

**COST FOR REPLACEMENT OF LIFT STATION L2A WHICH WAS SET FOR REPLACEMENT PRIOR TO HURRICANE IRMA
AND WAS SUBSTANTIALLY DAMAGE DURING HURRICANE IRMA (BROKEN AND KNOCKED DOWN)**

LIFT STATION L2A REPLACEMENT AGREEMENT

THIS LIFT STATION L2A REPLACEMENT AGREEMENT (this "Agreement"), is made and entered into this 23rd day of October, 2017, by and between B & L Beneway, Inc., a Florida corporation ("Beneway"), having an address at 936 Crane Boulevard, Sugarloaf, Florida 33042 and KW RESORT UTILITIES CORP., a Florida corporation ("KWRU"), having an address at 6630 Front Street, Key West, Florida 33040.

RECITALS

A. KWRU operates a wastewater facility, which includes that certain Lift Station #L2A located at the corner of 9th Avenue and 5th Street in Stock Island, Florida (the "Lift Station");

B. Hurricane Irma damaged the Lift Station beyond repair and requires immediate replacement;

C. Beneway has the expertise in the repairing and replacing facilities similar to the Lift Station in the Florida Keys; and

D. KWRU desires and Beneway has agreed to perform the work further set forth on Exhibit A pursuant to the terms of this Agreement ("Replacement Work").

AGREEMENT

NOW, THEREFORE, in consideration of Ten (\$10.00) Dollars, the premises and mutual covenants contained herein and other good and valuable consideration in hand paid by the parties hereto each to the other, simultaneously with the execution and delivery of these presents, the receipt and adequacy of which is hereby acknowledged, the parties hereto do hereby agree upon the following terms and conditions:

1. Recitals. The above recitals are true and correct and are incorporated herein by reference.

2. Work. For all matters related to this Agreement, the parties agree to cooperate and work together to value engineer the construction and installation of the Replacement Work in the most cost effective and efficient manner commercially possible. Beneway shall cause the Replacement Work to be done in accordance with the set of plans titled Station#L2A Lift Station Replacement Project signed and sealed May 21, 2014 by Serge Mashtakov, P.E. Weiler Engineering (the "Plans"). The Plans shall be submitted to the appropriate governmental entities and agencies for approval and shall comply with all applicable laws, ordinances, rules, and regulations of any governmental entity or agency having jurisdiction over the Lift Station ("Legal Requirements") and Beneway shall obtain all permits required and shall complete the Replacement Work in accordance with the Plans.

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3. Cap on Cost. The parties agree and acknowledge that all costs (hard and soft) for the Replacement Work and the most that KWRU will be responsible for is \$140,000

4. Installation and Construction.

(a) The Replacement Work construction and installation shall be completed in a manner so as to minimize any interference with the businesses or operation of surrounding property.

(b) On or before the date Beneway commences construction of the Replacement Work, Beneway shall provide to Sunset certificates of in effect (and shall maintain at all times during the course of the work hereunder) for workers' compensation insurance to cover full liability under workers' compensation laws of the State of Florida with employers' liability coverage; commercial general liability and builder's risk insurance for the hazards of operations, independent contractors, products and completed operations (for one (1) year after the date of acceptance of the work by KWRU); and contractual liability specifically covering the indemnification provision in the construction contract, such commercial general liability to include such coverage as KWRU reasonably determines, but at a minimum, broad form property damage and afford coverage for explosion, terrorism, collapse and underground hazards, and "personal injury" liability insurance and an endorsement providing that the insurance afforded under the such policy is primary insurance with respect to KWRU and that any other insurance maintained by KWRU is excess and non-contributing with the insurance required hereunder, provided that such insurance may be written through primary or umbrella insurance policies with a minimum policy limit of \$2,000,000.00. KWRU is to be included as an additional insured for insurance coverages. Beneway shall inform its contractor, subcontractors, and material suppliers that the Lift Station shall not be subject to any lien to secure payment for work done or materials supplied to the Replacement Work.

(c) All inspections and approvals necessary and appropriate to complete the Replacement Work in accordance with the Plans are the responsibility of Beneway and its general contractor.

5. Completion of the Replacement Work. The parties agree that the Replacement Work shall be complete by March 31, 2018 ("Completion Date").

6. Damage Caused by Installation of Replacement Work; Indemnity. Any damage to any part of the Lift Station which occurs due to the construction and/or installation of the Replacement Work, shall be promptly repaired by Beneway, at its expense, and all such work shall be done to KWRU's reasonable satisfaction. Beneway agrees to indemnify and hold harmless KWRU, its agents, and employees from and against any and all costs, expenses, damage, loss, or liability, including, but not limited to, reasonable attorneys' fees and costs, which arise out of, are occasioned by, or are in any way attributable to the planning and construction of the Replacement Work.

7. Default and Remedies.

(a) Each of the following events shall be an "Event(s) of Default" by Beneway under this Agreement:

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Completion Date: (i) Failure to complete the Replacement Work on or prior to the

(ii) Failure to comply with any obligations under this Agreement, if such failure continues for ten (10) days subsequent to written notice thereof; and/or

(iii) In the event that (i) Beneway shall make an assignment for the benefit of creditors, or apply for the appointment of a trustee, liquidator or a receiver of any substantial part of its assets, or shall commence any proceeding relating to itself under any bankruptcy, reorganization, arrangement or similar law; or (ii) if any such application is filed or proceeding is commenced against Beneway and Beneway indicates its consent thereto, or an order is entered appointing any such trustee, liquidator or receiver or approving a petition in any such proceedings and such order remains in effect for more than 60 days; or (iii) if Beneway shall admit, in writing, its inability to pay its debts as they become due.

(b) Upon an Event of Default, KWRU may pursue any and all remedies available to it in law and/or equity.

8. Termination. Either party may terminate this Agreement upon 15 days written notice to the other party, provided that such notice is received prior to the date that any of the Replacement Work commences or any parts for the Replacement Work have been ordered. .

9. Notice. Whenever notice is required under this Agreement, it shall be sent by certified mail, return receipt requested, by nationally recognized overnight courier service or by hand delivery to the address of the parties set forth in the preamble of this Agreement, provided the parties may change the address provided for above by notifying the other party of the new address in writing. Any notice given shall be effective upon receipt or refusal of delivery.

10. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. By execution of this instrument, the parties acknowledge that in the event of any dispute arising under this Agreement the sole venue for such dispute shall be Monroe County, Florida

11. Further Assurances. KWRU and Beneway agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further acts, assignments, transfers and assurances as shall reasonably be requested of it in order to carry out this Agreement and give effect thereto.

12. Severability. If for any reason any provision of this Agreement is determined to be invalid, or unenforceable in any circumstance, such invalidity or unenforceability shall not impair the effectiveness of the other provision in this Agreement or, to the extent permissible, the effectiveness of such provision in other circumstances.

13. Successor and Assigns. The agreements contained herein shall be binding upon and inure to the benefit of the permitted successors and assigns of the respective parties hereto. Beneway shall not mortgage, pledge, sell, assign, hypothecate, or otherwise encumber, transfer or permit to be transferred in any manner or by any means whatsoever whether voluntarily or by operation of law, all or any part of its interest in this Agreement.

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14. Amendments. No amendment or modification of this Agreement shall be effective executed by both parties.

15. Waiver of Jury Trial. Each of the parties waive trial by jury in any litigation, suit or proceeding between them in any court with respect to, in connection with or arising out of this Agreement, or the validity, interpretation or enforcement thereof.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes all prior understandings or agreements between the parties.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement binding on the parties hereto.

[Signature to Follow]

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IN WITNESS WHEREOF, the parties have hereunto set forth their hands and seals as of the date first above written.

Signed in the presence of:

KWRU:

KW RESORT UTILITIES CORP., a Florida corporation

Witness: _____
Print Name:

By:  10/23/2017
Name: Christopher A. Johnson
Title: President

Witness: 
Print Name: Robert A. Derryberry

BENEWAY:

B & L BENEWAY, INC., a Florida corporation

Witness: _____
Print Name:

By: 
Name: V.P.
Title: V.P.

Witness: 
Print Name: Robert A. Derryberry

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EXHIBIT A

REPLACEMENT WORK

00095723 -111

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KW Resort Utilities Corp

6630 Front Street
Key West, FL 33040
305.295.3301
FAX 305.295.0143
www.kwru.com

**Station#L2A Lift Station Replacement Project
Location 9th Avenue and 5th Street Stock Island**

Project Summary

Provide pump around or other means to pump the gravity flow that is tributary to the lift station. Remove existing lift station wet well including electrical elements, furnish and install new lift station wet well, install electrical elements. Install 304 stainless steel rail system for 2 pumps, install QTY (2) stationary 90 degree elbows that match the discharge plate/flange of the pumps. Install valve vault. QTY (2) check valves, QTY (2) isolation valves, and an interconnect gravity drain line between the valve vault and the wet well with check valve. Tie discharge line into existing force main and install division valve to provide the lift station with a shut off. Provide and install a T-lock or A-lock lining system, contractor to make submittal to Engineer for approval of specific lining system. After installing rails and discharge piping internal to the wet well, reinstall existing pumps and controls into the wet well and wire pumps and controls into the existing panel.

Electrical Summary

Remove panel and rack to be reinstalled. Remove conduit and junction boxes. Install new SCH80 2" conduits from the control panel to the wet well location. Install new NEMA3R enclosed breaker at existing customer pole. Install (3) new 2" EYS seal offs at control panel. Install (3) new 12 x 12 x 4 PVC junction boxes at new wet well location. Install (3) new SCH80 2" PVC conduits from new junction boxes to wet well. Install pump cables from wet well to junction boxes. Install control (float) cables from wet well to new junction box. Install existing control panel and existing equipment rack at new location. Install all wire and terminate, assist in pump station start up.

Plans and Specifications

Lift Station Detail is given in the set of plans (4 pages) that are attached to this agreement and labeled as Exhibit A of Station#L2A Lift Station Replacement Project signed and sealed May 21, 2014 by Serge Mashtakov, P.E. Weiler Engineering.

Total Lift Station Replacement..... \$ _____