

LINE EXTENSION AGREEMENT
between
K W RESORT UTILITIES CORP.
and
THE CITY OF KEY WEST

This Agreement ("Agreement") is made this ____ day of _____, 2019, by and between K W Resort Utilities Corp., a for-profit Florida corporation having its principal place of business at 6630 Front Street, Key West, FL 33040 (hereinafter referred to as "KWRU" or "Utility") and the City of Key West, whose address is 1300 White Street, Key West, Florida 33040 (hereinafter referred to as the "City").

WHEREAS, the City has proposed to develop a new One Hundred and Four residential dwelling unit housing project ("Project") located at 5220, 5224, 5228 and 5230 College Road, Key West, Stock Island, Florida ("Property"); and

WHEREAS, KWRU is the wastewater public utility which tariff area includes the Property; and

WHEREAS, the Project's size requires the increase in size of the pipe of KWRU's collection system in the College Road Right of Way to accommodate the wastewater flows generated by the Project as depicted in the plans attached as Appendix A ("Work"); and

WHEREAS, the City is obligated to pay any expenses associated with the wastewater flows generated by the Project, including but not limited to any improvements necessary to the Utility's infrastructure caused by the Project;

NOW, therefore, in consideration of the mutual promises contained herein, and other good and valuable consideration, the parties agree as follows:

1. Term. The term of this Agreement shall begin on the date first above written ("Effective Date"), and shall continue until the Work described in Appendix A to this Agreement, is completed.

2. Contract Documents. The Contract Documents shall consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, plans dated September 16, 2019, included herein as Appendix A, and any amendment issued after execution of this Agreement. The Contract represents the entire integrated agreement between the parties hereto and supersedes any and all prior negotiations, representations or agreements on the subject, whether written or oral.

3. Scope of Services.

A. In consideration for the payment of the Payment Amount by City to Utility, the Utility agrees to perform the Work. This Work is based on plans dated

September 16, 2019, which have been submitted to the City prior to execution of this Agreement.

B. The Utility further agrees to provide a set of as-built plans within ninety (90) days following completion of the Work.

4. Compensation. The City agrees to pay for all work associated with the Work. KWRU estimates the total cost of the Work as Two Hundred Thirty Six Thousand Two Hundred Forty-five Dollars (\$236,245) to the Utility ("Payment Amount"). The Payment Amount shall consist of:

A. Contractor fees estimated in the amount of One Hundred Eighty Five Thousand Nine Hundred Ninety-five Dollars (\$185,995); and

B. Engineering, design, and inspection fees estimated in the amount of Forty Five Thousand Dollars (\$45,000); and

C. Legal fees estimated in the amount of Five Thousand Dollars (\$5,000); and

D. Florida Department of Environmental Protection application fee in the amount of Two Hundred and Fifty Dollars (\$250).

Notwithstanding the foregoing, the City agrees to pay to the Utility all actual costs associated with doing the Work to service the Project.

5. Payment will be made pursuant to Section 218.70, Florida Statutes, the Florida Local Government Prompt Payment Act.

6. Termination.

A. This Agreement may be terminated by the City for breach of any provision of this Agreement, if, after written notice of the breach is delivered, the Utility does not cure the breach within seven (7) calendar days following delivery of notice of the breach.

B. Should the Agreement be terminated, the City shall pay for all reimbursable costs incurred to the effective date of termination.

7. Warranties. The Utility warrants and represents that:

A. Its existing facilities, and all facilities to be constructed as outlined in this Agreement, are and will be in compliance with all applicable existing environmental permits, laws, rules, and orders.

B. The Utility holds and at all times relevant and necessary will hold all necessary permits, certificates, licenses, and authorizations from the Florida Department of Environmental Protection, the Florida Public Service Commission, and any and all

other licensing or regulatory agencies with jurisdiction over the Utility and the Work to be performed under this Agreement.

8. Indemnification and Hold Harmless.

A. To the extent allowed by law, the Utility agrees to fully defend, release, discharge, indemnify and hold harmless the City, the members of the City Commission, City 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 Utility's operations in connection with this Agreement 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 City. The Utility's purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph.

B. This indemnification and hold harmless provision shall survive the expiration or early termination of this Agreement.

9. Public Records.

A. The Utility agrees to keep its financial records pertaining to this Agreement according to generally accepted accounting principles. The records will be maintained for a period of seven (7) years following completion of this Agreement. The City, its officers, employees, agents and designees shall have access to the Utility's books and records related to this Agreement at any time during normal business hours upon request.

B. The Utility agrees to make its financial records pertaining to this Agreement available to an auditor employed by the City during regular business hours (Monday – Friday, 9 am – 5 pm, holidays excepted). If an auditor determines that money paid by the City to the Utility was not spent as authorized by this Agreement, then the Utility will be required to repay to the City the amounts not spent or remitted as required by this Agreement, together with interest thereon calculated at the rate set forth in Section 55.03, Florida Statutes, from the date the auditor determines that the funds were improperly spent or withheld.

10. Notice.

A. Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

For the City:
Mr. Gregory Veliz, City Manager
City of Key West
1300 White St.
Key West, FL 33040

With a copy to:
George Wallace, Esq.
City of Key West Attorney's Office
1300 White Street
Key West, FL 33040

For the Utility:
Mr. Chris Johnson
President
K W Resort Utilities Corp.
6630 Front Street,
Key West, FL 33040

With a copy to:
Barton W. Smith, Esq.
Smith Hawks PL
138 Simonton St.
Key West, FL 33040

11. Public Entities Crimes.

A. A person or affiliate who has been placed by the Florida Department of Management Services on the convicted vendor list (http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/convicted_vendor_list) following a conviction for a public entity crime may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes for category two (\$35,000) for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By signing this Agreement, the Utility represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes). Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from the City's competitive procurement activities.

B. In addition to the foregoing, the Utility further represent that there has been no determination, based on an audit, that it, any of its consultants, contractors or subcontractors in any tier, has committed an act defined by Section 287.133, Florida Statutes, as a "public entity" crime, and that neither itself, nor any consultant, contractor or subcontractor in any tier has been formally charged with committing an act defined in the said statute as a "public entity crime," regardless of the money involved or whether the entity has been placed on the convicted vendor list.

C. The Utility will formally notify the City if it, a contractor or subcontractor is formally charge with a "public entity crime" or has been placed on the convicted vendor list.

12. Subsequent Conveyance. After completion of the Work by the Utility, the City agrees to convey the new force main pipes described in Appendix A to Utility, or to a subsidiary company of Utility, who will service and maintain the force main pipes.

13. Miscellaneous Provisions.

A. This agreement constitutes the full and final agreement between the parties, and can never be amended except in a duly authorized writing signed by both parties. Any prior agreements, promises, negotiations or representations, either verbal or written, relating to the subject matter of this Agreement and not expressly set forth in this Agreement are of no force and effect.

B. This Agreement may not be assigned, without the prior written consent of the other party to the Agreement.

C. This Agreement is subject to and shall be governed by the laws of the State of Florida. Any action brought by either party to enforce the terms of the Agreement shall be brought before the State of Florida Public Service Commission.

D. Any notice required to be given pursuant to this Agreement shall be in writing, postage pre-paid, and shall be sent by certified or registered mail, return receipt requested, or by Federal Express or other overnight mail delivery at the address indicated on the first page of this Agreement, or such other address that a party may hereafter designate in writing. The notice shall be effective on the date the notice was received.

E. 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 or regulatory body 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 Parties 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.

F. The Agreement shall be binding upon and inure to the benefit of the parties, their agents, servants, employees, successors, and assigns unless otherwise set forth herein or agreed to by the parties.

G. The Utility understands and agrees that officers and employees of the City are required to comply with the standards of conduct for 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. The Utility warrants that it will take no action that would cause an officer or employee of the City to violate the Florida Code of Ethics contained in that statutory provision.

H. The Utility shall not discriminate against any person on the basis of race, color, religion, national origin, sex, age, pregnancy, sexual orientation, gender expression, disability in its recruiting, hiring, promoting, terminating, awarding of contracts, or any other area affecting employment or the provision of goods and services covered by this Agreement.

I. The City and Utility 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, which shall include attorneys' fees, court costs, investigative and out of pocket expenses at appellate stages as well as at the trial court stage.

J. The terms, covenant, conditions and provisions of this Agreement shall bind and inure to the benefit of the City and the Utility, their legal representatives, successors and assigns.

K. Each party warrants to the other that the execution, delivery and performance of this Agreement has been duly authorized by all necessary City and corporate action, as required by law.

L. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument. An electronic signature or facsimile signature shall be as binding as an original.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, on the date first written above, the parties have caused this Agreement to be executed by their duly authorized representatives.

(Seal)
Attest: Cheri Smith, Clerk

CITY OF KEY WEST

By: _____
Clerk

By: _____
Gregory Veliz, City Manager

Attest (witnesses):

K W RESORT UTILITIES CORP.

By: _____
Print Name:

By: _____
Title: President