

UTILITY AGREEMENT

THIS UTILITY AGREEMENT (Agreement), dated as of the ___ of _____, _____, by and between KW Resort Utilities Corp., a Florida corporation, having its office(s) at 6630 Front Street, Key West, Florida 33040, (Utility), and **The City of Key West**, (Customer) whose property is located at **5537 College Rd., Key West, FL 33040** (Property).

RECITALS

- A. Customer is the owner of the Property.
- B. Utility owns, operates, manages and controls a Central Sewer System and is willing to provide sanitary sewer services pursuant to this Agreement.
- C. Customer requests that Utility provide sanitary sewer service to the Property.

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 Sewer System shall mean the central collection, transmission, wastewater treatment and disposal system and appurtenant facilities owned and operated by the Utility.

Connection as such term is defined in Section 6 hereof.

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 shall mean the required drawings evidencing the design, layout, profile and other structural details of the on-site sewer system necessary for the Utility to review and evaluate the on-site sewer system's compliance with Utility standards.

Point of Delivery shall mean the point where the pipes connect at the property line between the public right of way and private property. If a customer connected to the vacuum system, the Utility shall own the clean out to the valve pit and the remaining vacuum lines down

stream. If a customer is connected to the gravity system, the Utility shall own the clean out at the right-of-way line to the main. The customer shall own the pipes connecting thereto.

Property shall mean the Customer's property requesting service from Utility.

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

2. New On-Site Sewer System Construction

(a) Prior to construction and installation of a new on-site sewer system, Customer shall, at its sole cost and expense, cause to be prepared and provide to Utility Plans and Specifications of the on-site sewer system, prepared by a Florida registered professional engineer, or other qualified professional, as determined by the Utility, and in accordance with all policies and practices of Utility and all applicable laws and regulations and standards adopted by the State of Florida Department of Environmental Protection and Monroe County.

(b) Utility shall approve or disapprove of the Plans and Specifications within thirty (30) days of receipt thereof by written notice to Customer.

(c) Upon Customer's receipt of Utility's written notice of disapproval of the Plans and Specifications, Customer shall promptly revise the Plans and Specifications in accordance with any requirements set forth by Utility in its written notice of disapproval, and re-submit such revised plan and Specifications to Utility for approval or disapproval. Utility shall approve or disapprove of any revised Plans and Specifications within five (5) business days of receipt thereof by written notice to Customer.

(d) Upon Customer's receipt of Utility's written notice of approval of the Plans and Specifications, Customer may proceed with the construction and installation of the on-site sewer system. Customer shall notify Utility seventy-two (72) hours prior to beginning construction. Construction and Installation shall be completed within six (6) months of Utility'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 Utility. In accordance with Chapter 25-30.540 F.A.C., Customer shall

provide, at its sole cost, a Professional Engineer registered in Florida, or other professional, as determined by the Utility, to provide on-site observation during construction and testing and to certify that the on-site sewer system is constructed in compliance with the approved Plans and Specifications. All materials employed by Customer for the on-site sewer system shall be reasonably acceptable to Utility.

No portion or element of the on-site sewer system shall be covered or concealed until inspected by Utility. Customer shall notify Utility of Customer's readiness for inspection of the on-site sewer system, and Utility shall inspect the on-site sewer system within two (2) business days after each such notice. Any portion of the on-site sewer system not inspected by Utility within said time period, shall be deemed to have been accepted by Utility. In the event that Utility determines through any such inspection that any portion of the on-site sewer system does not fully comply with the Plans and specific conditions or applicable laws and regulations, Utility shall notify Customer in writing of such non-compliance not more than two (2) business days after any such inspection and Customer shall immediately modify the on-site sewer system to insure that the on-site sewer system fully complies with the Plans and Specifications and applicable laws and regulations.

(e) In the event Utility discovers that any portion of element of the on-site sewer system has been installed, covered or concealed without the prior approval of Utility, Customer shall, upon written demand by Utility, immediately dismantle or excavate such portion of the on-site sewer system at its sole cost and expense.

3. On-Site Sewer System Records

As part of construction of an on-site sewer system, the Customer is responsible for providing the following records:

- (a) Prior to construction:
1. an affidavit signed by the Customer stating the total cost of constructing the on-site sewer system; and

2. Two (2) hard copy plan sets signed and sealed by engineer or other qualified professional of the on-site sewer system as constructed and installed; and
- (b) Upon completion of construction:
1. Copies of the results of all tests conducted on the on-site sewer system; and
 2. A certificate of completion of the on-site sewer system signed and sealed by the engineer of record; and
 3. One hard copy plan set of as-builts signed and sealed by engineer or other qualified professional; and
- (c) Any other records or documents required by applicable law or required under the Tariff.

4. Rates, Fees, Charges

(a) All Customer will pay the applicable fees, rates and charges as set forth in the Tariff. Nothing contained in this Agreement shall serve to prohibit Utility's right to bill or collect its rates and charges from Customer or to require compliance with any provision of its Tariff. Customer's Property is serviced by Florida Keys Aqueduct Authority (FKAA) Water Meters identified in Exhibit A and shall be charged the corresponding charges identified in Exhibit B. If Customer does not know its FKAA Water Meters at the time of execution of this Agreement, it shall be Customer's obligation to provide this information immediately upon availability. Should Customer fail to do so, Utility shall have the right to recover any and all costs associated with determining the correct FKAA Water Meter sizes and back billing for any shortfall in base facility and gallonage charges.

(b) Customer shall pay to Utility a Capacity Reservation Fee in the amount of Two Thousand Seven Hundred (\$2,700.00) dollars per ERC. In addition, Customer shall pay to Utility a fee for Allowance for Funds Prudently Invested ("AFPI") per ERC in accordance with its Tariff Original Sheet 18.1 attached as Exhibit C. ERC's assigned to the property must remain with the property and, as such, are non-

transferrable to other property. Prior to execution of this Agreement, Customer has previously supplied Utility access and information necessary to determine number of ERC's proposed. From this information, it has been determined per Exhibit D: Total **60 ERC's**

(c) Customer shall make 100% payment of Capacity Reservation Fee, for new capacity, upon execution of the Agreement, and will be responsible for AFPI upon connection of the first structure or building, whichever is first.

Utility shall have the right to cancel such reservation in the event of Customer'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 4(b) above, (based on an annual review) the Customer shall remit additional Capacity Reservation Fees and AFPI to Utility thirty (30) days after notice by Utility of additional fees due.

(d) Customer shall pay all costs and expenses for engineering review and administrative costs related to processing construction plans and documents submitted by Customer pursuant to this Agreement. The estimated cost for these services is \$ **8,500.00**, which amount is due upon execution of this Agreement. Customer is responsible for all costs that exceed the estimated costs and shall be required to make final payment prior to connection of the last structure or building, whichever is first, to be connected under this Agreement. Customer shall also pay Utility \$100.00 per hour for periodic inspections to be made by Utility or its agents within thirty (30) days of submission by Utility to Customer of invoices confirming time spent conducting such inspection services.

(e) Customer agrees that in the event of a change of use or any change that might affect the flows (i.e. addition of a restaurant, additional seats in a restaurant, additional washing machines, or anything that may increase water flows) Utility will be notified and the applicable Capacity Reservation Fees and AFPI will be paid prior to discharge to the Central Sewage System. Failure to notify Utility shall not relieve Customer of its requirement to pay for additional ERCs and AFPI based on additional flows.

5. Absolute Conveyance

Customer understands, agrees and acknowledges that Customer's conveyance of any and all easements, real property or personal property (including, without limitation, the On-site sewer system), or payment of any funds hereunder (including, without limitation, the Capacity Reservation Fee, AFPI and Connection Charges), shall, upon acceptance by Utility, be absolute, complete and unqualified, and that neither Customer nor any party claiming by or through Customer shall have any right to such easements, real or personal property, or funds, or any benefit which Utility may derive from such conveyance or payments in any form or manner.

6. Delivery of Service; Operation and Maintenance

- (a) Upon Customer's full performance of its obligations under this Agreement, Utility 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) Customer shall, at its sole cost and expense, own, operate and maintain any part of the on-site sewer system in accordance with Utility and governmental requirements. Any Customer that's operations generates any type of fat, oil, grease or similar substance (FOG) shall be obligated to remove said FOG from the wastewater stream in accordance to Federal, State, Local regulations.
- (c) Customer 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 Utility to monitor flows and water quality at Utility's discretion at a point on the Customer's side of the Point of Delivery. If it is determined that substandard influent or excessive flows are entering the Central Sewage System via Customer's on-site sewer system, Customer agrees to isolate the source and to repair or replace the

portion or portions of the faulty on-site sewer system in a manner acceptable to Utility in accordance with this Agreement.

7. Term

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

8. Default

Utility may, at its sole option, discontinue and suspend the delivery of service to the on-site sewer system in accordance with all requirements of applicable law and the Tariff if Customer fails to timely pay all fees, rates and charges pursuant to the terms of this Agreement.

9. Excuse from Performance

(a) Force Majeure.

If Utility is prevented from or delayed in performing any act required to be performed by Utility 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 Utility (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 Customer, any federal, state or local authorities or agencies fail to issue necessary permits, grant necessary approval or require any change in the operation of the Central Sewage System or the on-site sewer 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 Customer nor Utility shall be obligated to accept any new agreement if it substantially adds to its burdens and obligations hereunder.

(c) Emergency Situations.

Utility shall not be held liable for damages to Customer and Customer hereby agrees not to hold Utility 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; provided that Utility has utilized its best efforts to maintain the Central Sewage System in good operating condition.
2. Equipment or material failure in the Central Sewage System, including storage, pumping and piping provided the Utility has utilized its best efforts to maintain the Central Sewage Sewer 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, Customer shall not be excused from payment of any fees, charges and rates due to Utility under the terms of this Agreement (including without limitation, the Capacity Reservation Fee, AFPI, Connection Charges and monthly service charges).

10. 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.

11. Indemnification

Utility and Customer agree:

(a) to indemnify and hold the other harmless from negligent acts or omissions of itself, its officers, agents, invitees and users of the on-site sewer system, and

(b) to indemnify and hold the other harmless from third-party suits against a party which result from the breach of the Agreement by the other party.

12. Assignment of Warranties and Bonds

Customer shall assign any and all warranties, maintenance, completion and performance bonds and the right to enforce same to the Utility which Customer obtains from any contractor constructing on the Central Sewer System. Customer shall obtain a written warranty, completion, performance and maintenance bonds from its contractor for a minimum period of twenty-four (24) months.

13. 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) Email confirmed as follows:

If to Utility: Mr. Christopher Johnson, President
6630 Front Street
Key West, FL 33040
Email: info@kwru.com

With a Copy To: Ed Castle, P.E.
Weiler Engineering
6805 Overseas Highway
Marathon, FL 33050

Email: edrcastle@me.com

If to Customer: City of Key West
Glynn Meienburg
1300 White Street
Key West, FL 33040
glynn.meienburg@cityofkeywest-fl.gov

14. Tariff

This Agreement shall be filed by Utility with the Florida Public Service Commission within thirty (30) days of execution of this Agreement by both parties. This Agreement is subject to all of the terms and provisions of the Tariff. In the event of any conflict between the Tariff and the terms of this Agreement, the Tariff shall govern and control.

15. 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 Utility 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 Utility, 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 enforceability 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 term 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 attorney's 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.

(l) Customer agrees that the Utility may, at its sole discretion, require certain allocations to the proposed collection and transmission on-site sewer system for future connections. Customer further agrees that Utility may, at its sole discretion, extend the sewer line for any reason. It is understood that there will be no reimbursement or additional credit.

(Remainder of page blank. Signature page to follow)

IN WITNESS WHEREOF, Utility and Customer have executed this Agreement as of the day and year first above written.

UTILITY:

KW Resort Utilities Corp.

By: _____

Print Name: Christopher Johnson

Title: President

Address: 6630 Front Street
Key West, FL 33040

CUSTOMER:

City of Key West

By: _____

Print Name: _____

Title: _____

Address: _____

STATE OF FLORIDA)

COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Christopher Johnson, as President, of KW Resort Utilities Corp., a Florida corporation, on behalf of said corporation. He is personally known to me or who has produced _____ as identification.

Seal:

Signature: _____

My Commission Expires: _____

STATE OF FLORIDA)

COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, on behalf of The City of Key West. He/She is personally known to me or who has produced _____ as identification.

Seal:

Signature: _____

My Commission Expires: _____

EXHIBIT A

Number of Meters	-
	<u>Residential Service</u>
	All Meter Sizes
	<u>General Service</u> Base Facility Charge by Meter Size
	5/8" x 3/4"
	1"
	1-1/2"
1	2"
	3"
	4"
	6"
	8"
	8" Turbo
	<u>Private Lift Station Owners</u>
	5/8" x 3/4"
	1"
	1-1/2"
1	2"
	3"
	4"
	6"
	8"