

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

WHEREAS, the Florida Keys Aqueduct Authority (FKAA) was created by Special Legislation, Chapter 76-441, Laws of Florida, as amended; and

WHEREAS, the FKAA's Big Coppitt Key Wastewater treatment plant is nearing its service capacity requiring the FKAA to consider expanding the treatment plant or seeking alternative methods of disposing of its excess wastewater from the service area; and

WHEREAS, the CITY has excess advanced wastewater treatment capacity at its Richard A. Heyman Environmental Pollution Control Facility (Wastewater Treatment Plant) and is willing to accept sufficient wastewater flow from the FKAA Big Coppitt service area to satisfy the needs of the FKAA; and

WHEREAS, the CITY and FKAA are in general agreement that entering into this agreement is in the best interest of the public; and

WHEREAS, through this agreement, FKAA will be responsible for reimbursing the CITY for the costs associated with the FKAA's connection with the CITY'S wastewater treatment system as well as a one-time connection fee and annual consumption fees; and

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. This Interlocal Agreement shall become effective on _____, 2022, the date of execution. This Agreement shall be for a term of twenty (20) years from the date of execution.

2. Reimbursement. FKAA agrees to reimburse CITY for the cost of the Wholesale Wastewater Pricing Model in the amount of \$6,600.00, payable within five (5) days of the execution of this agreement.

3. The FKAA shall tie in its wastewater line for the Big Coppitt service area at the Duck Ave and South Roosevelt manhole location. The location of the manhole is attached on Exhibit A.

4. The tie in work shall be performed at the sole cost of the FKAA in a method and manner approve by CITY. All costs to maintain, repair, calibrate, or replace the flow meter will be conducted by the City with all costs 100% allocable to FKAA. It is expressly understood and agreed that certain costs associated with facilities or activities that benefit FKAA exclusively, including but not limited to the installation of flow meters, the maintenance of flow meters, and performing waste strength evaluations, are 100% allocable to FKAA.

5. Forcemain from FKAA shall have a flow meter meeting the specifications required by the City installed on the line in a location easily accessible by the City. The forcemain shall have a manual shut off valve upstream of the flow meter for use by the City to shut off FKAA flow after providing advanced notice to FKAA prior to any such shut off. Emergency Notice shall be provided to FKAA at 305-293-1464; 305-293-6399; or 305-809-2510.

6. FKAA shall pay a one-time connection fee to CITY in the amount of ONE MILLION SEVENTY-SIX THOUSAND THREE HUNDRED SIXTY NINE and NO (\$1,076,369.00) DOLLARS for a maximum reserve capacity of .15 million gallons per day on an annual average basis. Payment shall be made within 60 days of connection.

7. For all service furnished under this contract to the service location, FKAA shall pay the CITY a rate as depicted in Exhibit B, ANNUAL RATES AND CHARGES SCHEDULE, attached hereto, as amended from time to time, in accordance with the review procedure described herein, and made a part of this contract. The flow meter is to be read within the first five (5) days of each month by the CITY. Payment shall be made by FKAA within fifteen (15) days of receipt of the bill.

8. The flow volume rate of \$6.46 was established by a maximum 150,000 gallons per day and is based on a 5 year capital plan and a 4.5 million gallons per day (mgd) average and shall be reestablished by the anniversary date every 5 years by the City.

9. FKAA shall pay a minimum monthly charge to the CITY each month for the term of this service contract. This charge shall be calculated as sixty percent (60%) of the average of the actual monthly flows for the most recent full 12 months of wastewater service multiplied by the applicable rate for the current month, as shown in the current rate schedule in Exhibit B.

Provided however, that no minimum monthly bill shall be less than \$1,000 during the Term of this Agreement.

10. FKAA shall be allowed excess flow not to exceed 200,000 gallons per day. If average monthly flows that continue to exceed the maximum reserve capacity for more than a 6-month period, the City and FKAA agree to enter into negotiations of term and conditions of FKAA payment for excess capacity on a permanent use basis including additional connection fees equal to the newly established reserve capacity pursuant to section 14 of this agreement.

11. Change in Volume or Character of Service

FKAA shall give reasonable notice to the CITY respecting any material changes anticipated in the volume or characteristics of the wastewater utility service required at each service location.

12. Compliance with Federal and State Laws and Regulations

It is agreed by both parties that the intent and objective of this Agreement is that both parties perform in operating and managing the facilities of the KEY WEST WASTEWATER TREATMENT SYSTEM to be in compliance with Federal and state laws and regulations, including but not limited to those of the Florida Department of Environmental Regulation and the U.S. Environmental Protection Agency related to wastewater collection, transport, treatment and disposal and the management of residual sanitary sludge.

It is further agreed that the CITY will exercise due diligence, and FKAA shall exercise due cooperation, to do all that is necessary and reasonable in meeting the requirements of such laws and regulations as detailed herein. It is further agreed that in the event that the applicable laws and regulations are modified or changed, the CITY shall have the right and responsibility under the terms of this Agreement to do all that is necessary and reasonable to develop the facilities and procedures that will bring the wastewater system operations into compliance with the modified or

changed laws and regulations, and that FKAA shall exercise all reasonable cooperation with the CITY in its efforts to achieve compliance, and that in such event, the Agreement shall be the controlling document without the requirement that its terms and conditions be renegotiated.

13. FKAA Reserve Capacity

The FKAA has the right of use of the wastewater system capacity allocated for normal and excess flows conditions, but not to exceed the capacity reserved for FKAA's use as set forth in Exhibit C. FKAA shall not exceed those capacities shown on Exhibit C except as provided in Section 14.

14. Allowance for Excess FKAA Capacity

The CITY shall grant FKAA use of system capacity in excess of FKAA's RESERVE CAPACITY as established in Section 10 above, so long as FKAA's excess flow combined with flows from other sources do not exceed the design capacity of the treatment and/or collection system. FKAA shall be allocated a pro rata share of system costs attributable to FKAA's usage determined in the same manner as costs are determined for other CITY customers for those costs for capacity in excess of that allocated for FKAA use.

If capacity requirements of FKAA exceed the capacity allocated for normal use and the excess capacity requirements continue beyond a cumulative period of 6 months, the FKAA and the CITY agree to enter into negotiations related to the terms and conditions of FKAA's payment for an additional Reserve Capacity on a permanent use basis. Such negotiations and permanent capacity use are considered beyond the terms of this Agreement. During negotiations, FKAA will pay 150% monthly flow rate. Should an agreement not be reached within one year, FKAA will pay 200% monthly flow rate until an agreement is reached.

Notwithstanding section 16 below, FKAA shall be liable for any and all CITY damages arising as a result of use of capacity granted by the CITY in excess of the allowed reserve capacity or for damages caused by the FKAA's use of the capacity in excess of that allowed.

15. Compliance with City Sewer Ordinance

FKAA agrees to comply with the Sewer Use Ordinance, Chapter 27 of the Key West Code, as may be amended from time to time as is in accordance with generally accepted practice in wastewater system operations.

16. To the extent permitted by law and subject to the provisions and monetary limitation of Section 768.28, Florida Statutes, the FKAA and City do hereby agree to defend, indemnify and hold the other, its officers, agents or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorney's fees, cost, and expenses at both the trial and appellate levels) arising from the acts or omissions of the respective party.

17. Insurance.

The parties to this agreement stipulate that each is a state of Florida governmental entity as defined by the 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 Sections 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this agreement.

18. Notices

All notices, requests, demands, elections, consents, approvals, and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to FKAA: Executive Director
 Florida Keys Aqueduct Authority
 1100 Kennedy Dr.
 Key West, Florida 33040

With a copy to: General Counsel
 1100 Kennedy Dr.
 Key West, Florida 33040

If to CITY: City Manager
 City of Key West
 P.O. Box 1409
 Key West, Florida 33041-1409

With a copy to: City Attorney
 City of Key West
 P.O. Box 1409
 Key West, Florida 33041

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

19. Records – Access and Audits.

All parties shall maintain adequate and complete records for a period of four years after termination of this Agreement. Each party, its officers, employees, agents and auditors shall have access to the other parties' books, records, and documents, related to this Agreement upon request. The access to and inspection of such books, records, and documents by the parties shall occur during the regular office hours or as agreed.

20. Public Access.

Pursuant to Florida Statute §119.0701, the parties shall comply with all public records laws of the State of Florida, including but not limited to:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City of Key West in the performance of this Agreement.

(b) Provide the public with access to public records on the same terms and conditions that the City of Key West would provide the records and at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119 or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, upon request by the City of Key West, at no cost, to the City of Key West all public records

in possession of the contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City of Key West in a format that is compatible with the information technology systems of the City of Key West.

21. Attorney's Fees and Waiver of Jury Trial.

In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both trial and appellate levels subject to the limitations imposed by Section 768.28 Florida Statute.

In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

22. Adjudication of disputes or Disagreements

FKAA and CITY agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

23. 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, FKAA and CITY agree to participate, to the extent 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. FKAA and CITY specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

24. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement

shall be in Monroe County, Florida, Lower Keys Division of the Circuit Court, or the Southern District of Florida, as applicable. This Agreement is not subject to arbitration.

25. Entire Agreement/Modification/Amendment.

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

26. No Assignability.

No Party may assign this Agreement or assign or subcontract any of its obligations under this Agreement other than as specified without the approval of the governing boards of the other Parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the Parties. Upon the aforementioned approval(s), modification under this section shall be executed with the same formality as this document.

27. Severability.

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

28. Independent Contractor.

The FKAA and its employees, volunteers, agents, vendors, and subcontractors shall be and remain independent contractors and not agents or employees of the CITY with respect to all acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise, or venture between the parties.

29. Waiver.

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach, or wrongful conduct.

30. Survival of Provisions.

Any terms or conditions of this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

31. Construction.

This Agreement has been carefully reviewed by each of the parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

32. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

(SEAL)

FLORIDA KEYS AQUEDUCT AUTHORITY

By: _____
J. Robert Dean, Chairman

ATTEST: Antoinette Appell, Secretary/Treasurer

CITY OF KEY WEST, FLORIDA

ATTEST: Patti McLaughlin, City Manager
Clerk

EXHIBIT A

FKAA Connection Point to CITY Sanitary System



MH 26

Lat 24.568 dd
Long -81.752 dd

NAD 1983 StatePlane Florida East FIPS 0901 (US Feet)

EXHIBIT B

ANNUAL RATES AND CHARGES SCHEDULE
FY 2022

Rate Component	Amount
Minimum Monthly Charge	\$1,000 per month
Sanitary Flow Volume Rate	\$6.46 per 1,000 gallons

The following tables provide the calculation basis for each rate component.

Notes:

a. Kgals = 1,000 gallons

EXHIBIT C
SCHEDULE OF CAPACITY RESERVATION

Flow	FKAA Share	City Share	System Design
	mgd	mgd	mgd
Average Daily Flow	0.15	4.60	7.20
Maximum Month Average Daily Flow	0.2	7.70	10.00
Peak Daily Flow	0.2	10.00	13.00
Percentage Allocation	1.5	98.5%	100%

Notes:

mgd = million gallons per day