

AGREEMENT
BETWEEN
THE FLORIDA KEYS AQUEDUCT AUTHORITY
AND
CITY OF KEY WEST, FLORIDA

April , 2012

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS

SECTION 1.01. WORDS AND TERMS..... 1
SECTION 1.02. CORRELATIVE WORDS..... 2

ARTICLE II AGREEMENT

SECTION 2.01. PURPOSE OF AGREEMENT 2
SECTION 2.02. TERM OF AGREEMENT 2
SECTION 2.03. TERMINATION 2
SECTION 2.04. SCOPE OF WORK..... 3
SECTION 2.05. CHARGES FOR SERVICE..... 4

ARTICLE III WARRANTIES, REPRESENTATIONS AND COVENANTS

SECTION 3.01. BY AUTHORITY 4
SECTION 3.02. BY CITY 5
SECTION 3.03. AUTHORITY LEGAL AUTHORIZATION 5
SECTION 3.04. CITY LEGAL AUTHORIZATION..... 5
SECTION 3.05. AUDIT AND MONITORING REQUIREMENTS..... 6

ARTICLE IV ACCOUNT INFORMATION

SECTION 4.01. IDENTIFICATION OF ACCOUNTS 6
SECTION 4.02. PROHIBITION AGAINST ENCUMBRANCES..... 6
SECTION 4.03. START UP 7
SECTION 4.04. CLOSE-OUT 7

ARTICLE V DEFAULTS AND REMEDIES

SECTION 5.01. EVENTS OF DEFAULT 7
SECTION 5.02. REMEDIES 8
SECTION 5.03. DELAY AND WAIVER 8
SECTION 5.04. TERMINATION FOR DEFAULT 8

ARTICLE VI GENERAL PROVISIONS

SECTION 6.01. ASSIGNMENT OF RIGHTS UNDER AGREEMENT 8
SECTION 6.02. AMENDMENT OF AGREEMENT 8
SECTION 6.03. SEVERABILITY 9
SECTION 6.04. ATTORNEY'S FEES AND COSTS 9
SECTION 6.05. NONDISCRIMINATION 9
SECTION 6.06. COOPERATION 10
SECTION 6.07. COVENANT OF NO INTEREST 11
SECTION 6.08. CODE OF ETHICS 10
SECTION 6.09. NO SOLICITATION/PAYMENT..... 11
SECTION 6.10. PUBLIC ACCESS TO RECORDS 11
SECTION 6.11. NON-WAIVER OF IMMUNITY 11
SECTION 6.12. LEGAL OBLIGATIONS; NON-DELEGATION OF DUTIES 11
SECTION 6.13. NON-RELIANCE BY NON-PARTIES 11

TABLE OF CONTENTS

Page

SECTION 6.14. NO PERSONAL LIABILITY 12
SECTION 6.15. SECTION HEADINGS 12
SECTION 6.16. GOVERNING LAW; VENUE..... 12

ARTICLE VII EXECUTION OF AGREEMENT

SECTION 7.01. COUNTERPARTS..... 12
SECTION 7.02. SUPERSEDES OTHER AGREEMENTS 12

AGREEMENT

THIS AGREEMENT is entered into by and between the Florida Keys Aqueduct Authority (the “Authority”), an independent special district, and the City of Key West, a Florida municipality (the “City”).

WHEREAS, the Authority was recreated in 1976 by the Legislature of the State of Florida. Chapter 76-441, Laws of Florida, said law having been amended from time to time, for purposes of obtaining, supplying and distributing an adequate supply of water to the Florida Keys and to purchase, construct, acquire, operate, manage and control wastewater systems; and

WHEREAS, the City is a Florida municipality operating its own wastewater utility; and

WHEREAS, the Authority generates records of water usage by its customers within the service boundaries of the City, which records are capable of being used to calculate wastewater charges imposed by the City, and the Authority has in place a billing system capable of being modified to incorporate billing for City wastewater charges; and

WHEREAS, the Authority and the City desire to enter into an agreement whereby the Authority, for compensation, will bill City customers for City wastewater charges and collect and transmit those charges, net of Authority fees, to the City; and

WHEREAS, the parties have the legal authority to enter into this agreement and to implement its provisions;

NOW, THEREFORE, in consideration of the mutual covenants, representations and promises set forth in this Agreement and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the Authority and the City hereby agree, stipulate, and covenant as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. WORDS AND TERMS. Words and terms used herein shall have the meanings set forth below:

"Agreement" means this Agreement.

"Authority" means the Florida Keys Aqueduct Authority.

"Authorized Representative" means the official of the Authority or the City authorized by ordinance or resolution to sign documents of the nature identified in this Agreement.

"Customer" means a property that is within the boundaries of the City's wastewater service area and is listed by the City as having service availability.

"City" means the City of Key West.

"Wastewater Charges" means periodic fixed and variable monthly and annual charges imposed by the City upon its customers in connection with accepting, transmitting, and treating wastewater.

SECTION 1.02. CORRELATIVE WORDS. Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word "person" shall include corporations and associations, including public bodies, as well as natural persons.

ARTICLE II AGREEMENT

SECTION 2.01. PURPOSE OF AGREEMENT. The purpose of this Agreement is to establish a mechanism whereby the Authority, for compensation, uses its existing billing mechanism to bill City customers on behalf of the City, collects City wastewater charges, and transfers to the City the wastewater charges collected.

SECTION 2.02. TERM OF AGREEMENT. The term of this Agreement shall be for a period of three (3) years, and shall be renewed automatically at the conclusion of the term unless terminated by either party.

SECTION 2.03 TERMINATION. Either party may terminate this Agreement without cause upon written notice to the other party. The Authority shall provide notice of termination of not less than 180 days. The City shall provide notice of termination of not less than 60 days. Upon termination or expiration, the Authority shall timely provide the City with all records related to its Customers and upon request, shall provide the documents in electronic format.

(1) Either party may terminate this Agreement for default pursuant to the provisions of Article V of this Agreement.

SECTION 2.04 SCOPE OF WORK. The Authority shall perform the following services for the Customers of the City:

(1) The Authority shall prepare monthly or annual Customer billing for Wastewater Charges using the rate structure adopted by the City and as may be subsequently amended. Preparation includes data preparation, printing on Authority billing stock, folding and mailing in a standard #10 envelope with a #9 return envelope included. The bill shall be consolidated with the Authority's monthly water bill. Charges shall be delineated on the face of the bill by type.

(2) If the rate structure includes a flow charge, the Authority shall apply the rate to water flows for each customer based on the Authority's monthly water meter reading.

(3) The Authority shall accept and process payments from the City's Customers. Customers may pay through recurring bank account draft or credit card charges, one time credit card charge or by check or cash. Payments will be accepted via mail, in person at the Authority's Customer Service offices or online at the Authority's website. A single payment may be made to satisfy both the Authority's water bill and the City's wastewater bill. Payment will be applied first to water charges, then wastewater charges. If a payment does not satisfy the entire outstanding balance, the next payment will be first applied to the oldest outstanding balance.

(4) The Authority will pursue collection of delinquent wastewater accounts in conjunction with delinquent water bills. Notwithstanding the foregoing, the City retains the right to directly pursue collection of delinquent accounts.

(5) The Authority shall provide to the City a monthly report of Customer accounts billed and payments received. Cash received shall be transferred electronically to the account designated by the City on a weekly basis.

(6) The Authority shall provide customer service to the City's Customers for matters relating to new service, billing, service interruption, assistance with delinquent accounts, and termination of service. All matters relating to the City's rates, policies, procedures and operations will be referred to the City.

SECTION 2.05 CHARGES FOR SERVICE. The City will pay the Authority for the above services each month through an electronic debit to the City's designated bank account. The total monthly charge will be calculated based on a rate of \$1.07 per bill for customers billed monthly based on water flow (the "Authority Charges"). This charge will be indexed each May 1 using the inflationary index applied to the Authority's water rates each year. The charge will also be increased for any postal rate increases beyond the Authority's control. The charge is subject to re-negotiation prior to the start of the Renewal Term.

ARTICLE III
WARRANTIES, REPRESENTATIONS AND COVENANTS

SECTION 3.01. BY AUTHORITY. The Authority warrants, represents, and covenants that:

(1) The Authority has full power and authority to enter into this Agreement and to comply with the provisions hereof.

(2) The Authority currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Authority's knowledge, threatened, which seeks to restrain or enjoin the Authority from entering into or complying with this Agreement.

(4) The Authority shall exercise reasonable care and diligence to advise the City of any problems encountered by the Authority in implementing this Agreement, to maintain accurate and complete records of all billings and collections on behalf of the City, to provide timely and accurate reports of all such billings and collections, and to promptly transmit to the City all funds collected on the City's behalf according to a schedule to be agreed by the parties.

SECTION 3.02. BY CITY. The City warrants, represents, and covenants that:

(1) The City has full power and authority to enter into this Agreement and to comply with the provisions hereof.

(2) The City currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the City's knowledge, threatened, which seeks to restrain or enjoin the City from entering into or complying with this Agreement.

(4) The City shall exercise reasonable care and diligence to ensure that the Authority is advised on a timely basis of all applicable City wastewater charges and rates, and changes thereto, to allow the Authority to collect proper amounts for them. This includes communication of all changes to equivalent unit calculations for non-residential customers.

SECTION 3.03. AUTHORITY LEGAL AUTHORIZATION. Upon signing this Agreement, the Authority's legal counsel hereby expresses the opinion, generally, that this Agreement has been duly authorized by the Authority and shall constitute a valid and binding legal obligation of the Authority enforceable in accordance with its terms upon execution by both parties, provided, however, the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity and the exercise of judicial discretion.

SECTION 3.04. CITY LEGAL AUTHORIZATION. Upon signing this Agreement, the City's legal counsel hereby expresses the opinion, generally, that this Agreement has been duly authorized by the City and shall constitute a valid and binding legal obligation of the City enforceable in accordance with its terms upon execution by both parties, provided, however, the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity and the exercise of judicial discretion.

SECTION 3.05. AUDIT AND MONITORING REQUIREMENTS. The Authority agrees to the following audit and monitoring requirements.

(1) Audit. The Authority shall maintain accounts of collections on behalf of the City according to and consistent the Authority's normal record maintenance procedures and shall be subject to audit to the same extent as the Authority's normal records. The Authority shall cause its auditor to notify the City immediately if anything comes to the auditor's attention during the examination of records that would lead the auditor to question whether any City wastewater charges are properly accounted for, or whether Authority charges to the City costs are allowable under this Agreement.

(2) Record Retention. The Authority shall retain sufficient records demonstrating its compliance with the terms of this Agreement in accordance with State of Florida record retention laws, from the dates that the records are generated, or for the same amount of time that the Authority maintains its own financial records, whichever is longer. The City shall have access to such records upon request. The Authority shall ensure that audit working papers also are made available to the City, or its designee, upon request, during such time as the records are required under this Agreement to be maintained.

(3) Record of Account. The Authority shall maintain records of all funds collected on behalf of the City.

ARTICLE IV ACCOUNT INFORMATION

SECTION 4.01. IDENTIFICATION OF ACCOUNTS. The Authority and the City will work cooperatively to identify the water meters to be associated with City Customer accounts and to identify the recurring and variable charges to be collected by the Authority.

(1) The City shall periodically notify the Authority of additional Customers. The Authority shall bill additional Customers on the next monthly billing cycle from the date notice is received from the City.

SECTION 4.02. PROHIBITION AGAINST ENCUMBRANCES. The Authority is prohibited from selling, pledging, or otherwise using funds collected on behalf of the City.

SECTION 4.03. START UP. The Authority agrees to provide the services specified in Section 2.05 to the City on the next month's billing cycle, but no later than 30 days from the date the City provides written notice to the FKAA. The City agrees to provide Customer information to the Authority 30 days prior to the start up date listed in this Section 4.03.

SECTION 4.04. CLOSE-OUT. Upon termination or expiration of this Agreement, the Authority and the City shall conduct a final accounting of all outstanding funds collected on behalf of the City and all outstanding Authority Charges due under this Agreement, and the Authority shall promptly disburse the net funds due the City.

ARTICLE V

DEFAULTS AND REMEDIES

SECTION 5.01. EVENTS OF DEFAULT. Each of the following events is hereby declared an event of default:

(1) Failure by the Authority or the City to comply substantially with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement if such failure shall continue for a period of 30 days after written notice thereof to the defaulting party.

(2) Any warranty, representation or other statement by, or on behalf of, the Authority or the City contained in this Agreement or in any information furnished by the Authority or the City in compliance with, or in reference to, this Agreement, is proven to be materially false or misleading.

(3) An order or decree entered, with the acquiescence of the Authority or the City, appointing a receiver for the Authority or the City; or if such order or decree, having been entered without the consent or acquiescence of the Authority or the City, shall not be vacated, discharged or stayed on appeal within sixty (60) days after the entry thereof.

(4) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the Authority or the City under federal or state bankruptcy or insolvency law now or hereafter in

effect and, if instituted against the Authority or the City, is not dismissed within sixty (60) days after filing.

SECTION 5.02. REMEDIES. Upon any event of default, after first attempting to resolve the issue under the terms of Section 6.05, the non-defaulting party may enforce its rights by any of the following remedies:

(1) By mandamus or other proceeding at law or in equity, to require the defaulting party to fulfill its obligations under this Agreement.

(2) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the non-defaulting party.

(3) By termination of this Agreement for default upon 30 days written notice to the defaulting party.

SECTION 5.03. DELAY AND WAIVER. No delay or omission by the Authority or the City to exercise any right or power accruing upon an event of default shall impair any such right or power nor shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver of any default under this Agreement shall extend to or affect any subsequent event of default, whether concerning the same or different provision of this Agreement, nor shall such waiver impair consequent rights or remedies of the County or the City hereunder.

SECTION 5.04. TERMINATION FOR DEFAULT. If the City elects the remedy of termination specified in Section 5.02, the City shall not be obligated to pay the Authority Charges incurred subsequent to the effective date of the termination.

ARTICLE VI GENERAL PROVISIONS

SECTION 6.01. ASSIGNMENT OF RIGHTS UNDER AGREEMENT. Neither the Authority nor the City shall have the power to assign rights or obligations created by this Agreement to any third party without the prior written consent of the other party.

SECTION 6.02. AMENDMENT OF AGREEMENT. This Agreement may be amended in only in a writing signed by representatives of the parties with authority to bind them.

SECTION 6.03. SEVERABILITY. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The Authority and City agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

SECTION 6.04. ATTORNEY'S FEES AND COSTS. The Authority and City agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe County.

SECTION 6.05. NONDISCRIMINATION. The parties agree that they will not discriminate against any person in the carrying out of their respective duties under this Agreement. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination, to the extent they may apply to each party, including but not limited to: (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 794), which prohibits discrimination on the basis of handicap; (3) The Age Discrimination Act of 1975, as amended (42 U.S.C. ss. 6101-6107), which prohibits

discrimination on the basis of age; (4) The Drug Abuse Office And Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse And Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527, (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Florida Civil Rights Act of 1992, (Chapter 760, Florida Statutes, and Section 509.092, Florida Statutes), as may be amended from time to time, relating to nondiscrimination; (9) The Monroe County Human Rights Ordinance (Chapter 13, Article VI, Sections 13-101 through 13-130), as may be amended from time to time, relating to nondiscrimination; and (10) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

SECTION 6.06. COOPERATION. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, the parties agree to participate, to the extent reasonably required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. The parties specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement or any Attachment or Addendum to this Agreement.

SECTION 6.07. COVENANT OF NO INTEREST. The Parties covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

SECTION 6.08. CODE OF ETHICS. The Authority's officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation;

misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

SECTION 6.09. NO SOLICITATION/PAYMENT. The Parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

SECTION 6.10. PUBLIC ACCESS TO RECORDS. The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

SECTION 6.11. NON-WAIVER OF IMMUNITY. Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the parties in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by a party be required to contain any provision for waiver.

SECTION 6.12. LEGAL OBLIGATIONS; NON-DELEGATION OF DUTIES. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any other participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of either party, except to the extent permitted by law.

SECTION 6.13. NON-RELIANCE BY NON-PARTIES. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt

to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the Authority nor the City or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

SECTION 6.14. NO PERSONAL LIABILITY. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

SECTION 6.15. SECTION HEADINGS. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

SECTION 6.16. GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the parties agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

ARTICLE VII EXECUTION OF AGREEMENT

SECTION 7.01. COUNTERPARTS. This Agreement shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

SECTION 7.02. SUPERSEDES OTHER AGREEMENTS. The parties agree that this Agreement represents their mutual agreement and replaces and supersedes any prior

agreements, understandings, or communications on the subject of the Agreement, whether written or oral.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by the Authority Director and the City Manager.

FCAA Board Approved:

FLORIDA KEYS AQUEDUCT AUTHORITY

By: _____
Kirk C. Zuelch, Executive Director

Attest

CITY OF KEY WEST

By: _____
Jim Scholl, City Manager

Attest