

RESOLUTION NO. 22-046

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "INTERLOCAL AGREEMENT BETWEEN THE FLORIDA KEYS AQUEDUCT AUTHORITY (FKAA) AND THE CITY OF KEY WEST" FOR THE COLLECTION AND BILLING OF WASTEWATER FLOWS FROM FKAA'S BIG COPPITT WASTEWATER TREATMENT PLANT FOR A TERM OF 20 YEARS; AUTHORIZING ANY NECESSARY BUDGET ADJUSTMENTS AND TRANSFERS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, FKAA has a need for increased wastewater treatment due to permitting regulations and increased flows coming online to their treatments plants; and

WHEREAS, FKAA reached out to the City of Key West, requesting availability of flow capacity and connection possibilities to divert flow of up to 150,000 gallons per day of to the Key West Wastewater Treatment Plant (WWTP) from the Big Coppitt Key Treatment Plant; and

WHEREAS, the Key West WWTP has capacity to accept such additional flow, and the requested .15 MGD is acceptable under the current operations permit; and

WHEREAS, all costs to connect into the City's system, flow meters and future costs for maintenance of the connection point are 100% allocable to FKAA; and

WHEREAS, City staff finds that an interlocal agreement would not place unreasonable hardship on the WWTP capacity, while allowing FKAA to meet regulatory compliance at the Big

Coppitt Treatment Plant, without incurring the burdensome cost and effort required to expand facilities at this time; and

WHEREAS, City staff finds that approval of an interlocal agreement to allow FCAA to construct a wastewater connection point to the WWTP at the intersection of Duck Avenue and South Roosevelt Blvd, and to compensate the City for the connection, and monthly wastewater flows would benefit the City, FCAA, water/sewer customers in Key West and Monroe County, and the environment of and surrounding Key West and the Lower Keys; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: That the attached "Interlocal Agreement between Florida Keys Aqueduct Authority and the City of Key West" (ILA) for the collection and billing of wastewater flows from FCAA's Big Coppitt Wastewater treatment plant for a term of 20 years is hereby approved.

Section 2: That city revenue pursuant to this ILA will be allocated to WWTP operating/improvements/reserve accounts as necessary through the annual budget process. All costs to connect into the City's system, flow meters, and future costs for the maintenance of the connection point are 100% allocable to FCAA.

Section 3: That the City Manager is authorized to execute the interlocal agreement, and any necessary documents for this project, upon consent of the City Attorney.

Section 4: 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 1st day of February, 2022.

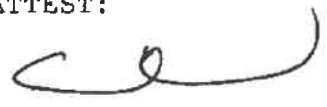
Authenticated by the Presiding Officer and Clerk of the Commission on 2nd day of February, 2022.

Filed with the Clerk on February 2, 2022.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


TERI JOHNSTON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

MEMORANDUM

TO: Patti McLaughlin, City Manager

FROM: John Paul Castro, Utilities Director

CC: Todd Stoughton, Assistant City Manager

DATE: January 24, 2021

SUBJECT: Interlocal Agreement with FKAA for the Acceptance of Limited Wastewater Flow from the Big Coppitt Key Treatment Plant

ACTION STATEMENT:

This resolution will approve an interlocal agreement (ILA) between the City of Key West and the Florida Keys Aquaduct Authority (FKAA) for the collection and billing of wastewater flows from FKAA's Big Coppitt Wastewater treatment plant for a term of 20 years.

BACKGROUND:

FKAA has a need for increased wastewater treatment due to permitting regulations and increased flows coming online to their treatment plants. FKAA has met the maximum flow for the Big Coppitt treatment plant and per Florida Department of Environmental Protection (FDEP) must either expand their treatment capacity or send flows elsewhere.

FKAA reached out to City staff requesting availability of flow capacity and connection possibilities to divert flow to the City of Key West wastewater treatment plant (WWTP). The requested flow from the Big Coppitt plant is 150,000 gallons per day.

PURPOSE & JUSTIFICATION:

The City of Key West WWTP has a permit capacity of 10 million gallons per day. WWTP flows currently average 4.5 million gallons per day (MGD). Capacity exists at the City's WWTP to accept additional flows. The requested .15 MGD is acceptable under the current operations permit.

A connection point has been identified at the end of Duck Ave. at South Roosevelt Blvd. that can accommodate both the physical connection needed by FKAA and then handle the flows being diverted.

The City hired Raftelis Financial Consulting to run a rate model for the wholesale pricing of wastewater from FKAA. The connection fee and commodity flow rate within the ILA are a result of a 5-year capital plan rate model in which only costs associated with the FKAA flow were considered. The results of the financial model are a connection fee of \$1,076,369.00 and a flow rate of \$6.46 per 1,000 gallons. The estimated yearly revenue is \$353,685.00.

All costs to connect into the City's system, flow meters, and all future costs for the maintenance of the connection point are 100% allocable to FKAA.

OPTIONS:

1. The City Commission can approve the attached ILA with FKAA and accept .15 MGD into the City's wastewater collection system. This would allow FKAA to meet regulatory compliance at the Big Coppitt treatment plant and save FKAA an estimated \$15 million in expansion costs and multiple years of construction.
2. The City Commission could not approve the ILA or request additional/amended terms and conditions.

FINANCIAL IMPACT:

A one-time connection paid to fund 401 of \$1,076,369.00 would be collected from FKAA for their proportionate flow reserve plus \$6.46 per 1,000 gallons of flow read and billed on a monthly basis.

RECOMMENDATION:

City Staff recommends the City Commission select Option 1; approve the attached ILA with FKAA to accept .15 MGD of wastewater flows which is a mutually beneficial agreement.



BOARD OF DIRECTORS, FLORIDA KEYS AQUEDUCT AUTHORITY
AGENDA ITEM SUMMARY

AGENDA ITEM: OOC-01

CONSENT:

REGULAR:

MEETING DATE: March 8, 2022

DEPARTMENT: Office of Counsel

AGENDA TITLE:

Consideration to approve Resolution #22-03 and the Interlocal Agreement between the Authority and the City of Key West (City) to accept sufficient wastewater flow from the Authority Big Coppitt service area for the term of twenty 20 years.

ITEM BACKGROUND:

The City approved the ILA at its meeting February 1, 2022 The ILA would authorize the Authority to tie in its Big Coppitt wastewater treatment in order to avoid the costly and expenses to the Authority expanding it's existing Plant on Big Coppitt. The tie in cost and expenses, as well as the consumption and connection rates favorable to the Authority. A Supplement has been prepared to address concerns raised by a challenge to the ILA by Key West Resort Utilities.

PREVIOUS RELEVANT ACTION BY FKA BOARD OF DIRECTORS:

STAFF RECOMMENDATION (MOTION):

Consideration to Approve Resolution #22-03, Interlocal Agreement between the Authority and the City to accept sufficient wastewater flow from the Authority Big Coppitt service area. The Authority agrees to reimburse for the cost of Wholesale Wastewater Pricing in the amount of \$6,600.00. The Authority shall pay a one time connection fee to the City in the amount of One Million Seventy-Six Thousand Three Hundred Sixty-Nine (\$1,076,369.00) Dollars and the flow rate of \$6.46 per 1,000 gallons with not less than 1,000.00 per month and other terms as set forth in the ILA.

BOARD OF DIRECTORS, FLORIDA KEYS AQUEDUCT AUTHORITY
AGENDA ITEM SUMMARY

SUPPLEMENTAL INFORMATION:

DOCUMENTATION: Included: To-Follow: Not Required:

Cost to FCAA: \$ 1,082,969. **BUDGETED:** Yes No

Cost to Others: \$ _____

Total Cost: \$ 1,082,969.

Department: Office of Counsel Department Director: *John T. J. [Signature]*

Exe. Director: *[Signature]* Deputy Exe. Director: *[Signature]*

Internal Auditor: *[Signature]* General Counsel: *BTJ*

BOARD ACTION:

Approved: Tabled: Disapproved: Recommendation Revised:

Comments: _____

Date: March 8, 2022 Recording Clerk: *Pamela [Signature]*

FLORIDA KEYS AQUEDUCT AUTHORITY

RESOLUTION #22-03

A RESOLUTION OF THE FLORIDA KEYS AQUEDUCT AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE INTERLOCAL AGREEMENT BETWEEN FLORIDA KEYS AQUEDUCT AUTHORITY AND THE CITY OF KEY WEST TO ACCEPT SUFFICIENT WASTEWATER FLOW FROM THE AUTHORITY'S BIG COPPITT SERVICE AREA AND AGREEING TO DEFEND THE CITY OF KEY WEST SHOULD THE ILA BE CHALLENGED BY KEY WEST RESORT UTILITIES.

WHEREAS, FKAA has a need for increased wastewater treatment due to permitting regulations and increased flows coming online to their treatment plants; and

WHEREAS, FKAA reached out to the City of Key West, requesting availability of flow capacity and connection possibilities to divert flow of up to 150,000 gallons per day of to the Key West Wastewater Treatment Plant (WWTP) from the Big Coppitt Key Treatment Plant; and

WHEREAS, the Key West WWTP has capacity to accept such additional flow, and the requested .15 MGD is acceptable under the current operations permit; and

WHEREAS, all costs to connect into the City's system, flow meters and future costs for maintenance of the connection point are 100% allocable to FKAA; and

WHEREAS, City staff finds that an interlocal agreement would not place unreasonable hardship on the WWTP capacity, while allowing FKAA to meet regulatory compliance at the Big Coppitt Treatment Plant, without incurring the burdensome cost and effort required to expand facilities at this time; and

WHEREAS, City staff finds that approval of an interlocal agreement to allow FKAA to construct a wastewater connection point to the WWTP at the intersection of Duck Avenue and South Roosevelt Blvd, and to compensate the City for the connection, and monthly wastewater flows would benefit the City, FKAA, water/sewer customers in Key West and Monroe County, and the environment of and surrounding Key West and the Lower Keys; and

NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA KEYS AQUEDUCT AUTHORITY BOARD OF DIRECTORS.

Section 1: That the attached "Interlocal Agreement between Florida Keys Aqueduct Authority and the City of Key West" (ILA) for the collection and billing of wastewater flows from FKAA's Big Coppitt Wastewater treatment plant for a term of 20 years and the "Supplemental Provision to the Interlocal Agreement Between the Florida Keys Aqueduct Authority and the City of Key West" is hereby approved.

Section 2: That city revenue pursuant to this ILA will be allocated to WWTP operating/improvements/reserve accounts as necessary through the annual budget process. All costs to connect into the City's system, flow meters, and future costs for the maintenance of the connection point are 100% allocable to FKAA

Section 3: That the Executive Director is authorized to execute the interlocal agreement, and any necessary documents for this project, upon consent of the General Counsel.

Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Executive Director and the Board's Chairman and Secretary.

Passed and adopted by the Board of Directors at a meeting held this 22nd day of February, 2022.

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 Bean, Chairman

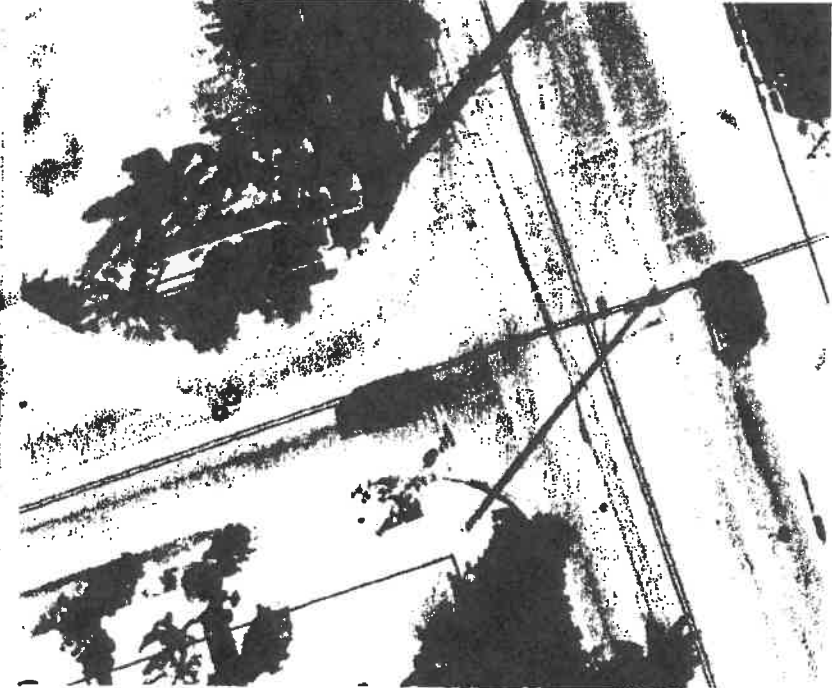

ATTEST:

By: 
Antoinette Appell, Secretary/Treasurer

EXHIBIT A

FCAA Connection Point to CITY Sanitary System

ORIGID	1225
PLANID	MH 26 ^
RMELEVATION	3.88
SOURCE_RMELEV	DEM
TYPE	MANHOLE
STATUS	ACTIVE
OWNERSHIP	CITY
MAINTENANCE	<Null>
MAINTENANCE_COMMENT	<Null>
EDITOR	<Null>
INSTALL_DATE	<Null>
INSTALL_YEAR	2000
REF_PLANSET	Sewer District Rohab
NOTES	<Null>
DISTRICT	G
DATUM	NGVD29
ORIGINAL_DATUM	NGVD29
DEM_ELEVATION88	2.345338
VERTCON_FACTOR	-1.348
CONVERTED_ELEVATION29	3.88
Lat	24.568 dd
Long	-81.752 dd v
Invert	<Null>



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	FCAA 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

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.

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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:

By: 
Antoinette Appell, Secretary/Treasurer



ATTEST:
Clerk

CITY OF KEY WEST, FLORIDA

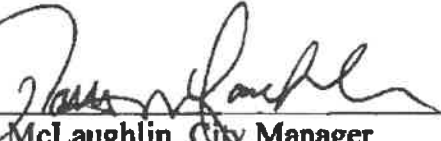
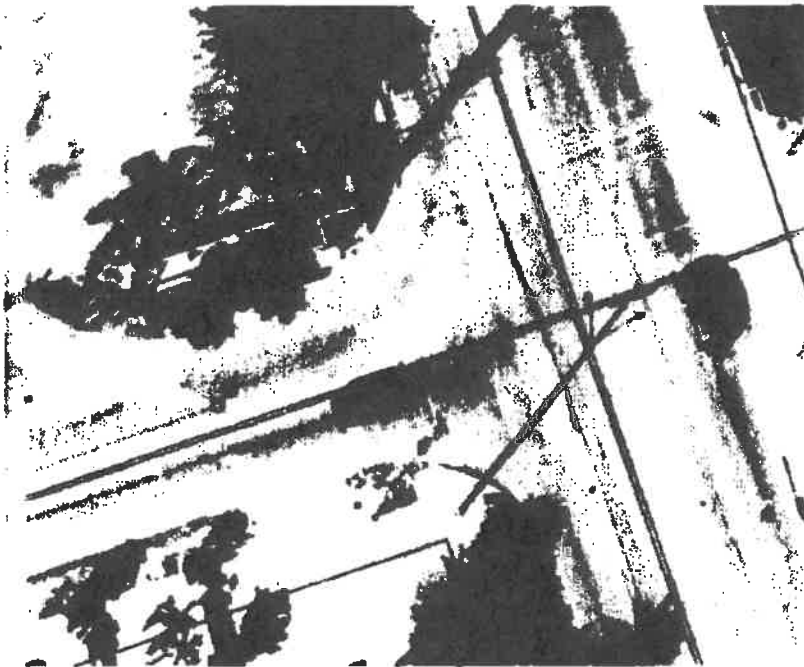
By: 
Patti McLaughlin, City Manager

EXHIBIT A

FKAA Connection Point to CITY Sanitary System

UNIQUEID	1225
PLANSID	MH 26
RSELEVATION	2.68
SOURCE_RISELEV	DEM
TYPE	MANHOLE
STATUS	ACTIVE
OWNSHIP	CITY
MAINTENANCE	<Null>
MAINTENANCE_COMMENT	<Null>
EDITOR	<Null>
INSTALL_DATE	<Null>
INSTALL_YEAR	2000
REF_PLANSSET	Sewer District District Pub
NOTED	<Null>
DISTRICT	0
DATUM	NOV080
ORIGINAL_DATUM	NOV080
DEM_ELEVATION	2.362336
VERTCON_FACTOR	-1.241
CONVERTED_ELEVATION	2.68
Lat	24.568 dd
Long	-81.752 dd
Level	<Null>



MH 26

**Lat 24.568 dd
Long -81.752 dd**

NAD 1983 StatePlane Florida East FIPS 0901 (US Feet)

EXHIBIT B

Page 11 of 13

**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

**SUPPLEMENTAL PROVISION TO THE INTERLOCAL AGREEMENT
BETWEEN THE FLORIDA KEYS AQUEDUCT AUTHORITY AND THE
CITY OF KEY WEST**

THIS SUPPLEMENTAL PROVISION is entered into this ____ day of _____, 2022 by and between Florida Keys Aqueduct Authority (FKAA) and the City of Key West;

RECITALS

WHEREAS, the City of Key West approved and executed that certain proposed Interlocal Agreement between the City of Key West and the Florida Keys Aqueduct Authority (FKAA) on February 22, 2022 as approved by Resolution No. 22-046, and:

WHEREAS, the City of Key West and the Florida Keys Aqueduct Authority have received a demand letter from a third-party utility threatening certain legal challenges to the Interlocal Agreement claiming the ILA to be unlawful:

NOW THEREFORE:

1. In the event the third-party utility successfully challenges the proposed ILA between the City of Key West and the FKAA, then either party shall have the right to terminate the ILA upon reasonable notice to the other party.
2. Notwithstanding the Interlocal Agreement (ILA) previously negotiated and approved by the City of Key West, with respect to claim(s) from a third-party utility, FKAA agrees to indemnify, defend, and hold free and harmless, the CITY and each of its members, agents, servants, employees, officers, and directors, from and against any and all actions, claims, liabilities, assertions, of liability, losses, costs, and expenses including, but not limited to, attorney fees, reasonable investigative and discovery costs, and court costs, which in any manner may arise or be alleged to have arisen, or resulted, or alleged to have resulted, from the presence and activities, or any nature or otherwise of

FKAA, its agents, servants, or employees relating to this ILA and claim(s) from a third-party utility and shall additionally include but not be limited to, appellate, supplemental or bankruptcy proceedings. This indemnification shall survive the term of this agreement. In the event that any action or proceeding is brought against the City of Key West by reason of such claim or demand, FKAA shall resist and defend such action or proceeding by counsel of FKAA's choosing.

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

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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:

By: 

Antoinette Appell, Secretary/Treasurer

CITY OF KEY WEST, FLORIDA

By: _____

Patti McLauchlin, City Manager

ATTEST:

Clerk

RESOLUTION NO. 22-046

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "INTERLOCAL AGREEMENT BETWEEN THE FLORIDA KEYS AQUEDUCT AUTHORITY (FKAA) AND THE CITY OF KEY WEST" FOR THE COLLECTION AND BILLING OF WASTEWATER FLOWS FROM FKAA'S BIG COPPITT WASTEWATER TREATMENT PLANT FOR A TERM OF 20 YEARS; AUTHORIZING ANY NECESSARY BUDGET ADJUSTMENTS AND TRANSFERS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, FKAA has a need for increased wastewater treatment due to permitting regulations and increased flows coming online to their treatments plants; and

WHEREAS, FKAA reached out to the City of Key West, requesting availability of flow capacity and connection possibilities to divert flow of up to 150,000 gallons per day of to the Key West Wastewater Treatment Plant (WWTP) from the Big Coppitt Key Treatment Plant; and

WHEREAS, the Key West WWTP has capacity to accept such additional flow, and the requested .15 MGD is acceptable under the current operations permit; and

WHEREAS, all costs to connect into the City's system, flow meters and future costs for maintenance of the connection point are 100% allocable to FKAA; and

WHEREAS, City staff finds that an interlocal agreement would not place unreasonable hardship on the WWTP capacity, while allowing FKAA to meet regulatory compliance at the Big

Coppitt Treatment Plant, without incurring the burdensome cost and effort required to expand facilities at this time; and

WHEREAS, City staff finds that approval of an interlocal agreement to allow FKAA to construct a wastewater connection point to the WWTP at the intersection of Duck Avenue and South Roosevelt Blvd, and to compensate the City for the connection, and monthly wastewater flows would benefit the City, FKAA, water/sewer customers in Key West and Monroe County, and the environment of and surrounding Key West and the Lower Keys; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: That the attached "Interlocal Agreement between Florida Keys Aqueduct Authority and the City of Key West" (ILA) for the collection and billing of wastewater flows from FKAA's Big Coppitt Wastewater treatment plant for a term of 20 years is hereby approved.

Section 2: That city revenue pursuant to this ILA will be allocated to WWTP operating/improvements/reserve accounts as necessary through the annual budget process. All costs to connect into the City's system, flow meters, and future costs for the maintenance of the connection point are 100% allocable to FKAA.

Section 3: That the City Manager is authorized to execute the interlocal agreement, and any necessary documents for this project, upon consent of the City Attorney.

Section 4: 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 1st day of February, 2022.

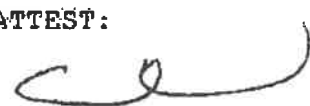
Authenticated by the Presiding Officer and Clerk of the Commission on 2nd day of February, 2022.

Filed with the Clerk on February 2, 2022.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


TERI JOHNSTON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

4069-17

BOARD OF DIRECTORS, FLORIDA KEYS AQUEDUCT AUTHORITY

AGENDA ITEM SUMMARY

AGENDA ITEM: DOE-02 CONSENT: REGULAR:
MEETING DATE: December 16, 2020 DIVISION: Engineering

AGENDA TITLE:

Consideration to approve award of Task Order 2 to Wharton-Smith team for final design and pre-construction services for the expansion of the Big Coppitt Wastewater Treatment Plant (WWTP) for FCAA Project 4069-17 in the amount of \$732,769.

ITEM BACKGROUND:

- The wastewater treatment plant (WWTP) is currently operating at 95 percent of its annual average daily flow (AADF) permitted capacity of 0.323 MGD.
- This project will increase the AADF capacity to 0.538 MGD by adding two additional Sequencing Batch Reactors for an estimated construction cost of \$13 million.
- The WWTP was not originally designed to treat the flows from the additional affordable housing units in Big Coppitt and flows from the Boca Chica NAS.

PREVIOUS RELEVANT ACTION BY FCAA BOARD OF DIRECTORS:

- On April 22, 2020, the Board of Directors approved the selection of the Wharton-Smith team to provide Design-Build services for expansion of the Big Coppitt Wastewater Treatment Plant.
- On August 26, 2020, the Board of Directors approved Task Order 1 for preliminary design for \$174,471.

STAFF RECOMMENDATION (MOTION):

Consideration to approve award of Task Order 2 to Wharton-Smith team for final design and pre-construction services for the expansion of the Big Coppitt Wastewater Treatment Plant (WWTP) for FCAA Project 4069-17 in the amount of \$ 732,769.

SUPPLEMENTAL INFORMATION:

See attached proposal from Wharton-Smith Team.

DOCUMENTATION: Included: To-Follow: Not Required:

Cost to FCAA: \$ 732,769 BUDGETED: Yes No
 Cost to Others: \$ _____
 Total Cost: \$ 732,769

DEPARTMENT: Engineering DEPARTMENT MANAGER APPROVAL: Jolynn Reynolds Digitally signed by Jolynn Reynolds Date: 2020.12.16 11:40:02

Reviewed by: Internal Auditor _____ General Counsel: RTF Executive Director: Kerry Shelby Digitally signed by Kerry Shelby Date: 2020.12.07 11:20:05

BOARD ACTION:

Approved: Tabled: Disapproved: Recommendation Revised:

Comments: _____

Date: 12.16.20 Recording Clerk: Paula Aley

**BOARD OF DIRECTORS, FLORIDA KEYS AQUEDUCT AUTHORITY
AGENDA ITEM SUMMARY**

AGENDA ITEM: DOCP- TAB: _____ CONSENT: REGULAR:

MEETING DATE: August 24, 2021 DEPARTMENT: Capital Projects

AGENDA TITLE:

Consideration to approve ranking from Sunshine Committee and contract negotiations with highest ranked firm (Baxter and Woodman Consulting Engineers) for professional engineering services for the new wastewater force main from Key Haven to Key West (FKAA Proj. 4090-21).

ITEM BACKGROUND:

RFQ 0012-21 was advertised on July 2, 2021. Qualifications packages were opened on August 3, 2021. The Sunshine Committee meeting held on August 11, 2021 reviewed and ranked the submissions; Baxter & Woodman received the highest ranking.

PREVIOUS RELEVANT ACTION BY FKAA BOARD OF DIRECTORS:

None

STAFF RECOMMENDATION (MOTION):

Approve ranking from Sunshine Committee and contract negotiations with highest ranked firm (Baxter and Woodman Consulting Engineers) for professional engineering services for the new wastewater force main from Key Haven to Key West (FKAA Proj. 4090-21).

SUPPLEMENTAL INFORMATION:

See attached memo summarizing the Sunshine Committee review.

DOCUMENTATION: Included: To-Follow: Not Required:

Cost to FKAA: \$ _____
Cost to Others: \$ _____
Total Cost: \$ _____

BUDGETED: Yes No

Department: Capital Projects

Department Director Approval: DJH

Executive

Deputy Executive Director Approval: _____

Director Approval: _____

Internal Auditor: _____

General Counsel: _____

BOARD ACTION:

Approved: _____ Tabled: _____ Disapproved: _____ Recommendation Revised: _____

Comments: _____

Date: _____ Recording Clerk: _____

BOARD OF DIRECTORS, FLORIDA KEYS AQUEDUCT AUTHORITY
AGENDA ITEM SUMMARY

AGENDA ITEM: DOE-08 CONSENT: REGULAR:
MEETING DATE: April 27, 2021 DIVISION: Engineering

AGENDA TITLE:

Consideration to approve contract for Phase 1 services with Water Science Associates for Project # 4069-17 - Big Coppitt Wastewater Treatment Plant Expansion in the amount not to exceed of \$118,500.

ITEM BACKGROUND:

The FKAAs submitted a FDEP permit application for the Big Coppitt Wastewater Treatment Plant (BCWWTP) Expansion. FDEP issued a Request for Additional Information (RAI). The RAI is associated with the BCWWTP disposal well application to rerate the permitted flow to the injection wells. WSA will assist the FKAAs in addressing and responding to the RAI.

PREVIOUS RELEVANT ACTION BY FKAAs BOARD OF DIRECTORS:

On March 25, 2015, the Board approved the selection of Water Science Associates to provide services related to groundwater projects for FKAAs's water and wastewater systems.

STAFF RECOMMENDATION (MOTION):

is that the Board approve contract for Phase 1 services with Water Science Associates for Project # 4069-17 - Big Coppitt Wastewater Treatment Plant Expansion in the amount not to exceed of \$118,500.

SUPPLEMENTAL INFORMATION:

See attached.

DOCUMENTATION: Included: To-Follow: Not Required:

Cost to FKAAs: \$ 118,500 BUDGETED: Yes No
Cost to Others: \$ -
Total Cost: \$ 118,500

DEPARTMENT: Engineering DEPARTMENT MANAGER APPROVAL: Jolynn Reynolds Digitally signed by Jolynn Reynolds Date: 2021.04.14 12:02:03 -0700

Reviewed by: Internal Auditor Timothy Esquinado Digitally signed by Timothy Esquinado Date: 2021.04.14 12:02:03 -0700 General Counsel: J.F. Executive Director Kerry G. Shelby Digitally signed by Kerry G. Shelby Date: 2021.04.17 12:02:03 -0700

BOARD ACTION:

Approved: Tabled: Disapproved: Recommendation Revised:

Comments: _____

Date: 4.27.21

Recording Clerk: Paula Alvarado

4069-17

BOARD OF DIRECTORS, FLORIDA KEYS AQUEDUCT AUTHORITY

AGENDA ITEM SUMMARY

AGENDA ITEM: DOE-02 CONSENT: REGULAR:
MEETING DATE: December 16, 2020 DIVISION: Engineering

AGENDA TITLE:

Consideration to approve award of Task Order 2 to Wharton-Smith team for final design and pre-construction services for the expansion of the Big Coppitt Wastewater Treatment Plant (WWTP) for FCAA Project 4069-17 in the amount of \$732,769.

ITEM BACKGROUND:

- The wastewater treatment plant (WWTP) is currently operating at 95 percent of its annual average daily flow (AADF) permitted capacity of 0.323 MGD.
- This project will increase the AADF capacity to 0.538 MGD by adding two additional Sequencing Batch Reactors for an estimated construction cost of \$13 million.
- The WWTP was not originally designed to treat the flows from the additional affordable housing units in Big Coppitt and flows from the Boca Chica NAS.

PREVIOUS RELEVANT ACTION BY FCAA BOARD OF DIRECTORS:

- On April 22, 2020, the Board of Directors approved the selection of the Wharton-Smith team to provide Design-Build services for expansion of the Big Coppitt Wastewater Treatment Plant.
- On August 26, 2020, the Board of Directors approved Task Order 1 for preliminary design for \$174,471.

STAFF RECOMMENDATION (MOTION):

Consideration to approve award of Task Order 2 to Wharton-Smith team for final design and pre-construction services for the expansion of the Big Coppitt Wastewater Treatment Plant (WWTP) for FCAA Project 4069-17 in the amount of \$ 732,769.

SUPPLEMENTAL INFORMATION:

See attached proposal from Wharton-Smith Team.

DOCUMENTATION: Included: To-Follow: Not Required:

Cost to FCAA:	\$ <u>732,769</u>	BUDGETED:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Cost to Others:	\$ _____			
Total Cost:	\$ <u>732,769</u>			

DEPARTMENT: Engineering DEPARTMENT MANAGER APPROVAL: Jolynn Reynolds Digitally signed by Jolynn Reynolds Date: 2020.12.16 14:05:00 -0500

Reviewed by: Internal Auditor _____ General Counsel: RTF Executive Director: Kerry Shelby Digitally signed by Kerry Shelby Date: 2020.12.16 14:05:00 -0500

BOARD ACTION:

Approved: Tabled: Disapproved: Recommendation Revised:

Comments: _____

Date: 12.16.20 Recording Clerk: Paula Aley

BOARD OF DIRECTORS, FLORIDA KEYS AQUEDUCT AUTHORITY

AGENDA ITEM SUMMARY

AGENDA ITEM: DOCP- TAB: _____ CONSENT: REGULAR:

MEETING DATE: August 24, 2021 DEPARTMENT: Capital Projects

AGENDA TITLE:

Consideration to approve ranking from Sunshine Committee and contract negotiations with highest ranked firm (Baxter and Woodman Consulting Engineers) for professional engineering services for the new wastewater force main from Key Haven to Key West (FKAA Proj. 4090-21).

ITEM BACKGROUND:

RFQ 0012-21 was advertised on July 2, 2021. Qualifications packages were opened on August 3, 2021. The Sunshine Committee meeting held on August 11, 2021 reviewed and ranked the submissions; Baxter & Woodman received the highest ranking.

PREVIOUS RELEVANT ACTION BY FKAA BOARD OF DIRECTORS:

None

STAFF RECOMMENDATION (MOTION):

Approve ranking from Sunshine Committee and contract negotiations with highest ranked firm (Baxter and Woodman Consulting Engineers) for professional engineering services for the new wastewater force main from Key Haven to Key West (FKAA Proj. 4090-21).

SUPPLEMENTAL INFORMATION:

See attached memo summarizing the Sunshine Committee review.

DOCUMENTATION: Included: To-Follow: Not Required:

Cost to FKAA: \$ _____
 Cost to Others: \$ _____
 Total Cost: \$ _____

BUDGETED: Yes No

Department: Capital Projects

Department Director Approval: DJH

Executive Director Approval: _____

Deputy Executive Director Approval: _____

Internal Auditor: _____

General Counsel: _____

BOARD ACTION:

Approved: _____ Tabled: _____ Disapproved: _____ Recommendation Revised: _____

Comments: _____

Date: _____ Recording Clerk: _____

BOARD OF DIRECTORS, FLORIDA KEYS AQUEDUCT AUTHORITY

AGENDA ITEM SUMMARY

AGENDA ITEM: DOE-08 CONSENT: REGULAR:
 MEETING DATE: April 27, 2021 DIVISION: Engineering

AGENDA TITLE:

Consideration to approve contract for Phase 1 services with Water Science Associates for Project # 4069-17 - Big Coppitt Wastewater Treatment Plant Expansion in the amount not to exceed of \$118,500.

ITEM BACKGROUND:

The FCAA submitted a FDEP permit application for the Big Coppitt Wastewater Treatment Plant (BCWWTP) Expansion. FDEP issued a Request for Additional Information (RAI). The RAI is associated with the BCWWTP disposal well application to rerate the permitted flow to the injection wells. WSA will assist the FCAA in addressing and responding to the RAI.

PREVIOUS RELEVANT ACTION BY FCAA BOARD OF DIRECTORS:

On March 25, 2015, the Board approved the selection of Water Science Associates to provide services related to groundwater projects for FCAA's water and wastewater systems.

STAFF RECOMMENDATION (MOTION):

is that the Board approve contract for Phase 1 services with Water Science Associates for Project # 4069-17 - Big Coppitt Wastewater Treatment Plant Expansion in the amount not to exceed of \$118,500.

SUPPLEMENTAL INFORMATION:

See attached.

DOCUMENTATION: Included: To-Follow: Not Required:

Cost to FCAA: \$ 118,500 BUDGETED: Yes No
 Cost to Others: \$ -
 Total Cost: \$ 118,500

DEPARTMENT: Engineering

DEPARTMENT MANAGER APPROVAL: Jolynn Reynolds Digitally signed by Jolynn Reynolds Date: 2021.04.27 10:05:41 -0400

Reviewed by: Internal Auditor Timothy Esquinado

General Counsel: RTF Executive Director: Kerry G Shelby Digitally signed by Kerry G Shelby Date: 2021.04.27 10:05:41 -0400

BOARD ACTION:			
Approved: <input checked="" type="checkbox"/>	Tabled: <input type="checkbox"/>	Disapproved: <input type="checkbox"/>	Recommendation Revised: <input type="checkbox"/>
Comments: _____			
Date: <u>4.27.21</u>		Recording Clerk: <u>Pamela Allen</u>	