)	\$ 5,000.00
AMOUNT BILLED	<u>\$250,530.84</u>

Smith, Hemmesch, Burke & Brannigan (#K39-02216)	\$ 25,000.00	
Green Fairways	\$ 15,000.00	\$ 307,000.00
v) <u>Testing</u>	\$ 100,000.00	
Weiler Engineering Corp (#31537)	\$ 5,000.00	\$ 95,000.00
	<u>\$ 250,530.84</u>	<u>\$4,606,000.00</u>
		<u>\$4,355,469.16</u>

Also enclosed, per the Contract:

Two Engineers' Certificates certifying that:

- a) 4.50% of the Contract has been completed for Engineering & Inspection.
- b) 5.00% of the Contract has been completed for Testing
- & c) 100% Mobilization & 15% construction stake out and as-builts on the Collection System Infrastructure

EXHIBIT C & J

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

204005

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630		9S1001 ✓	250,530.84	PAY#1 CAP RES & INFRA CON

02203 KEY WEST RESORT UTILITIES CORP

KW RESORT UTILITIES

P.O. Box 2125

Key West, Florida 33045

Telephone (305) 294-9578

Facsimile (305) 294-1212

Exhibit C & I

November 12, 2002

*By Hand
11/12/02*

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

Re: Reimbursement – Capacity Reservation & Infrastructure Contract

Billing No. SSI002

The following is a summary of the enclosed Invoice #SSI002 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

<u>INVOICE #SS1002</u>	<u>Amt Due</u>	<u>Contract Amt</u>	<u>Prev Billed</u>	<u>Balance Due</u>
<u>i) Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc.	\$235,908.25	\$3,500,000.00	\$192,975.84	\$3,071,115.91
<u>ii) Contingency Amount</u>	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 380,000.00
<u>iii) Engineering & Engineering Inspect.</u> Weiler Engineering Corp (#31672)	\$ 25,947.00	\$ 279,000.00	\$ 12,555.00	\$ 240,498.00
<u>iv) Construction Admin & Legal Fees</u>	\$ 26,400.00	\$ 347,000.00	\$ 40,000.00	\$ 280,600.00
<u>v) Testing</u> Weiler Engineering Corp (31673)	\$ 7,000.00	\$ 100,000.00	\$ 5,000.00	\$ 88,000.00
	<u>\$ 295,255.25</u>	<u>\$4,606,000.00</u>	<u>\$250,530.84</u>	<u>\$4,060,213.91</u>

Also enclosed, per the Contract:

- a) Engineers' Certificate certifying that 13.8 % of the Contract has been completed for Engineering & Inspection and 12.0% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Partial Lien Waiver from Weiler Engineering in the amount of \$25,947.00.
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$7,000.00
- e) Partial Lien Waiver from E. T. MacKenzie in the amount of \$192,975.84 re: Application for Payment 1
- f) Partial Lien Waiver from Green Fairways in the amount of \$26,400.00
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$295,255.25.

K W RESORT UTILITIES
 P.O. BOX 2125
 KEY WEST, FL 33045
 305 284-8578

12/11 - called Jackie Dlyna
 ck will be ready
 for pick up
 fri am.

INVOICE

TO:

Monroe County Board of Commissioners
 Finance Department
 500 Whitehead Street
 Key West, FL 33040

INVOICE NO.	PAGE
SSI002	
DATE	
11/12/02	
DUE DATE	

submitted by hand 11/12
 to Mr. Kuppel's office

**CAPACITY RESERVATION
 & INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i. <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc. (Application for Payment #2)	\$235,908.25
ii. <u>Contingency Amount</u>	\$ 00.00
iii. <u>Engineering and Engineering Inspection</u> Weiler Engineering Corporation (invoice #31672)	\$ 25,947.00
iv. <u>Construction Administration and Legal Fees</u> Green Fairways (invoice dated November 7, 2002)	\$ 26,400.00
v. <u>Testing</u> Weiler Engineering Corporation (invoice #31673)	\$ 7,000.00
AMOUNT BILLED:	<u>\$295,255.25</u>

11/25 called Gaye Cury - ok at this end going to
 Jackie Friday (in finance).

1/3 called Jackie Dlyna in ~~regis~~ clerk's office
 will not make this weeks run - should be
 ready for next week.

paid Fri 12/13

BOARD OF C

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER
23000	560630		SSI002

002203 KEY WEST RESORT UTILITIES

ORIGINAL CHECK HAS MICRO PRINTING IN THE SIGNATURE
BOARD OF COUNTY COMMISSIONERS
 MONROE COUNTY KEY WEST, FLORIDA



PAY THE SUM OF ***295,255.25
 TO THE ORDER OF
 KEY WEST RESORT UTILITIES
 PO BOX 2125
 KEY WEST FL 33045-2125

SWANBERG

Exhibit C & J

PAID 12/13/02

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

070037

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630		SSI002	295,255.25	PYMNT#2 CAP RESRV&INF CON

102203 KEY WEST RESORT UTILITIES CORP

KW RESORT UTILITIES

P.O. Box 2125

Key West, Florida 33045

Telephone (305) 294-9578

Facsimile (305) 294-1212

EXHIBIT C & F

December 10, 2002

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

Re: Reimbursement – Capacity Reservation & Infrastructure Contract

Billing No. SSI003

The following is a summary of the enclosed Invoice #SSI003 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

<u>INVOICE #SSI003</u>	<u>Amt Due</u>	<u>Contract Amt</u>	<u>Prev Billed</u>	<u>Balance Due</u>
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc.	\$274,961.20	\$3,500,000.00	\$428,884.09	\$2,796,154.71
ii) <u>Contingency Amount</u>	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspect.</u> Weiler Engineering Corp (#31840)	\$ 31,248.00	\$ 279,000.00	\$ 43,803.00	\$ 209,250.00
iv) <u>Construction Admin & Legal Fees</u> Green Fairways (Inv dated 12/9)	\$ 33,600.00	\$ 347,000.00	\$ 66,400.00	\$ 247,000.00
v) <u>Testing</u> Weiler Engineering Corp (31841)	\$ 5,000.00	\$ 100,000.00	\$ 12,000.00	\$ 83,000.00
	<u>\$ 344,809.20</u>	<u>\$4,606,000.00</u>	<u>\$545,786.09</u>	<u>\$3,715,404.71</u>

Also enclosed, per the Contract:

- a) Engineers' Certificate certifying that 25 % of the Contract has been completed for Engineering & Inspection and 17% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Partial Lien Waiver from Weiler Engineering in the amount of \$31,248.00.
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$5,000.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$274,961.20
- f) Partial Lien Waiver from Green Fairways in the amount of \$33,600.00
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$344,809.20.

RESORT UTILITIES
 P.O. BOX 2125
 KEY WEST, FL 33045
 305 294-9578

INVOICE

INVOICE NO.	PAGE
SSI003	
DATE	
12/10/02	
DEL DATE	

Monroe County Board of Commissioners
 Finance Department
 500 Whitehead Street
 Key West, FL 33040

**CAPACITY RESERVATION
 & INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i. <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc. (Application for Payment #3)	\$274,961.20 o/s
ii. <u>Contingency Amount</u>	\$ 00.00
iii. <u>Engineering and Engineering Inspection</u> Weiler Engineering Corporation (invoice #31840)	\$ 31,248.00 pd
iv. <u>Construction Administration and Legal Fees</u> Green Fairways (invoice dated December 9, 2002)	\$ 33,600.00 o/s
v. <u>Testing</u> Weiler Engineering Corporation (invoice #31841)	\$ 5,000.00 pd
AMOUNT BILLED	\$344,809.20

1/17 - Jackie Clynnes - it's ready!

Paid 1/17

DESCRIPTION
 RESRV&INF CON

78653

EXHIBIT C 5 J

PAID 01/17/03

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

78653

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630	23543A	651003	344,809.20	PYMNT#3 CAP RESRV&INF CON

002203 KEY WEST RESORT UTILITIES CORP

EXHIBIT C & I

January 9th, 2003

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

by-HAND
01/14/03

Re: Reimbursement – Capacity Reservation & Infrastructure Contract

Billing No. SSI004

The following is a summary of the enclosed Invoice #SSI004 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

<u>INVOICE #SSI004</u>	<u>Amt Due</u>	<u>Contract Amt</u>	<u>Prev Billed</u>	<u>Balance Due</u>
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc.	\$278,802.80	\$3,500,000.00	\$703,845.29	\$2,517,351.91
ii) <u>Contingency Amount</u>	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspect.</u> Weiler Engineering Corp (#31998)	\$ 26,505.00	\$ 279,000.00	\$ 69,750.00	\$ 182,745.00
iv) <u>Construction Admin & Legal Fees</u> Green Fairways (Inv dated 1/6)	\$ 28,500.00	\$ 347,000.00	\$100,000.00	\$ 218,500.00
v) <u>Testing</u> Weiler Engineering Corp (31999)	\$ 12,000.00	\$ 100,000.00	\$ 17,000.00	\$ 71,000.00
	<u>\$ 345,807.80</u>	<u>\$4,606,000.00</u>	<u>\$890,595.29</u>	<u>\$3,369,596.91</u>

Also enclosed, per the Contract: / / /

- a) Engineers' Certificate certifying that 34.5 % of the Contract has been completed for Engineering & Inspection and 29% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Partial Lien Waiver from Weiler Engineering in the amount of \$26,505.00
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$12,000.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$278,802.80
- f) Partial Lien Waiver from Green Fairways in the amount of \$28,500.00
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$345,807.80.

K.W. RESORT UTILITIES
 P.O. BOX 2125
 KEY WEST, FL 33045
 305 294-9578

INVOICE

INVOICE NO.	PAGE
SSI004	
DATE	
01/09/03	
DUE DATE	

TO:
 Monroe County Board of Commissioners
 Finance Department
 500 Whitehead Street
 Key West, FL 33040

**CAPACITY RESERVATION
 & INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i. <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc. (Application for Payment #4)	\$278,802.80
ii. <u>Contingency Amount</u>	\$ 00.00
iii. <u>Engineering and Engineering Inspection</u> Weiler Engineering Corporation (invoice #31998)	\$ 26,505.00 ✓
iv. <u>Construction Administration and Legal Fees</u> Green Fairways (invoice dated January 6, 2003)	\$ 28,500.00
v. <u>Testing</u> Weiler Engineering Corporation (invoice #31999)	\$ 12,000.00 ✓
AMOUNT BILLED:	\$345,807.80

4 - submitted to Monroe City

RESERVATION
 DESCRIPTION

79869

\$ 345,807.80 \$4,606,000.00 \$890,595.29 \$3,369,596.91

34.5 % of the Contract has been completed for Engineering & Contract has been completed for Testing.
 work completed to date by Contractor, E. T. MacKenzie Company

of Florida Inc.

- c) Partial Lien Waiver from Weiler Engineering in the amount of \$26,505.00
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$12,000.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$278,802.80
- f) Partial Lien Waiver from Green Fairways in the amount of \$28,500.00
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$345,807.80.

EXHIBIT C 3 J

PAID 02/14/03

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

79869

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630	23543A,,	SSI004✓	345,807.80	PYMNT#4 CAP RESRV&INF CON

002203 KEY WEST RESORT UTILITIES CORP

February 6th, 2003

Exhibit C & I

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

by hand
02/10/03

Re: Reimbursement - Capacity Reservation & Infrastructure Contract

Billing No. SSI005

The following is a summary of the enclosed Invoice #SSI005 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

<u>INVOICE #SS1005</u>	<u>Amt Due</u>	<u>Contract Amt</u>	<u>Prev Billed</u>	<u>Balance Due</u>
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc.	\$703,452.41	\$3,500,000.00	\$982,648.09	\$1,813,899.50
ii) <u>Contingency Amount</u>	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspect.</u> Weiler Engineering Corp (#32125)	\$ 23,715.00	\$ 279,000.00	\$ 96,255.00	\$ 159,030.00
iv) <u>Construction Admin & Legal Fees</u> Green Fairways (Inv dated 2/2)	\$ 20,710.00	\$ 347,000.00	\$128,500.00	\$ 197,790.00
v) <u>Testing</u> Weiler Engineering Corp (32126)	\$ 5,000.00	\$ 100,000.00	\$ 29,000.00	\$ 66,000.00
	<u>\$752,877.41</u>	<u>\$4,606,000.00</u>	<u>\$1,236,403.09</u>	<u>\$2,616,719.50</u>

Also enclosed, per the Contract:

- a) Engineers' Certificate certifying that 43.0 % of the Contract has been completed for Engineering & Inspection and 34% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Partial Lien Waiver from Weiler Engineering in the amount of \$23,715.00
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$5,000.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$703,452.41
- f) Partial Lien Waiver from Green Fairways in the amount of \$20,710.00
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$752,877.41.

K W RESORT UTILITIES
 P.O. BOX 2125
 KEY WEST, FL 33046
 305 294-9578

hand delivered by Judi on 2/7/03

INVOICE

*page 3/4 poss this week or next
 in invoice now:*

INVOICE NO.	PAGE
SSI005	
DATE	
02/06/03	
DUE DATE	

Monroe County Board of Commissioners
 Finance Department
 500 Whitehead Street
 Key West, FL 33040

**CAPACITY RESERVATION
 & INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i. <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc (Application for Payment #5)	\$703,452.41
ii. <u>Contingency Amount</u>	\$ 00.00
iii. <u>Engineering and Engineering Inspection</u> Weiler Engineering Corporation (invoice #32125)	\$ 23,715.00
iv. <u>Construction Administration and Legal Fees</u> Green Fairways (invoice dated February 2nd, 2003)	\$ 20,710.00
v. <u>Testing</u> Weiler Engineering Corporation (invoice #32126)	\$ 5,000.00
AMOUNT BILLED:	\$752,877.41

11/11	11/11	11/11	11/11	11/11	11/11	11/11	11/11	11/11	11/11
EDDANTE WITHDRAWAL CENTS									

12

Exhibit C & J

PAID 03/14/03

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

81242

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630	235434	SS1005 ✓	752,877.41	PYMT#5 RESERV&INF CON

002203 KEY WEST RESORT UTILITIES CORP

KW RESORT UTILITIES

P.O. Box 2125

Key West, Florida 33045

Telephone (305) 294-9578

Facsimile (305) 294-1212

Exhibit C & I

March 7th, 2003

by-hand 03/12/03

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

Re: Reimbursement – Capacity Reservation & Infrastructure Contract

Billing No. SSI006

The following is a summary of the enclosed Invoice #SSI006 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

<u>INVOICE #SS1006</u>	<u>Amt Due</u>	<u>Contract Amt</u>	<u>Prev Billed</u>	<u>Balance Due</u>
<u>i) Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc.	\$524,697.58	\$3,500,000.00	\$1,686,100.50	\$1,289,201.92
<u>ii) Contingency Amount</u>	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 380,000.00
<u>iii) Engineering & Engineering Inspect.</u> Weiler Engineering Corp (#32285)	\$ 31,806.00	\$ 279,000.00	\$119,970.00	\$ 127,224.00
<u>iv) Construction Admin & Legal Fees</u> Green Fairways (Inv dated 3/3)	\$ 39,558.00	\$ 347,000.00	\$149,210.00	\$ 158,232.00
<u>v) Testing</u> Weiler Engineering Corp (32286)	\$ 11,250.00	\$ 100,000.00	\$ 34,000.00	\$ 54,750.00
	<u>\$607,311.58</u>	<u>\$4,606,000.00</u>	<u>\$1,989,280.50</u>	<u>\$2,009,407.92</u>

Also enclosed, per the Contract;

- a) Engineers' Certificate certifying that 54.4 % of the Contract has been completed for Engineering & Inspection and 45.25% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Partial Lien Waiver from Weiler Engineering in the amount of \$31,806.00
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$11,250.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$524,697.58
- f) Partial Lien Waiver from Green Fairways in the amount of \$39,558.00
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$607,311.58.

hand delivered by Judi on 3/12

K W RESORT UTILITIES
P.O. BOX 2126
KEY WEST, FL 33045
305 294-0578

INVOICE

TO:

INVOICE NO.	PAGE
SSI006	
DATE	
03/07/03	
DI F DATE	

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

**CAPACITY RESERVATION
& INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i. <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc. (Application for Payment #6)	\$524,697.58 ✓
ii. <u>Contingency Amount</u>	\$ 00.00
iii. <u>Engineering and Engineering Inspection</u> Weiler Engineering Corporation (invoice #32285)	\$ 31,806.00 ✓
iv. <u>Construction Administration and Legal Fees</u> Green Fairways (invoice dated March 3rd, 2003)	\$ 39,558.00 ✓
v. <u>Testing</u> Weiler Engineering Corporation (invoice #32286)	\$ 11,250.00 ✓
AMOUNT BILLED:	\$607,311.58 <i>paid 4/4</i>

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE AND ANY APPLICABLE COLLECTION AGREEMENT.



- DEPOSIT
- WITHDRAWAL
- PAYMENT
- OTHER _____

RECEIPT

difference you can bank on.™

What are you wishing for?

See the difference a **home equity loan** can make in your life.

Acct#
RECEIPT Tlr# 607,311.58
DDA Deposit(Checkings/MMA) AM
55 12:34:12 4/04/2003 DN

All items accepted subject to verification, collection, applicable law, the rules and regulations of the Bank and to any applicable collection agreement. Deposits may not be available for immediate withdrawal.

Exhibit C: J

paid 04/04/03

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

82301

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630	235434	551006	607,311.58	CAP RESERV & INFRAS CONT

02203 KEY WEST RESORT UTILITIES CORP

KW RESORT UTILITIES

P.O. Box 2125

Key West, Florida 33045

Telephone (305) 294-9578

Facsimile (305) 294-1212

April 2nd, 2003

Exhibit C & I

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

*by-hand
04/02/03*

Re: Reimbursement – Capacity Reservation & Infrastructure Contract

Billing No. SSI007

The following is a summary of the enclosed Invoice #SSI007 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

<u>INVOICE #SSI007</u>	<u>Amt Due</u>	<u>Contract Amt</u>	<u>Prev Billed</u>	<u>Balance Due</u>
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc.	\$ 58,075.20	\$3,500,000.00	\$2,210,798.08	\$1,231,126.72
ii) <u>Contingency Amount</u>	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspect.</u> Weiler Engineering Corp (#32449)	\$ 28,513.80	\$ 279,000.00	\$151,776.00	\$ 98,710.20
iv) <u>Construction Admin & Legal Fees</u> Green Fairways (Inv dated 4/1)	\$ 35,463.40	\$ 347,000.00	\$188,768.00	\$ 122,768.60
v) <u>Testing</u> Weiler Engineering Corp (32450)	\$ 19,750.00	\$ 100,000.00	\$ 45,250.00	\$ 35,000.00
	<u>\$141,802.40</u>	<u>\$4,606,000.00</u>	<u>\$2,596,592.08</u>	<u>\$1,867,605.52</u>

Also enclosed, per the Contract:

- a) Engineers' Certificate certifying that 64.62 % of the Contract has been completed for Engineering & Inspection and 65.00% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Partial Lien Waiver from Weiler Engineering in the amount of \$28,513.80
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$19,750.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$58,075.20
- f) Partial Lien Waiver from Green Fairways in the amount of \$35,463.40
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$141,802.40

K W RESORT UTILITIES
P.O. BOX 2125
KEY WEST, FL 33046
305 284-8578

Judi delivered 4/2/03
ch rec'd
5/5/03

INVOICE

TO:

INVOICE NO.	PAGE
SSI007	
DATE	
04/02/03	
DUE DATE	

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

**CAPACITY RESERVATION
& INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i. <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc. (Application for Payment #7)	\$ 58,075.20 ✓ \$ 00.00
ii. <u>Contingency Amount</u>	
iii. <u>Engineering and Engineering Inspection</u> Weiler Engineering Corporation (invoice #32449)	\$ 28,513.80 ✓
iv. <u>Construction Administration and Legal Fees</u> Green Fairways (invoice dated April 1st, 2003)	\$ 35,463.40 ✓
v. <u>Testing</u> Weiler Engineering Corporation (invoice #32450)	\$ 19,750.00 ✓

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

83613

SANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
3000	560630	235434	SSI007 ✓	141,802.40 ✓	CAP RESERV & INFRAS CONT

2203 KEY WEST RESORT UTILITIES CORP

- b) Engineers' Certificate certifying the work completed to date by *Commissioners of Florida Inc.*
- c) Partial Lien Waiver from Weiler Engineering in the amount of \$28,513.80
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$19,750.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$58,075.20
- f) Partial Lien Waiver from Green Fairways in the amount of \$35,463.40
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$141,802.40

Exhibit C & J

paid 05/05/03

BOARD OF COUNTY COMMISSIONERS, MONROE COUNTY, KEY WEST, FLORIDA.

83613

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630	235434	SSI007 ✓	141,802.40	CAP RESERV & INFRAS CONT

002203 KEY WEST RESORT UTILITIES CORP

KW RESORT UTILITIES

P.O. Box 2125

Key West, Florida 33045

Telephone (305) 294-9578

Facsimile (305) 294-1212

Exhibit C & E

May 12th, 2003

*by-hand
05/14/03*

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

Re: Reimbursement – Capacity Reservation & Infrastructure Contract

Billing No. SSI008

The following is a summary of the enclosed Invoice #SSI008 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

<u>INVOICE #SSI008</u>	<u>Amt Due</u>	<u>Contract Amt</u>	<u>Prev Billed</u>	<u>Balance Due</u>
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc.	\$ 40,331.25	\$3,500,000.00	\$2,268,873.28	\$1,190,795.47
ii) <u>Contingency Amount</u>	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspect.</u> Weiler Engineering Corp (#32599)	\$ 28,960.20	\$ 279,000.00	\$180,289.80	\$ 69,750.00
iv) <u>Construction Admin & Legal Fees</u> Green Fairways (Inv dated 5/12)	\$ 36,018.60	\$ 347,000.00	\$224,231.40	\$ 86,750.00
v) <u>Testing</u> Weiler Engineering Corp (32607)	\$ 10,000.00	\$ 100,000.00	\$ 65,000.00	\$ 25,000.00
	<u>\$115,310.05</u>	<u>\$4,606,000.00</u>	<u>\$2,738,394.48</u>	<u>\$1,752,295.47</u>

Also enclosed, per the Contract;

- a) Engineers' Certificate certifying that 75.00 % of the Contract has been completed for Engineering & Inspection and 75.00% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Partial Lien Waiver from Weiler Engineering in the amount of \$28,960.20
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$10,000.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$40,331.25
- f) Partial Lien Waiver from Green Fairways in the amount of \$36,018.60
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$115,310.05

Todi - hand delivered - 5/14

K W RESORT UTILITIES
P.O. BOX 2125
KEY WEST, FL 33045
305 294-8578

INVOICE

TO:

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

INVOICE NO.	PAGE
SSI008	
DATE	
05/12/03	
DUE DATE	

**CAPACITY RESERVATION
& INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc. (Application for Payment #8)	\$40,331.25 ✓
ii) <u>Contingency Amount</u>	\$ 0.00
iii) <u>Engineering & Engineering Inspection</u> Weiler Engineering Corporation (invoice #32599)	\$28,960.20 ✓
iv) <u>Construction Administration and Legal Fees</u> Green Fairways (invoice dated May 12, 2003)	\$36,018.60 ✓
v) <u>Testing</u> Weiler Engineering Corporation (invoice #32607)	\$10,000.00 ✓
AMOUNT BILLED:	<u>\$115,310.05</u>

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE AND ANY APPLICABLE COLLECTION AGREEMENT.



A difference you can bank on.™

- DEPOSIT
- WITHDRAWAL
- PAYMENT
- OTHER _____

RECEIPT

**What are you
wishing for?**

See the difference
a **home equity**
loan can make
in your life.

ACV
RECEIPT Tr# 4 115,310.05
20 DDA Deposit(Checkins/MMA) AM
TR# 32 12:28:26 6/10/2003 ON

All items accepted subject to verification, collection, applicable law, the rules and regulations of the Bank and to any applicable collection agreement. Deposits may not be available for immediate withdrawal.

Exhibit C & J

paid 06/10/03

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

85490

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630	235434	SSI008 ✓	115,310.05	CAP RESERV & INFRAS CONT

002203 KEY WEST RESORT UTILITIES CORP

KW RESORT UTILITIES

P.O. Box 2125

Key West, Florida 33045

Telephone (305) 294-9578

Facsimile (305) 294-1212

June 23rd, 2003

Exhibit C & I

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

*by-hand
06/24/03*

Re: Reimbursement – Capacity Reservation & Infrastructure Contract

Billing No. SSI009

The following is a summary of the enclosed Invoice #SSI009 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

<u>INVOICE #SSI009</u>	<u>Amt Due</u>	<u>Contract Amt</u>	<u>Prev Billed</u>	<u>Balance Due</u>
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc.	\$410,209.42	\$3,500,000.00	\$2,309,204.53	\$ 780,586.05
ii) <u>Contingency Amount</u>	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspect.</u> Weiler Engineering Corp (#32776)	\$ 17,493.30	\$ 279,000.00	\$209,250.00	\$ 52,256.70
iv) <u>Construction Admin & Legal Fees</u> Green Fairways (Inv dated 6/16)	\$ 21,756.90	\$ 347,000.00	\$260,250.00	\$ 64,993.10
v) <u>Testing</u> Weiler Engineering Corp (32777)	\$ 12,500.00	\$ 100,000.00	\$ 75,000.00	\$ 12,500.00
	<u>\$461,959.62</u>	<u>\$4,606,000.00</u>	<u>\$2,853,704.53</u>	<u>\$1,290,335.85</u>

Also enclosed, per the Contract:

- a) Engineers' Certificate certifying that 81.27% of the Contract has been completed for Engineering & Inspection and 87.5% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Partial Lien Waiver from Weiler Engineering in the amount of \$17,493.30
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$12,500.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$410,209.42
- f) Partial Lien Waiver from Green Fairways in the amount of \$21,756.90
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$461,959.62

BOA

K W RESORT UTILITIES

P.O. BOX 2125
KEY WEST, FL 33045
305 294-9378

hand delivered by Judi 6/24/03 am

INVOICE

INVOICE NO	PAGE
SSI009	
DATE	
06/23/03	
DUE DATE	

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

**CAPACITY RESERVATION
& INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc. (Application for Payment #9)	\$410,209.42 ✓
ii) <u>Contingency Amount</u>	\$ 0.00
iii) <u>Engineering & Engineering Inspection</u> Weiler Engineering Corporation (invoice #32776)	\$ 17,493.30 ✓
iv) <u>Construction Administration and Legal Fees</u> Green Fairways (invoice dated June 16,2003)	\$ 21,756.90 ✓
v) <u>Testing</u> Weiler Engineering Corporation (invoice #3277)	\$ 12,500.00 ✓
AMOUNT BILLED:	\$461,959.62

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE AND ANY APPLICABLE COLLECTION AGREEMENT



- Deposit
- Withdrawal
- Payment
- Other _____

RECEIPT

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- A new car?*
- An updated kitchen?*
- A college education?*

Loan rates are at historic lows.

A home equity loan can help.

1-800-386-5454

RECEIPT Tr# 461,959.62
 20 DDA Deposit(Checking/MMA) AM
 TR# 79 12:27:58 7/21/2003 ON
 KW Util

Items are subject to credit approval. Interest may be tax-deductible; please consult your tax advisor. Items accepted subject to verification, collection, applicable law, the rules and regulations of the Bank and to any applicable collection agreement. Deposits may not be available for interest.

Exhibit C: J

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

87731

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630	235434	SSI009 ✓	461,959.62	CAP RESERV & INFRAS CONT Rec'd 7/21/03

002203 KEY WEST RESORT UTILITIES CORP

KW RESORT UTILITIES

P.O. Box 2125

Key West, Florida 33045

Telephone (305) 294-9578

Facsimile (305) 294-1212

July 28th, 2003

EXCEPT C & I

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

*by-hand
07/30/04*

Re: Reimbursement – Capacity Reservation & Infrastructure Contract

Billing No. SSI010

The following is a summary of the enclosed Invoice #SSI010 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

<u>INVOICE #SSI010</u>	<u>Amt Due</u>	<u>Contract Amt</u>	<u>Prev Billed</u>	<u>Balance Due</u>
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc.	\$235,856.94	\$3,500,000.00	\$2,719,413.95	\$ 544,729.11
ii) <u>Contingency Amount</u>	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspect.</u> Weiler Engineering Corp (#32976)	\$ 35,516.70	\$ 279,000.00	\$226,743.30	\$ 16,740.00
iv) <u>Construction Admin & Legal Fees</u> Green Fairways (Inv dated 7/22)	\$ 44,173.10	\$ 347,000.00	\$282,006.90	\$ 20,820.00
v) <u>Testing</u> Weiler Engineering Corp (32977)	\$ 7,500.00	\$ 100,000.00	\$ 87,500.00	\$ 5,000.00
	<u>\$323,046.74</u>	<u>\$4,606,000.00</u>	<u>\$3,315,664.15</u>	<u>\$ 967,289.11</u>

Also enclosed, per the Contract:

- a) Engineers' Certificate certifying that 94% of the Contract has been completed for Engineering & Inspection and 95% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Partial Lien Waiver from Weiler Engineering in the amount of \$35,516.70
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$7,500.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$235,856.94
- f) Partial Lien Waiver from Green Fairways in the amount of \$44,173.10
- g) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$323,046.74

K W RESORT UTILITIES

P.O. BOX 2125
KEY WEST, FL 33045
305 294-9578

INVOICE

BOA
TO:

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

INVOICE NO.	PAGE
SSI010	1
DATE	
07/28/03	
DUE DATE	

CAPACITY RESERVATION
& INFRASTRUCTURE CONTRACT

DESCRIPTION	AMOUNT
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc. (Application for Payment #10)	\$235,856.94
ii) <u>Contingency Amount</u>	\$ 0.00
iii) <u>Engineering & Engineering Inspection</u> Weiler Engineering Corporation (invoice #32976)	\$ 35,516.70
iv) <u>Construction Administration and Legal Fees</u> Green Fairways (invoice dated JuLY 22,2003)	\$ 44,173.10
v) <u>Testing</u> Weiler Engineering Corporation (invoice #32977)	\$ 7,500.00
AMOUNT BILLED:	\$323,046.74

ug Cert rec'd 7/29 3:00pm
final OK given by Cd C. - 7/28 11:00am
Delivered To County by Judi - 7/30

pd \$285,020.74 = short \$38,026.00

Contract
Change

0.16**

/03

56011

OS

IMMEDIATE WITHDRAWAL
CHECKS

35434

812

92812

Exhibit C & J

PAID 11/14/03

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

92811

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
✓ 1504	✓ 530430		✓ MD600CT03	✓ 309.34	✓ BAYSHORE
✓ 304	✓ 206000		✓ SSI010	155,540.58	APPL PYMT #10 PON235434

002203 KEY WEST RESORT UTILITIES CORP

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

92812

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
304	202000		SSI010	129,480.16	APPL PYMT #10 PON 235434

002203 KEY WEST RESORT UTILITIES CORP

September 13th, 2003

KW RESORT UTILITIES

P.O. Box 2125
Key West, Florida 33045
Telephone (305) 294-9578
Facsimile (305) 294-1212

Exhibit C & F

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

*by hand
11/13/03*

Re: Reimbursement – Capacity Reservation & Infrastructure Contract

Billing No. SSI011

The following is a summary of the enclosed Invoice #SSI011 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

INVOICE #SS1011	Amt Due	Contract Amt	Prev Billed	Bal Unpd	Balance Due
i) Collection System Infrastructure					
E.T. MacKenzie of Florida, Inc.	\$475,058.88	\$3,500,000.00	\$2,719,413.95	\$235,856.94	\$ 69,670.23
ii) <u>Contingency Amount</u>					
	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 0.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspect.</u>					
Weiler Engineering Corp (#33160)	\$ 8,370.00				
Weiler Engineering Corp (#33358)	\$ 8,370.00	\$ 279,000.00	\$226,743.30	\$ 35,516.70	\$ 0.00
iv) <u>Construction Admin & Legal Fees</u>					
	\$ 0.00	\$ 347,000.00	\$282,006.90	\$ 44,173.10	\$ 20,820.00
v) <u>Testing</u>					
Weiler Engineering Corp (33161)	\$ <u>5,000.00</u>	\$ <u>100,000.00</u>	\$ <u>87,500.00</u>	\$ <u>7,500.00</u>	\$ <u>0.00</u>
	<u>\$496,798.88</u>	<u>\$4,606,000.00</u>	<u>\$3,315,664.15</u>	<u>\$323,046.74</u>	<u>\$ 470,490.23</u>

Also enclosed, per the Contract:

- a) Engineers' Certificate certifying that 100% of the Contract has been completed for Engineering & Inspection and 100% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Two Partial Lien Waivers from Weiler Engineering in the amounts of \$8,370.00
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$5,000.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$475,058.88
- f) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$496,798.88

KW RESORT UTILITIES

P.O. Box 2125

Key West, Florida 33045

Telephone (305) 294-9578

Facsimile (305) 294-1212

Exhibit C & I

January 20, 2004

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

Re: Reimbursement - Capacity Reservation & Infrastructure Contract

Billing No. SSI011 - AMENDED

The following is a summary of the enclosed Amended Invoice #SSI011 and attachments, submitted to Monroe County for reimbursement on the Capacity Reservation and Infrastructure Contract.

	Current		Prev Billed	Prev Billed	Total Contract
INVOICE #SS1011 AMENDED	Amt Due	Contract Amt	and Paid	Bal Unpd	Balance Due
i) <u>Collection System Infrastructure</u>					
E.T. MacKenzie of Florida, Inc.	\$423,781.36	\$3,500,000.00	\$2,955,270.89	\$38,026.00	\$544,729.11
ii) <u>Contingency Amount</u>					
	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 0.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspect.</u>					
Weiler Engineering Corp (#33160)	\$ 8,370.00				
Weiler Engineering Corp (#33358)	\$ 8,370.00	\$ 279,000.00	\$ 262,260.00	\$ 0.00	16,740.00
iv) <u>Construction Admin & Legal Fees</u>					
	\$ 0.00	\$ 347,000.00	\$ 326,180.00	\$ 0.00	\$ 20,820.00
v) <u>Testing</u>					
Weiler Engineering Corp (33161)	\$ 5,000.00	\$ 100,000.00	\$ 95,000.00	\$ 0.00	\$ 5,000.00
	<u>\$445,521.36</u>	<u>\$4,606,000.00</u>	<u>\$3,638,710.89</u>	<u>\$ 38,026.00</u>	<u>\$ 967,319.11</u>

Also enclosed, per the Contract:

- a) Engineers' Certificate certifying that 100% of the Contract has been completed for Engineering & Inspection and 100% of the Contract has been completed for Testing.
- b) Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- c) Two Partial Lien Waivers from Weiler Engineering in the amounts of \$8,370.00
- d) Partial Lien Waiver from Weiler Engineering in the amount of \$5,000.00
- e) Conditional Lien Waiver from E. T. MacKenzie in the amount of \$23,781.36
- f) Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$445,521.36

Exhibit C & J

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

96959

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000 304	560630 206000		SSI011AMEND SSI011AMEND	50,458.04 86,580.32	CAP RESERVE & INFRAS CAP RESERVE & INFRAS

002203 KEY WEST RESORT UTILITIES CORP

Check number has micro print on it. The MICR line and the check number make the amount to the bank of \$137,038.36



BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY KEY WEST, FLORIDA

First State Bank of the Florida Keys
Key West, Florida 33040

63-43
670

96959

DATE 96959
02/25/04

AMOUNT ***137,038.36**

PAY THE SUM OF ***137,038.36 DOLLARS

TO THE ORDER OF
KEY WEST RESORT UTILITIES CORP
PO BOX 2125
KEY WEST FL 33045-2125

Murray Nelson
J. Folger

PAID
03/10/04

RESORT UTILITIES
P.O. BOX 2125
KEY WEST, FL 33045
305 294-9578

INVOICE

Monroe County Board of Commissioners
Finance Department
500 Whitehead Street
Key West, FL 33040

INVOICE NO.	PAGE
SSI012	
DATE	
08/30/04	
DUE DATE	
AMENDMENT	
#2	

**CAPACITY RESERVATION
& INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i) <u>Collection System Infrastructure</u> E.T. MacKenzie of Florida, Inc. (Application for Payment #12)	\$139,840.25
ii) E.T. MacKenzie of Florida, Inc. Repairs to pipe - E Laurel Ave	\$ 3,273.00
iii) Keys Environmental - Storm Drain Cleaning	\$ 8,250.00
iv) Sod Restoration	\$ 1,660.93
AMOUNT BILLED:	<u>\$153,024.18</u>

100% delivered to base support office

002203 Key West Resort Utilities

ORIGINAL CHECK HAS MICRO PRINTING IN THE SIGNATURE LINE AND RED CHECK NUMBERS IMAGE THROUGH TO THE BACK OF SHEET



BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY KEY WEST, FLORIDA

First State Bank of the Florida Keys
Key West, Florida 33040

63-43
670

207911

DATE 01/07/05

AMOUNT ***148,951.18***

PAY ***The Sum of One Hundred Forty Eight Thousand Nine Hundred Fifty One
and 18/100 Dollars***

THE Key West Resort Utilities
DER

Hija M. Spehar
D. P. [Signature]

WARNING: DO NOT ACCEPT THIS DOCUMENT UNLESS YOU CAN SEE A TRUE WATERMARK AND VISIBLE FIBERS FROM BOTH SIDES.

EXHIBIT L

K W RESORT UTILITIES
P.O. BOX 2125
KEY WEST, FL 33045
305 294-9578

00281000000000000000

INVOICE

TO:

Monroe County Engineering Dept
Attn: Judy Layne
1100 Simonton Street
2nd Floor, Room 2-215
Key West FL 33040

INVOICE NO. PAGE

SSI015 Amended

DATE

05/15/10

HARBOR SHORES BUFFER TANK

PAST DUE

DESCRIPTION

AMOUNT

P.O. #00016743

INSTALLATION OF BUFFER TANK AT HARBOR SHORES:

Bee Brothers/Contractor Cost
Affordable Asphalt
Weiler Engineering
Keys Environmental Inc.

\$19500.00
\$ 1620.00
\$ 2497.50
\$ 6660.51

TOTAL COST:

\$30,278.01

PAST DUE

**K.W. Resort Utilities Corp.
6450 East College Road
Key West, FL 33040
(305) 294-5232
FAX (305) 294-1212**

County of Monroe
Engineering Division
Ms. Elizabeth Wood, Sr. Wastewater Engineer
1100 Simonton Street
Key West, FL 33040

January 23, 2007

Dear Ms. Wood,

The Harbor Shores buffer tank installation breaks out as follows.

Plumber/Underground Contractor (Blue Skies Plumbing)	\$14,250
Procurement 2 Airvac valves, 2 Airvac breachers, 2 Airvac controllers, 2 hose kits, all internal stainless steel components including but not limited to anchors, unistrut, uni 3"clamps, uni 2" clamps, 3" PVC, 2" PVC, various PVC schedule 40 fittings, labor to weld, fabricate, and install unistrut and internal piping. Valve installation by Airvac Certified Technicians. Follow up visits by technicians to adjust valve timing to optimize performance. (KWRU).....	\$5379.31
Inspection (estimated at 11 hours KWRU)	\$1100.00
Engineering	\$900.00
ROI (@5%).....	\$1081.47
Total Buffer Tank Installation cost.....	\$22,710.78

This proposal represents a good faith effort by K.W. Resort Utility Corp. (KWRU) to complete this work in accordance with the County's wishes. In the preparation of this proposal, utility engineers contacted several contractors, held field meetings, solicited bids, and developed cost estimates. A Purchase Order, issued to KWRU for the total project cost of \$22,710.78 would be acceptable for us to commence construction. KWRU is committed to providing affordable wastewater service to Monroe County residents.

Sincerely Yours,



Doug Carter
General Manager, K.W. Resort Utilities Corp.

Chris Johnson

From: Wood-Liz <Wood-Liz@monroecounty-fl.gov>
Sent: Wednesday, July 28, 2010 4:28 PM
To: chriskw
Subject: Harbor Shores Buffer Tank
Attachments: DOC041.PDF; DOC042.PDF

Chris,

I am attempting to pay DOC041.pdf (random scan #) ASAP to avoid having to roll the budget to FY11.

The estimate from Blue Skies plumbing was \$14,250 as shown on attached DOC042.pdf. I increased the budget for the plumber to \$19,500 because Bee Brothers could expedite the project.

I am approving line item 1 (\$19,500) and line item 2 (\$1,620) plus the \$1100 estimate for inspection and the \$900 estimate for engineering (from 1/23/07 letter from Doug Carter) for a total of \$23,120. If this payment will work for you, I will process immediately.

However, I will need itemized explanation with staff class, hourly rate, and number of hours if you want me to approve the additional \$1,597.50 for engineering and \$5,560.51 for inspection. If you can pull the billing out of a Weiler invoice that would be helpful for me.

My sending this to the Clerk is the first step. I am hopeful we will be successful and I can take this off my list.

Let me know if you want to give me some more back-up or if you want me to approve for \$23,120...which is approximately the amount of estimate with allowance for Bee Brothers of \$5,250 less \$5379.31 for the airvac valves.

Thanks,

Elizabeth A. Wood
Senior Administrator - Monroe County, Sewer Projects
1100 Simonton Street, Suite 2-216
Key West, FL 33040
305-292-4525

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