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VIA FEDERAL EXPRESS

April 17, 2013

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

130086-SU

RECEIVED-FPSC
13 APR 18 AM 10:05
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 _____
AFD 1
APA _____
ECO 2
ENG 1
GCL 2
IDM _____
TEL _____
CLK _____
CAO - 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

K W RESORT UTILITIES CORP.

Complainant,

130086-5U

v.

Filed: April 16, 2013.

MONROE COUNTY, a political subdivision
of the State of Florida,

Respondent.

COMPLAINT BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

KW RESORT UTILITIES CORPORATION ("KWRU"), by and through undersigned counsel and pursuant to 25-22.036, Fla. Admin. Code, files its complaint before the Commission against its customer, Monroe County, 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.
SMITH OROPEZA, P.L.
138 - 142 Simonton Street
Key West, Florida 33040
Telephone: (305) 296-7227
Facsimile: (305) 296-8448

3. The Commission's disposition of the instant complaint 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 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 the Parties' Utility 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.

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 four (4) Equivalent Residential Connections ("ERC") and Monroe County agreed to the amount

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.

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.²

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. 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 Although the City agreed to pay for eight (8) ERCs, the City only paid for four (4) ERCs.

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. 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.

18. After sending the initial demand letter and Monroe County's refusal to pay, in contravention of Monroe County's assertion it was using less water, Monroe County's usage continued to increase to a three months average daily flow of 45,156 gallons per day or 220.27 EDUs. On September 18, 2012, KWRU sent another demand letter requesting Monroe County pay \$594,729.00 for the total additional capacity its facility has used. A true and correct copy of the letter dated September 18, 2012 from KWRU to the County is attached hereto and incorporated herein as Exhibit G.

19. Monroe County then asserted that its cooling towers located on the Detention Center were contributing to the increase in water usage. KWRU spent considerable time investigating this claim and based on information provided by the companies that built and installed the cooling towers, Monroe County's claimed amount of water evaporation be substantiated nor were the amounts capable of being evaporated by the cooling towers.

20. On March 21, 2013, KWRU sent Monroe County a fourth demand letter demanding payment for the increased capacity. A copy of the March 21, 2013 letter is attached hereto and incorporated herein as Exhibit H.

21. The County has consistently failed and/or refused to pay for the extra capacity.

22. 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

23. 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

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

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.

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.

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

26. 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.

27. Upon learning of the malfunctioning meter, Monroe County requested KWRU provide a report of the actual usage from FKAA, which KWRU spent several months requesting a corrected report from the FKAA. After 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 I.

28. KWRU also discovered billing errors in the amount of \$6,965.24 which the County was notified of at the same time in the same demand letter.

29. As of the date of this Complaint, the County has failed and/or refused to pay KWRU any funds, including those not in dispute, for its actual consumption of KWRU's services due to the errors stated in ¶¶ 24 – 26 of this Complaint.

COUNTY LIFT STATIONS

30. 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.

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

32. 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 maintained and continues to maintain the lift stations daily at no charge to the County.

33. 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.

34. 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 J.

35. 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 K. 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 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.

36. KWRU is 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

37. 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 in exchange the County agreed to the installation and expansion of the wastewater collection treatment system on South Stock Island and to pay for KWRU's plant conversion to Advanced Wastewater Treatment standards.

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.

38. 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.

39. 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.

40. 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 . . .

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

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.

42. 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

⁶ KWRU points to the Commission that no contingency money to date has been paid by Monroe County even though the cost of installation exceeded \$3,500,000.00 and the County has refused to pay invoices for construction.

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.”

43. 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.

44. 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.

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

46. On information and belief, the County reviewed invoice #SSI001 according to the process required by the CRI Contract and described in ¶39 above. After reviewing invoice #SSI001, the County requested additional documents from KWRU.

47. 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.

48. 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.

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

49. 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.

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

51. On information and belief, the County reviewed invoice #SSI002 according to the process required by the CRI Contract and described in ¶39 above.

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

53. 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.

54. 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.

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

56. On information and belief, the County reviewed Invoice #SSI003 according to the process required by the CRI Contract and described in ¶39 above.

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

58. 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.

59. 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.

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

61. On information and belief, the County reviewed Invoice #SSI004 according to the process required by the CRI Contract and described in ¶39 above.

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

63. 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.

64. 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.

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

66. On information and belief, the County reviewed Invoice #SSI005 according to the process required by the CRI Contract and described in ¶39 above.

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

68. 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.

69. 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.

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

71. On information and belief, the County reviewed Invoice #SSI006 according to the process required by the CRI Contract and described in ¶39 above.

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

73. 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.

74. 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.

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

76. On information and belief, the County reviewed invoice #SSI007 according to the process required by the CRI Contract and described in ¶39 above.

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

78. 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.

79. 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.

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

81. On information and belief, the County reviewed invoice #SSI008 according to the process required by the CRI Contract and described in ¶39 above.

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

83. 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.

84. 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.

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

86. On information and belief, the County reviewed invoice #SSI009 according to the process required by the CRI Contract and described in ¶39 above.

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

88. 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.

89. 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.

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

91. On information and belief, the County reviewed invoice #SSI010 according to the process required by the CRI Contract and described in ¶39 above.

92. 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.

93. 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.

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

95. On information and belief, the County reviewed amended invoice #SSI011 according to the process required by the CRI Contract and described in ¶39 above.

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

97. 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.

98. 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.

99. 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 ¶40 above.

100. 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.

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

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

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

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

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

106. 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.

107. 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.

108. On or about January 20, 2007, the County requested additional work be completed by KWRU under the CRI contract. The County, pursuant to the contract, 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.

109. 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. The invoice was for a total of \$ 30,278.01. See a copy of Invoice # SSI0015 attached hereto as Exhibit M.

110. Until recently, the County refused or ignored to pay invoice #SSI015 and the remaining balance of invoice #SSI011. On September 11, 2012, the County acknowledged its debts under the CRI contract by remitting payment of \$30,278.01 and identifying it as a payment towards Invoice # SSI0015 under the CRI Contract.

COUNT I
BREACH OF CONTRACT FOR CAPACITY RESERVATION FEES OWED

111. KWRU hereby re-alleges each and every allegation contained in paragraphs 1 through 23, inclusive, as if fully set forth herein.

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

113. 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.

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

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

WHEREFORE, KWRU respectfully requests that the Commission:

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

(2) Issue an Order determining as a matter of law that KWRU is entitled to payment of \$594,729.00;

(3) Issue an Order determining as a matter of law that the County is in breach of the Utility Agreement by withholding such payment from KWRU;

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

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

COUNT II

BREACH OF CONTRACT FOR CORRECTED CONSUMPTION

116. KWRU hereby re-alleges each and every allegation contained in paragraphs 1 – 9, and 24 -29 inclusive, as if fully set forth herein.

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

118. 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.

119. 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. The meter's incorrect readings were not due to the fault or mistake of KWRU, but because of a broken FKAA meter that KWRU has no custody or control over.

120. Upon receipt of the corrected Meter Consumption Report, KWRU requested payment for the excess services the County received due to FKAA's malfunctioning meter.

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

(2) Issue an Order determining as a matter of law that KWRU is entitled to payment of \$43,436.16;

(3) Issue an Order determining as a matter of law that the County is responsible for compensating KWRU for all of the corrected consumption;

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

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

COUNT III
BREACH OF CONTRACT FOR WORK PERFORMED

122. KWRU hereby re-alleges each and every allegation contained in paragraphs 1 - 9, and 30 - 36 inclusive, as if fully set forth herein.

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

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

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

(2) Issue an Order 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;

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

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

COUNT IV
BREACH OF CONTRACT FOR CRI CONTRACT PAYMENT

126. KWRU hereby re-alleges each and every allegation contained in paragraphs 1 - 9, and 37 - 110 inclusive, as if fully set forth herein.

127. 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.

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

129. Pursuant to the CRI Contract, the invoice must be paid in full after the work has been determined to completed in full.

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. The County has no contractual right to withhold payment for work performed. The County has acknowledged its past debts owed under the CRI contract by making a partial payment towards the total amount owed and outstanding under the CRI contract.

131. The County's justification for non-payment is a lack of documentation for invoices the County had already reviewed and paid according to the review process the County agreed to. KWRU would have been capable of providing documentation to the County should the County have timely requested documentation according to the terms of the CRI contract.

WHEREFORE, KWRU respectfully requests that the Commission:

- (1) Permit KWRU and County to address the Commission at a regularly scheduled Agenda Conference in support of their respective positions;
- (2) Issue an Order determining as a matter of law that KWRU is entitled to payment of \$308,483.00;
- (3) Issue an Order determining as a matter of law that the County is in breach of the CRI Contract by withholding such payment from KWRU; and
- (4) Award reasonable attorney's fees and costs; and
- (5) Grant such other relief as may be just and appropriate.

Dated: April 16, 2013.

Respectfully Submitted,

/s/ Barton Smith

Barton W. Smith, Esq.

Florida Bar No. 20169

SMITH OROPEZA, P.L.

138 – 142 Simonton Street

Key West, Florida 33040

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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 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. 128

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

EXHIBIT A

EXHIBIT A

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 Weller 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	100,000
	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:

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EXHIBIT B

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

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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>
Utility	Utility	End
US 1	US 1	12 th Avenue
US 1	US 1	12 th Avenue
End (radio station)	End (radio station)	4 th Avenue
5 th Avenue	5 th Avenue	Maloney Ave. (excluding Maloney intersection)
End past Sunshine	End past Sunshine	4 th Avenue
3 rd Avenue	3 rd Avenue	2 nd Avenue
Sunshine (B)	Sunshine (B)	3 rd Street (excluding 3 rd St. intersection)
3 rd Street	3 rd Street	Maloney Avenue
3 rd Avenue	3 rd Avenue	2 nd Avenue
3 rd Avenue	3 rd Avenue	1st Avenue
End Peninsula Marine	End Peninsula Marine	Maloney Ave. (excluding Maloney intersection)
Maloney 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



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

KOLHAGE, CLERK

By *Donald C. DeSantis*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By *[Signature]*
Mayor/Chairperson

(SEAL)
ATTEST:

By *Adrian Guardo*
Title *Assistant Secretary*

JdconKWRU702B

KW RESORT UTILITIES CORP.

By *[Signature]*
Title *President*

APPROVED AS TO FORM
AND LEGAL EFFICIENCY.
BY: *[Signature]*
ROBERT N. WOLF
DATE *7-30-02*

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 edu's} ~~the wastewater~~ generated on south Stock Island. *WJ*

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.

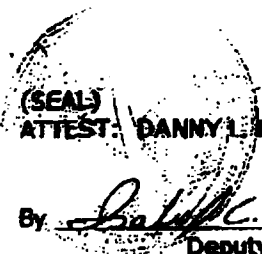
4 The County must by June 1, 2005, determine whether the south Stock
5 Island capacity reservation fee revenue collected through the non-ad valorem
6 assessment method can legally be pledged for the repayment of bonds. If
7 the revenue is pledged, then the \$600 per EDU for AWT must be paid to the
8 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)
ATTEST: DANNY L. KOLHAGE, CLERK

By *Danny L. Kolhage*
Deputy Clerk
Date 9-10-03

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By *Hejira M. Jackson*
Mayor/Chairman

(SEAL)
Attest:

By *William Smith*
Secretary
Date 11-14-03

KW RESORT UTILITIES CORPORATION

By *William Smith*
President

johnKWRLJA

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

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
John R. Collins
JOHN R. COLLINS
COUNTY ATTORNEY
Date 12/09/03

REVIEWED	
JRC 09/10/03	JEH
RNW	SNS
SAH	DCT
RBS	

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 12th 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 for 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

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



DANNY L. KOLHAGE, CLERK

By *[Signature]*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By *[Signature]*
Mayor/Chairman



Daryl Smith, City Clerk

By *[Signature]*

CITY OF KEY WEST

By *[Signature]*
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:

[Signature]
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 3/22/04

EXHIBIT "A"

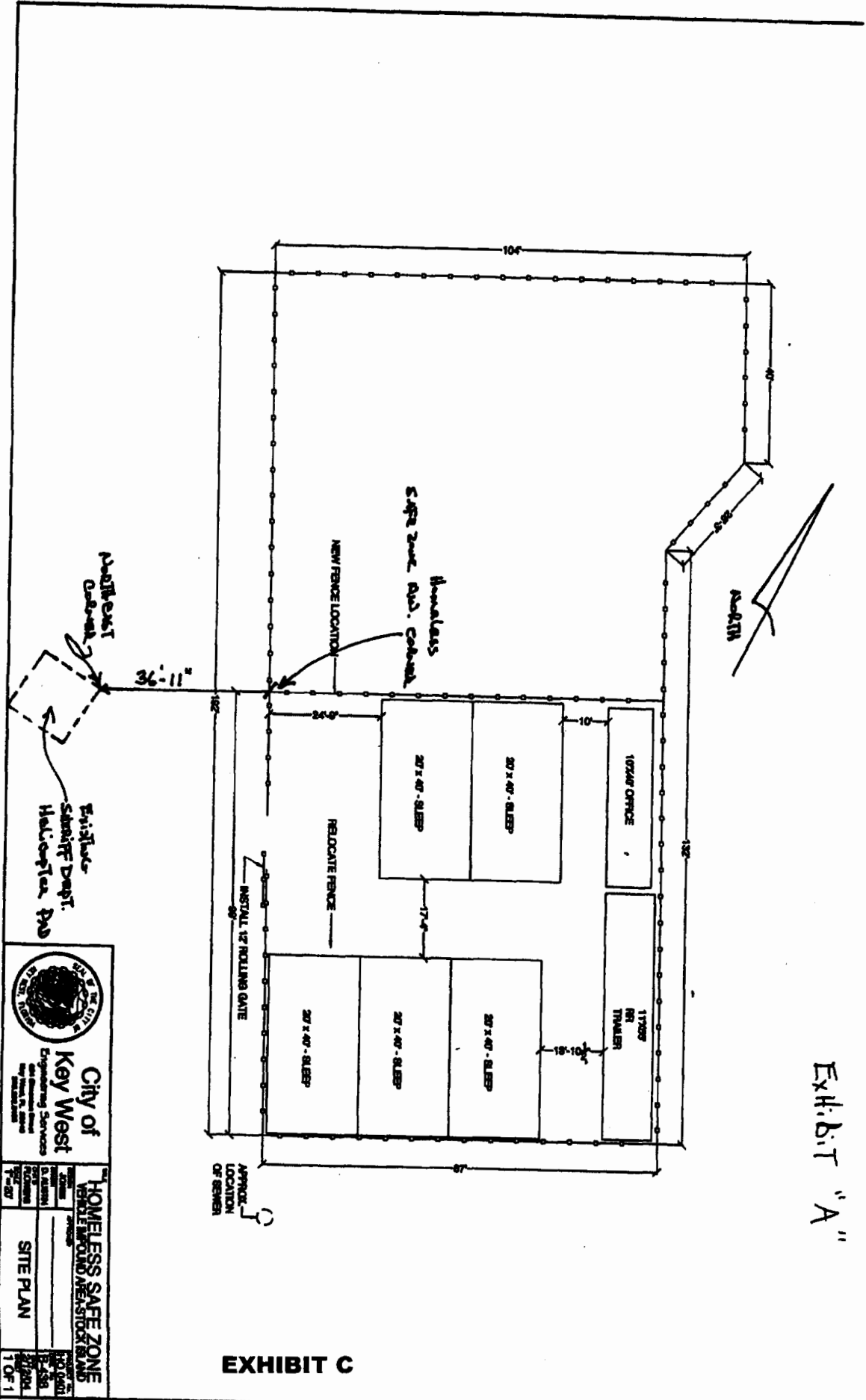



EXHIBIT C

 <p>City of Key West Engineering Services 100 Duval Street Key West, FL 33401</p>	<p>HOMELESS SAFE ZONE</p> <p>PERMITS AND REGULATIONS</p>	
	<p>PROJECT NO. 2024-001</p>	<p>DATE 08/20/24</p>
	<p>SITE PLAN</p>	<p>1 OF 1</p>

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, CITY CLERK


JIMMY WEEKLEY, MAYOR

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 Starnock* D.C.
Clerk

By: *George R. Neugeb*
Mayor/Chairman



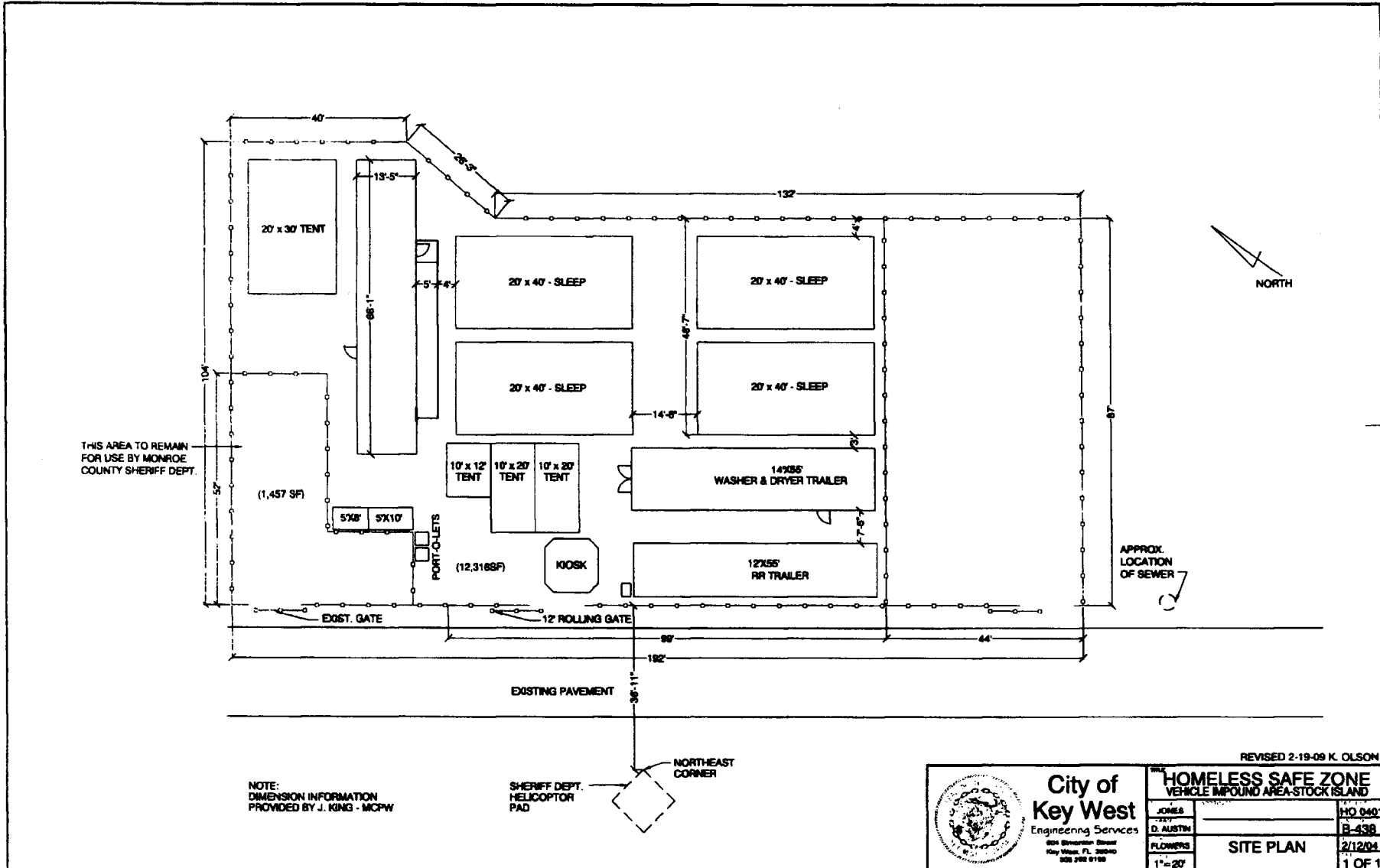
Ray Smith
Clerk

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

EXHIBIT D



NOTE:
DIMENSION INFORMATION
PROVIDED BY J. KING - MCPW

SHERIFF DEPT.
HELICOPTER
PAD

City of Key West
Engineering Services
824 Grandview Street
Key West, FL 33540
305 262 6199

REVISED 2-19-09 K. OLSON

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

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.

EXHIBIT E

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 it's 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@ 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: JOHNSONS
Title: 1507 - CITY MANAGER

STATE OF FLORIDA)
) ss:
COUNTY OF MONROE)

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



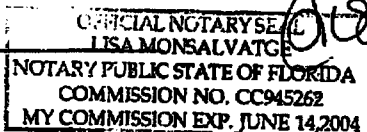
Susan P. Harrison
MY COMMISSION # DD184792 EXPIRES
April 8, 2007
BONDED THRU TROY PAH INSURANCE, INC.

[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 _____, a Florida corporation, on behalf of said corporation. He/~~she~~ is personally known to me or who has produced as identification.



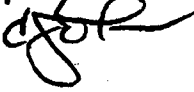
[Signature]

My Commission Expires:

KW RESORT UTILITIES, CORP.

FILE COPY

7/15/09



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

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



KW Resort Utilities, Corp.

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

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

September 18, 2012

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 (KW RU), Monroe County has exceeded the reserved capacity pursuant to paragraph 6(b) by 45,156 GPD. This figure is based upon the average of the highest 3 months flows within the last 3 years, which is the industry standard. You will recall in my letter of August 4, 2009 where the County was asked to pay for the increased use of 39,375 GPD. Since August 4, 2009 there was an increase in water used, by the County, and therefore, the capacity fee needs to be adjusted to reflect this increase in use. Thus, Monroe County is required to pay an additional capacity fee for its use equal to \$594,729.00. The calculations are as follows:

$$\begin{aligned} (45,156 \text{ gallons/day}) / (205 \text{ gallons/connection}) &= 220.27 \text{ connections} \\ (220.27 \text{ connections}) \times \$2700/\text{connection} &= \$594,729 \end{aligned}$$

Please refer to attached spreadsheet to see the water consumed at the various County facilities.

I respectfully ask that you please remit payment for attached INVOICE# MCA01, dated 9/18/2012, at your earliest convenience.

Sincerely,

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

Exhibit G

MCDC AVERAGE GALLONS PER DAY

Read Date	8" Gallons	2" Gallons	Total MCDC	Bayshore Manor	SPCA
4/14/2009	36,000	3,614,600	3,650,600	106,000	17,700
5/13/2009	279,000	3,023,800	3,302,800	35,600	15,200
6/15/2009	435,000	3,554,000	3,989,000	42,600	19,300
7/14/2009	369,000	3,320,000	3,689,000	34,900	22,000
8/17/2009	374,000	4,060,800	4,434,800	44,600	23,500
9/15/2009	314,000	2,277,500	2,591,500	39,300	23,700
10/15/2009	64,000	3,111,699	3,175,699	39,300	24,600
11/16/2009	280,000	2,871,200	3,151,200	42,100	24,600
12/10/2009	241,000	1,995,000	2,236,000	33,200	15,300
1/14/2010	260,000	2,948,400	3,208,400	46,300	26,900
2/16/2010	331,000	2,517,500	2,848,500	46,400	24,600
3/15/2010	207,000	2,529,400	2,736,400	41,700	18,500
4/15/2010	169,000	2,448,900	2,617,900	49,400	20,200
5/17/2010	294,000	2,654,500	2,948,500	50,900	24,000
6/15/2010	306,000	2,696,700	3,002,700	41,600	22,200
7/15/2010	421,000	2,863,320	3,284,320	44,600	23,900
8/16/2010	415,000	3,012,900	3,427,900	47,500	26,900
9/15/2010	428,000	2,508,500	2,936,500	41,100	23,000
10/18/2010	454,000	2,411,500	2,865,500	44,100	28,500
11/16/2010	315,000	2,261,700	2,576,700	42,100	22,800
12/15/2010	333,000	2,388,000	2,721,000	41,700	39,400
1/13/2011	371,000	2,195,900	2,566,900	44,300	28,000
2/14/2011	984,000	2,379,860	3,363,860	52,800	29,800
3/15/2011	440,000	2,098,700	2,538,700	47,500	26,400
4/13/2011	146,000	2,417,200	2,563,200	53,700	27,400
5/12/2011	431,500 *	2,204,400	2,204,400	56,600	29,500
6/14/2011	421,200	2,111,646	2,532,846	66,200	30,300
7/13/2011	606,800	2,688,851	3,295,651	61,100	29,100
8/12/2011	1,008,000	2,256,500	3,264,500	74,300	36,400
9/13/2011	967,700	2,741,900	3,709,600	84,600	41,000
10/13/2011	247,100	2,720,900	2,968,000	87,000	35,700
11/14/2011	484,000	3,078,800	3,562,800	41,200	39,000
12/15/2011	421,000	2,611,000	3,032,000	98,500	36,000
1/13/2012	271,000	2,642,800	2,913,800	31,100	38,900
2/14/2012	381,100	2,468,700	2,849,800	27,300	40,800

Highest 3 Month Average 4,044,467 97,167 40,400

Total 3 Month Average 4,182,033

Total Gallons per Day 139,401

* 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)

K W RESORT UTILITIES
P.O. BOX 2125
KEY WEST, FL 33045
305 294-9578

INVOICE

TO:

Monroe County Administrator
Roman Gastesi
1100 Simonton Street
Key West, FL 33040

INVOICE NO. 1001

MCA01

DATE

09/18/12

ISS

STREET

DESCRIPTION

AMOUNT

ADDITIONAL CAPACITY FEE DUE

\$594,729.00

Barton W. Smith, Esq.
Managing Partner

SMITH | OROPEZA, P.L.

Patrick Flanigan, Esq.

Gregory S. Oropeza, Esq.
Partner

Richard McChesney, Esq.

138-142 Simonton Street
Key West, Florida 33040
Telephone : (305) 296-7227
Facsimile : (305) 296-8448

VIA EMAIL AND US MAIL

March 21, 2013

Jay Lavia
Schef Wright
GARDNER, BIST, WIENER, WADSWORTH,
BOWDEN, BUSH, DEE, LAVIA & WRIGHT, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308

RE: *KW Resort Utilities Corp. v. Monroe County*

Dear Jay and Schef,

Attached is the technical paper Chris Johnson drafted after contacting the manufacturers of the cooling towers that are installed at the Monroe County Detention Center.

First, it should be noted that Bob Stone claimed that the cooling towers evaporated 20,074 gallons of water per day on average. Based on the designs of the Imeco and Baltimore twin cooling tower, under no circumstances are the cooling towers designed to evaporate this amount of water per day. I do not know where Mr. Stone obtained his information to make this claim, but it goes against everything stated by the manufacturers of the cooling towers and what Mr. Stone has ever submitted to KW Resort Utilities Corp. ("KWRU") to be provided to the Florida Department of Environmental Protection ("FDEP").

Again, KWRU and I have had to deal with information from Monroe County that has no basis in fact which has delayed the resolution of these issues.¹ If all three cooling towers operated at 100% of operational capacity twenty-four hours per day using the maximum water possible they could only evaporate 17,323.2 gallons of water per day. However, both manufacturers stated unequivocally that this should never occur and it would be significantly less than this amount. The manufacturers explained it is impossible to determine how much water actually evaporates in a given day or period unless there was a

¹ The first being that massive amounts of water were leaking from the holding tank at a rate of almost 700,000 gallons per month or 23,333 gallons per day without any evidence of a leak or water accumulation outside of the holding tank.

flow meter providing the actual amount of water that flowed into the units per day, which during the months and years at issue, no such meters were installed at the facility.

Therefore, based on the foregoing, the assumption is all amounts that entered the units were evaporated. Attached is KWRU's most recent rate case. On page 30, section IX. Rate Structure, it specifically states the following:

"In determining the appropriate wastewater gallonage charge, we commonly recognize that only 80 percent of the residential water used is collected and treated by the wastewater system; the other 20 percent of the residential water is used for other purposes and is not returned to the wastewater system. There is no cap on usage for general service wastewater bills, and it is assumed that 100 percent of general service use will be returned to the collection system."

Pursuant to PSC order, KWRU must assume all water that enters the Monroe County Detention Center leaves the facility through KWRU's collection system. At this time, we have not been provided sufficient information to determine anything more than an amount is being evaporated, but it is inconclusive as to the actual amount. Consequently, the required assumption is that everything is being returned to the collection system.

Moreover, as to any loss at the holding tank, it was conclusively proven that the County's meter had not been calibrated and was not operating correctly. Your report states that KW Resort Utilities old meter was no longer functioning correctly, but the meter was off a small amount. More importantly, the old meter that was tested by your outside consultants was no longer being used by the utility and an additional meter had been installed by KWRU's staff months prior to the test and this meter was functioning correctly and was calibrated according to manufacturer specifications.

Therefore, based on the foregoing we again demand payment for the total amount due and owing for capacity reservation fees which amount is \$594,729.00.

As to the back billing, our position remains the same. KWRU believes it is entitled to all amounts owed as it was not the fault of KWRU that the meters broke as they are FKAA meters and KWRU has no right to inspect or tamper with FKAA meters. Therefore, KWRU demands the full amount of \$43,436.16 for unpaid consumption of services.

As to the County Lift Station, we have stated we would agree to the breakdown contained in your letter dated June 22, 2012 and stand by this statement. This amount equals \$8,241.73.

Finally, as to the unpaid costs during the South Stock Island expansion, it is our position that the statute of limitations has not run or has been reinstated by the payment of amounts owed to KWRU under the contract at issue. Therefore, KWRU demands \$308,843.00 in unpaid construction costs.

In total, KWRU demands Monroe County remit payment in the total amount of \$955,249.89.

We would desire to resolve these issues amicably, but unfortunately, Monroe County has a prolonged history of not paying KWRU for amounts owed which leaves us with little faith that Monroe County will act any differently at this time. Therefore, we will give Monroe County fifteen (15) days from today's date to remit payment in full for all amounts owed as is required under the Monroe Detention Center contract. Otherwise KWRU shall file any and all necessary actions against Monroe County to seek recovery of all amounts due and owing.

Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'B. Smith', written over a horizontal line.

Barton W. Smith, Esq.
For the Firm

Electronic Cc: Client
Monroe County Attorney's Office



KW Resort Utilities, Corp.

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

March 15, 2013

Barton W. Smith, Esq.
SMITH OROPEZA, P.L.
138 – 142 Simonton Street
Key West, Florida 33040

Re: Technical Review of Cooling Towers located at Monroe County Detention Center

Dear Mr. Smith,

Pursuant to your request, I have reviewed the technical data for the three cooling towers at the Monroe County Detention Center ("Detention Center") located at 5525 College Road, Key West, Florida to determine, if possible, the evaporation rate and actual amount of water evaporated by each tower in a given day or month time period.

As part of my review, I obtained the name, type, and serial numbers for each cooling tower from Monroe County staff, contacted the manufacturer of each cooling tower, obtained and reviewed copies of the schematics for each cooling tower, and had many conversations with the manufacturer's engineering representatives regarding the evaporation rates for each cooling tower. Accordingly, based on the foregoing review, I have obtained the following data and reached the following conclusions.

First, there are three cooling towers at the Detention Center, a stand-alone Imeco Cooling Tower and a twin Baltimore Cooling Tower. According to my discussions with both companies' engineers, the cooling towers are designed to be capable of operating at a capacity or use rate above and beyond any scenario anticipated or necessary for cooling the building it is designed or intended to cool. In essence, the cooling towers should never be operated at or near the maximum potential evaporation rates and in most applications are operating at or between 40 to 80 percent of the potential capability of the cooling tower.

According to the engineering representatives for the cooling tower manufacturers, the maximum potential evaporation rates for each tower are as follows:¹

Imeco Tower

I base the following evaporation rate review for the IMECO Tower on conversations and email correspondence with the Imeco Technical Representative, Charles B. Spear of Johnson Controls, Dixon, Illinois. When discussing the matter, Mr. Spear pulled the Original Imeco/YORK INTERNATIONAL job drawing from the project file. The Original job drawing (B-5090590) shows the design criteria that were submitted to Imeco and implemented in the design of the IMC-806-110-1-5, SN 5574 single tower open cooling tower.

¹ Note, the manufacturing representatives specifically stated

From the drawing the design engineer specified that 312 gallons per minute ("gpm") could potentially be sourced to the unit. The design engineer used a specification that assumes that the water leaving the unit is 10 degrees cooler than the water coming in. Based on these parameters the unit should be rejecting 1,560,000 btu/hr. The maximum water evaporation rate is based on 2 gpm per million btu/hr rejected, or, in this case, 3.12 gallons per minute or 187.2 gallons per hour. Therefore, the maximum potential evaporation rate is 4,492.8 gallons per day, which should never occur under normal operating circumstances.

Mr. Spear explained that you cannot ascertain the actual evaporation rate without knowing how much water was flowing into the unit and any determination is inconclusive unless a meter was installed providing the actual amount of water that flows into the unit.

Baltimore Aircoil

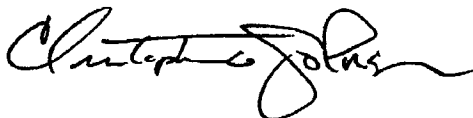
I base the following evaporation rate review for the Baltimore Tower from telephone conversations and email correspondence with Andrew Sickler, Project Engineer, Baltimore Aircoil Company. The Monroe County Jail Facility has Twin Baltimore Aircoil Cooling Towers. Mr. Sickler provided the following design parameters from the project file. The design engineer specified that Design Flow was 900 gpm and he/she also used a specification that assumes that the water leaving the unit is 9.9 degrees cooler than the water coming in.

The Maximum Evaporation Rate = (.001) x (900gpm) x (9.9 degrees) = 8.91gpm or 534.6 gph. Therefore, the maximum potential evaporation rate per day is 12,830.4 gallons per day.

Mr. Sickler explained that you cannot ascertain the actual evaporation rate without knowing how much water was flowing into the unit and any determination is inconclusive unless a meter was installed providing the actual amount of water that flows into the unit.

Conclusions

The formulas for Maximum Evaporation Rates are used by the manufacturers of the cooling towers to determine worst case scenarios. These evaporation rates are insufficient to quantify the amount of water that actually evaporates in any given application or for a specific installation. Both technical representatives stated that to determine the amount of water evaporated a sub-meter for the cooling towers should be installed as it will be able to measure the amount of replacement water that will be equivalent to the amount of water that evaporated or was put down the drain. After conducting a thorough examination of the information, as provided by the resident experts for the two different cooling systems, the fact that the jail facility has not provided sub-meter data, I can only conclude that a minimal amount of water should be attributed to evaporation based on the assumption that all water that enters the facility leaves the facility through the collection system.

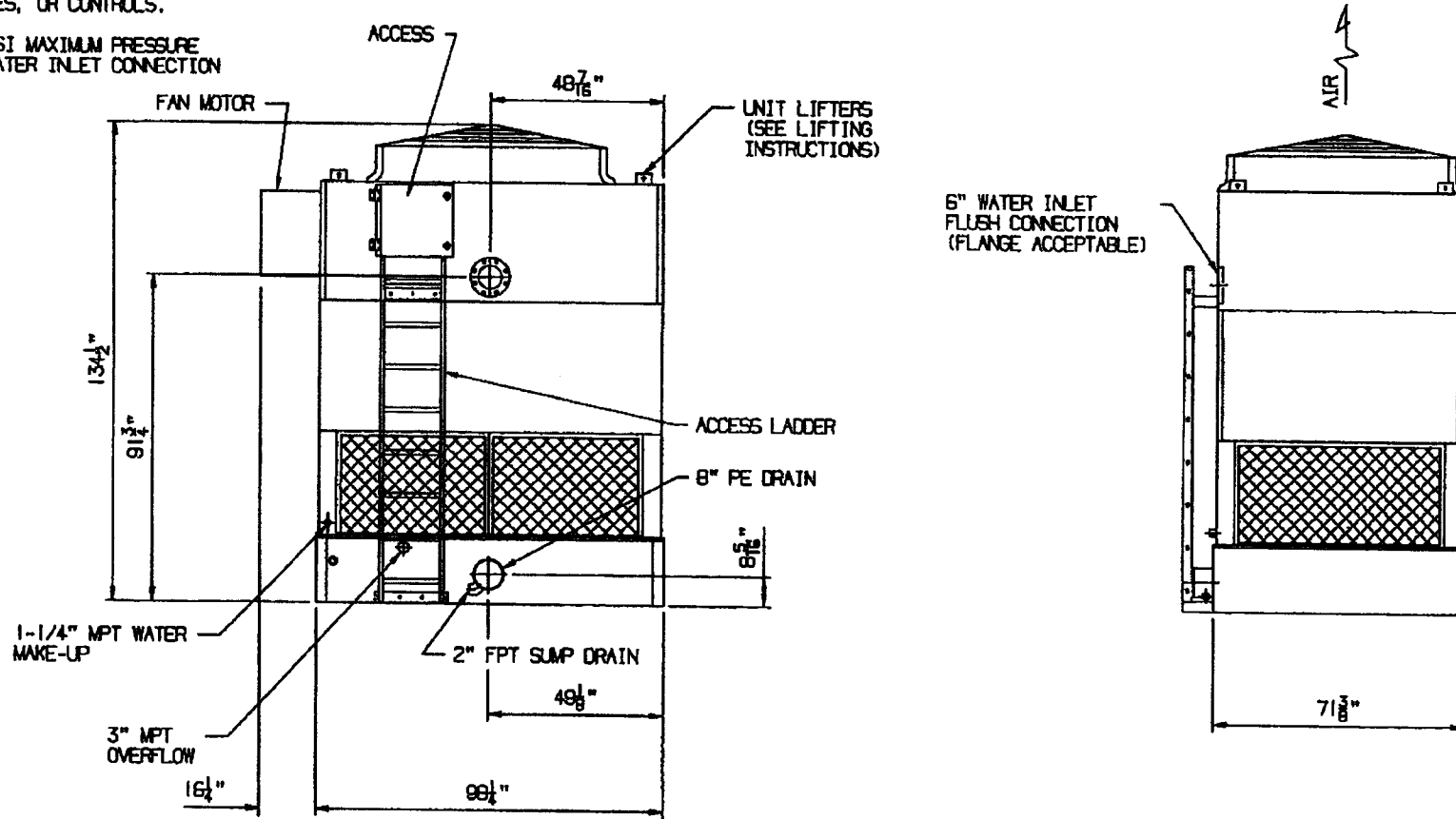


Christopher A. Johnson
President
KW Resort Utilities Corp.

Exhibit H

NOTE: THIS UNIT IS NOT DESIGNED TO SUPPORT ANY ADDITIONAL PIPING, VALVES, OR CONTROLS.

10 PSI MAXIMUM PRESSURE AT WATER INLET CONNECTION



SO: 5574 PAGE: 1 QTY: 1

STANDARD UNIT DATA:
 CASING: STAINLESS STEEL SHEET
 PAN: STAINLESS STEEL
 MOTOR: (1) 5 HP, TEFC, 480-3-60,
 1800 RPM, 184T FR
 FOUNDATION DRG: B-5090130

CAPACITY:
 312 GPM WATER
 95°F IN
 85°F OUT
 79°F WB
 1.75 PSI @ WATER INLET

OPTION: ALUMINUM ACCESS LADDER, VIBRATION ISOLATORS

IMC 806-110-1-5
 INDUCED DRAFT COUNTER-FLOW
 COOLING TOWER
 FOR
 POWER AIR COND.

ECN	DATE
001	11-8-93
002	11-8-93
62	11-10-93



DR: CDH
 DA: 8-22-94
 B-5090590

B-5090590-3

2009 WL 1716788 (Fla.P.S.C.)
Slip Copy

In Re: Application for Increase in Wastewater Rates in Monroe County by K W Resort Utilities Corp.

070293-SU
PSC-09-0057-FOF-SU

Florida Public Service Commission

January 27, 2009

APPEARANCES: F. MARSHALL DETERDING, ESQUIRE, and JOHN L. WHARTON, ESQUIRE, Rose, Sundstrom & Bentley, LLP, 2548 Blirstone Pines Drive, Tallahassee, Florida 32301 On behalf of K W Resort Utilities, Corp. (KWRU). STEPHEN C. BURGESS, ESQUIRE, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, room 812, Tallahassee, Florida 32399-1400 On behalf of the Citizens of the State of Florida (OPC). RALPH R. JAEGER, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 On behalf of the Florida Public Service Commission (Staff). MARY ANNE HELTON, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 Advisor to the Florida Public Service Commission

Before Matthew M. Carter II, Chairman, Nancy Argenziano and Nathan A. Skop, Commissioners.

FINAL ORDER REQUIRING PARTIAL REFUND AND GRANTING IN PART AND DENYING IN PART WASTEWATER RATE INCREASE

BY THE COMMISSION:

I. BACKGROUND

K W Resort Utilities Corp. (KWRU or Utility) is a Class A utility providing wastewater service to approximately 1,556 customers in Monroe County. Water service is provided by the Florida Keys Aqueduct Authority (FKAA). Wastewater rates were last established for this Utility in its 1983 rate proceeding.¹

On August 3, 2007, KWRU filed an application for the rate increase at issue in the instant docket. The Utility had a few deficiencies in the Minimum Filing Requirements (MFRs). KWRU requested that the application proceed directly to hearing for the establishment of rates as provided under Section 367.081(6), Florida Statutes (F.S.).

By Order No. PSC-07-0672-PCO-SU, issued August 21, 2007, we acknowledged the Office of Public Counsel (OPC) intervention in this case.

KWRU also requested interim rates, which were granted by Order No. PSC-07-0812-PCO-SU, issued October 10, 2007. The Utility requested final rates designed to generate annual revenues of \$1,647,998. This represents a revenue increase of \$601,684 (or 57.51 percent).

Hearing dates were originally set for February 6 and 7, 2008. However, on January 7, 2008, KWRU filed its Emergency Stipulated Motion for Continuance (Motion). As the basis for its Motion, the Utility stated that there were on-going discussions concerning the sale of KWRU, and that the sale of the Utility would render this rate case moot. By Order No. PSC-08-0032-PCO-SU, issued January 8, 2008, we granted KWRU's request for a continuance of at least 60 days. By Order No. PSC-08-0129-PCO-SU, issued February 28, 2008, we granted the Utility a further continuance until April 7, 2008.

On April, 7, 2008, KWRU requested that we re-establish the hearing dates and other controlling dates so as to allow sufficient time for the parties to complete the discovery and appropriate rebuttal testimony. As justification for this request, the Utility stated that negotiations were not far enough along and resolution sufficiently imminent to warrant a request for further continuance. OPC agreed with this request. By Order No. PSC-08-0241-PCO-SU, issued April 15, 2008, we re-established the hearing dates and other controlling dates for this case. A hearing was held on October 1 and 2, 2008.

On November 25, 2008, KWRU agreed to our staff's request that this Commission have up to and including January 6, 2009, to take its final vote on the Utility's requested rate increase.

This Order addresses KWRU's request for final rates and whether a refund of a portion of the interim rates is appropriate. We have jurisdiction pursuant to Sections 367.081 and 367.082, F.S.

II. APPROVED STIPULATIONS

We found that the stipulations reached by the parties and supported by staff were reasonable, and accepted the stipulated matters set forth below at the hearing.

1. To correct a misclassification of purchased land, plant shall be reduced by \$152,255. Corresponding adjustments shall be made to reduce Accumulated Depreciation by \$71,274 and Depreciation Expense by \$6,766.
2. To correct the misclassification of Florida Department of Environmental Protection permit and renewal application fees, taxes other than income shall be reduced by \$7,950 and plant increased by \$577. Corresponding adjustments shall be made to increase accumulated depreciation by \$52 and increase depreciation expense \$104.
3. KWRU purchased a beachcleaner which it expensed during the test year. The beachcleaner should have been capitalized. To correct this error, operating expenses shall be decreased by \$11,825 and average plant increased by \$910. Accumulated depreciation and depreciation expense shall be increased by \$493.
4. In accordance with Commission practice, temporary cash investments of \$168,265 shall be removed from working capital.
5. Sludge removal expense shall be reduced by \$9,129 to reflect the amortization of non-recurring amounts incurred during the test year.
6. Miscellaneous expenses shall be reduced by \$7,508 to remove non-utility telephone expenses.
7. In accordance with Rule 25-30.115(1), Florida Administrative Code (F.A.C.), materials and supplies, advertising, and miscellaneous expenses shall be reduced by \$1,203 to remove expenses related to political contributions and fundraising.
8. Contractual services - other shall be reduced by \$1,032 to reflect the amortization of non-recurring amounts incurred during the test year.
9. Pursuant to Audit Finding No. 12, the correct amount for the copier fee for Account 720, Materials and Supplies, shall not be \$5,378, but 50 percent of that amount, or \$2,689. This reduces operating expenses by \$2,689 for out of period charges, and increases prepaid expenses by \$2,689.
10. Pursuant to Audit Finding No. 17, the cost for the use of a golf cart recorded in Account 736, Contractual Services Other, shall be reduced from \$2,400 annually to \$852 annually. This reduces operating expenses by \$1,548. The Utility does not agree that this properly captures all costs related to the use of the golf cart, but has agreed to this adjustment because it is immaterial.
11. In order to reclassify expenses, plant shall be increased by \$51,663, and O&M expenses shall be reduced by \$51,663. Accordingly, accumulated depreciation and depreciation expense shall be increased pending further development of the record as to the appropriate primary accounts for these costs.

III. QUALITY OF SERVICE

Pursuant to Rule 25-30.433(1), F.A.C., we determine the overall quality of service provided by the Utility by evaluating the quality of the Utility's product, the operating condition of the Utility's plant and facilities, and the Utility's attempt to address customer satisfaction. The Utility's compliance history with the Department of Environmental Protection (DEP) and comments or complaints received from customers are also considered.

A. Quality of Utility's Product and Operating Conditions of the Utility's Plant and Facilities

Staff witness Johnson, from the DEP, testified that the Utility is upgrading the wastewater treatment plant to meet advanced wastewater treatment (AWT) standards and address maintenance-related repairs. Included with his testimony is a copy of a November 26, 2007, DEP warning letter to the Utility regarding disinfection reporting violations, total suspended solids exceedances for effluent discharged to the reuse system, and three separate wastewater spills over a three-month period. The letter noted that heavy rains and restrictions caused by the AWT upgrade may have caused the spills. Witness Johnson testified that the Utility has been cooperative and has taken action to correct the problem that caused the spill by undergoing repairs and upgrades, but that there was still is one outstanding issue dealing with an injection well that is being corrected.

B. Customer Satisfaction

Approximately 40 customers attended the morning and evening service hearings and seventeen provided testimony, three of whom were not customers of the Utility. Although most customers appeared to favor interconnecting small wastewater systems or septic tanks to a higher quality central wastewater system in order to preserve the environment of the Keys, the majority of the comments addressed the Utility's handling of the mandatory connection to the KWRU wastewater treatment plant resulting from a 2002 agreement with Monroe County.

The Florida Legislature enacted Chapter 99-395, Laws of Florida, which required existing wastewater treatment plants and onsite disposal systems, such as septic tanks, in Monroe County to cease discharge or comply with AWT standards by July 1, 2010. The Law further authorized the County to enact an ordinance that requires connection to a central sewerage system within 30 days of notice of availability of service. Monroe County subsequently passed Ordinance No. 04-2000, requiring the interconnections within 30 days of notice. The Ordinance further required the Utility to provide the required notices.

In July 2002, Monroe County and KWRU entered into a Capacity Reservation and Infrastructure Contract (Contract) which contained provisions for the County to purchase capacity from KWRU to provide service to the remaining 1,500 equivalent dwelling units (EDUs) on Stock Island that were on individual septic tanks or small package plants that could not be upgraded to AWT standards. KWRU agreed to convert its wastewater plant to AWT standards by January 1, 2007, in order to comply with Chapter 99-395. Further, the County agreed to advance funds to KWRU for the construction of the wastewater collection system on South Stock Island (SSI) in an amount not to exceed \$4,606,000, and the Utility agreed to complete the system in 16 months from the commencement of the contract. The agreement further provided that KWRU would collect its authorized plant capacity charge of \$2,700 per EDU from new connections and remit \$2,100 per EDU back to the County in repayment of the construction advances. The \$600 per EDU retained by the Utility was designed to offset the cost associated with upgrading the wastewater treatment plant to AWT standards.

Pursuant to Rule 25-30.550, F.A.C., the Utility provided this Commission with a proposed developer agreement for the Harbor Shores Condominium Unit Owners Association, Inc., one of the areas that would be affected by the required interconnection. The agreement was acknowledged by our staff by letter dated March 21, 2003, and our staff recommended that the Utility use the agreement for all current and future connections.

In the summer of 2003, the Florida State Attorney's Office began receiving complaints from Monroe County citizens residing in the Stock Island area as well as two of the County Commissioners concerning the costs associated with the construction of the sewer system on Stock Island. In late 2003, the State Attorney ordered an investigation of the project and the complaints. The concerns were subsequently presented to the Grand Jury which completed its investigation in the fall of 2004. The Grand Jury concluded that Monroe County had provided little oversight for the connection of customers to the KWRU wastewater system and failed to effectively communicate with the citizens of Stock Island as to their potential financial burdens.

At the service hearing, customers expressed their frustration with the Utility regarding the cost of the interconnection, the impact on low income families, Utility mismanagement, and customer intimidation. With regard to the cost of the interconnection, customers testified that it had not been clear originally that, in addition to the \$2,700 connection charge, customers would also be required to bear the cost of extending onsite lines needed to connect their property to the Utility's collection system. Some customers paid \$10,000 to \$100,000 for design, permitting, and construction of onsite lines. In some instances, property owners were unable to connect to the collection system, even though they paid the Utility's fees and installed the required infrastructure on their property. Some commercial and multifamily property owners did not understand that the \$2,700 connection charge was for each EDU and not for each connection. There were allegations that unnecessary or excessive amounts were paid for construction, testing, and legal fees. Allegations were also made regarding money paid to Utility family members. Several customers testified that the Utility used less than professional actions and inappropriate behavior in requiring property owners to connect to the KWRU system. People were leery about speaking out against the Utility due to intimidation and retaliation of both a political and financial nature.

One of the Monroe County Commissioners, who had contacted the Florida State Attorney's Office during their investigation, but who is not a customer of KWRU, testified. He stated that the process with the Commission and OPC works to make sure that the residents get a fair shake. He also stated that regardless of the cost, a level of service should be expected by the residents from the standpoint of quality of service. In reference to some residents not being able to hookup to the Utility's system, he testified that it was an undue burden for the customer and that it was the obligation of the Utility to provide the service.

Another customer testified that the work the Utility has done is eco-friendly and supportive of the Legislature's laws to that effect. He also noted that such a project is a very expensive process, in light of the burden that the Utility is under and the decisions it has to make, and that it was very easy to sit back and pick on the Utility. He also thought that the infrastructure needs to be in place and the choice of the system installed was probably the smartest choice instead of wasting money on something inferior.

During the technical portion of the hearing, KWRU witness Smith acknowledged the customers' frustration over the way they were treated in connecting to the system. In response to questions about the use of deputies to deliver 21 connection notices, he testified that deputies were used to hand deliver notices requiring connection to the system, when notices sent out by certified mail were returned unsigned or not returned. He said that the Utility went to the County Code Enforcement Office and was told that unless the Utility served every single trailer with notice, the County would not take enforcement action. Also, some people may have signed for service for one of their trailers, but may not have signed for the second trailer, and that is the reason some got served the second time.

Witness Smith went on to say that there are 350 EDUs that are left to be connected, including residential, multifamily, and commercial customers. There is also one or two who have paid the connection fee but have not yet connected because of access problems to the Utility collection system. For example, witness Smith testified that the owner of the Elmar Mobile Home Park is unwilling to install a lift-station that is needed to connect the park to the collection system. However, he also indicated that the Utility is waiting on a purchase order from the County to complete projects to connect those remaining that have access problems. Also, in response to customer questions about access to Utility board meetings, witness Smith resolved that from now on he will have an annual board meeting in Key West and open it to the public.

In addition to comments received at the customer service hearing, a review was also made of complaints received by the Commission during the test year to the present. There are no active complaints against the Utility on file with this Commission at this time. During the test year, two complaints were received concerning the mandatory connection process and the use of sheriff deputies to intimidate homeowners into signing up for service. The Utility responded to these complaints with a report that referred to the Florida Statutes, the Monroe County Ordinances, and the 30-day connection notice letter with the application for service. Resolution letters were sent out to the customers; however, the complaints were closed due to a lack of customer response.

OPC's position is that the Utility's quality of service is unsatisfactory. OPC argues that customer relations are an integral component of virtually every business enterprise, and that, in a competitive market, customers who are mistreated will find another supplier of the service. For a protected monopoly like KWRU, however, OPC states that we are the only entity with

the direct authority to assure appropriate treatment of Utility customers. When a Utility mistreats its customers, we have historically penalized the Utility, just as the market place would have penalized such behavior if competition were present. In its post-hearing statement, OPC indicates that the record contains many examples of customers who testified about the Utility's abusive and intimidating tactics. OPC concludes that we should acknowledge the Utility's deficiencies in how it treats its customers and set any allowed return at the bottom of the authorized range.

In response, the Utility believes that the quality of service it provides to its customers is satisfactory. In its post-hearing statement, KWRU stressed that staff witness Johnson's testimony indicated that the Utility has been attentive and cooperative in its responses to DEP, and that the DEP has not required the Utility to take any action based upon concerns or problems resulting from odors, noise, aerosol drift, or lighting. Further, there was no customer testimony regarding the typical issues that customers address in a wastewater case, such as odor, plant shutdowns, interruptions in service during storm events, or billing issues. Neither were there overwhelming comments concerning expensive service, nor the prospect of paying higher rates. Instead, the Utility points out that the overwhelming concern brought out at the customer meeting was related to mandatory connection, the Utility's utilization of personnel not employed by the Utility to operate the company, related parties or contractors, and the related expenses charged to the Utility. The Utility acknowledged that the local governmental mandatory connection directives presented difficulties and controversy, but attempted to implement the mandatory connection directives of local government in the smoothest, most expedient, and most efficient manner possible. Also, the Utility points out that the presumption that the use of related or contractual parties is inherently adverse to the interest of customers might be a presumption that could be fairly applied to the Utility if they had advance notice of the same. While the concerns of the customers are absolutely legitimate, the Utility urges that we should allow the Utility an opportunity to earn a return on its costs and investments reasonably incurred, whether or not the same went to related or contractual parties or entities. The Utility believes that there is no genuine evidence upon which a finding that the quality of service is unsatisfactory could be made.

KWRU responded in even more detail to the concerns expressed by the customers in late-filed Exhibit 44. In reference to the customer comments made about the Utility's agreement with Monroe County, the Utility indicated that the Monroe County Board of Commissioners looked at this project with a fine-tooth comb. In 2004, the Monroe County Board of Commissioners authorized a study and spent \$150,000 on an engineering report to evaluate all possible connection scenarios for the property owners. The County accepted the findings of the study which concluded that the most cost effective way for private properties to connect to central sewers was to install a vacuum system rather than a gravity system. Section 381.00655, F.S., requires that if there is an available publicly owned or investor-owned sewerage system, residential consumers are required to connect. Monroe County, by ordinance, requires residential connection to the wastewater system within 30 days of connection notification. It has been determined that out of the 1,500 EDUs that the newly constructed vacuum system was intended to serve, there are four properties, which make up ten EDUs for which that service is not available. The Utility is still waiting for assistance from the County before any installation for the four properties without service can occur. Concerning comments and complaints regarding the findings of the 2004 Grand Jury Report over the construction of the Utility's sewer system, the Utility points out that it was found not guilty of any wrong doing in the Grand Jury Report. However, the Utility notes that the County Engineer was found to be incompetent in performing his duties and the County Administrator and the County Commission were found negligent in their respective duties. Exhibit 44 also provided explanations justifying the costs saving using subcontractors, and the appropriate mark-up allowance for overhead and profit margin. There was also concern about special deals for the golf course, which is a family related business. The Utility claims that this was an unsubstantiated claim and that the golf course paid for sewer service and effluent water rates in accordance with the approved Commission tariff. As far as excessive fees and charges, the Utility points out that all fees paid are a result of a Commission-approved developer agreement. The Utility indicated that there was Community Development/Block Ship Grants available to assist low-income customers in the connection process.

The Utility provided additional explanations in Exhibit 44 in response to other customer claims made about the connection noticing process and the possible loss of homes, additional infrastructure costs, and lift-station backup problems which the Utility claims as non-existent.

C. Analysis and Conclusion

Based on DEP witness Johnson's testimony, it appears that the quality of the Utility's treated wastewater and the operational

condition of the plant are satisfactory. Although the Utility has an outstanding DEP warning letter, it is working with DEP to correct the problems. Further, it appears that some customers were clearly intimidated by the Utility as a result of tactics used to notify them of the requirement to interconnect to the Utility's wastewater treatment plant, although the County also failed to properly communicate with customers regarding the need and cost to connect to KWRU. It is obvious that there is a certain level of animosity that exists between some customers and the Utility. This is unfortunate since it appears, in part, that the animosity is the result of activities supporting an agreement that relates to laws and ordinances designed to preserve the environment of the area in which the Utility and the customers it serves are located. For some customers, there appears to have been financial and emotional hardships related to the connection process. However, it appears that the Utility has generally been responsive to customer concerns, and has applied our rules and regulations in reference to approved rates and charges, and developer agreements. Therefore, we find that we do not need to take any action in regards to the procedures used by the Utility.

However, we do have concerns over the remaining 350 EDUs that have not connected. Possibly ten of these do not have service available, with one or two having paid the appropriate connection charges for service. We realize that connection enforcement is a problem for the majority of these EDUs, and that the Utility appears to be looking at Monroe County for support in that area. For the ten EDUs, which make up four customers, we find that the Utility has an additional responsibility in proving to us that it has made a good faith effort in making sure that service is available. Because the record is not clear concerning the status of all the 350 unconnected EDUs, the Utility shall provide a monthly report to this Commission addressing the status of the remaining 350 EDUs with particular attention given to the four potential customers that do not have service available. The report shall include a description of Monroe County's enforcement activities towards those who refuse to connect to the Utility, status of what is remaining to be done to connect the four customers who do not have service available, and a complete accounting of paid connection charges for those who are not connected. These reports shall continue until such time as all of the 350 EDUs are connected and the conditions of the KWRU's 2002 contract with Monroe County have been fully satisfied.

Based on all of the above, the overall quality of service provided by the Utility shall be considered satisfactory. However, as set forth in the preceding paragraph, KWRU shall file monthly reports concerning the connection status of the remaining 350 EDUs left to be connected, until such time the conditions of the Utility's 2002 contract with Monroe County have been fully satisfied.

IV. RATE BASE

A. Plant in Service

1. Keys Environmental, Inc. (KEI) Hook-Up Fees

According to Audit Finding No. 3, staff witness Welch stated that KWRU has a contract with KEI that requires two full-time operators and an operations manager, which provide for, among other things, customer relations, periodic inspections, minor maintenance, daily pumping stations inspections, preventative maintenance programs, monitoring collection systems, reclaimed water lines, meters, pumps, and blowers. In addition, witness Welch stated that the contract includes sampling, testing, supervision, and inspection of new customer tie-ins; however, she stated that the description of KEI's work performed on customer connections appears to be more extensive. Witness Welch asserts that we should consider whether the work being done by KEI exceeds what is in the contract.

Utility witnesses Smith and DeChario asserted that KEI has a coordinator and inspector for all new connections for SSI residents, and they stated that the hook-up inspection involves an initial customer contact, review of plans and drawings, at least five field visits, as well as testing and coordination with the Utility's administrative staff. Utility witness Smith further asserts that the contract does not cover the hook-up fees. In its brief, KWRU contends that the extensive inspection and oversight of the customer connections to its vacuum system could not have been envisioned at the time KEI and KWRU executed its agreement in December 2004.

OPC witness Dismukes testified that we should treat the functions of inspecting and hooking up customers as part of the contract, for which KEI is paid a significant management fee. In its brief, OPC argues that the contract language clearly obligates KEI to inspect customer connections as part of its overall obligation to manage, maintain, and operate the system for which the general body of ratepayers pay the monthly management fees in exchange for the service to be rendered under the contract. Witness Dismukes asserted that plant should be reduced by \$252,690 to remove an apparent duplication of contractual operation service fees. Moreover, witness Dismukes stated that corresponding adjustments should be made to reduce accumulated depreciation and depreciation expense by \$10,983 and \$3,021, respectively.

We agree with OPC witness Dismukes that the contract includes the work related to hook-up fees. First, in accordance with the contract between KWRU and KEI, Article II - Responsibilities of Agent (which refers to KEI) states, among other things, that KEI is responsible for supervising and inspecting new customer tie-ins. Based on the above, plant shall be reduced by \$252,690 to remove an apparent duplication of contractual operation service fees. In addition, corresponding adjustments shall be made to reduce accumulated depreciation and depreciation expense by \$10,983 and \$3,021, respectively.

2. Decommissioning of Jail Facilities

OPC witness Dismukes testified that the funds spent by KWRU to decommission Monroe County's wastewater treatment plant at its detention center should be removed because the Utility did not own the plant. In its brief, OPC argued that KWRU did not provide any rebuttal testimony to refute witness Dismukes' recommended adjustment. In addition, witness Dismukes discussed how KWRU was under no obligation to use customer money to dismantle the County's treatment facilities.

Utility witness Smith emphasized that the decommissioning of the existing sewage treatment plant at the Monroe County Detention Center (MCDC) was part of the agreement between the parties in order to obtain the detention center as a customer of KWRU. In its brief, KWRU asserted that the costs incurred are reasonable and appropriate in order to obtain a new customer to benefit KWRU and the general body of ratepayers.

The Utility agreed to pay \$10,000 to assist the detention center in decommissioning its treatment plant, as KWRU previously provided service to the detention center. We agree with OPC witness Dismukes that the ratepayers should not have to bear this apparent non-utility expenditure. Based on the above, plant shall be reduced by \$10,000 to remove costs associated with decommissioning the jail facilities. Accordingly, corresponding adjustments shall be made to reduce accumulated depreciation and depreciation expense by \$1,259 and \$315, respectively.

3. Green Fairways Jail Project Management Fee

OPC witness Dismukes asserted that KWRU paid Weiler Engineering a management fee to oversee the jail project. In addition, witness Dismukes stated that KWRU also paid Green Fairways, an affiliate, a management fee of \$32,198. When Monroe County auditors asked for Green Fairways' completion logs, they noted that the logs "were completed by the engineering firm and consisted of daily work reports of approximately one page per day." Witness Dismukes contended that it appears that Weiler Engineering oversaw the project and KWRU has shown no documentation to justify paying its affiliate, Green Fairways, the \$32,198. OPC believes that this amount should not be passed on to the ratepayers as they receive no benefit.

Utility witness DeChario testified that, "It would be imprudent for the Utility . . . to simply turn a project over to a contractor and wait for its completion . . . in this case, Mr. Smith, through Green Fairways, has the right and responsibility of oversight and supervision of all parties working on the project." In its brief, the Utility also asserted that there is little to nothing to support the proposed elimination of these contract fees, yet there is evidence in the record that they are not only the same fees charged to other clients of Green Fairways but that this is the norm for the area for large construction contracts. Based upon these facts, the Utility asserts that no adjustment is appropriate to these costs actually incurred by the Utility for oversight of construction projects undertaken by Green Fairways above and beyond the day-to-day administrative duties related to operation and maintenance and the costs must be recognized.

It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982). Additionally, we have previously disallowed undocumented capitalized salaries.² The Utility has failed to provide adequate documentation of the oversight provided by Green Fairways for the Jail Project; therefore, plant shall be reduced by \$32,198. Accordingly, accumulated depreciation and depreciation expense shall be decreased by \$2,823.

4. Management Fee for South Stock Island (SSI) Project

OPC witness Dismukes asserts that KWRU paid Weiler Engineering a management fee to oversee the SSI project. KWRU also paid Green Fairways, an affiliate, a management fee of \$301,180. When Monroe County auditors asked for Green Fairways completion logs, they noted that the logs "were completed by the engineering firm and consisted of daily work reports of approximately one page per day." Witness Dismukes contended that it appears that Weiler Engineering oversaw the project and KWRU has shown no documentation to justify paying its affiliate, Green Fairways, the \$301,180. OPC believes that this amount should not be passed on to the ratepayers as they receive no benefit.

Again, Utility witness DeChario responded that: "It would be imprudent for the Utility ... to simply turn a project over to a contractor and wait for its completion ... in this case, Mr. Smith, through Green Fairways, has the right and responsibility of oversight and supervision of all parties working on the project." In its brief, the Utility also asserted that there is little to nothing to support the proposed elimination of these contract fees, yet there is evidence in the record that they are not only the same fees charged to other clients of Green Fairways, but also that this the norm for the area for large construction contracts. Based upon these facts, the Utility asserts that no adjustment is appropriate to these costs actually incurred by the Utility for oversight of construction projects undertaken by Green Fairways above and beyond the day-to-day administrative duties related to operation and maintenance and the costs must be recognized.

It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse. Additionally, we have previously disallowed undocumented capitalized salaries.³ The Utility has failed to provide adequate documentation of the oversight provided by Green Fairways for the SSI Project. Therefore, plant shall be reduced by \$301,180. Accordingly, accumulated depreciation and depreciation expense shall be decreased by \$26,406.

5. Smith, Hemmesch, and Burke Legal Fees

OPC witness Dismukes contended that Monroe County auditors found that KWRU could not provide any supporting documentation for the charge. As a result, Monroe County refused to reimburse KWRU, notwithstanding its contract to reimburse KWRU's reasonable expenditures from the SSI contracts. Even though Monroe County refused to pay this affiliated transaction because of lack of supporting documentation, KWRU is now asking this Commission to force its customers to pay it. Witness Dismukes believes that we should refuse to allow KWRU to charge its customers for a completely undocumented payment to its affiliate.

In its brief, the Utility stated that since the legal fees were part of a flat fee arrangement agreed to by Monroe County in writing, the contract itself is documentation of the charge. The Utility further argues that the fact Monroe County has failed to pay for these services does not affect the fact that KWRU incurred these legitimate cost in complying with the terms of the contract with Monroe County by negotiating agreements related to the SSI project, and that KWRU incurred an obligation to pay the \$25,000 legal bill originally agreed to by Monroe County.

It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse. We find that the Utility has failed to provide adequate documentation for its legal fees. Therefore, plant shall be reduced by \$25,000 to remove unsupported legal fees. Accordingly, accumulated depreciation and depreciation expense shall be decreased by \$2,192.

6. Chris Johnson's Moving Expenses

KWRU capitalized in its SSI project costs \$8,602 of relocation costs for Chris Johnson and his family. Mr. Johnson is the

son-in-law of KWRU's President. According to the Utility, KWRU would stand to benefit from Mr. Johnson's participation in the SSI project, and as a result, agreed to pay his moving expenses to Florida.

OPC witness Dismukes raised Mr. Johnson's moving expenses as an issue in her direct testimony. In her testimony, witness Dismukes asserted that it would be inappropriate to capitalize Mr. Johnson's moving expenses to the SSI plant.

Other than the information provided in its brief, KWRU did not provide sufficient evidence in the record to support the capitalization of Mr. Johnson's moving expenses. The record is clear that KWRU did pay \$8,602 to reimburse Mr. Johnson for his relocation expenses. However, the appropriateness of capitalizing the moving expenses was not addressed.

When a utility seeks to increase its rates and charges, it has the burden to prove its requested increase is appropriate. In this case, KWRU failed to prove that Mr. Johnson's moving expenses should be capitalized. Further, Mr. Johnson is the President and owns 100 percent of KEI. Mr. Johnson is not an employee of KWRU. Mr. Johnson's employment at KEI is not required for KWRU to provide utility service.

KWRU argues that Mr. Johnson's participation in the SSI project benefited KWRU, as Mr. Johnson had KWRU's best interest at heart. When a utility hires a firm to conduct work on its behalf, the hired firm has a responsibility to provide the best possible service. There is no evidence in the record that indicates KEI was the only firm capable of providing the services necessary to oversee the SSI project. Further, the capitalization of engineering costs is not the issue being addressed. The issue is the capitalization of the relocation costs of the engineering firm's president.

We see no reason to allow KWRU to reimburse the relocation costs of an employee of another company, much less to capitalize those costs as part of the SSI project. The prudence of this expense is questionable considering the relocation costs are those of the son-in-law of KWRU's owner. Further, the moving expenses allowed Mr. Johnson to move to Florida to operate KEI, the company he owns.

Based on the above, we find that Mr. Johnson's capitalized moving costs shall be removed from the SSI project costs. An adjustment of \$8,602 shall be made to remove Mr. Johnson's capitalized moving costs from plant. Corresponding adjustments shall be made to reduce accumulated depreciation and depreciation expense of \$1,075 and \$269, respectively.

7. Johnson Constructors' Charges for JAS Corp.

This issue was raised by the OPC in witness Dismukes prefiled testimony. KWRU did not address the issue in its rebuttal testimony. In its brief, KWRU touched on the issue of the \$4,650 for Jim Johnson's management fee and travel costs. However, KWRU's only support for the costs is a statement that the costs were appropriate. To rebut witness Dismukes' assertion that the costs are duplicative, KWRU points out that witness Dismukes lacks experience in utility construction projects. The \$30,000 in unsupported fees was not addressed by KWRU in its testimony or brief.

OPC argues that both the \$30,000 in fees billed to Johnson Constructors and the \$4,560 for travel and management services for Jim Johnson should be removed. Witness Dismukes' Exhibit 13 shows an invoice from Johnson Constructors to KWRU for the AWT project. On Exhibit 13, a charge is shown for \$30,000, but there is no information presented as to the services provided. Without supporting documentation as to the purpose of the charge, OPC believes the amount should be removed from rate base. With respect to the \$4,650 for Jim Johnson's management fee and travel, witness Dismukes believes the charges to be duplicative. Witness Dismukes asserts that a management service fee was paid to Johnson Constructors and to JAS for services related to the same AWT project. Witness Dismukes believes that KWRU's ratepayers should not be forced to pay for two supervisors working on the same project.

As in all utility cases, the Utility has the burden of proof. KWRU is required to support all dollars for which it seeks recovery. Exhibit 13, attached to witness Dismukes testimony, shows a \$30,000 charge, assessed on December 4, 2006. Under the heading, "Description," the line is blank. Although cryptic, the other entries on this invoice do include a description. KWRU was fully aware of the issue raised by witness Dismukes in her prefiled testimony. As a result, KWRU needed to provide support for this amount. KWRU did not provide any documentation to support its case. As we do not know the nature of the \$30,000 assessment, we cannot allow recovery of this amount from KWRU's ratepayers.

KWRU enlisted the services of Johnson Constructors to complete its AWT upgrade project. Johnson Constructors, whose principal is Chris Johnson, enlisted the services of JAS Corporation. JAS Corporation is owned by Chris Johnson's father, Jim Johnson. In her direct testimony, witness Dismukes states that she does not believe the ratepayers should have to pay for two supervisors. KWRU did not supply testimony about the necessity of paying management fees to two companies, nor did it attempt to differentiate between the services provided by each company.

KWRU focused its efforts on discrediting witness Dismukes testimony that the fees paid to Johnson Constructors and JAS Corporation were duplicative. KWRU's support for these fees is based on its statement in its brief that the costs were appropriate. KWRU argues that witness Dismukes has no experience in utility construction projects. While witness Dismukes admitted that she has no experience in utility construction projects, such experience is not required to identify duplicative costs.

In witness Dismukes' testimony, a chart is included that shows \$4,650 in charges were assessed by JAS Corp. On the first line of the chart, a management fee of \$2,000 was assessed on October 2, 2006. However, KWRU has not provided any documentation to substantiate the appropriateness of the management fee. No documentation was provided to indicate what service was provided under the term "management service" fee.

As for Jim Johnson's travel, again no document has been provided that indicated the appropriateness of his travel. Without documentation to prove that Chris Johnson and Jim Johnson had different responsibilities related to the AWT project, we find it is not appropriate for KWRU to recoup management service fees and the associated travel for Mr. Jim Johnson. Based on the above, KWRU's test year rate base shall be reduced by \$34,650. Corresponding adjustments shall be made to decrease accumulated depreciation and depreciation expense both by \$1,925.

8. Mr. London's Consulting Fees

KWRU capitalized consulting fees paid to former Monroe County Commissioner, Jack London. KWRU asserted that while it did not issue separate invoices for the costs, that should not affect the fact that the services were provided. KWRU contended that Mr. London's services ultimately benefited all customers, as his services related to the SSI project. KWRU entered into an oral contractual agreement with Mr. London whereby Mr. London would serve as a liaison between KWRU and Monroe County.

OPC believes that the consultant fees paid by KWRU should be removed from rate base because: 1) KWRU has no written documentation indicating the services performed; 2) KWRU has not demonstrated that the customers benefited from Mr. London's services; and 3) KWRU has not demonstrated that it was appropriate to capitalize the consulting fees.

KWRU argued that the only basis for the adjustment proposed by OPC is that there are no invoices to be reviewed. We find that the lack of documentation alone warrants removal from rate base. A company the size of KWRU should be fully aware that documentation must be provided to justify the recovery of costs. Reliance on oral contracts alone subjects utilities to potential disagreements regarding terms of the agreement. In this case, KWRU has no written contract with Mr. London and received no invoices detailing his services. Further, KWRU provided no documentation to support its claim that all ratepayers benefited from Mr. London's services.

Because KWRU has not provided documentation necessary to support inclusion of Mr. London's consulting fees in rate base, \$32,500 shall be removed from KWRU's test year rate base. Corresponding adjustments shall be made to accumulated depreciation and depreciation expense of \$6,145 and \$855, respectively.

9. White and Case Legal Charges Related to Monroe County Audit Report

OPC witness Dismukes testified that she does not believe that the legal fees associated with the response to the Monroe County audit by the law firm of White and Case should be capitalized and included in rate base. Witness Dismukes stated

that the legal fees associated with the response to the Monroe County audit should be removed citing correspondence that the law firm attended a meeting with KWRU that was at the request of KWRU to discuss the funds that the County refused to reimburse the Utility. Dismukes stated that the appropriate reduction for the Case and White legal fees is \$27,230, the depreciation expense is \$907, and accumulated depreciation is \$1,814.

Utility witness DeChario testified that Monroe County commissioned this audit as part of its requirements for the use of municipal funds. As with any audit, witness DeChario stated the Utility being audited may be called upon to correct or clarify [REDACTED] of the independent auditor and that occasionally a response is required. DeChario also stated that it was proper for the Utility to capitalize these expenditures in accordance with National Association of Regulatory Utility Commissioners (NARUC) Accounting Instruction 19:

Utility Plant-Components of Construction Costs (15) "Legal Expenditures" includes the general legal expenditures incurred in connection with construction and the court and legal costs directly related thereto . . .

NARUC USOA for Wastewater Utilities, 1996, Page 24.

We agree with witness Dismukes that the \$27,230 in legal expenses related to the KWRU response to the Monroe County Audit Report should not be included in the test year rate base. The burden of proof in ratemaking cases in which a utility seeks an increase in rates rests on the utility. See South Fla. Natural Gas Co. v. Florida Pub. Serv. Commission, 534 So. 2d 695 (Fla. 1988); Florida Power Corp. v. Cresse; Sunshine Utilities, v. Florida Pub. Serv. Commission, 577 So. 2d 663, 666 (Fla. 1st DCA 1991). We find the Utility has not met its burden of proof that these legal fees were directly related to the construction associated with the SSI construction project. As such, KWRU's test year rate base shall be reduced by \$27,230 to remove legal fees associated with the response to the Monroe County Audit Report. Corresponding adjustments shall also be made to decrease accumulated depreciation and depreciation expense by \$1,814 and \$907, respectively.

10. Key West Citizen Public Relations (PR) Advertisement

OPC witness Dismukes stated that prior to the test year KWRU spent \$422 for a newspaper advertisement. KWRU capitalized the cost and included it in rate base rather than expense the cost in the period in which it was incurred. OPC asserts that the balance should be removed from rate base.

KWRU stated that the advertisement was an action undertaken at the County's request to assist customers in understanding the required system expansion and required interconnection to the system on SSI, thereby benefiting all of the Utility's customers through a larger rate base. KWRU also stated that an adjustment of this nature actually discourages good customer relations and a utility's attempt to keep its customers informed.

It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse. We agree with witness Dismukes that the \$422 associated with the newspaper advertising expense should be removed from the test year rate base. This expense should have been expensed in the period in which it was incurred. Accordingly, corresponding adjustments shall be made to decrease accumulated depreciation and depreciation expense by \$117 and \$23, respectively.

B. Pro Forma Plant Additions

In its filing, the Utility reflected \$1,139,707 in pro forma plant. In its brief, KWRU indicated the pro forma plant additions were related to the upgrade project undertaken by the Utility for the AWT conversion. In its brief, OPC asserted that two adjustments from the pro forma plant additions should be removed from rate base.

1. Administration Fees Paid to Green Fairways

According to Audit Finding No. 2, staff witness Welch stated that Mr. Smith manages many companies, and there are no time

records to support the allocation of his time spent on the Utility. Mr. Smith also charges 10 percent of large construction projects to plant for the management of the construction project. Green Fairways charged the Utility \$107,198 in 2002 and \$194,377 in 2003 for lining the collection system with a fiberglass liner in order to keep from having to replace the crumbling clay system. In 2006, \$124,984 was charged for the work on the AWT plant expansion project. Through cross examination by the Utility, witness Welch acknowledged that she has not compared these figures to Key Haven, which is mentioned as the only utility that is similarly situated to KWRU.

Utility witness Smith emphasized that Green Fairways charged the Utility an oversight administrative fee related to construction projects. Witness Smith testified that a project manager must obtain financing for these projects, and generally has to personally guarantee these projects and sign the contracts in order to obtain the financing. He contended that this type of agreement is not unusual and typically a management fee for projects, property, and management is normal. Witness Smith asserted "... there isn't a manager who will do the management of a project which is completely different than ... a capital intensive project." He stated that a management company manages those big projects but charges additional amounts, typically 10 percent of the overall cost of a project. Moreover, he stated there is a huge difference between acting as a project administrator versus acting as just a manager of the Utility Company. Witness Smith admitted that he does not keep track of his time that he spends on various projects, but he feels that one-third of his time is devoted to Utility matters. He asserted that as project administrator you have to plan, engage in construction oversight, conduct quality assurance, manage the payment of contractors, and arrange financing.

OPC witness Dismukes testified that, according to the agreement for construction of the AWT project, Green Fairways, Inc. and Johnson Constructors, LLC, together are the "Contractor" for this project. Both companies are affiliates of KWRU. Johnson Constructors and JAS Corp. are owned by Jim Johnson (Chris Johnson's father) and several of the charges relate to travel charges of Mr. Jim Johnson. In addition, according to the contract for this project, the engineering firm Weiler Engineering, is responsible for providing administration. Witness Dismukes testified that KWRU has neither demonstrated the need for the excessive oversight responsibility nor adequately documented the actual services provided by Green Fairways. She does not believe ratepayers should pay for two supervisors. Therefore, witness Dismukes recommends removing the \$111,374 for Green Fairways fees from rate base.

Utility witness DeChario emphasized it would be imprudent for the Utility, or anyone for that matter, to simply turn a project over to a contractor and wait for its completion. This chain of supervision is necessary whether building a home or expanding a wastewater treatment plant. Subcontractors supervise their employees, contractors supervise the subcontractors, engineers supervise the contractors, and ultimately the property owner, in this case Mr. Smith, through Green Fairways, has the right and responsibility of oversight and supervision of all parties working on the project.

It is the Utility's burden to show that its requested expenses are reasonable. See Florida Power Corporation v. Cresse. Because KWRU has not met its burden of proof, we agree with OPC witness Dismukes that the administrative fees paid to Green Fairways for the oversight of the construction projects should be removed from rate base. Specifically Mr. Smith acknowledged that he does not keep track of time spent on various projects. Therefore, \$111,374 shall be removed from KWRU's pro forma plant additions. Accordingly, corresponding adjustments shall be made to decrease accumulated depreciation and depreciation expense both by \$6,187.

2. Subcontractors US Filter Davco

OPC witness Dismukes testified that the added costs associated with the change orders from Davco were due to KWRU's failure to have the permits in place to start the job as scheduled. The change orders reflect additional housing costs associated with Davco and the delay of the project. Because Davco was to originally start the job on November 8, 2006, a house was rented for \$3,300 a month. However, KWRU was red tagged and Davco could not pour the slab until the permits were pulled. Utility witness DeChario testified that he has no rebuttal testimony regarding these change orders. Because witness Dismukes does not believe customers should have to pay for KWRU's failure to properly secure the permits for the project, she recommends removing \$13,547 from the pro forma adjustment and making corresponding adjustments for accumulated depreciation and depreciation expense.

Utility witness Castle emphasized that the Capacity Reservation Agreement between Monroe County and KWRU specifically

stated that the agreement constituted all required permits and that no further permits were required from the County. Mr. Castle testified that KWRU had assumed no building permit was needed based on the agreement. He further asserted, when the County red-tagged the AWT construction project, work was stopped until the permit could be obtained. Witness Castle contended that the delay was caused by the position taken from the Building Department that the permitting condition in the Agreement was not valid and that a building permit was required.

We agree with OPC witness Dismukes that the added costs of \$13,547 associated with the change-orders from Davco should be removed. The change orders were due to KWRU not having permits in place for the scheduled work and customers should not have to pay for KWRU's failure to properly secure permits for the project. Thus, pro forma plant shall be reduced by \$13,547. Accordingly, corresponding adjustments shall be made to decrease accumulated depreciation and depreciation expense both by \$753.

In conclusion, to remove administration fees paid to Green Fairways and to remove cost incurred for not obtaining the necessary permits in a timely manner, pro forma plant shall be reduced by \$124,921. Accordingly, corresponding adjustments shall also be made to decrease accumulated depreciation and depreciation expense both by \$6,940. In addition, a corresponding adjustment shall be made to decrease property taxes by \$1,027.

C. Used and Useful Percentages for the Wastewater Treatment Plant, Collection, and Reuse Systems

The Utility considers its treatment plant and wastewater collection system to be 100 percent used and useful because of its contractual obligations to Monroe County to provide wastewater treatment to a developed area for environmental reasons. However, in its MFRs, the Utility calculated a 61.35 percent used and useful for its wastewater treatment plant, although no growth was included in the calculation. The Utility expanded the capacity of its wastewater treatment plant in 1997 and subsequently upgraded the treatment plant to AWT standards, and expanded its collection system to accommodate an additional 1,500 EDUs pursuant to a contract between the Utility and Monroe County.

Although not all of the potential customers located within the environmentally sensitive area have connected, the Utility has included Monroe County's advance payments as a reduction to rate base for rate making purposes. This, according to the Utility, eliminates the need for a non-used and useful adjustment. In addition, to further bolster its claims that this facility should be 100 percent used and useful, the Utility maintains that the plant is designed and built to provide reuse and will be an AWT plant, as mandated by Monroe County.

OPC agrees that the Utility's collection system is 100 percent used and useful; however, OPC believes that the Utility's wastewater treatment plant is 72.14 percent used and useful, based on the annual average test year flow of 288,000 gallons per day (gpd), a growth allowance of 72,000 gpd (capped at five percent per year for five years pursuant to Section 367.081(2)(a)2.b., F.S.), and the permitted capacity of the plant of 499,000 gpd. OPC witness Woodcock testified that his disagreement with the Utility's used and useful analysis lies in both the calculated used and useful and the rationale for 100 percent used and useful.

Witness Woodcock points out that the Utility's used and useful calculation incorrectly relies on the maximum three-month average daily flow rather than the lower annual average flow (consistent with the permitted capacity), pursuant to Rule 25-30.432, F.A.C. In reference to growth, witness Woodcock admitted that he did not take into account a mandatory connection ordinance, any particular agreement commitment the Utility made to Monroe County, or any other commitments or reservations of capacity. He explained that if he was looking at how he would prudently plan for growth, he would consider the mandatory connections, agreements, and commitments. However, for the purposes of used and useful, he did not see them as relevant issues.

When questioned as to why engineers would prudently design a plant without the constraints of the Commission's wastewater used and useful rule, witness Woodcock pointed out that used and useful is not an engineering principle. He agreed that a utility could design a plant that an engineer would think was prudently sized, yet not warrant inclusion in rate base at 100 percent used and useful. He indicated that KWRU's plant is appropriately sized and that the expansion and the installation of the AWT facilities represent environmental compliance costs. Witness Woodcock asserted that there is an opportunity for those costs not included in rate base to be collected as the Utility's service area grows and the used and useful

approaches 100 percent.

Witness Woodcock explained that the collection system consists of two parts, the original gravity collection system and the newer vacuum system. His review showed that the gravity part of the collection system was essentially built out and therefore 100 percent used and useful. The newer vacuum system, although not yet at the design capacity of serving 1,500 EDUs, was funded by Monroe county and is considered a fully contributed system; therefore, the vacuum system should be excluded from the used and useful analysis.

Witness Woodcock points out that the MFRs seem to indicate that expansion of the wastewater treatment plant was required by Monroe County in 2001. However, the expansion was actually made in 1997, which was prior to the agreement with Monroe County for expansion of the system. His review of the Utility's Capacity Reservation Contract with Monroe County found that the Utility is allowed to keep \$600 of the \$2,700 capacity reservation fee for the purpose of upgrading the wastewater treatment plant to AWT standards. The agreement made no mention of expanded treatment capacity. Therefore, he testified that the traditional used and useful calculation should be applied.

In response to OPC's used and useful analysis, KWRU's witness Castle agrees with OPC that the permitted capacity is based on annual average daily flow rather than the three-month average daily flow reflected in the MFRs. He also agrees with witness Woodcock that the 1997 plant expansion was not required by agreement with Monroe County, but was required by DEP in order to provide capacity for the Key West Golf Club (KWGC) Development housing. However, the conversion to AWT was required by the agreement with Monroe County.

Witness Castle points out that Rule 25-30.432, F.A.C., provides that the extent to which the area served is built out should be considered. He indicates that the rule implies that projected growth based on factors other than a strict percentage should be reasonably allowed. He stated that the Utility's service area is experiencing significant redevelopment of properties into higher density uses as indicated by capacity reservation agreements with KWRU. He believes that the known developments proposed to connect to the Utility should be considered in future capacity calculations as well as a standard percentage growth rate. All customers were supposed to be connected to the system within two years; however, he states that considerable balking by the customers and lax enforcement by Monroe County has delayed these connections.

Monroe County provided funding for the expansion by paying the capacity fees of all the Stock Island residents under a repayment agreement with the Utility. The Utility has included these advances as a reduction to rate base for ratemaking purposes, thus eliminating the need for a non-used and useful adjustment. In addition, the plant is designed and built to provide reuse and will be an AWT plant as mandated by Monroe County.

In its post hearing statement, the Utility states that the factors clearly exist which we should consider, pursuant to Rule 24-30.432 F.A.C., to find that the existing wastewater treatment plant and the expansion, refurbishment, and upgrade of KWRU's facilities are 100 percent used and useful. In this regard, the Utility states that we should consider the growth of the system, the mandate of the legislature and Monroe County which directly resulted in the upgrade and expansion; and the nature and reality of the service area and the mandatory connection ordinance and the reservations of capacity related to each, which essentially render the service area as built out. Rule 24-30.432, F.A.C., expressly provides that the enumerated factors are only some of the factors that we will consider in determining the used and useful amount, and is not by any means an exhaustive list. The rule also expressly provides that it does not apply to reuse projects, pursuant to Section 367.0817(3), F.S., nor investment for environmental compliance pursuant to Section 367.081(2)(a)2.c, F.S. The Utility's post-hearing statement goes on to refer to Chapter 99-395, in which the Legislature enacted certain sewage requirements for Monroe County which, in Section 6 of that law, required sewage facilities to go to AWT by July 1, 2010. In furtherance of that mandate, the Utility points out that Monroe County secured an agreement from the Utility to convert its wastewater treatment system to AWT by January 1, 2007, providing that the Utility is allowed to recapture the costs of its conversion to AWT and increased operating costs by a resolution of the County Commission.

We agree with the Utility that factors clearly exist, pursuant to Rule 24-30.432, F.A.C., to find that the Utility's wastewater treatment plant and collection and reuse systems are all 100 percent used and useful. The record shows that the remaining capacity of the treatment facility and lines have been committed and contributed towards the provision of service of the 1,500 EDUs that the Utility agreed to serve pursuant to a contract with Monroe County. Although not all of the potential customers located within the environmentally sensitive area have connected, it appears that Monroe County's advance payment for

these customers clearly reserves that remaining capacity. In addition, the record shows that the facility is 100 percent used and useful because the plant is designed and built to provide reuse and will be an AWT plant, as mandated by Monroe County. Given the above, we find KWRU's wastewater treatment plant, entire collection system, and reuse systems are all 100 percent used and useful in providing service to the customers of the Utility.

D. Accumulated Depreciation

In its filing, KWRU reflected \$2,803,410 of test year accumulated depreciation. Consistent with our plant adjustments made above, we calculate that the appropriate test year balance of accumulated depreciation is \$2,674,088.

E. Contributions In Aid of Construction (CIAC) and Accumulated Amortization of CIAC

In its filing, KWRU reflected historical test year balances of \$4,856,429, \$686,844, and \$2,777,630 for CIAC, advances for construction, and accumulated amortization of CIAC, respectively. Staff witness Welch testified that \$707,000 of advances for construction should be transferred to CIAC as a result of the KWRU's reimbursement of funds received by Monroe County through the collection of cash CIAC from customers.

OPC witness Dismukes agrees that \$707,000 should be transferred from advances for construction to CIAC. Utility witness DeChario also agrees with witness Welch. This adjustment does not affect rate base.

Based on the above, the appropriate test year balances of CIAC and accumulated amortization of CIAC are \$5,563,429 and \$726,153, respectively.

F. Working Capital Allowance

In its filing, the Utility reflected a Working Capital Allowance of \$496,846. At hearing, we approved a stipulation that temporary cash investments of \$168,265 shall be removed from working capital allowance, and working capital shall be increased by \$2,689 for prepaid expenses.

OPC witness Dismukes recommended a rate decrease, and testified that KWRU had no need to file for a rate increase for wastewater operations and that the associated rate case expense should be disallowed. Ms. Dismukes asserted that working capital allowance should be reduced by the unamortized balance of rate case expense.

KWRU Witness DeChario stated that a rate increase is fair and reasonable for the economic climate in which the Utility operates. Also, KWRU stated that \$133,341 of the actual rate case expenditures of this case are directly related to responding to the discovery propounded by OPC, as well as the preparation of rebuttal testimony in response to unreasonable adjustments and allegations put forth in OPC testimony. In its brief, KWRU stated that it believes that the working capital allowance originally outlined in the Utility's application, adjusted for the effect of the stipulations, is the appropriate balance.

The Utility included \$100,000 of average deferred rate case expense in its working capital allowance of \$496,846. It is our practice to include the average approved amount of rate case expense in the working capital calculation for Class A water and wastewater utilities.⁴ Consistent with this practice and our approval of rate case expense of \$466,615 later in this Order, we calculate the appropriate working capital to be \$464,578 (\$496,846 less \$168,265 plus \$2,689 plus $(\$466,615/2)$ less \$100,000). Accordingly, working capital shall be decreased by \$32,269.

G. Total Rate Base

Based on our adjustments above, the appropriate 13-month average rate base is \$127,795. Schedule No. 1-A depicts our rate

base calculation. Our adjustments to rate base are depicted on Schedule No. 1-B.

V. COST OF CAPITAL

A. Return on Common Equity (ROE)

The ROE requested in the Utility's filing is 12.01 percent. This return is based on the application of our leverage formula approved in Order No. PSC-07-0472-PAA-WS and an equity ratio of 26.22 percent.⁵

On May 10, 2008, our staff filed its annual recommendation to update the water and wastewater leverage formula based on current financial data. On May 20, 2008, in Docket No. 080006-WS, we determined that the water and wastewater leverage formula should be set directly for hearing. A hearing was held on October 23, 2008. Based on the evidence in the record, we issued our approved water and wastewater leverage formula by Order No. PSC-08-0846-FOF-WS, on December 31, 2008.

The Utility's proposed ROE of 12.01 percent shall be updated to reflect the cost rate yielded by our leverage formula approved by Order No. PSC-08-0846-FOF-WS. Based on the approved methodology and an equity ratio of 27.34 percent, we find an ROE of 12.67 percent is appropriate. The allowed range of plus or minus 100 basis points shall be recognized for ratemaking purposes.

B. Weighted Average Cost of Capital

As shown on MFR Schedule D-1, KWRU originally proposed an overall cost of capital of 8.39 for the test year ending December 31, 2006. KWRU acknowledges that its proposed weighted average cost of capital should be updated for the effects, if any, of the stipulations agreed to by the parties.

OPC has not recommended any specific adjustments to KWRU's proposed capital structure, but acknowledges that the weighted average cost of capital should be adjusted for the outcome of our decisions involving rate base.

Based on the resolution of the preceding issues, our approved capital structure yields an overall cost of capital of 8.62 percent. Schedule No. 2 contains our approved capital structure.

VI. TEST YEAR REVENUES

In its filing, KWRU reflected adjusted test year revenues of \$1,046,314. OPC believes there are three adjustments necessary to test year revenues that address: (1) annualized revenues, (2) rental income, and (3) revenue collected from Monroe County.

A. Annualized Revenues

Utility witness Smith testified that the Utility has always operated with a flat rate for sewer service because it was difficult to obtain water usage information from the FKAA. He further stated that because FKAA has been the provider of water service to all of KWRU's wastewater customers, obtaining that information was necessary in order to move to a base facility type charge, including a base charge and usage charge. He asserted that it is appropriate for the Utility to move to a base and gallonage charge because it is a better indicator of the cost of providing service to each customer and helps to promote conservation.

OPC witness Dismukes testified that the number of bills, according to the FKAA usage information, is different from the number of bills KWRU has reported. According to witness Dismukes, the Utility provided an explanation of this difference

in its response to OPC Interrogatory 60:

The Utility has historically billed flat rates for all but commercial customers. With the FKAA information, certain customers which were flat rate billed, such as multifamily apartment units, have individually metered units as billed by FKAA. As a result, the number of residential customers, including individually metered apartment units, increased. Additionally, based on the FKAA data, meter sizes were updated to agree to what was being billed for commercial and multi-family bulk meters by FKAA. Also, some commercial establishments are being served by multiple meters which were being flat rate billed as a single meter.

Witness Dismukes further testified that in order to ensure consistency between test year revenue and the proposed rate design which contains different billing units, test year revenue should be adjusted, where possible, using the FKAA billing data provided by the Utility. As shown in Exhibit 14, witness Dismukes asserted that test year revenue should be increased by \$158,151 to reflect the appropriate annualized revenue adjustment.

Utility witness DeChario testified that Ms. Dismukes' annualized revenue adjustment is a matching principal violation because the billing unit information from FKAA includes customers beyond the test year number of customers.

We agree with Utility witness DeChario that the inclusion of pro forma billing units to project revenues would be a matching principal violation if the expenses are not projected as well. However, when comparing the Utility's MFR Schedules E-2(a) and E-3, it appears that the Utility has failed to include six general service bills, and KWRU also used the incorrect rate for its 4-inch general service customers. We have calculated test year revenues of \$1,052,578. Based on the above, the appropriate annualized revenue adjustment is \$6,264.

B. Rental Income

According to Audit Finding No. 3, staff witness Welch testified that KEI has its office in a Utility-owned trailer. KEI pays KWRU \$24,000 annually for the use of this trailer; it also uses the Utility-owned trucks, but only pays for the gasoline and vehicle maintenance.

OPC witness Dismukes agreed with staff witness Welch. Even though KEI rents the Utility trailer that is located at the sewer site, no employees of either the Utility or KWGC occupy the trailer. In addition, Weiler Engineering Corporation and KEI paid \$37,400 in rent to KWRU. Witness Dismukes examined the billing summary the Company provided in response to Citizens' Interrogatory No. 4. The rent charged to KEI has always remained constant at \$2,000/month. In contrast, since 2002, the rent charged to Weiler Engineering Corporation changed four times in five years during the test year and the monthly rent went from \$1,750 to \$800 without an explanation for the change. Witness Dismukes recommends that we adjust test year revenues to reflect the monthly rent of \$1,750 paid by Weiler Engineering Corporation for the entire year. Accordingly, she recommends that the test year revenue be increased by \$14,600. In addition, we note that Johnson Constructors, another affiliate of KWRU, uses the same address as the Utility trailer, but there is no type of rent that has been paid by this entity.

The Utility did not file testimony on this issue. Utility witness DeChario testified that he did not address the issue specifically as part of the revenue requirement. He felt that the billing data and the MFRs stood on their own.

As noted by OPC witness Dismukes, during the test year, Weiler Engineering's rental fee went from \$1,750 to \$800 a month without explanation. Again, the Utility has the burden to show that its requested expenses are reasonable. See Florida Power Corporation v. Cresse. Therefore, we shall increase test year revenue by \$14,600 to reflect a \$1,750 monthly rental fee from Weiler Engineering.

C. Revenue Collected from Monroe County

According to Audit Finding No. 10, staff witness Piedra testified that the Utility recorded \$19,575 in general ledger account number 80271 - MCDC Income, for income received from the MCDC. This relates to income for cleaning the County lift-stations. This was not included in the operating revenues in its MFRs. Witness Piedra recommends that the test year revenues be increased by \$19,575.

OPC witness Dismukes testified that because the Utility has no employees, this service is most likely provided by KEI. The person that performed this service on behalf of the County would appear to be the same person that maintains the Utility lift-stations. She has not seen documents which indicate that KEI keeps a record of the time spent on servicing Monroe County lift-stations versus the Utility lift-stations. Consequently, in the absence of showing that the cost of cleaning these lift-stations has been excluded from the costs charged to the Company, we agree that the associated revenue income should be recorded above the line for ratemaking purposes. Therefore, test year revenue shall be increased by \$19,575.

Utility witness DeChario testified that the full responses to the audit report are contained in Exhibit 33. He believes that the income is properly stated below the line. Witness DeChario asserted that it would be better if it were included in NARUC Account 415 - Revenues from Merchandise, Jobbing, and Contract Work, which states, in part: "These accounts shall include all revenues derived from . . . contract work." The nature of the agreement with Monroe County, who owns the lift-stations, falls into this category. The Utility acknowledges that a similar amount of expenses should also be reclassified below the line to NARUC Account 416 - Expenses of Merchandise, Jobbing, and Contract Work.

We agree with both OPC witness Dismukes and staff witness Piedra that this income relates to cleaning the County lift-stations. The income was not included in the operating revenues of the MFRs and should be recorded above the line for ratemaking purposes. Because the Utility has not provided any documentation showing the cost charged to KWRU for the cleaning of the lift-stations and has not provided any support showing that these costs have been excluded from the Utility's test year expenses, test year revenues shall be increased by \$19,575.

VII. OPERATING EXPENSES

A. Operations and Maintenance (O&M) Expenses

1. Sludge Removal Expense

In its filing, KWRU reflected test year sludge removal expense of \$38,196. Pursuant to our approval of the stipulations discussed previously in this Order, sludge removal expense shall be reduced by \$9,129, as shown in Stipulation No. 5.

2. Chemicals Expense

OPC asserts that the chemicals purchased for use by the Utility are supplied by KEI, a supplier owned by the son-in-law of the owner of KWRU, Mr. Smith. OPC also asserts that the relationship between KWRU and KEI has resulted in costs that are up to 30 percent higher than "in a more conventional situation," and that this results in higher costs for purchased chemicals. OPC witness Dismukes cites that along with sludge hauling, chemical expenses were abnormally high. OPC witness Dismukes states that the expense should be reduced by \$16,480 to reflect a normalized level based on a three-year average.

KWRU stated that witness Dismukes admitted that customer growth had occurred in the past three-year period, but failed to account for inflation, customer growth, and an overall increase in costs. In its brief, the Utility stated that the three-year average is not reasonable, based on increased customers, higher treatment requirements, and increased costs. KWRU went on to state that witness Dismukes has done no analysis whatsoever to determine the reasonableness of these increases in costs. KWRU also cites that witness Dismukes had made no attempt to compare the costs with any similarly situated utilities at the time she had made her adjustments. Witness Smith stated that the Utility is going to an AWT treatment process as a result of county and state mandates, and as a result, the Utility will be required to purchase a lot more chemicals and haul a lot more sludge.

We agree with KWRU that chemicals would likely increase as a result of its transition to an advanced wastewater treatment facility. However, the Utility has failed to meet its burden to support any quantifiable amount. It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse.

We also agree with OPC, in part, that chemicals expense increased from \$27,490 in 2005 to \$50,763 in 2006. It appears that the increase in test year chemicals expense was substantially higher than in preceding years. Because witness Dismukes failed to consider increases in the cost of chemicals, chemical expense in the test year shall be reduced by \$16,117 to normalize the indexed chemical expense. This is consistent with our prior decisions to index O&M expenses.⁶ Recognizing the customer growth, we find that a three-year period, versus a four or five-year period, is reasonable in normalizing the increase in chemical expense.

3. Reduction of Test Year Expenses for Reduction of Infiltration and Inflow (I&I)

OPC witness Dismukes testified that chemicals and purchased power expenses should be decreased as a result of the Utility's re-sleeving line project. It is our practice to reduce chemicals and purchased power expenses when a Utility has excessive I&I.

Utility witness DeChario testified that we did not make an O&M expense reduction resulting from excessive I&I for KWRU's neighboring utility, Key Haven Utility Corporation. Specifically, witness DeChario pointed out that we found the following in our Order No. PSC-03-0351-PAA-SU:

Adjustments to plant used and useful percentage and operating expenses such as power and chemicals could be recommended because of the excessive infiltration determination. However, in this case consideration should be given to the age of the system, the severe conditions the facilities are exposed to with the saltwater and high ground water environment, and the recent improvements done to the collection system to help reduce the problem. Staff sees no benefit to penalizing the utility by further reducing used and useful or expenses based on excessive infiltration when the problem is being addressed satisfactorily.

As a result, witness DeChario asserted that no adjustments are necessary.

We agree with Utility witness DeChario. Further, we note that neither OPC witnesses Dismukes nor Woodcock testified that the Utility had any excessive I&I. We find it is unfair to reduce expenses for the Utility's re-sleeving line project, because we would not reduce expenses if a Utility had I&I flows of 10 percent or less. In accordance with our decision in the above-cited order, we find no adjustments are necessary.

B. Markup in Pro Forma Expenses

Staff witness Welch testified that KEI purchases supplies, chemicals, and sludge hauling, and then bills the Utility for these services. Witness Welch stated that related party charges to a Utility require additional review to determine whether the related party bills the Utility at actual cost and does not use the affiliate company to increase prices to the Utility. She attempted to determine if KEI increases the costs for these items and to compare a sample of the costs to prices on the internet.

OPC witness Dismukes testified that Chris Johnson, owner of KEI, stated in his deposition and in response to OPC discovery, that the Utility provided an invoice from KEI with notation that certain charges are marked up over cost. Witness Dismukes asserted that if KWRU purchased the chemicals and moved the sludge, the Commission would not permit it to expense more than the actual costs. Witness Dismukes stated that the removal of the 30 percent mark-ups would reduce chemicals, sludge hauling, and materials and supplies expense by \$7,913, \$2,690, and \$23,224, respectively.

Utility witnesses Smith and DeChario testified that Exhibit 25 justifies the 30 percent mark-up imposed upon the Utility by KEI, and stated that such a mark-up is in keeping with the standard practice for providing such services by third party contractors. Specifically, Exhibit 25 includes an operating cost proposal by U.S. Water Service Corporation, which was not accepted by KWRU. Among other things, this cost proposal states that “[t]he costs for chemicals and residuals management are to be billed to KWRU on a per occurrence basis with an appropriate allowance for overhead and margin.” Further, witness DeChario asserted that, in GTE Florida, Inc. v. Deason, 642 So. 2nd 545 (Fla. 1994), the Court’s standard to review affiliate transactions is whether the transaction exceeds the going market rate or is otherwise inherently unfair.

Staff witness Welch further testified that KEI did not appear to make a large profit based on its financial statements, but she did not know whether it was because KEI was making a lot of money in contractual labor. She still contended that KEI is marking up certain items. Witness Welch testified that, subsequent to the GTE case cited by witness DeChario, that it was her understanding that the Federal Communications Commission came out with a lower of cost or market in Rule 32.27C, Code of Federal Regulations, Title 47, Vol. 2. She asserted that the Commission has traditionally used the lower of cost or market to determine the cost of affiliate transactions.

It is the Utility’s burden to show that its requested expenses are reasonable. See Florida Power Corporation v. Cresse. We agree with witnesses Welch and Dismukes that the 30 percent mark-ups of chemicals, sludge hauling, and materials and supplies should be disallowed. Regardless of whether we apply the going market rate or inherently unfair standard cited in the GTE case, or the lower of cost or market standard, we find that the Utility has not met its burden of proof that a 30 percent markup is reasonable. In so finding, we note that “it is the [Commission’s] prerogative to evaluate the testimony of competing experts and accord whatever weight to the conflicting opinions it deems necessary.” See Gulf Power Co. v. FPSC, 453 So. 2d 799, 805 (Fla. 1984). Therefore, chemicals, sludge hauling, and materials and supplies shall be reduced by \$7,913, \$2,690, and \$23,224, respectively.

C. Insurance - General Liability

KWRU included \$701 in finance charges related to payment of its insurance policies over time. According to the insurance documents, finance charges accrue if payment is not made in full. KWRU asserts that its insurance premiums are charged to a prepaid expense account and amortized over the term of the policy, which covers the twelve-month period beginning in August and ending in July. KWRU believes the payment of finance charges should not be deemed a “late” payment, but should be recognized as a prepaid insurance amount. KWRU further argues that the \$701 is a minor amount and should be treated as the cost of insurance.

OPC believes that interest accrued on late payments should be denied on the grounds that the interest charges are avoidable if paid timely. As such, OPC believes general liability insurance should be reduced by \$701.

We have reviewed the insurance financing documents and note that the premiums are in excess of \$20,000. While it has been our prior practice to deny the recovery of foregone property tax discounts because the utility had control of the timing of its payments, we view this situation differently. Although KWRU does have control over whether payment would be made as a lump sum or paid over time, the decision to spread the payments over a 12-month period appears to be reasonable based on the amount of the premiums and the associated finance charges. As a result, we shall make no adjustment to KWRU’s general liability insurance.

D. Advertising Expenses

In its filing, KWRU reflected \$25,315 of test year contractual services - public relations in Schedule B-9. Staff witness Piedra stated that the Utility recorded \$25,000 in Account 760 - Advertising Expenses, for charges to William Barry for public relations.

OPC witness Dismukes recommended that we disallow all of the expenses charged to advertising expenses because, as the Utility admitted, they are related to public relations functions. Therefore, the adjustment for advertising expenses related to

public relations would be \$26,653.

In its brief, the Utility stated that the items produced by Mr. Barry were not a public relations campaign, but instead were an attempt to educate and keep the customers of the Utility informed about the requirement that they connect to its system, and the costs and benefits of that requirement. The Utility asserted that the cost is not for public relations but for customer service, and should be considered an appropriate function of the Utility.

A review of the sample items produced by Mr. Barry for KWRU shows that the items include newspaper articles regarding KWRU, letters written on behalf of KWRU, and public statements/press releases. The items produced by Mr. Barry appear to be for public relation purposes. Therefore, advertising expenses shall be reduced by \$26,653 to remove costs related to public relation functions.⁷

E. Mr. Smith's Management Fees Charged by Green Fairways

According to staff's audit report, Mr. Smith manages several other businesses through Green Fairways in addition to KWRU, including: KWGC; Venetian Partners - office building in San Francisco; 900 Commerce - offices in Oakbrook Illinois; Portland Court - office building in Addison; Rail Golf Course - in Springfield, Illinois; and Deer Creek Golf Course in University Park, Illinois.

The staff audit further stated that Mr. Smith performs the following duties for KWRU: review of all bids; hire of key employees, review and approve budgets, coordinate financing, provide advance funds, monitor contract employees, coordinate public relations, engage accountants and lawyers, coordinate with FKAA, engage engineers, coordinate county contract, negotiate customer contracts, supervise expansion, and coordinates rate cases.

The staff audit also stated that Mr. Smith indicated that one third of his time is spent on the Utility. According to a letter provided by his accountant, one third of his actual salary far exceeds the amount included in KWRU's expense. However, Mr. Smith manages many companies as indicated above, and there are no time records to support the allocation of his time spent on the Utility. Staff's audit also notes that most of Mr. Smith's salary is not provided in a W-2 since his businesses are limited partnerships. Less than 10 percent of Mr. Smith's salary comes from Green Fairways, because he is paid the excess of Green Fairways revenues less expenses. Because the actual hours spent on KWRU by Mr. Smith cannot be determined, it is difficult to determine the reasonableness of the charges in relation to Mr. Smith's other companies.

The staff audit report also included the following breakdown based on Mr. Smith's W-2 from Green Fairways, and the management fees and project administrative fees:

Year	Mr. Smith's W-2 Green Fairways Salary	Management Fees to KWRU	Project Administrative fees in Plant	Total Charged to KWRU
2001	\$55,000	\$60,000	\$0	\$60,000
2002	190,000	60,000	107,198	167,198
2003	70,000	100,000	194,377	294,377
2004	70,000	80,000	0	80,000
2005	35,000	81,667	0	81,667
200	40,000	60,000	124,984	184,984

OPC witness Dismukes stated that the Utility failed to provide adequate documentation supporting the management fee paid to Green Fairways. Mr. Smith could not produce any timesheets in support of the amount of time that he spends managing the Utility versus the numerous other companies that he owns or operates through Green Fairways. Even assuming that Mr. Smith spends 50 percent of his time managing the Utility, his salary equates to an annualized salary of \$120,000, which appears excessive given the amount of time that Mr. Smith spends at the Utility's headquarters in Key West. Even while in Key West, Mr. Smith spends time managing the KWGC. While Mr. Smith undoubtedly spends time on the phone with Utility-related employees when he is not in town (which is approximately once a month), witness Dismukes finds it difficult to believe that he spends 50 percent of his time on Utility business given the fact that he is a managing partner of a law firm and owns numerous other businesses. Furthermore, Mr. Smith has most likely been spending more time recently on Utility matters due to the rate case and other issues that should subside now that most customers have hooked up to the system. If Mr. Smith maintained time records, it would be easier to determine how much time he typically spends on Utility business. In the absence of documentation supporting the on-going time spent by Mr. Smith on Utility matters, witness Dismukes recommended that the Commission remove 50 percent of Mr. Smith's management fee, or \$30,000, under the [REDACTED] that on a going forward basis, Mr. Smith will spend less time on Utility matters and there has been no demonstration that the \$60,000 is reasonable.

Utility witness DeChario stated that the amounts charged for Mr. Smith for a management fee are in lieu of a direct salary; because the Utility has no employees, these amounts are recorded as a management fee. The amount charged by Green Fairways for management fees are for Mr. Smith's day-to-day oversight of the Utility operations in-lieu of any direct salary. Because the Utility has no employees and does not report wages to the Internal Revenue Service, the amounts charged by Green Fairways for the benefit of Mr. Smith are in lieu of salaries and are recorded as management fees. Mr. Smith, as reported in the audit, devotes a substantial portion of his time dealing with the day-to-day operation and maintenance of Utility matters and Utility oversight. The Utility argues that another clear example of the reasonableness of Mr. Smith's charge is the fact that this Commission recently completed a limited rate proceeding for Key Haven Utilities, the only other regulated sewer utility near Key West. In that proceeding for Key Haven Utilities, we allowed a management fee for the services of Mr. Luhan in lieu of salary which was approximately three times the amount per ERC that Green Fairways charges the Utility in lieu of a salary for Mr. Smith.

According to staff's audit report, Mr. Smith indicated that one third of his time is spent on the Utility. Based on Mr. Smith's representation, it appears that Mr. Smith's effective annualized salary from 2001 through 2006 would be as follows:

Year	Annualized Salary
2001	\$180,000
2002	501,594
2003	883,131
2004	240,000
2005	245,001
2006	554,953

Utility witness DeChario included the following comparison between KWRU and Key Haven Utilities in his rebuttal testimony:

Utility	Class	Salary	Customers	Gallons	Meter Equivalents (Equiv.)	Salary/1,000 Gallons	Salary/Meter Equiv.
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Key Haven	B	\$26,000	442	27,209,000	444	\$0.96	\$58.56
KWRU	B	\$60,000	1,503	95,991,000	1,708	\$0.63	\$35.13

We acknowledge the comparison of Key Haven and KWRU provided by the Utility. However, we find the total annualized compensation for Mr. Smith, including management fees as well as project administrative fees, should be taken into account. If the total annualized compensation for Mr. Smith in 2006 charged to KWRU were included in the above comparison chart, the following would result:

Company	Class	Annualized Salary	Customers	Gallons	Meter Equiv.	Salary/1,000 Gallons	Salary/Meter Equiv.
KWRU	B	\$554,953	1,503	95,991,000	1,708	\$5.78	\$324.91

Based on Mr. Smith's total annualized compensation charged to KWRU in 2006, Mr. Smith's salary per 1,000 gallons sold and salary per meter equivalent is considerably higher than Key Haven Utilities. It is the Utility's burden to prove that its costs are reasonable. See *Florida Power Corp v. Cresse*. The Utility has failed to provide any support documentation relating to the actual amount of time Mr. Smith spends managing KWRU; therefore, we cannot determine if the management fee of \$60,000 is a prudent amount. Based on all the above, we agree with OPC and find that the \$60,000 management fee shall be reduced by \$30,000.

F. Transactions between Keys Environmental (KEI) and KWRU

According to Audit Finding No. 3, KEI was started by Mr. Smith's son-in-law to service KWRU. KEI purchases supplies, chemicals, and sludge hauling, then bills KWRU for these services. KEI has its office in a trailer owned by KWRU and pays \$24,000 for its use. KEI also uses trucks owned by KWRU, but pays for its own gas and maintenance.

According to staff's audit, the contract with KEI requires two full time operators, and a manager to work a minimum of eight hours a day on weekdays and two hours a day on the weekends. The contract includes customer relations, periodic inspections, minor maintenance, daily pumping stations inspections, preventative maintenance programs, collection systems monitoring, reclaimed water lines monitoring, and monitoring of meters, pumps, and blowers. KEI reads the meters and maintains an answering service and dispatch. The contract also says that KEI will do the sampling, testing, and supervision and inspection of new customer tie-ins.

In 2006, KWRU recorded \$450,776 of invoices from KEI. This amount is broken down in the following chart:

Expense Description	Amount
Monthly operations fee at \$23,206 per month	\$278,472
Monthly fees for Air Vac service at \$3,333 per month	40,000
Total contractual fees	\$318,472
Fees received from developers for review and inspections were used to reduce the monthly operating fee amount	(81,233)

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Net contractual fees	\$237,239
Hook-up fees that should be capitalized	\$15,000
Chemicals and supplies	43,203
Trailer repairs	982
Plant repairs	59,283
Vacuum repairs	24,004
Sludge hauling	19,472
Filter beds work	2,393
Generator work	6,652
Equipment and supplies	631
Lift-station cleaning	2,854
Lift-station repair	37,405
Pump repair	1,637
Sewer line cleaning	1,376
Sewer line repair	10,181
Vacuum collection system	24,895
Effluent repairs	14,536
Miscellaneous	1,530
Transferred to plant	(52,497)
Total	\$450,776

Included in the chemicals and supplies charges is \$1,313 for lab testing. Sampling and testing were supposed to be part of the contract. In its brief, the Utility stated that lab testing, while included as a function of KEI under the agreement to provide services, was not intended to be a function covered by the regular monthly payment, but instead was intended to be a function for which KEI would separately bill the Utility. We disagree with the Utility and find that sampling and testing is supposed to be covered in the contract between KWRU and KEI. Therefore, these charges shall be removed, and expenses shall be reduced by \$1,313.

The \$15,000 of hook-up fees charged to the operations account shall be transferred to plant account 363. In its response to staff's audit report and in its brief, the Utility agreed with this adjustment. Therefore, expenses shall be reduced by \$15,000 and plant in service shall be increased by \$15,000. Accordingly, accumulated depreciation and depreciation expense shall be increased by \$179.

At hearing, we approved a stipulation regarding the capitalization of \$51,663 of items that were expensed in the test year (See

Stipulation No. 11). As such, expenses shall be reduced by \$51,663 and plant be increased by \$51,663. Accordingly, accumulated depreciation and depreciation expense shall be increased by \$2,907.

Staff's audit report also noted that included in the expense accounts was a bill for \$2,083 for damage to a pit vacuum that was caused by Waste Management and an invoice from the Oceanside Marina for \$995. The Utility asserted in its brief that it has not been reimbursed and these costs were incurred by the Utility in maintenance of its system. However, the Utility stated that, if in some future time period, it is able to recover some costs, those costs will be offset against any repairs in the years in which those receipts are obtained. We find that that these items shall be recovered from the cost causer and not from the ratepayers. Therefore, expenses shall be reduced by \$3,077 (\$2,083+ \$995).

In summary, test year expenses shall be reduced by \$71,053 (\$1,313+\$15,000+ \$51,663+\$3,077)8 for certain transactions between KEI and KWRU. Additionally, plant in service shall be increased by \$66,663 (\$15,000+\$51,663). Accordingly, accumulated depreciation and depreciation expense shall be increased by \$3,086.

G. Contractual Services - Other Expenses

In its filing, KWRU reflected Contractual Services - Other expense of \$1,302. We approved a stipulation to reduce Contractual Services - Other by \$1,302 to reflect the amortization of non-recurring amounts incurred during the test year (see Stipulation No. 8).

OPC witness Dismukes stated that KWRU pays KWGC, an affiliate, an \$8,000 monthly fee for KWGC to provide ongoing services. In the test year, KWGC paid its employees bonuses totaling \$12,038 and charged them to KWRU. The \$8,000 monthly fee should cover the services that KWRU receives, and any bonus that the golf course wants to give its own employees should not be paid by utility customers.

KWRU witness DeChario testified that these "bonuses" were in fact, not bonuses, but rather compensation for work that was performed "above and beyond normal recurring operation and maintenance and management of the Utility." Witness DeChario went on to state that the EDU bonuses paid were for additional administrative work performed to process customer requests for service, as a result of the large influx of new customers from the SSI project. Witness DeChario also stated that the bonuses paid to Mr. Carter "encourages him to achieve results and thereby put downward pressure on rates by increasing its customer base." Mr. DeChario then asserted that not charging these expenses to the entity that incurred them would violate the Generally Accepted Accounting Principle of matching revenues and expenses.

It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse. After analyzing the charges made to Contractual Services - Other, we find that the bonuses paid to the employees of KWGC shall be removed from Contractual Services - Other. The "compensation" paid for work performed "above and beyond normal recurring operation and maintenance" should reasonably be assumed as part of the \$8,000 monthly fee for services. In particular, the compensation paid for processing EDUs is designed for acquiring additional new customers, and is primarily for the benefit of the Utility and its stockholders and shall not be borne by the ratepayers. Therefore, Contractual Services - Other shall be reduced by an additional \$12,038.

H. Miscellaneous Expenses

KWRU has included in the test year, miscellaneous expenses related to Mr. Smith's travel and lodging, moving expenses to transport a car from Illinois to Key West, delivery of hook-up notices by the Monroe County Sheriff's department, a donation, and floral costs.

With respect to Mr. Smith's travel and lodging expenses, KWRU argues that travel costs are part of Mr. Smith's compensation package. KWRU asserts that Mr. Smith spends one third of his time on the Utility's business regardless of whether he is in Illinois or in Key West. OPC argues that the highest ranking utility officers are expected to work full-time for the utility and live in proximity to the utility. As a result, no travel expenses would be necessary.

Although it is the owner's choice of where he wishes to reside, the customers shall not be required to pay the cost of travel because the owner chooses to live a considerable distance from KWRU. We believe this issue is related to a utility's choice to maintain its books and records outside the state of Florida. Rule 25-30.110(1)(c), F.A.C., requires a utility to reimburse the Commission for the reasonable travel expense incurred by each Commission representative during any review of the out-of-state records of the utility or its affiliates if it chooses to keep its records outside the state. Based on this rule, a utility is permitted to keep its records outside the state, but must reimburse the Commission for any travel that must be incurred to view the records. Similarly, we have denied Federal Express costs incurred by a utility to ship its records to Florida.⁹

Although Mr. Smith certainly has the choice as to where to live, that choice shall not impose additional costs to KWRU and its customers. As Mr. Smith's choice to live outside Florida also imposes additional lodging costs, those costs shall be removed from the test year expenses. Based on the above, the \$19,106 amount shall be removed from test year expenses.

Other costs included in miscellaneous expenses relate to transporting a vehicle purchased in Illinois to Key West. KWRU argues that it purchased the truck in Illinois because it was a good price and matched the Utility's needs. Included in the transportation costs is lodging expenses for Chris Johnson.

OPC argues that there are automobile dealerships in the Keys and Miami, and that it was unnecessary for KWRU to purchase a vehicle in Illinois and transport it to Florida. OPC also argues that KWRU did not provide any evidence to support the costs.

There is no evidence in the record to indicate that KWRU paid less for the vehicle in Illinois than it would have had to pay in Florida, thus warranting the recovery of transportation costs. When a utility seeks to increase its rates, it must support its request and be prepared to provide documentation necessary to prove the costs incurred are reasonable. KWRU has not provided any documentation to allow us to determine whether purchasing the vehicle in Illinois and transporting it to Florida was less than or equal to the cost of purchasing the vehicle in Florida. As a result, the \$2,525 in transportation costs and lodging shall be removed from the test year expenses.

Another item included in miscellaneous expenses is the cost to deliver hook-up notices to the customers of SSI. Monroe County imposed a requirement that all KW customers be notified, by certified letter, of their obligation to connect to KWRU's new system. If the customer refused to sign the letter or failed to send it back to KWRU, the Utility would be required to hand-deliver notices to these customers. KWRU argued that it engaged Monroe County's Sheriff's Department to deliver the notification, rather than a private company, as it was the least-cost alternative.

OPC argues that the use of deputies to issue hook-up notices was intimidating to the customers. OPC also disputes KWRU's claim that the deputies were only used as a last resort.

Under the circumstances, we find that engaging deputies to hand-deliver notices to customers who refused the certified letter was appropriate. The cost of noticing these customers was \$420. Customer witness Wigington testified that she had signed the original registered letter but still was hand-delivered a notice by a deputy. KWRU argues that there may have been instances where customers signed the original registered letter and still received a hand-delivery from a deputy. In these cases, the customer may have only signed one letter yet owned two properties. As KWRU had to have a letter on file for each property, the Utility would have needed the deputy to hand deliver a notice for the property for which no letter had been received. The Utility was responsible for ensuring that it noticed each customer of the Utility and received confirmation that the customers had received the notice. As the record indicates that Ms. Wigington was served a notice by a deputy even though she had signed the original registered letter, the \$20 fee for that delivery shall be removed, resulting in a total allowed notification expenses of \$400.

Because the notification expenses are non-recurring expenses, in accordance with Rule 25-30.433(8), F.A.C., the \$400 of expense shall be amortized over five years, resulting in a yearly expense of \$80 ($\$400/5$). As \$420 was included in test year expenses, test year expenses shall be reduced by \$340.

OPC witness Dismukes testified that KWRU made a donation of \$100 to the Rotary Club of Key West and paid \$61 to Blossoms in Paradise. Utility witness DeChario testified that the Utility did not present any rebuttal testimony on these items.

In its brief, KWRU stated it was in agreement with Ms. Dismukes' adjustment to reduce \$161 for the above items. As such, miscellaneous expenses shall be reduced by \$161 for these two items.

Based on these adjustments, miscellaneous expenses shall be reduced by \$22,132 (\$19,106+\$2,525+\$340+161).

I. Rate Case Expense

1. KWRU's Argument

KWRU initially submitted in their MFRs \$200,000 in rate case expense, for an annual amortization expense of \$50,000. After the hearing, KWRU updated their actual and estimated rate case expense and submitted it in Late-Filed Exhibits 41 through 43. In its update, KWRU requested a total rate case expense of \$609,778. This results in an increase of \$409,778 to the initial amount in the MFRs. Based on the Utility's requested rate case increase, the four-year amortization test year rate case expense would be \$152,444, which increased the MFRs amortization amount by \$102,444.

KWRU believes that the increase in rate case expense was primarily due to preparing responses to OPC's unprecedented and repetitious discovery. The Utility and its consultants contend they have spent considerable time and effort in attempting to respond to OPC's voluminous data requests and have demonstrated that the request for a rate increase is fair and reasonable for the economic climate in which it operates, and the extraordinary amount of rate case expense it has incurred as a direct result of OPC's involvement in this case. KWRU asserts that twenty-one of the PODs or interrogatories submitted requested information duplicating what our staff had requested.

In its brief, KWRU also states that it filed this rate proceeding as a result of governmental-imposed requirements that KWRU move to AWT and other costs it incurred to keep in environmental compliance.

2. OPC's Argument

OPC alleges that KWRU's request for additional rate case expense is not acceptable. OPC believes that after all adjustments are made to correct the errors in the filing, the revenue requirement shows that rates were adequate before the rate case was filed. OPC asserts that this case never should have been filed and customers should not be forced to pay for a Utility's imprudent decision to file for a rate increase when none is warranted. OPC argues that they had no impact in causing the rate case expense to increase.

Furthermore, OPC stated the number and the magnitude of the Utility's own errors and dealings have justified OPC's challenge of the rate filing. By conceding thirty-one separate errors, KWRU has effectively demonstrated the justification for OPC's involvement. Rather than fault OPC, the Utility should acknowledge its own actions caused the additional expense. Moreover, because of KWRU's affiliate relationships, OPC had to examine more than one set of books and ask for the financial information concerning each of the affiliates that provides services to the Utility.

Finally, OPC contends that KWRU's failure to provide adequate and timely response to OPC's discovery forced OPC to file three motions to compel. These motions to compel resulted in the modifications to the procedural schedule in this proceeding, either requiring KWRU for the most part to properly respond to OPC's discovery, or to modify the procedural schedule to give OPC additional time to file testimony due to KWRU's failure to provide timely and responsive answers. In addition, because of KWRU's failure to provide adequate responses, OPC was forced to ask follow-up discovery questions to try and obtain the information originally requested. Any suggestion that OPC caused the excessive rate case expense in this proceeding should be rejected by the Commission. OPC recommends that we disallow all rate case expense as a rate decrease should be authorized, not an increase.

3. Commission Analysis

KWRU included in its MFRs an estimate of \$200,000 for current rate case expense. Our staff requested an update of the actual rate case expense incurred, with supporting documentation, as well as the estimated amount to complete the case. On October 13, 2008, the Utility submitted a revised estimated rate case expense through completion of Late-Filed Exhibits 41 through 43 in the amount of \$609,778. The Utility's components of the estimated rate case expense are as follows:

	MFR Estimated	Actual	Additional Estimated	Revised Total
Legal - Rose, Sundstrom & Bentley, LLP	\$100,000	\$131,143	83,340	\$314,483
Accounting - Carlstedt, Jackson, Nixon & Wilson CPA's	90,000	89,775	12,110	191,885
Engineering - Weiler Engineering	0	12,960	0	12,960
Company Time	0	74,050	6,400	80,450
Company Expense - (filing fees, mailings, copying, notices, phone, Fed Ex, etc.)	10,000	0	0	10,000
Total Rate Case Expense	\$200,000	\$307,928	\$101,850	\$609,778

Pursuant to Section 367.081(7), F.S., this Commission shall determine the reasonableness of rate case expenses and shall disallow all rate case expenses determined to be unreasonable. Also, it is the Utility's burden to justify its requested costs. See Florida Power Corp. v. Cresse. Further, we have broad discretion with respect to allowance of rate case expense; however, it would constitute an abuse of discretion to automatically award rate case expense without reference to the prudence of the costs incurred in the rate case proceedings. See Meadowbrook Util. Sys., Inc. v. FPSC, 518 So. 2d 326, 327 (Fla. 1st DCA 1987), affd. 529 So. 2d 694 (Fla. 1988). As such, we have examined the requested actual expenses, supporting documentation, and estimated expenses as listed above for the current rate case. Based on our review, we find several adjustments are necessary to the revised rate case expense estimate.

First, Rose, Sundstrom & Bentley, LLP (RS&B), the law firm representing KWRU originally filed in their MFRs \$100,000 in rate case expense. On October 13, 2008, the Utility submitted an update of actual and estimated rate case expense of \$314,483 in Late-Filed Exhibits 41 through 43. Based on our review of invoices, several adjustments shall be made to RS&B's actual costs. RS&B spent 6.40 hours on the submission of the Utility's test year approval letter. We find that these hours are excessive, in light of the Utility's accounting consultant's time related to the test year request. As such, only three hours shall be allowed for the test year request, which would result in a \$935 reduction. In addition, our staff also identified 15.2 hours and \$298 of costs related to staff's revisions to the Utility's synopsis, the Commission's approval in part to OPC's motions to compel, the MFR deficiencies, and the time related to the Utility's approved abatement period. We find the ratepayers shall not have to bear these costs. Thus, legal costs shall be reduced by \$4,478.

Second, we believe that the Utility's estimated legal costs of \$83,340 are excessive. RS&B estimated 145 hours for reviewing hearing transcripts, filing late-filed hearing exhibits, and preparing the Utility's brief. We find 85 hours should be more than sufficient to accomplish those tasks, which results in a reduction of \$16,500. RS&B also included a request for \$1,250 of costs which had no detail breakdown or support documentation. Moreover, RS&B included \$23,200 for time related to a motion for reconsideration. Because it is not known whether the Utility will request reconsideration of our decision, we find that it would be premature to include this cost in rate case expense. It has been our practice not to include the allowance of cost estimates for reconsideration or appeals in rate case expense.¹⁰ Because reconsideration is considered a possibility, not a certainty, rate case expense shall be reduced by \$23,200. If a motion for reconsideration is filed, a determination will be made at a later time, upon request, as to the reasonableness of the amounts requested and whether inclusion of those amounts are

appropriate.

Third, the Utility had originally filed in its MFRs \$90,000 for accounting fees for Carlstedt, Jackson, Nixon & Wilson CPA's (CJNW). In Late-Filed Exhibits 41 through 43, the Utility submitted an update of actual and estimated rate case expense of \$191,885. On review of invoices, it appears that 4.5 hours are related to our approval in part to OPC's motions to compel and the MFR deficiencies. The ratepayers shall not have to bear these costs, and costs shall be reduced by \$720 for these hours. Further, CJNW estimated 32 hours and 16 hours for Utility witness DeChario and CJNW's Senior Partner, respectively, related to reviewing the Utility's brief and our staff's recommendation, for accounting costs of \$12,110. We find that the 32 hours for DeChario is more than sufficient to accomplish those tasks. Thus, rate case expense shall be reduced by \$3,520.

Fourth, KWRU originally did not include an estimate of engineering fees in its MFRs. However, in the Utility's Late-Filed Exhibits 41 through 43, Weiler Engineering submitted \$12,960 in invoices. A review of these expenses shows that the full \$12,960 shall be included in rate case expense.

Fifth, KWRU did not file Company time in their MFRs. Then, in Late-Filed Exhibits 41 through 43, the Utility submitted an up-to-date actual and estimated rate case expense of \$80,450 - an actual amount of \$74,050 and an estimate for remaining costs of \$6,400. We find that the Utility has not met its burden of proof by failing to provide timesheets of hours worked. We have consistently relied on time records to support Utility time spent on rate case matters.¹¹ As such, the entire amount of \$80,450 shall be disallowed.

In summary, rate case expense shall be decreased by \$143,163 for MFR deficiencies, and for unsupported and unreasonable rate case expense. Based on this reduction, we calculate the appropriate total rate case expense to be \$466,615. Our breakdown of rate case expense is as follows:

	MFR Estimated	Utility Revised Actual & Estimated	Commission Adjustment	Allowed Total
Legal - Rose, Sundstrom & Bentley, LLP	\$100,000	\$314,483	(\$46,363)	\$268,120
Accounting - Carlstedt, Jackson, Nixon & Wilson CPA's	90,000	191,885	(16,350)	175,535
Engineering - Weiler Engineering	0	12,960	0	12,960
Company Time	0	80,450	(80,450)	0
Company Expense - (filing fees, mailings, copying, notices, phone, Fed Ex, etc.)	10,000	10,000	0	10,000
Total Rate Case Expense	\$200,000	\$609,778	(\$143,163)	\$466,615
Annual Amortization Amounts	\$50,000	\$152,445	(\$35,791)	\$116,586

Therefore, rate case expense shall be increased by \$66,654 over the MFR requested amount of \$50,000, for a total annual rate case expense of \$116,654.

J. Net Depreciation Expense

In its filing, KWRU reflected net depreciation expense of \$205,903. Based on the approved stipulations and our previous plant adjustments, that depreciation expense shall be reduced by \$48,759.

K. Wastewater Operating Loss

Based on our adjustments above, we calculate that the test year operating income before any provision for increased revenues is a loss of \$132,988 for wastewater. The schedule for the wastewater operating loss is attached as Schedule No. 3-A and the adjustments are shown on Schedule No. 3-B.

VIII. REVENUE REQUIREMENT

Our computation of the revenue requirement is shown on Schedule No. 3-A and is \$1,328,524, which represents an increase of \$241,771 or 22.25 percent.

IX. RATE STRUCTURE

KWRU wastewater customers receive their water service from the FKAA. The Utility's current rate structure is a flat rate charged to all residential service customers. The rate structures for general service and multi-family classes consists of a base facility charge and gallonage charge. The Utility's current rate structure for wastewater service was approved by this Commission in the last rate case, primarily because water use information from the FKAA was not available at that time.

The Utility, pursuant to Rule 25-30.437(6), F.A.C., requested that it be allowed to implement a base facility/gallonage charge rate structure in this filing. The Utility has submitted a billing analysis using potable water data obtained from the FKAA, and has provided documentation stating that this data will be available from the FKAA on a going-forward basis.

In changing from a flat rate structure to measured consumption, we establish a residential wastewater gallonage cap. This cap recognizes that any water used by residential customers over the cap is for purposes such as lawn sprinkling and washing automobiles, and is not collected by the wastewater system. In determining the appropriate wastewater gallonage charge, we commonly recognize that only 80 percent of the residential water used is collected and treated by the wastewater system; the other 20 percent of the residential water is used for other purposes and is not returned to the wastewater system. There is no cap on usage for general service wastewater bills, and it is assumed that 100 percent of general service use will be returned to the collection system. Therefore, for the general service class, the gallonage charge shall be 20 percent greater than the residential gallonage charge.

Generally, the residential wastewater gallonage caps are set at 6,000, 8,000, or 10,000 gallons per month. Considering the above factors, we shall set the residential wastewater gallonage cap for KWRU at 10,000 gallons per month, which is the gallonage cap the Utility requested in its MFRs.

Based on the foregoing, the appropriate rate structure for the wastewater system is the base facility charge (BFC)/uniform gallonage charge rate structure with the residential monthly wastewater gallonage cap of 10,000 gallons (with the general service customers gallonage charge being 20 percent greater with no cap).

X. APPROPRIATE MONTHLY WASTEWATER RATES

The approved rates are designed to produce revenue of \$1,222,064 for wastewater, excluding miscellaneous service charge, reuse, and other revenues, and are as shown on Schedule No. 4. These rates were calculated using test-year number of bills

and consumption, and using the rate structure approved above.

The Utility shall file revised wastewater tariff sheets and a proposed customer notice to reflect the approved wastewater rates. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The approved wastewater rates shall not be implemented until our staff has approved the proposed customer notice. The Utility shall provide proof of the date notice was given no less than ten days after the date of the notice.

If the effective date of the new rates falls within a regular billing cycle, the initial bills at the new rate may be prorated. The old charge shall be prorated based on the number of days in the billing cycle before the effective date of the new rates. The new charge shall be prorated based on the number of days in the billing cycle on and after the effective date of the new rates. In no event shall the rates be effective for service rendered prior to the stamped approval date.

A comparison of the Utility's original rates and our approved wastewater rates is shown on Schedule No. 4, respectively.

XI. APPROPRIATE MONTHLY BULK AND REUSE SERVICE RATES

Given the Utility is basically limited as to any cost-effective effluent disposal alternatives, we find that the Utility's proposed reuse gallonage rate of \$0.69 per thousand gallons is appropriate. In its filing, KWRU proposed a continuation of a flat bulk rate for two marinas. By Order No. PSC-02-1165-PAA-SU,12 we approved the methodology for calculating bulk wastewater rates which was set at 78.37 percent of the residential flat rate. This bulk rate was less than the residential rate because the bulk water customers own and maintain the lift-stations that connect to the Utility's collection system. Consistent with the methodology approved by Order No. PSC-02-1165-PAA-SU, we approve KWRU's proposed continuation of a flat bulk rate for the two marinas.

The Utility shall file revised wastewater tariff sheets and a proposed customer notice to reflect the approved rates for the wastewater system. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates shall not be implemented until our staff has approved the proposed customer notice. The Utility shall provide proof of the date notice was given no less than 10 days after the date of the notice.

A comparison of the Utility's original rates and our approved wastewater rates is shown on Schedule No. 4.

XII. REFUND OF PORTION OF INTERIM RATES

By Order No. PSC-07-0812-PCO-SU, issued October 10, 2007, we authorized the collection of interim wastewater rates, subject to refund, pursuant to Section 367.082, F.S. The approved interim revenue requirement was \$1,227,722, which represents an increase of \$204,008, or 19.93 percent.

According to Section 367.082, F.S., any refund shall be calculated to reduce the rate of return of the Utility during the pendency of the proceeding to the same level within the range of the newly authorized rate of return. Adjustments made in the rate case test period that do not relate to the period interim rates are in effect shall be removed. Rate case expense is an example of an adjustment which is recovered only after final rates are established.

In this proceeding, the test period for establishment of interim and final rates is the historical period ending December 31, 2006. KWRU's approved interim rates did not include any provisions for pro forma or projected operating expenses or plant. The interim increase was designed to allow recovery of actual interest costs and the floor of the last authorized range for equity earnings.

To establish the proper refund amount, we have calculated a revised interim revenue requirement utilizing the same data used to establish final rates. Rate case expense was excluded because this item is prospective in nature and did not occur during

the interim collection period.

Using the principles discussed above, we calculate that the \$1,227,722 wastewater revenue requirement granted in Order No. PSC-07-0812-PCO-SU for the interim test year is greater than the revenue requirement for the interim collection period of \$1,206,373. This results in a 1.85 percent refund of interim rates. The Utility shall be required to refund 1.85 percent of wastewater revenues collected under interim rates. The refund shall be made with interest in accordance with Rule 25-30.360(4), F.A.C. The Utility shall submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The Utility shall treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. Further, the corporate undertaking shall be released upon our staff's verification that the required refunds have been made.

XIII. STATUTORY FOUR-YEAR RATE REDUCTION

Section 367.0816, F.S., requires rates to be reduced immediately following the expiration of the four-year amortization period by the amount of the rate case expense previously included in the rates. The reduction will reflect the removal of revenues associated with the amortization of rate case expense and the gross-up for regulatory assessment fees which is \$122,151 for wastewater. The decreased revenue will result in the rate reduction shown on Schedule No. 4.

The Utility shall file revised tariff sheets and a proposed customer notice to reflect the approved reduction in rates no later than 30 days prior to the actual date of the required rate reduction. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-40.475(1), F.A.C. The rates shall not be implemented until staff has approved the proposed customer notice. KWRU shall provide proof of the date notice was given no less than 10 days after the date of the notice.

If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data shall be filed for the price index and/or pass-through increase or decrease, and for the reduction in the rates due to the amortized rate case expense.

XIV. ADJUSTMENT OF BOOKS FOR NARUC USOA PRIMARY ACCOUNTS

To ensure that the Utility adjusts its books in accordance with our decisions, KWRU shall provide proof within 90 days of this final order that the adjustments for all the applicable NARUC Uniform System of Accounts (USOA) primary accounts have been made.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of K W Resort Utilities Corp. for increased wastewater rates is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that each of the findings made in the body of this Order are hereby approved in every respect. It is further

ORDERED that all matters contained in the attachments and schedules appended hereto are incorporated herein by reference. It is further

ORDERED that K W Resort Utilities Corp. is authorized to charge the new rates and charges as set forth in the body of this Order and the attachments and schedules attached hereto. It is further

ORDERED that because the record is not clear concerning the status of all the 350 unconnected equivalent dwelling units (EDUs), K W Resort Utilities Corp. shall provide a monthly report to this Commission addressing the status of the remaining 350 EDUs with particular attention given to the four potential customers that do not have service available. It is further

ORDERED that the report shall include a description of Monroe County's enforcement activities towards those who refuse to

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connect to the Utility, status of what is remaining to be done to connect the four customers who do not have service available, and a complete accounting of paid connection charges for those who are not connected. It is further

ORDERED that these reports shall continue until such time as all of the 350 EDUs are connected and the conditions of the KWRU's 2002 contract with Monroe County have been fully satisfied. It is further

ORDERED that the Utility shall file revised wastewater tariff sheets and a proposed customer notice to reflect the approved wastewater rates. It is further

ORDERED that the approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. It is further

ORDERED that the approved wastewater rates shall not be implemented until our staff has approved the proposed customer notice. The Utility shall provide proof of the date notice was given no less than ten days after the date of the notice. It is further

ORDERED that the Utility shall refund 1.85 percent of wastewater revenues collected under interim rates. It is further

ORDERED that the refunds shall be made with interest in accordance with Rule 25-30.360(4), F.A.C. It is further

ORDERED that the Utility shall submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The Utility shall treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. It is further

ORDERED that the corporate undertaking shall be released upon our staff's verification that the required refunds have been made. It is further

ORDERED that the wastewater rates shall be reduced as shown on Schedule No. 4 to remove \$122,151 of wastewater rate case expense, grossed up for regulatory assessment fees. It is further

ORDERED that the decrease in rates shall become effective immediately following the expiration of the four-year rate case expense recovery period. It is further

ORDERED that the Utility shall file revised tariff sheets and a proposed customer notice setting forth the lower rates and the reason for the reduction to reflect the approved reduction in rates no later than 30 days prior to the actual date of the required rate reduction. It is further

ORDERED that the approved reduction in rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-40.475(1), F.A.C. It is further

ORDERED that the rates shall not be implemented until staff has approved the proposed customer notice. The Utility shall provide proof of the date notice was given no less than 10 days after the date of the notice. It is further

ORDERED that if the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data shall be filed for the price index and/or pass-through increase or decrease, and for the reduction in the rates due to the amortized rate case expense. It is further

ORDERED that this docket shall be closed upon staff's approval of the tariffs, verification of the required refunds, and the expiration of the time for filing an appeal. It is further

ORDERED that the Utility shall provide proof within 90 days of this final order that the adjustments for all the applicable NARUC USOA primary accounts have been made.

By ORDER of the Florida Public Service Commission this 27th day of January, 2009.

ANN COLE Commission Clerk

(SEAL)

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Schedule No. 1-A

K W Resort Utilities Corp.

Schedule of Wastewater Rate Base

Test Year Ended 12/31/06

Description	Test Year Per Utility	Utility Adjustments	Adjusted Test Year Per Utility	Commission Adjustments	Commission Adjusted Test Year
1 Plant in Service	\$9,371,002	\$1,139,707	\$10,510,709	(\$933,498)	\$9,577,211
2 Land and Land Rights	222,745	152,255	375,000	0	375,000
3 Non-used and Useful Components	0	0	0	0	0
4 Accumulated Depreciation	(2,740,042)	(63,368)	(2,803,410)	129,322	(2,674,088)
5 CIAC	(4,856,429)	(707,000)	(5,563,429)	0	(5,563,429)
6 Amortization of CIAC	686,844	39,309	726,153	0	726,153
7 CWIP	265,413	(265,413)	0	0	0

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8 Advances for Construction	(2,777,630)	0	(2,777,630)	0	(2,777,630)
9 Working Capital Allowance	0	496,846	496,846	(32,269)	464,578
1 Other	0	0	0	0	0
1 Rate Base	\$171,903	\$792,336	\$964,239	(\$836,445)	\$127,795

Schedule No. 1-B

K W Resort Utilities Corp.

Adjustments to Rate Base

Test Year Ended 12/31/06

Explanation	Wastewater
Plant In Service	
1 To correct a misclassification of purchased land (Stip. 1)	(\$152,255)
2 To correct for a misclassification. (Stip. 2)	577
3 To capitalized a beachcleaner which was expensed. (Stip. 3)	910
4 To remove duplication of contractual operation service fees. (I-2)	(252,690)
5 To remove non-utility investment. (I-3)	(10,000)
6 To remove management fee associated with Green Fairways. (I-4)	(32,198)
7 To remove SSI project management fee. (I-5)	(301,180)
8 To remove unsupported legal fees. (I-6)	(25,000)
9 To remove Mr. Johnsons moving expense. (I-7)	(8,602)
10 To remove Johnson's contractors costs. (I-8)	(34,650)
11 To remove Mr. London's consultant fees. (I-9)	(32,500)
12 To remove White & Case legal charges. (I-10)	(27,230)
13 To remove Key West Citizen PR Advertisement. (I-11)	(422)

14	To reflect the appropriate pro forma plant. (I-12)	(124,921)
15	To capitalized certain items expensed in the test year. (I-28)	66,663
	Total	(\$933,498)

Accumulated Depreciation

1	To correct a misclassification of purchased land (Stip. 1)	\$71,274
2	To correct for a misclassification. (Stip. 2)	(52)
3	To capitalized a beachcleaner which was expensed. (Stip. 3)	(493)
4	Depr. Exp.associated w/ removal of operation service fees. (I-2)	10,983
5	Depreciation associated with non utility investment. (I-3)	1,259
6	Depreciation associated with management fee. (I-4)	2,823
7	Depreciation associated with SSI management fee. (I-5)	26,406
8	Depreciation associated with legal fees. (I-6)	2,192
9	Depreciation associated with Johnson moving expense. (I-7)	1,075
10	Depreciation associated with Johnson contractors. (I-8)	1,925
11	Depreciation associated with London's consulting fees. (I-9)	6,145
12	Depreciation associated with White & Case legal charges. (I-10)	1,814
13	Depreciation associated with Key West Citizen PR Advertisement. (I-11)	117
14	To reflect the appropriate pro forma depreciation expense. (I-12)	6,940
15	To capitalized certain items expensed in the test year. (I-28)	(3,086)
	Total	\$129,322

Working Capital

1	To remove temporary cash investments. (Stip. 4)(I-16)	(\$168,265)
2	To reflect prepaid expenses. (Stip. 9)(I-16)	2,689
3	To reflect the appropriate deferred rate case expense. (I-16)	133,308
	Total	(\$32,269)

Schedule No. 2

K W Resort Utilities Corp.

Capital Structure-Simple Average

Test Year Ended 12/31/06

Description	Total Capital	Specific Adjustments	Subtotal Adjusted Capital	Prorata Adjustments	Capital Reconciled to Rate Base	Ratio	Cost Rate	Weighted Cost
Per Utility								
Long-term Debt	\$1,475,869	\$0	\$1,475,869	(\$804,132)	\$671,737	69.66%	7.17%	4.99%
Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%
Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
Common Equity	555,435	0	555,435	(302,679)	252,756	26.21%	12.01%	3.15%
Customer Deposits	39,746	0	39,746	0	39,746	4.12%	6.00%	0.25%
Deferred Income Taxes	0	0	0	0	0	0.00%	0.00%	0.00%
Total Capital	\$2,071,050	\$0	\$2,071,050	(\$1,106,811)	\$964,239	100.00%		8.39%

Per Commission

8 Long-term Debt		\$1,475,869	\$0	\$1,475,869	(\$1,384,800)	\$91,069	71.26%	7.17%	5.11%
9 Short-term Debt		0	0	0	0	0	0.00%	0.00%	0.00%
10 Preferred Stock		0	0	0	0	0	0.00%	0.00%	0.00%
11 Common Equity		555,435	0	555,435	(521,162)	34,273	26.82%	12.67%	3.40%
12 Customer Deposits		39,746	0	39,746	(37,293)	2,453	1.92%	6.00%	0.12%

In Re: Application for Increase in Wastewater Rates in..., 2009 WL 1716788...

1	Deferred Income Taxes	0	0	0	0	0.00%	0.00%	0.00%
3								%
1	Total Capital	\$2,071,050	\$2,071,050	(\$1,943,256)	\$127,795	100.00%		8.62%
4		0						%

	LOW	HIGH
RETURN ON EQUITY	11.67%	13.67%
OVERALL RATE OF RETURN	8.35%	8.89%

Schedule No. 3-A

K W Resort Utilities Corp.

Statement of Wastewater Operations

Test Year Ended 12/31/06

Description	Test Year Per Utility	Utility Adjustments	Adjusted Test Year Per Utility	Commission Adjustments	Commission Adjusted Test Year	Revenue Increase	Revenue Requirement
Operating Revenues:	\$1,012,695	\$635,303	\$1,647,998	(\$561,245)	\$1,086,753	\$241,771	\$1,328,524
						22.25%	

Operating Expenses

2 Operation & Maintenance	\$1,017,156	\$222,154	\$1,239,310	(\$180,099)	\$1,059,211		\$1,059,211
3 Depreciation		181,844	24,059	205,903	(48,759)	157,144	157,144
4 Amortization		5,297	(968)	4,329	0	4,329	4,329
5 Taxes Other Than Income		79,594	37,962	117,556	(34,233)	83,323	10,880
6 Income Taxes		0	0	0	(84,265)	(84,265)	86,884
7 Total Operating Expense	1,283,891	283,207	1,567,098	(347,357)	1,219,741	97,764	1,317,505
8 Operating Income		(\$271,196)	\$352,096	\$80,900	(\$213,888)	(\$132,988)	\$144,007
9 Rate Base		\$171,903		\$964,239		\$127,795	\$127,795

1	Rate of Return	-157.76%	8.39%	-104.06%	8.62%
0					

Schedule No. 3-B

K W Resort Utilities Corp.:

Adjustment to Operating Income

Test Year Ended 12/31/06

Explanation	Wastewater
Operating Revenues	
1 Remove Utilities requested final revenue increase.	(\$601,684)
2 To reflect the appropriate annualized test year revenues. (I-20)	6,264
3 To reflect the appropriate test rental fee. (I-20)	14,600
4 To include income related to County lift-stations. (I-20)	19,575
Total	(\$561,245)
 Operation and Maintenance Expense	
1 To capitalized a beachcleaner which was expensed. (Stip. 3)	(\$11,825)
2 To reflect the appropriate sludge removal expense. (Stip. 5) (I-21)	(9,129)
3 To remove on-utility telephone expenses. (Stip. 6)	(7,508)
4 To remove political contributions. (Stip. 7)	(1,203)
5 To reflect the amortization of non-recurring amounts (Stip. 8)	(1,032)
6 To remove out-of-period expenses. (Stip. 9)	(2,689)
7 To reduce golf cart related expenses. (Stip. 10)	(1,548)
8 To reflect the appropriate chemicals expense. (I-22)	(16,117)
9 To remove mark-up of pro forma expenses. (I-24)	(33,826)
10 To reduce advertising expense for public relation functions. (I-26)	(26,653)
11 To reflect the appropriate management fees. (I-27)	(30,000)

12	To remove mark-up and reclassify historical test year expenses. (I-28)	(71,053)
13	To reflect the appropriate contractual services- other expenses. (I-29)	(12,038)
14	To reflect the appropriate miscellaneous expenses. (I-30)	(22,132)
15	To reflect the appropriate rate case expense. (I-31)	66,654
	Total	(\$180,099)

Depreciation Expense - Net

1	To correct a misclassification of purchased land (Stip. 1)	(\$6,766)
2	To correct for a misclassification. (Stip. 2)	104
3	To capitalized a beachcleaner which was expensed. (Stip. 3)	493
4	Depr. Exp.associated w/ removal of operation service fees. (I-2)	(3,021)
3	Depreciation expense associated with non utility investment. (I-3)	(315)
4	Depreciation expense associated with management fee. (I-4)	(2,823)
5	Depreciation expense associated with SSI management fee. (I-5)	(26,406)
6	Depreciation expense associated with legal fees. (I-6)	(2,192)
7	Depreciation expense associated with Johnson moving. (I-7)	(269)
8	Depreciation expense associated with Johnson constructors. (I-8)	(1,925)
9	Depreciation expense with London's consulting fees. (I-9)	(855)
10	Depreciation expense with White & Case legal charges. (I-10)	(907)
11	Depreciation expense with Key West Citizen PR Advertisement. (I-11)	(23)
12	To reflect the appropriate pro forma depreciation expense. (I-12)	(6,940)
13	To capitalize certain items expensed in the test year. (I-28)	3,086
	Total (Aggregate Adjustment in Issue 32)	(\$48,759)

Taxes Other Than Income

1	Remove RAFs on above revenue adjustments.	(\$25,256)
2	To correct for a misclassification. (Stip. 2)	(7,950)
3	To reflect the appropriate pro forma property taxes. (I-12)	(1,027)

Total (34,233)

Schedule No. 4

K W Resort Utilities Corp.

Wastewater Monthly Service Rates

Test Year Ended 12/31/06

	Rates Prior to Filing	Commission Approved Interim	Utility Requested Final	Commission Approved Final	Four Year Rate Reduction	
Residential						
Flat Rates	\$40.39	\$47.61				
Base Facility Charge All Meter Sizes:			\$35.08	\$18.39	\$1.69	
Gallonge Charge - Per 1,000 gallons (10,000 gallon cap)			\$4.49	\$3.99	\$0.37	
General Service						
Base Facility Charge by Meter Size:						
5/8" x 3/4"		\$30.73	\$36.21	\$35.08	\$18.39	\$1.69
1"		\$74.72	\$88.06	\$87.70	\$45.98	\$4.23
1-1/2"				\$175.40	\$91.95	\$8.45
2"		\$229.52	\$270.50	\$280.64	\$147.12	\$13.53
3"		\$454.63	\$535.80	\$526.20	\$294.24	\$27.05
4"		\$707.94	\$834.35	\$877.00	\$459.75	\$42.27
6"				\$1,754.00	\$919.50	\$84.54
8"				\$2,806.40	\$1,655.10	\$152.18
8" Turbo				\$3,157.20	\$2,114.85	\$194.45

In Re: Application for Increase in Wastewater Rates in..., 2009 WL 1716788...

Gallage Charge, per 1,000 Gallons	\$3.40	\$4.01	\$5.27	\$4.79	\$0.44
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Multi-Residential and Commercial

Flat Rate	\$40.39	\$47.61			
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Base Facility Charge by Meter Size:

5/8" x 3/4"			\$35.08	\$18.39	\$1.69
1"			\$87.70	\$45.98	\$4.23
1-1/2"			\$175.40	\$91.95	\$8.45
2"			\$280.64	\$147.12	\$13.53
3"			\$526.20	\$294.24	\$27.05
4"			\$877.00	\$459.75	\$42.27
Gallage Charge, per 1,000 Gallons			\$5.27	\$4.79	\$0.44

Reclaimed Water

Gallage Charge, per 1,000 Gallons	\$0.45	\$0.53	\$0.69	\$0.69	\$0.06
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	Rates Prior to Filing	Commission Approved Interim	Utility Requested Final	Commission Approved Final	Four Year Rate Reduction
Private Lift-Station Owners					
5/8" x 3/4"	\$32.55	\$38.32	\$35.08	\$18.39	\$1.69
1"	\$74.72	\$88.06	\$87.70	\$45.98	\$4.23
2"	\$229.52	\$270.50	\$280.64	\$147.12	\$13.53
Gallage Charge, per 1,000 Gallons	\$2.74	\$3.23	\$5.27	\$4.79	\$0.44

Bulk Wastewater Rates

Safe Harbor Marina

13 Residential Units @ 1 ERC each	\$525.11	\$618.87	\$456.04	\$354.86	\$32.63
18 Live Aboard Boats @ .6 ERC each	\$436.20	\$514.09	\$378.86	\$295.72	\$27.19

In Re: Application for Increase in Wastewater Rates in..., 2009 WL 1716788...

27 Non-Live Aboard Boats @ .2 ERC each	\$218.10	\$257.04	\$189.43	\$147.86	\$13.59
6 Vacant Slips @ .2 ERC each	\$48.46	\$57.11	\$42.10	\$31.85	\$2.93
2 Bathhouses @ 1 ERC each	\$80.79	\$95.21	\$70.16	\$54.59	\$5.02
2 Commercial Businesses @ .5 ERC each	\$40.39	\$47.61	\$35.08	\$27.30	\$2.51
1 Commercial Bar	\$51.53	\$60.73	\$44.90	\$34.83	\$3.20
Total	\$1,400.58	\$1,650.67	\$1,216.57	\$947.00	\$87.07

**South Stock Island Marinas
(Peninsular Marina)**

13 Residential Units @ 1 ERC each	\$525.11	\$618.87	\$456.04	\$354.86	\$32.63
16 Live Aboard Boats @ .6 ERC each	\$387.73	\$456.96	\$336.77	\$261.60	\$24.05
26 Non-Live Aboard Boats @ .2 ERC each	\$210.04	\$247.55	\$182.42	\$141.03	\$12.97
Bathhouse @ 1 ERC	\$40.39	\$47.61	\$35.08	\$27.30	\$2.51
3 Commercial Businesses @ .5 ERC each	\$60.59	\$71.41	\$52.62	\$40.95	\$3.76
Total	\$1,223.86	\$1,442.39	\$1,062.93	\$825.73	\$75.92

General Service Multiple Agreement

Large Swimming Pool (4 ERCs)	\$161.57	\$190.42	\$140.32	\$109.19	\$10.04
Small Swimming Pool (1.18 ERCs)	\$47.67	\$56.18	\$41.39	\$32.31	\$2.96

Temporary Service Agreement

Sweetwater Environmental, Inc.

Minimum Charge on 127,100 gallons	\$728.28	\$858.21	\$669.82	\$608.73	\$55.97
Gallonge Charge, per 1,000 Gallons	\$5.73	\$6.75	\$5.27	\$4.79	\$0.44

Typical Residential Bills 5/8" x 3/4" Meter

3,000 Gallons	\$40.39	\$47.61	\$48.55	\$30.36
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In Re: Application for Increase in Wastewater Rates in..., 2009 WL 1716788...

5,000 Gallons	\$40.39	\$47.61	\$57.53	\$38.34
10,000 Gallons	\$40.39	\$47.61	\$79.98	\$58.29

(Wastewater Gallonage Cap - 10,000 Gallons)

Footnotes

- 1 See Orders Nos. 14620 and 13862, issued July 23, 1985 and November 19, 1984, respectively, in Docket No. 830388-S, In re: Petition of Stock Island Utility Company, Inc. for increased sewer rates in Monroe County, Florida.
- 2 See Order No. PSC-07-0505-SC-WS, p. 15, issued June 13, 2007, in Docket No. 060253-WS, In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.
- 3 See Order No. PSC-07-0505-SC-WS, p. 15, issued June 13, 2007, in Docket No. 060253-WS, In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.
- 4 See Order Nos. PSC-08-0327-FOF-EI, issued May 19, 2008, in Docket No. 070304-EI, In re: Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, F.A.C., submitted by Florida Public Utilities Company.; PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.; and PSC-97-1225-FOF-WU, issued October 10, 1997, in Docket No. 970164-WU, In re: Application for increase in rates in Martin County by Hobe Sound Water Company.
- 5 See Order No. PSC-07-0472-PAA-WS, issued June 1, 2007, in Docket No. 070006-WS, In Re: Water and Wastewater Industry Annual Reestablishment of Authorized Range of Return on Common Equity for Water and Wastewater Utilities Pursuant to Section 367.081(4)(f), Florida Statutes.
- 6 See Order No. PSC-05-0624-PAA-WS, p. 23, issued June 7, 2005, in Docket No. 040450-WS, In Re: Application for rate increase in Martin County by Indiantown Company, Inc.
- 7 See Order Nos. PSC-93-0301-FOF-WS, issued February 25, 1993, in Docket No. 911188-WS, In Re: Application for a Rate Increase in Lee County by Lehigh Utilities, Inc.; PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.; and PSC-97-0618-FOF-WS, issued May 30, 1997, in Docket No. 960451-WS, In re: Application for rate increase in Duval, Nassau, and St. Johns Counties by United Water Florida Inc.
- 8 As recommended by OPC.
- 9 See Order No. PSC-07-0205-PAA-WS, p. 28, issued March 6, 2007, in Docket No. 060258-WS, In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corp.
- 10 See Order No. PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.
- 11 See Order Nos. PSC-07-0130-SC-SU, p. 31, issued February 15, 2007, in Docket No. 060256-SU, In re: Application for increase in wastewater rates in Seminole County by Alafaya Utilities, Inc.; and PSC-07-0205-PAA-WS, p. 27, issued March 6, 2007, in Docket No. 060258-WS, In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corp.
- 12 Issued August 26, 2002, in Docket No. 020520-SU, In re: Complaint by Safe Harbor Marina against K W Resort Utilities Corp. and request for new class of service for bulk wastewater rate in Monroe County.

End of Document

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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.

Exhibit I

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

**ADDRESS SERVICE
 REQUESTED**

FIRST CLASS MAIL
 US POSTAGE PAID
 MONROE COUNTY FL 33045
 PERMIT NO. 100

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.

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

Sewer 4080.82

BILLING ADJUSTMENT 43436.16

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

Total Amount Due 47516.98

A/C WILL BE MARCH 21

KW RESORT UTILITIES CORP



Judi Irtzary <judikwru@gmail.com>

Corrected Meter Consumption Report - KW Resort Utilities Account M066

1 message

Judi Irtzary <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 Irtzary
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
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

Monroe County Detention Center Erroneous FKAAs Readings

Read Date	FKAAs 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

KWRU New Billing System Error / No FKAAs Read

Read Date	FKAAs Reading in gallons	Amount Billed usage only	MCDC Amount Paid	Actual Usage	Amount Should Have Billed	Amount Owed

* 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



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,


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 MONRES	2,471		
9/13/2011	READ00003610918	History METER	3	7,039		
9/13/2011	READ00003610920	History METER	4 W MONRES			
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	READ00003216987	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	READ00002378309	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	2			
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	READ00001122893	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		

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		

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

EXHIBIT J

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

EXHIBIT J

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

EXHIBIT J

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
	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.		
	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

EXHIBIT J

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 4RH15oM2-43 SN S00139177	5,949.26	5,949.26
	Back up pump for MCDC		
	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

EXHIBIT J

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

EXHIBIT J

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

EXHIBIT J

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

EXHIBIT J

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

EXHIBIT J

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

EXHIBIT J

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

EXHIBIT J

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

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.

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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

EXHIBIT J

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.

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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 JI attached		Total	\$935.00

Keys Environmental, Inc.

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 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
	<p>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.</p> <p>Florida State Sales Tax with County Tax</p>	7.50%	21.72
		Total	\$1,155.30

EXHIBIT J

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
Manroe County Detention Center Attn: Gina 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	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	133.04	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	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%	0.00

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 #
1/28/2010	4974

B# 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.	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

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: January 20, 2010

Division: Public Works

Bulk Item: Yes X 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 x **AMOUNT PER MONTH** _____ **YEAR** _____

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

DOCUMENTATION: Included X 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
SUZANNE A. HUTTON
COUNTY ATTORNEY
Date 12/30/09

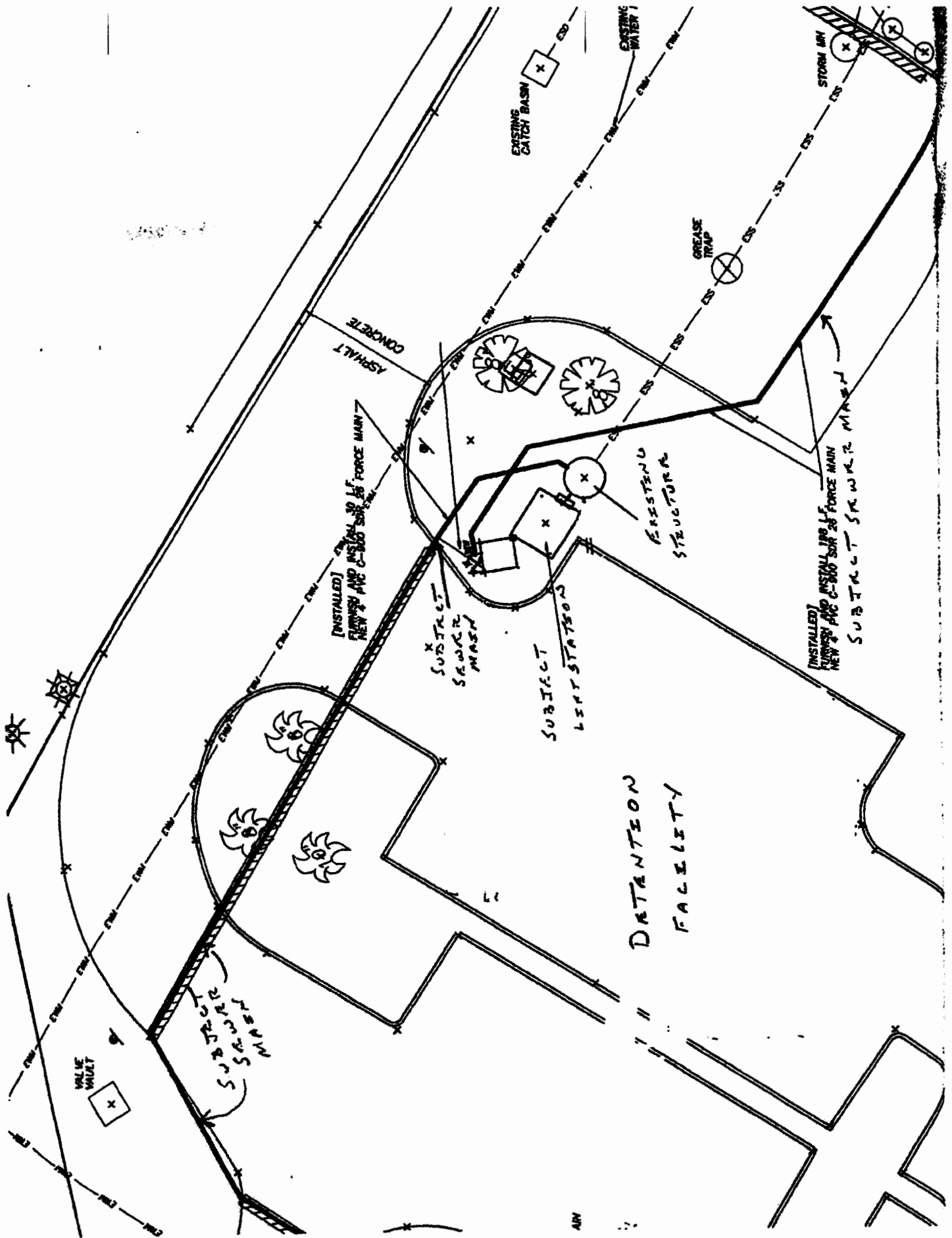


Exhibit K

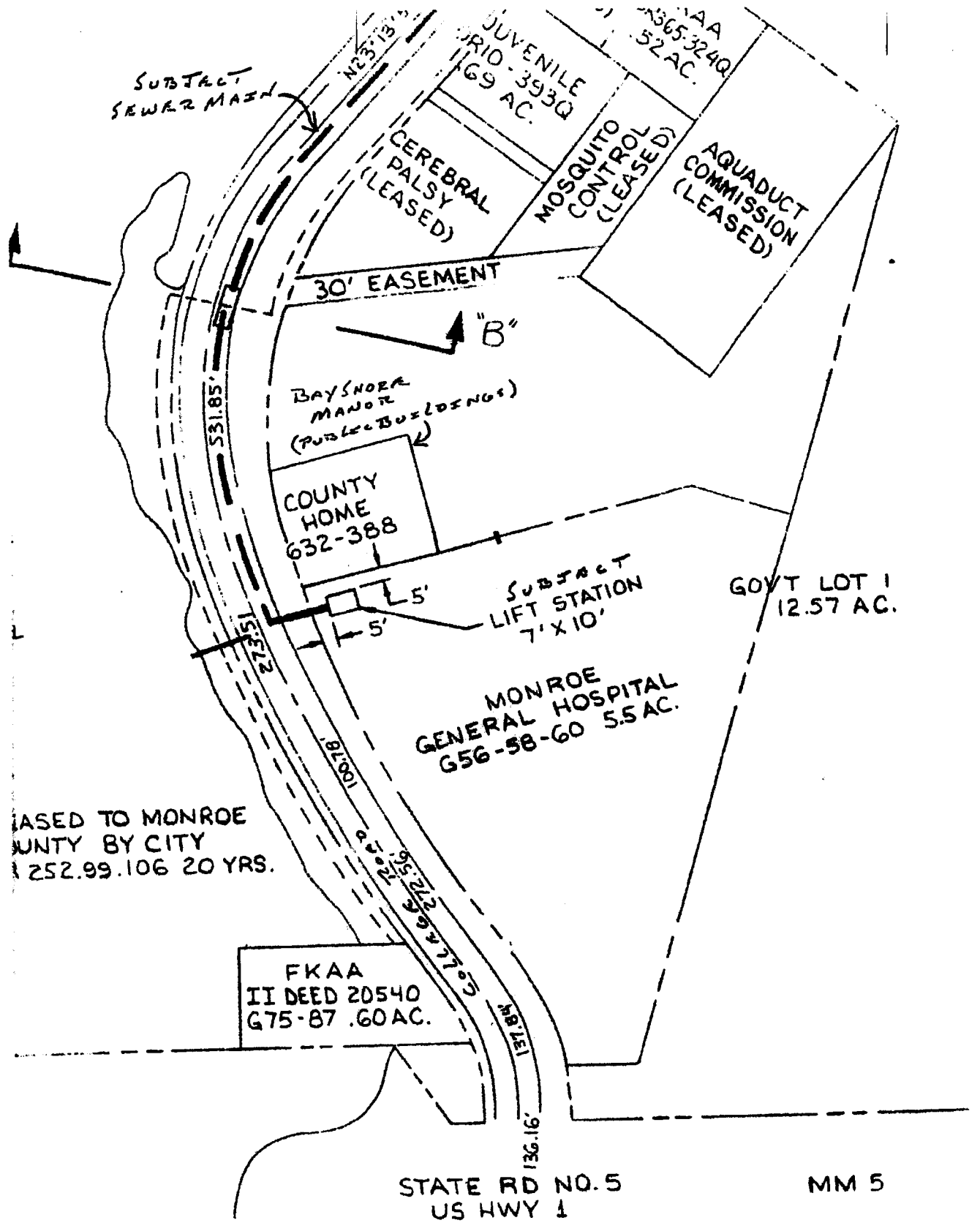


Exhibit K

JUNIOR COLLEGE ROAD

24'
DIMENSIONALITY

50' R/W

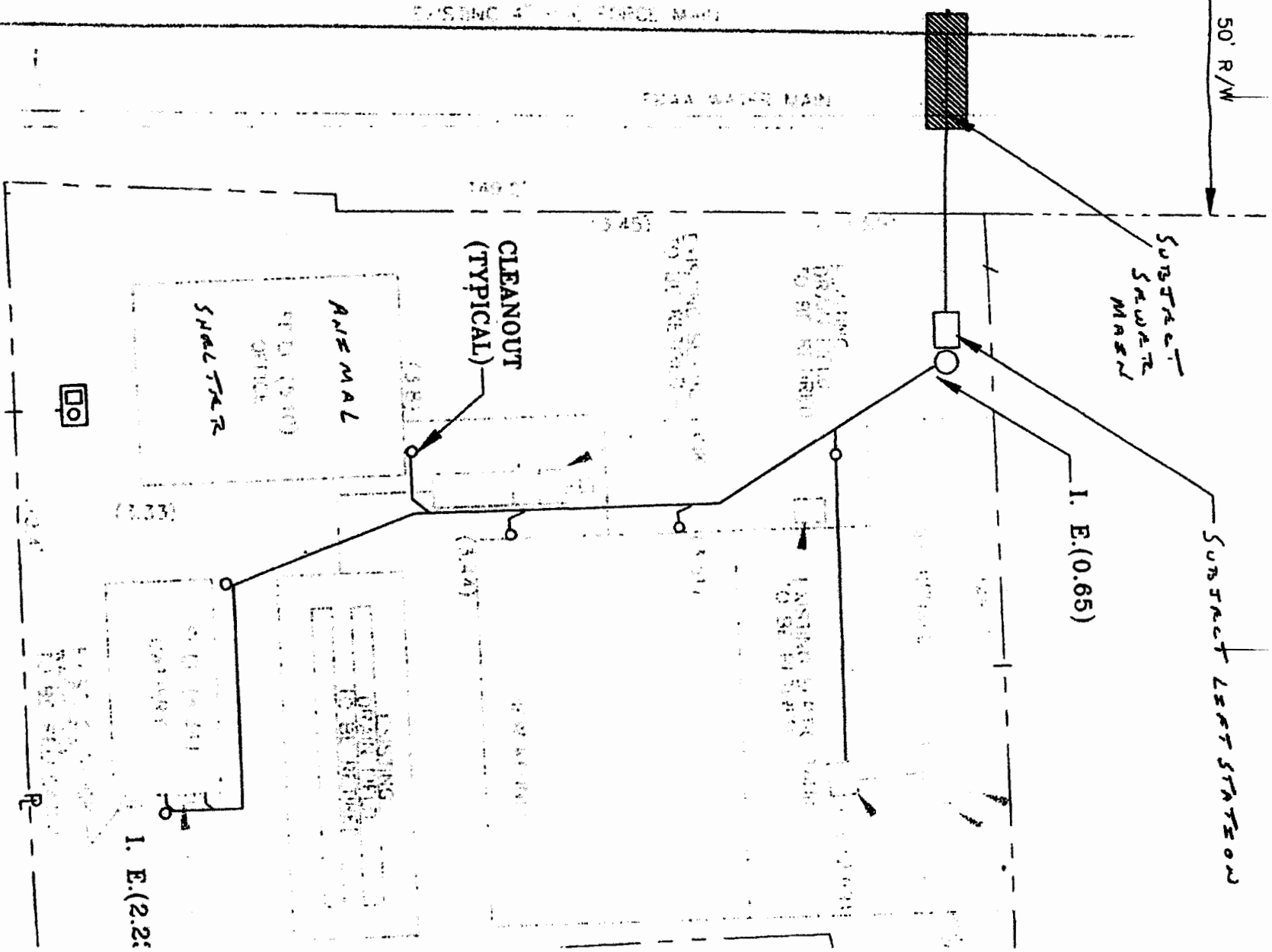


Exhibit K

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.



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

By: [Signature]
Title: PRESIDENT

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

FANNY L. KOLHAGE, Clerk
By: [Signature]
Deputy Clerk

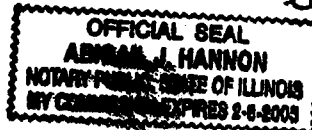
By: [Signature]
Mayor/Chairman

STATE OF ILLINOIS)
COUNTY OF COOK) SS:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.
BY: [Signature]
ROBERT N. WATTE
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
01 AUG 30 PM 4:53
FANNY L. KOLHAGE
CLERK
MONROE COUNTY, FLA.

Handwritten: B.E.P. Jr.
M.M.P.
Signature: J.B.

Addendum A

A parcel of land, formerly submerged in the Bay of Florida, and being a part of Trusteess of the Internal Improvement Trust Fund of the State of Florida (TIIF) Deed Number 19725, and said parcel being in Section 27, Township 07 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, 1990, said intersection being known as Point #1 and having coordinates of N-86989.70' & 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-251213.25'); thence N 52° 51' 57" W along the center line of the OCCR for a distance of 330.00 feet to Point #3 (N-87465.18' & E-250950.18'); thence N 39° 38' 57" W along the center line of the OCCR for a distance of 300.00 feet to Point #4 (N-87636.17' & E-250788.75'); thence N 30° 49' 57" W along the center line of the OCCR for a distance of 285.00 feet to Point #5 (N-87863.72' & E-250622.93'); 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-250513.40'); thence N 19° 47' 03" E along the center line of the OCCR for a distance of 122.55 feet to Point #7 (N-88130.75' & E-250464.96'); thence N 60° 20' 57" W for a distance of 200.00 feet to Point #8 (N-88229.58' & E-250401.18') and the SE1/4 corner of the lands described in the said TIIF Deed No. 19725; thence N 29° 29' 03" E along the SE1/4 boundary line of the lands described in the said TIIF Deed No. 19725 for a distance of 962.72 feet to Point #9 (N-89066.35' & E-250967.42') 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 226.48 feet to Point #10 (N-89158.37' & E-250772.57'); thence S 48° 23' 19.5" W for a distance of 188.08 feet to Point #11 (N-89076.04' & E-250702.54'); thence S 56° 13' 32" W for a distance of 241.24 feet to Point #12 (N-89341.95' & E-250502.01') 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-89701.07' & E-250429.33'); thence S 31° 02' 03" W and along the said MHTL for a distance of 137.17 feet to Point #14 (N-89664.33' & E-250349.52'); thence S 41° 02' 42" W and along the said MHTL for a distance of 163.25 feet to Point #15 (N-89806.44' & E-250281.83'); thence S 51° 32' 03" W and along the said MHTL for a distance of 146.23 feet to Point #16 (N-89496.48' & E-250167.33'); 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-250013.99'); thence N 30° 27' 57" W and along the said MHTL for a distance of 315.40 feet to Point #18 (N-89805.14' & E-249854.07'); thence N 20° 27' 57" W and along the said MHTL for a distance of 280.40 feet to Point #19 (N-89147.04' & E-249756.03'); thence N 01° 32' 03" E along the said MHTL for a distance of 165.00 feet to Point #20 (N-89312.78' & E-249760.45'); thence N 18° 27' 55" E and along the said MHTL for a distance of 77.62 feet to Point #21 (N-89387.22' & E-249782.45'); thence N 18° 46' 52" W and along the said MHTL for a distance of 57.65 feet to Point #22 (N-89441.91' & E-249763.91'); thence N 14° 57' 57.5" W and along the said MHTL for a distance of 128.48 feet to Point #23 (N-89666.99' & E-249730.75'); thence N 30° 26' 33" E and along the said MHTL for a distance of 165.00 feet to Point #24 (N-89698.14' & E-249633.32'); thence S 82° 04' 36" E for a distance of 195.00 feet to Point #25 (N-89575.25' & E-249987.14') and a concrete monument; thence S 13° 16' 39" W for a distance of 22.30 feet to Point #26 (N-89583.59' & E-249982.02') and a concrete monument; thence S 44° 52' 02" E for a distance of 269.08 feet to Point #27 (N-89342.88' & E-250171.86') and a concrete monument; thence N 74° 46' 00" E for a distance of 80.25 feet to Point #28 (N-89383.96' & E-250249.30') and a concrete monument; thence S 56° 50' 29" E for a distance of 403.59 feet to Point #29 (N-89119.46' & E-250654.14') and a concrete monument; thence N 48° 23' 19" E for a distance of 157.23 feet to Point #30 (N-89239.22' & E-250706.02') and a concrete monument; thence S 63° 32' 06" E for a distance of 315.58 feet to Point #31 (N-89090.13' & E-251039.42') 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 984.84 feet; thence SWly along the said curved right of way line for and arc distance of 66.04 feet to Point #32 (N-89045.11' & E-251000.00') 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 K

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 K

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 Beraldson. 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 indicated 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

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

Exhibit L

UTILITIES
 KEY WEST, FL 33045
 305 294-8578

Delivered by Hand
 to Mr. Koppala

INVOICE

SS1001

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

CAPACITY RESERVE
 & INFRASTRUCTURE

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

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 L

EXHIBIT C & J

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

204005

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630		961001 ✓	250,530.84	PAY#1 CAP RES & INFRA CON

02203 KEY WEST RESORT UTILITIES CORP

Exhibit L

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.

Exhibit L

K W RESORT UTILITIES
 PO BOX 2125
 KEY WEST, FL 33045
 305 234-9578

TO:

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

INVOICE

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

INVOICE NO.	SS1002
DATE	11/12/02
DEPT. DIV.	

submitted by hand 11/12
 to M. 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> Wetzel Engineering Corporation (invoice #31672)	\$ 25,947.00
iv. <u>Construction Administration and Legal Fees</u> Green Pathways (invoice dated November 7, 2002)	\$ 26,400.00
v. <u>Testing</u> Wetzel Engineering Corporation (invoice #31673)	\$ 7,000.00
AMOUNT BILLED:	<u>\$295,255.25</u>

11/25 Called Gage Corp. ok at this end going to
 Jackie Rodoff (in finance).

1/3 Called Jackie Dym in ~~paper~~ clerk's office
 will not make this weeks run - should be
 ready for next week.

Paid Finance

BOARD OF C

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER
23000	560630		SS1002

002203 KEY WEST RESORT UTILITIES

BOARD OF COUNTY COMMISSIONERS
 MONROE COUNTY KEY WEST, FLORIDA



Exhibit L

PAY THE SUM OF *****295,255.25**
 TO THE ORDER OF
 KEY WEST RESORT UTILITIES
 PO BOX 2125
 KEY WEST FL 33045-2125

Exhibit C & J

PAID 12/13/02

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

078037

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
13000	560630		SSI002	295,255.25	PYMT#2 CAP RESRV&INF CON

102203 KEY WEST RESORT UTILITIES CORP

December 10, 2002

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

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.

Exhibit L

RESORT UTILITIES
P.O. BOX 2126
KEY WEST, FL 33046
305 294-9578

INVOICE

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 (Application for Payment)	\$274,961.20 o/s
ii. <u>Contingency Amount</u>	\$ 00.00
iii. <u>Engineering and Engineering</u> Weiler Engineering Corporation (Invoice #31840)	\$ 31,248.00 pd
iv. <u>Construction Administration and</u> Green Fairways (invoice dated October 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

*Paid
1/17*

1/17 - Jackie Clynes - it's ready!

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	661009	344,809.20	PYMNT#3 CAP RESRV&INF CON

002203 KEY WEST RESORT UTILITIES CORP

Exhibit L

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 #SS1004</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:

- 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.
- Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- Partial Lien Waiver from Weiler Engineering in the amount of \$26,505.00
- Partial Lien Waiver from Weiler Engineering in the amount of \$12,000.00
- Conditional Lien Waiver from E. T. MacKenzie in the amount of \$278,802.80
- Partial Lien Waiver from Green Fairways in the amount of \$28,500.00
- Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$345,807.80.

Exhibit L

K W RESORT UTILITIES
P.O. BOX 2125
KEY WEST, FL 33045
305 284-9578

INVOICE

INVOICE NO.	SS1904
DATE	01/09/03
DELETED	

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>	\$100,000.00
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

Submitted to Monroe City

RESERVATION CONTRACT	DESCRIPTION	\$ 345,807.80	\$ 4,606,000.00	\$ 890,595.29	\$ 3,369,596.91
79869	34.5 % of the Contract has been completed for Engineering & ract 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: 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

Exhibit L

February 6th, 2003

Exhibit C & I

by hand
02/10/03

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

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 #SSI005</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:

- 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.
- Engineers' Certificate certifying the work completed to date by Contractor, E. T. MacKenzie Company of Florida Inc.
- Partial Lien Waiver from Weiler Engineering in the amount of \$23,715.00
- Partial Lien Waiver from Weiler Engineering in the amount of \$5,000.00
- Conditional Lien Waiver from E. T. MacKenzie in the amount of \$703,452.41
- Partial Lien Waiver from Green Fairways in the amount of \$20,710.00
- Conditional Waiver and Release of Lien Upon Payment furnished to Monroe County Board of County Commissioners in the amount of \$752,877.41.

Exhibit L

K W RESORT UTILITIES
P.O. BOX 2126
KEY WEST, FL 33046
305 294-8578

TO:

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



**CAPACITY RESERVATION
& INFRASTRUCTURE CONTRACT**

*Hand delivered by fed. as of 1/14/03
Page 3/4, less this week or next
in finance now*

INVOICE

DESCRIPTION	AMOUNT
i. <u>Collection System Infrastructure</u> E.T. MacKenzie of Monroe Co (Application for Payment #31)	\$ 570,452.41
ii. <u>Contingency Amount</u>	\$ 700,000.00
iii. <u>Engineering and Engineering Inspection</u> Weiler Engineering Corporation (invoice #32125)	\$ 25,100.00
iv. <u>Construction Administration and Legal Fees</u> Green Fairways (invoice dated February 2nd, 2003)	\$ 20,700.00
v. <u>Testing</u> Weiler Engineering Corporation (invoice #32126)	\$ 5,000.00
AMOUNT BILLED	\$ 1,511,252.41

1/11/03

GRANT WITHDRAWALS
CENTS

123

12

Exhibit C & J

PAID 03/14/03

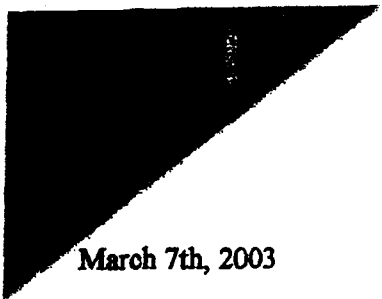
BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

81242

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630	235434	881005 ✓	752,877.41	PYMT#5 RESERV&INF CON

002203 KEY WEST RESORT UTILITIES CORP

Exhibit L



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

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

by-hand 03/12/03

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>
i) <u>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
ii) <u>Contingency Amount</u>	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 380,000.00
iii) <u>Engineering & Engineering Inspect.</u> Weiler Engineering Corp (#32285)	\$ 31,806.00	\$ 279,000.00	\$119,970.00	\$ 127,224.00
iv) <u>Construction Admin & Legal Fees</u> Green Fairways (Inv dated 3/3)	\$ 39,558.00	\$ 347,000.00	\$149,210.00	\$ 158,232.00
v) <u>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.

Exhibit L

K W REPORT UTILITIES
 P.O. BOX 2125
 KEY WEST, FL 33045
 305 284-9578

hand delivered by Judi

INVOICE

TO:

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

SS1006
 03/07/03

**CAPACITY RESERVATION
 & INFRASTRUCTURE CONTRACT**

DESCRIPTION

AMOUNT

- i. Collection System Infrastructure
 E.T. MacKenzie of Florida, Inc.
 (Application for Payment #6)
- ii. Contingency Amount
- iii. Engineering and Engineering Inspection
 Weiler Engineering Corporation (invoice #32285)
- iv. Construction Administration and Legal Fees
 Green Fairways (invoice dated March 3rd, 2003)
- v. Testing
 Weiler Engineering Corporation (invoice #32286)

AMOUNT BILLED:

CHECKS AND OTHER ITEMS



ALL ITEMS ACCEPTED SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE AND ANY APPLICABLE COLLECTION AGREEMENT.



- DEPOSIT
- WITHDRAWAL
- PAYMENT
- OTHER _____

RECEIPT

A difference you can bank on.™

What are you wishing for?

See the difference a home equity loan can make in your life.

Acct# [REDACTED]
 RECEIPT Tr# 4561611 607,311.58
 00 DDA Deposit (Checkings/MMA) AM
 55 12:34:12 4/04/2003 ON

Exhibit L

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

Exhibit L

April 2nd, 2003

KW RESORT UTILITIES

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

Exhibit C & I

*by-hand
04/02/03*

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

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

Exhibit L

K W RESORT UTILITIES
 P.O. Box 1125
 KEY WEST, FL 33045
 305 894-8375

Judi delivered 4/2/03
 ch rec'd
 5/5/03

INVOICE

TO:

Monroe County Board of Commissioners
 Finance Department
 600 Whitehead Street
 Key West, FL 33045

**CAPACITY RESERVATION
 INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
Construction of Greenways	\$ 58,075.20
Construction of Greenways	\$ 00.00
Construction of Greenways and Engineering Corporation (invoice #32449)	\$ 28,513.80
Construction Administration and Fees Green Fairways (invoice dated April 1st, 2003)	\$ 35,463.40
Testing Weiler Engineering Corporation (invoice #32450)	\$ 19,750.00

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

83613

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
3000	560630	235434	SSI007	141,802.40	CAP RESERV & INFRAS CONT

2203 KEY WEST RESORT UTILITIES CORP

- Inspection and ...
- b) Engineers' Certificate certifying the work completed to date by ... 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

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

*by-hand
05/14/03*

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

Exhibit L

radi - paid delivered - 5/17

K. W. RESORT UTILITIES
P.O. BOX 418
KEY WEST, FL 33046
305 894-8878

INVOICE

TO:

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

ACCOUNT NO.	SS1008
DATE	05/12/03
POST 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.

Acct# [REDACTED]
 RECEIPT Tr# 4561611 115,310.05
 20 DDA Deposit(Checking/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 L

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

Exhibit L

BOA

K W REPORT UTILITIES

PO BOX 220
KEY WEST, FL 34137

Handwritten notes

INVOICE

Office of the Board of Commissioners
Financial Services
500 Washington Blvd
Key West, FL 34137



CAPACITY RESERVATION
& INFRASTRUCTURE CONSTRUCTION

DESCRIPTION

AMOUNT

- i) Collection System Infrastructure
E.T. Mackenzie of Florida, Inc.
(Application for Payment #9) \$410,209.75
- ii) Contingency Amount \$ 6,000.00
- iii) Engineering & Engineering Inspection
Weiler Engineering Corporation (invoice #32776) \$ 15,275.00
- iv) Construction Administration and Legal Fees
Green Pathways (invoice dated June 16, 2003)
- v) Testing
Weiler Engineering Corporation (invoice #3277)

AMOUNT BILLED

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

A difference you can bank on.

What's your dream?

- 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

ACCT# [REDACTED]
 RECEIPT [REDACTED] 461,959.62 AM
 20 DDA Deposit (Checkings/MMA)
 TR# 79 12:27:58 7/21/2003 ON
 KW Ut11

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 to any applicable collection agreement. Deposits may not be available for [REDACTED]

Exhibit L

Exhibit C: J

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

87731

ORGANIZATION	ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630	235434	551009 ✓	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

Exhibit 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 #SS1010</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

Exhibit L

BOA
TO:

INVOICE

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

ISSUE NO.	SS1010
DATE	07/28/03
DUPLICATE	

**CAPACITY RESERVATION
& INFRASTRUCTURE CONTRACT**

DESCRIPTION	AMOUNT
i) <u>Collection System Infrastructure</u> E.T. McKenzie 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)	\$ 55,167.70
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)	\$ 17,500.00
AMOUNT BILLED	\$325,046.74

ug Ent rec'd 7/29 3:09pm
Final OK given by Ed C. - 7/28 11:00am
Delivered To County by Truck - 7/30

Pa. 5285,020.74 = shad \$38,026.00



92812

812

35434

92011

0.16**

1/03

Contract

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		NO600CT03	✓309.34	BAYSHORE
✓304	✓206000		SSI010	✓155,540.58	APPL PYMT #10 PO#235434

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 PO# 235434

002203 KEY WEST RESORT UTILITIES CORP

Exhibit L

November 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) Contingency Amount					
	\$ 0.00	\$ 380,000.00	\$ 0.00	\$ 0.00	\$ 380,000.00
iii) Engineering & Engineering Inspect.					
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) Construction Admin & Legal Fees					
	\$ 0.00	\$ 347,000.00	\$282,006.90	\$ 44,173.10	\$ 20,820.00
v) Testing					
Weiler Engineering Corp (33161)	\$ 5,000.00	\$ 100,000.00	\$ 87,500.00	\$ 7,500.00	\$ 0.00
	<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

Exhibit L

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 #SSI011 AMENDED	Amt Due	Contract Amt	and Paid	Bal Unpd	Balance Due
i) Collection System Infrastructure					
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	560630		SSI011AMEND	50,458.04	CAP RESERVE & INFRAS T CON
304	206000		SSI011AMEND	86,580.32	CAP RESERVE & INFRAS T CON

002203 KEY WEST RESORT UTILITIES CORP



BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY KEY WEST, FLORIDA

First State Bank of the Florida Keys
Key West, Florida 33040

69-49
670

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
John P. Polyzos

PAID
03/01/04

KEY WEST RESORT UTILITIES
 P.O. BOX 2128
 KEY WEST, FL 33040
 305 294-0870

INVOICE

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

INSURANCE NO.	DATE
SSI012	08/30/04
DESCRIPTION	
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

68-43
 670

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
 DEER

White M. Spickard
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
305 294-8578

0078 J. M. CHAIRMAN

INVOICE

TO:

Monroe County Engineering Dept
Attn: Judy Layne
1100 Simonton Street
2nd Floor, Room 2-215
Key West FL 33040

SS1015 Amended
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	\$19500.00
Affordable Asphalt	\$ 1620.00
Weiler Engineering	\$ 2497.50
Keys Environmental Inc.	<u>\$ 6660.51</u>

TOTAL COST: \$30,278.01

PAST DUE

K W RESORT UTILITIES
P.O. BOX 2125
KEY WEST, FL 33045
305 294-9578

002 8 1 11 01A103H

INVOICE

TO:

Monroe County Engineering Dept
Attn: Judy Layne
1100 Simonton Street
2nd Floor, Room 2-215
Key West FL 33040

SS1015 Amended

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	\$19500.00
Affordable Asphalt	\$ 1620.00
Weiler Engineering	\$ 2497.50
Keys Environmental Inc.	<u>\$ 6660.51</u>

TOTAL COST: \$30,278.01

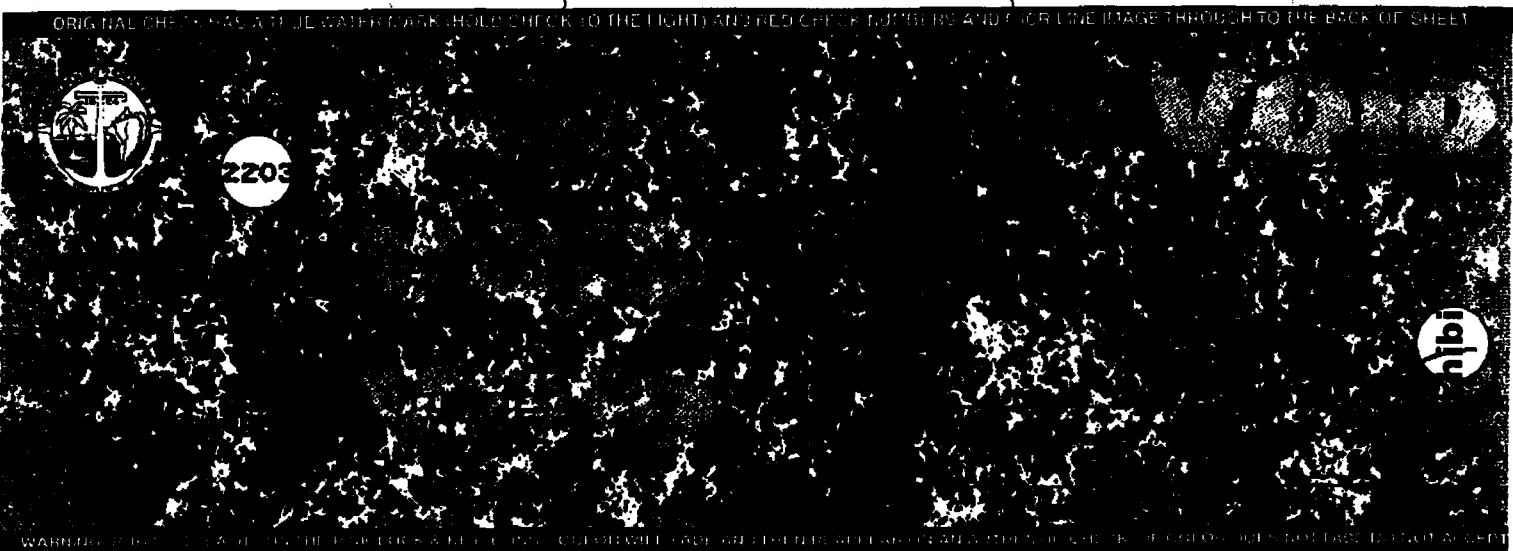
PAST DUE

Exhibit M

BOARD OF COUNTY COMMISSIONERS MONROE COUNTY, KEY WEST, FLORIDA

019209

ACCOUNT	PURCHASE ORDER NUMBER	INVOICE NUMBER	AMOUNT	DESCRIPTION
23000	560630	SSI015AMEND	30,278.01	HARBOR SHORES 5/10/07
002209	K W RESORT UTILITIES			



ENTER TOTAL OF CHECKS HERE	100	3027801	

BBK BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBK BBK.com
63-9136/2631

DATE 09/11/12
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

CURRENCY	
COINS	
TOTAL CASH	
FRONT SIDE TOTAL	30278 01
REVERSE SIDE TOTAL	

K W RESORT UTILITIES CORP
88. 306-296-3301
PO BOX 2125
KEY WEST, FL 33045-4346

HARBOR SHORES
05/10/07
INV# SSI015AMEND

TOTAL DEPOSIT \$ 30278.01
XXXXXXXXX3361 \$30,278.01
8540301 C71776 004 00029 13:39 09/11/12
DEPOSIT DUPLICATE