

RESOLUTION NO. 09-055

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING A 5 YEAR RENEWAL OF THE CONTRACT BETWEEN THE CITY OF KEY WEST AND OPERATIONS MANAGEMENT INTERNATIONAL, INC. (OMI) TO PROVIDE WASTEWATER AND STORMWATER SYSTEM OPERATION AND MAINTENANCE; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the current contract between the city and OMI provides for an option to renew for an additional five years.

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

Section 1: That the contract with OMI is renewed for an additional five year term pursuant to paragraph 4.1 of the contract.

Section 2: 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 3RD day of March, 2009.

Authenticated by the presiding officer and Clerk of the Commission on March 4, 2009.

Filed with the Clerk March 4, 2009.


MORGAN MCPHERSON, MAYOR

ATTEST:


CHERYL SMITH CITY CLERK



THE CITY OF KEY WEST

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

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TO: Jim Scholl, City Manager
E. David Fernandez, Asst. City Manager - Operations

FROM: Gary W. Bowman, General Services Director

DATE: February 9, 2009

SUBJECT: **Approval of a 5-Year Contract Extension between the City of Key West and OMI, Inc. to Provide Wastewater and Stormwater System Operation and Maintenance.**

Action Statement:

This resolution proposes the approval of a contract renewal between the City of Key West and OMI, Inc., for an additional five-year term to provide sewer and stormwater system operation and maintenance, including the Richard A. Heyman Environmental Pollution Control Facility (WWTP).

Background:

Prior to 1987, Key West had no biological sewage treatment capability. Wastewater was screened to remove large inorganic materials, chlorinated, and discharged to the Atlantic Ocean. The City determined that a more advanced method of wastewater treatment was needed to protect the near shore environment, so the Richard A. Heyman Environmental Protection Facility was designed and built.

It was then decided that the City needed the expertise to operate the facility and a request for proposal was developed to complete an operations and maintenance agreement with a private firm. Four operations companies submitted proposals for the original five year contract, and OMI was ultimately chosen as the City's consultant.

The partnership between OMI and the City of Key West has been renewed through the competitive bid process twice since its origin in 1989. After ten years, it became apparent that the public-private partnership was a success. The renewal in 1999 included a task order to a third party consultant, Black and Veatch, to compare the cost for services provided by OMI to those of their competitors. It was determined that OMI was well within industry cost standards and below those costs relative to geographical location.

Key to the Caribbean - Average yearly temperature 77° F

This resulted in contract changes that included two additional five-year agreement options between OMI and the City. This will be the third of three five year terms.

OMI supports many aspects of the community by contributing both man-hours and funding to many local non-profit organizations such as the Boys and Girls Club, Reef Relief, Hospice and Visiting Nurses Association, The Cancer Foundation, Key West High School Athletic Programs and Band, as well as being a major sponsor of the Children's Holiday Festival and Parade.

Purpose and Justification:

OMI has been acting as the City's "sewer" department for over twenty years. OMI continues to offer a competitive, cost-effective, privatized alternative to City operations of the wastewater treatment plant, collection system, and stormwater drainage system. History has shown that the exercise of putting this contract out to bid is expensive, time consuming, and is not required with legislative changes made in 1997 concerning public-private contract rules.

Public-private contract terms of up to twenty years are now common throughout the country. City staff have indicated they are very satisfied with the service that OMI provides. OMI has garnered several awards from the Florida Water Environment Association, including the Earl Phelps Award for Water Quality and the Collection System Award for Operations, Maintenance and Inflow Reduction.

Options:

The City has the option to forego the RFP process and automatically renew the current contract for the third of three five year terms if the City feels that OMI continues to provide adequate services.

The City could opt to go through the exercise of developing a request for proposals to operate and maintain the wastewater treatment plant, collection system, and stormwater drainage system. This option would require a third-party consultant to develop an RFP, prepare and schedule workshops with the mayor and commission, and develop a point system to rank competitors. The cost for this entire procedure could easily reach over \$50,000.00, with the significant possibility of OMI being chosen anyway.

A third option would be for the City to forego both the contract renewal with OMI and/or competitive bid of the service by assuming responsibility for the services provided through its Public Works Department. Using this option would require the City to staff all salaried positions and a significant number of skilled hourly positions within the various sub-departments of the sewer department. The City would also lose the significant depth of resources that OMI has provided from throughout their company during emergencies as evidenced after Hurricanes Georges and Wilma.

Financial Impact:

The existing contract is a modified cost-plus agreement that provides a management fee multiplier of 1.1575 over the direct operating costs. This fee is 2.25% less than the original 1.18 multiplier that the City agreed to in 1989. The agreement was designed to give the City budget control and audit rights when direct costs are reviewed and negotiated annually by the General Services Director. FY 2009 Sewer and Stormwater direct costs are \$4,421,109 (budget account # 401-3504-535-34) and \$572,369 (budget account # 402-3804-538-34) respectively.

Recommendation:

OMI and the City have developed a successful working relationship over a twenty year period. Since 2001, OMI has represented the City in winning numerous regulatory agency water quality, operational excellence, and safety awards that significantly enhance Key West's image as a steward of the environment and a world class tourist destination.

For these reasons staff recommends renewal of the existing contract with OMI.

RESOLUTION NO. 04-092

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED FIRST AMENDMENT TO AGREEMENT BETWEEN THE CITY AND OPERATIONS MANAGEMENT INTERNATIONAL, INC. (OMI); PROVIDING FOR AN EFFECTIVE DATE

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

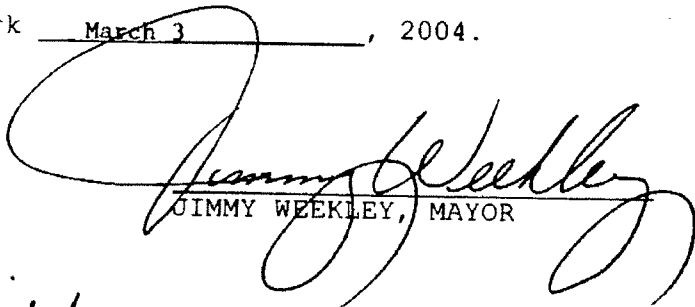
Section 1: That the attached Amendment to Agreement between the City and OMI is hereby approved; that a five-year renewal term is hereby approved; and the City Manager is authorized to execute the Amendment to Agreement on behalf of the City of Key West.

Section 2: 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 2 day of March, 2004.

Authenticated by the presiding officer and Clerk of the Commission on March 3, 2004.

Filed with the Clerk March 3, 2004.


JIMMY WEEKLEY, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

FIRST AMENDMENT TO
AGREEMENT FOR OPERATION, MAINTENANCE,
AND MANAGEMENT SERVICES FOR
THE CITY OF KEY WEST, FLORIDA, WASTEWATER FACILITIES

This First Amendment to Agreement is made and entered into this 25 day of May, 2004, by and between Operations Management International, Inc., ("Contractor") and the City of Key West, Florida ("City").

WITNESSETH:

WHEREAS, the City entered into an Agreement ("Agreement") with Contractor on March 1, 1999, for a period of five years upon certain terms and conditions; and

WHEREAS, City and Contractor desire to extend the contract according to Paragraph 4.1 of the agreement for a period of five years and to amend the terms of the Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the parties hereto agree effective March 1, 2004, as follows:

1. The term of the Agreement is extended for the first of two consecutive five year periods as provided in Paragraph 4.1 of the Agreement, commencing March 1, 2004.

2. Paragraph 2.8 shall be amended as follows:

2.8 Total Budgeted Amount. The sum of Total Budgeted Direct Cost plus ~~sixteen and six tenths percent (16.6%)~~ Fifteen and seventy-five hundredths percent (15.75%) of Total Budgeted Direct Cost which ~~sixteen and six tenths percent~~ fifteen and seventy-five hundredths figure shall constitute THE CONTRACTOR's indirect costs and management fees.

3. Paragraph 5.2 shall be amended as follows:

5.2 Total Budgeted Amount. The fee paid to THE CONTRACTOR as compensation for services performed shall be ~~sixteen and six tenths percent (16.6%)~~ Fifteen and seventy-five hundredths percent (15.75%) markup over Total Budgeted Direct Cost, plus Total Budgeted Direct Cost. Total Budgeted Direct Cost expended for Each Fiscal Year under this Agreement shall be negotiated annually commencing no later than five (5) months prior to the end of the then current Fiscal Year. If the parties fail to agree on the revision to the Fee by August 15 of each Fiscal Year, the Fee will be subject to Section 5.4(iii) hereof, and be determined by arbitration pursuant to Section 9 hereof unless said date is mutually extended.

4. Paragraph 5.3 shall be amended as follows:

5.3 Annual Adjustments. Within sixty (60) days after the end of each Fiscal Year, THE CONTRACTOR shall prepare and present to the City, a final financial report of the

Direct Cost of the Facilities for such Fiscal Year, comparing the Total Actual and Budgeted Direct Cost. If the Total Actual Direct Cost exceed the Total Budgeted Direct Cost, then no adjustment shall be made for that fiscal year to the Fee. If the Total Actual Direct Cost for any Fiscal Year are less than the Total Budgeted Direct Cost for said Fiscal Year , then THE CONTRACTOR shall be entitled to retain a portion of the estimated Fee paid for such fiscal Year pursuant to Section 5.1 hereof, based on the following formula:

1. Total Actual Direct Cost plus
2. ~~Sixteen and six tenths percent (16.6%)~~ Fifteen and seventy-five hundredths percent (15.75%) of Total Actual Direct Cost plus;
3. Fifty percent (50%) of the difference between Total Actual Direct Cost and Total Budgeted Direct Cost , up to a maximum difference of One Hundred Fifty Thousand dollars (\$150,000.00)

The balance of the Fee, calculated above, paid by the City for said Fiscal Year shall be rebated to the City in one lump sum payment with the final financial report described above. The Fee as adjusted herein shall be subject to the parameters in Section 5.4.

5. Paragraph 5.6 shall be amended as follows:

5.6 Initial Period Fee. The Fee for the initial period shall be One Million, Five Hundred Fifty-Two Thousand, Two Hundred and Forty-Three Dollars and Seventy-Seven Cents (\$1,552,243.77) Total Budgeted Direct Cost and markup of ~~sixteen and six tenths percent (16.6%)~~ Fifteen and Seventy-Five one hundredths percent (15.75%). Annual adjustments and Fee parameters under Section 5.3 and 5.4 shall be applied on a prorata basis where applicable (i.e., \$50,000 cap and Fixed Fee amount).

6. All other terms and conditions of the Agreement dated March 1, 1999, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have signed the day and year first above written.



Cheryl Smith
Cheryl Smith, City Clerk

CITY OF KEY WEST
Julio Avel
Julio Avel, City Manager

WITNESS

[Signature]

Eric Smith
Print Name

CONTRACTOR

R B Quayle

RB Quayle Sr VP
Print Name and Title

ES 5/25/04



EXECUTIVE SUMMARY

TO: Julio Arael, City Manager
CC: Mike Green, OMI, Inc.
FROM: E. David Fernandez, Utilities Director ED7
DATE: February 23, 2004

Action Statement: A resolution of the City Commission of the City of Key West, Florida, approving contract renewal between the City of Key West and OMI, Inc. for an additional five-year term providing for a management fee reduction from 16.6% to 15.75% over the direct operating costs and increase the Annual Adjustment up from \$100,000 to \$150,000.

Background:

Prior to 1987, Key West had no biological sewage treatment capability. Wastewater was screened to remove large inorganic materials, chlorinated, and discharged to the Atlantic Ocean. The City determined that a more advanced method of wastewater treatment was needed to protect the nearshore environment, so the Richard A. Heyman Environmental Protection Facility was designed and built. It was then decided that the City needed the expertise to operate the facility and a request for proposal was developed to compete an operations and maintenance agreement with a private firm. Four operations companies submitted proposals for the original five-year contract, with Operations Management International, Inc. (OMI) being ultimately chosen as the City's consultant. The partnership between OMI and the City of Key West has been renewed through competition twice since its origin in 1989. The most recent renewal in 1999 resulted in contract changes that included two additional five-year agreements upon mutual agreement of both OMI and the City.

OMI and the City have developed a successful working relationship over a fifteen-year period. OMI supports many aspects of the community by contributing both man-hours and funding to good causes throughout the City.

Purpose and Justification:

OMI has been acting as the City's sewer department for fifteen years. OMI continues to offer a competitive, cost-effective, privatized alternative to City operations of the wastewater treatment plant and stormwater system. The existing contract allows two optional contract extensions for five years each. The purpose of this resolution would be to extend the OMI contract for an additional five-year term.

Options/Advantages/Disadvantages:

The City could opt to go through the exercise of developing a request for proposals to operate and

maintain the wastewater treatment plant, collection system, and stormwater drainage system. This option would require a third-party consultant to develop an RFP, prepare and schedule a workshop with the mayor and commission, and develop a point system to rank competitors. The cost for this entire procedure could reach up to \$100,000.00. Based on the high level of service provided, and additional fee reduction offered, staff would likely recommend OMI being chosen for a fourth time. It is unlikely that rebid would result in a more competent or cost-effective contractor.

The City now has the option to renew the current contract. The current contract was bid as a 15-year contract allowing for 5-year renewals by mutual agreement. Service levels have been excellent, cost controls have been above average and management fee reductions continue to keep the contract competitive.

A third option would be for the City to forego both the contract renewal with OMI and/or re-competing the service by assuming responsibility for the services provided through its utilities department. Using this option would require the City to staff all salaried positions and a significant number of skilled hourly positions within the various sub-departments of the sewer department. Technical staff would have to be recruited and retained. Technical support and staff depth for emergencies would no longer be available.

Financial Impact:

The amended contract is a cost-plus agreement that provides a management fee of 15.75% over the direct operating costs with sharing of cost savings at \$150,000 maximum. The direct costs are reviewed and negotiated annually by the Utilities Director. Current year costs including the management fee are budgeted in 401.3504.535.34 for \$3,891,135 for sewer and \$457,776 is budgeted in 402.3804.538.34 for stormwater for a total of \$4,348,941.

Recommendation:

City staff recommends award of the contract extension for five years.

AGREEMENT FOR OPERATION, MAINTENANCE,
AND MANAGEMENT SERVICES FOR
THE CITY OF KEY WEST, FLORIDA, WASTEWATER FACILITIES

THIS AGREEMENT made this 1st day of March, 1999, by and between the City of Key West, Florida, a Florida municipal corporation (the "City") with an office located at 525 Angela Street, Key West, Florida 33040, and Operations Management International Inc., a California corporation (hereinafter THE CONTRACTOR) with an office located at 6060 South Willow Drive, Greenwood Village, Colorado 80111-5142.

WITNESSETH:

WHEREAS, the City intends to hire a management company to operate, maintain and manage the wastewater treatment plant and related facilities;

WHEREAS, THE CONTRACTOR is a corporation engaged in the business of operating, maintaining, and managing such wastewater treatment plants and related facilities; and

WHEREAS, the City desires to receive, and THE CONTRACTOR desires to provide, services for the operation, maintenance, and management of the wastewater treatment plant and related facilities.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Premises.

The foregoing recitals are hereby made a part of this Agreement.

2. Definitions.

In addition to all of the words and terms defined herein, the following words and terms

(or pronouns used in their stead) shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context. The masculine gender shall be deemed and construed to include correlative words of feminine and neuter genders. Unless the context shall otherwise indicate, all words shall include the plural as well as the singular number. The word "person" shall include corporations and associations, including public bodies, as well as natural persons.

- 2.1. Adequate Nutrients. Plant influent nitrogen, phosphorous, and iron contents proportional to BOD₅ in the ratio of five (5) parts nitrogen, one (1) part phosphorous and one-half (0.5) part iron for each one hundred (100) parts BOD₅.
- 2.2. Biologically Toxic Substances. Any substance or combination of substances contained in the plant influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the Wastewater required to meet the discharge requirements of the NPDES Permit. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides, and herbicides.
- 2.3. Purchasing Practices. Contractor must follow all City travel policies when travel relates to the Key West project and/or when expenses are allocated to the Key West project. Airline tickets and other transportation requirements shall be purchased from the most economical and practical carrier. Tickets will be advance purchase unless the travel is on an emergency basis. Meal reimbursements are subject to the City, per diem rate as allocated, based on the travel items. No alcoholic beverages or other personal items will be reimbursed. City travel policies have been provided to the Contractor and will be followed in every respect.

Purchasing practices under the terms of the contract are not required to follow the City's purchasing ordinance when purchases are made by the Contractor as a "Direct Cost". The Contractor will continue periodic competitive pricing of all purchases of goods and services made on the City's behalf. When it is in the City's best interest for the Contractor to select vendors for reasons other than lowest price, the Contractor will document and disclose these reasons to the City. The contractor national or regional purchase agreements/contracts will be nonbinding on the Key West project. Any purchases under such agreements shall be disclosed to the City. The terms of the agreements and relationship between vendor and the Contractor shall be documented and disclosed to the City. The Contractor shall continue to help the City in following City purchasing policies when direct purchases are to be made outside the scope of the contract.

The City encourages the Contractor to be a good corporate citizen; however, the City does not want said participation to be passed on to the City ratepayers. Community involvement in any form of contributions, fees or in-kind services (employee time) shall not be billed to Key West project "Direct Cost". Where it is expedient for an employee to participate in community involvement during working hours, said employee will be required to make up and document time (flex time). Company parties, Christmas parties and employee award programs shall not be charged to "Direct Cost".

Once the actual cost of local hardware and local software is recovered, no computer lease charges will appear as "Direct Cost". City to own all hardware and software charged to "Direct Cost". These computers charged to the project will remain property of the City. The total amortized cost charged to "Direct Cost" shall be disclosed to the City and shall not exceed reasonable market prices. All computers on site at the Key West project are City property. Computer upgrades will be required through established budgeting procedures subject to prior City approval.

Personally assigned vehicle costs (for the Project Manager) billed to "Direct Cost" shall not exceed \$300.00 per month without written prior City approval. City agrees to review new lease terms at the expiration of the current and subsequent leases.

Key West Project Reviews: Internal or external "project review" or other quality assurance program costs (except budgeted "quality training programs") will not be charged as a "Direct Cost".

The Contractor will establish accounting procedures to segregate nonbillable costs as they are incurred. Contractor employees who have budget, accounts payable or purchasing responsibilities will be trained on what is nonbillable and how said cost shall be treated. Internal control procedures shall be established to review all "Direct Costs" to ensure proper handling of nonbillable cost. Moving and Relocation expenses for the Project Manager will not occur more often than three years per assignment and will not exceed the current city policy amount as shown in the record for the City Manager. If it becomes necessary to move the Project Manager before the three-year limit for the Contractor's convenience, the Contractor will bear the expense of moving a new manager to the site. Should the City Commission request the Project Manager be replaced for any reason, Key West will bear the expense of moving a new manager to the site.

- 2.4. City's Representative. The person designated in writing, by the City Manager, to act on behalf of the City as its authorized representative in dealing with THE CONTRACTOR under this Agreement.

- 2.5. Direct Cost. The cost incurred for the direct benefit of the Facilities, including, but not limited to, expenditures for direct labor, employee benefits, chemical lab supplies, repairs, repair parts, maintenance, parts, safety supplies, gasoline, oil, equipment rental, office supplies, other supplies, uniforms, telephone, postage, utilities, tools, insurance, professional memberships, and training supplies. Direct Cost shall not include labor or other charges for Regional, District or Corporate personnel, offices or activities. All such costs shall be recovered through indirect cost and management fee provided for below.
- 2.6. Total Actual Direct Cost. The actual Direct Cost incurred by THE CONTRACTOR in any one Fiscal Year for the operation of the Facilities.
- 2.7. Total Budgeted Direct Cost. The amount of Direct Cost agreed upon by the parties in the annual budget determined pursuant to Section 5.2 hereof, a copy of which budget for the first Fiscal Year hereof is attached hereto as Exhibit F and, by this reference incorporated herein.
- 2.8. Total Budgeted Amount. The sum of Total Budgeted Direct Cost plus sixteen and six tenths percent (16.6%) of Total Budgeted Direct Cost which sixteen and six tenths percent figure shall constitute THE CONTRACTOR's indirect costs and management fees.
- 2.9. EPA. The United States Environmental Protection Agency.
- 2.10. FDEP. The Florida Department of Environmental Protection.
- 2.11. Federal Consent Order. Federal Consent Order, Case No. 79-238-CA-17, between the State of Florida Department of Environmental Protection and the City of Key West as amended.
- 2.12. Facilities. All equipment, vehicles, grounds and facilities described in Exhibit B attached hereto and, by this reference, incorporated herein.
- 2.13. Fiscal Year. The City's fiscal year commencing on October 1 and ending on September 30 of each calendar year.
- 2.14. Inflow/Infiltration. The inflow and infiltration of outside elements into the wastewater system as those terms are commonly used in wastewater treatment practices.
- 2.15. NPDES Permit. National Pollutant Discharge Elimination System Permit No. FL0025976 effective on January 1, 1995 with an expiration date of October 31, 1999, a copy of which is attached hereto as Exhibit C and, by this reference, incorporated herein, as may be amended or such other permit as is in effect

during the term hereof.

- 2.16. Navy Easement. The Grant of Easement dated March 31, 1986, by and between the United States of America, acting by and through the Department of the Navy, and the City, a copy of which is attached hereto as Exhibit A and, by this reference, incorporated herein, which easement allows the use by the City, subject to the terms contained therein, of the property described in Exhibit D attached hereto and, by this reference, incorporated herein.
- 2.17. Non-Processible Waste. Any ashes, foundry sand, human remains, animal carcasses, tree trunk sections, branches and stumps, motor vehicles (including major parts such as transmissions, rear ends, springs, and fenders), agriculture machinery and equipment, marine vessels and their major parts, any other large machinery or equipment, any matter or material the incineration of which in the Facility is prohibited by any law, ordinance, rule, or regulation of any government or public agency having jurisdiction over the Facility and its operations, noncombustible construction material or demolition debris, and hazardous waste, such as, but not limited to, explosives, hazardous chemicals, radioactive materials, cleaning fluids, crank case oils, cutting oils, paints, acids, caustics, poisons, or drugs.
- 2.18. THE CONTRACTOR's Representative. The person designated in writing, by THE CONTRACTOR, to act on behalf of THE CONTRACTOR as its authorized representative in dealing with the City under this Agreement.
- 2.19. Plant. The wastewater treatment plant and all appurtenances thereto, including, but not limited to, the incinerator, but not including any pump stations, lift stations or pipes located outside the physical structure of the building,
- 2.20. Processible Waste. Wastewater brought to the Plant other than Non-Processible Waste.
- 2.21. Collection System. All components of the sewer collection system from (and excluding) point of connection at the property line to (and excluding) lift stations, including gravity lines, force mains, and manholes.
- 2.22. Pump Stations/Lift Stations . The pump stations/lift stations are located as described on Exhibit B attached hereto.
- 2.23. Wastewater. The water carried through the wastewater collection system of the City and brought to the Plant for treatment and discharge.
- 2.24. Effluent Systems. The 30-inch force main from the point of discharge from the plant to the connection to the outfall.

2.25. Navy Flow Meters. The Navy Flow Meters located as described on Exhibit B attached hereto.

2.26. Stormwater Drainage System. All components of the stormwater collection system to include minor pipe and catch basin repair and improvements.

3. Scope of Services.

3.1. The City hereby hires and contracts with THE CONTRACTOR to operate, maintain, and manage the Facilities during the term hereof and upon the terms contained herein. The CONTRACTOR shall not subcontract or assign any portion of this contract without prior written approval of the City.

3.2. THE CONTRACTOR.

3.2.1. Staffing. THE CONTRACTOR will staff the facilities with its own employees who are qualified in wastewater utility operations, maintenance, and management. THE CONTRACTOR shall, at all times during the term hereof, provide qualified personnel needed to ensure the adequate and satisfactory monitoring and performance of the Facilities as required pursuant to this Agreement or by law. THE CONTRACTOR may utilize any and all other additional personnel that may be necessary for the operation of the Facilities during abnormal or emergency conditions for Key West, Florida, upon receipt of approval of such additional personnel by the City. THE CONTRACTOR shall be compensated for the costs of such personnel pursuant to Section 3.2.5 hereof. THE CONTRACTOR shall submit the name of the Project Manager to the City for approval, which approval shall not be unreasonably withheld. If the City does not approve the person submitted by THE CONTRACTOR, then THE CONTRACTOR shall select another candidate for approval by the City. THE CONTRACTOR shall reassign the Project Manager upon receipt of notice from the City that said Project Manager is no longer acceptable to the city.

3.2.2. Training. THE CONTRACTOR shall provide classroom and on-the-job training for its employees to ensure proper and safe operation of the Facilities and to maintain the competency levels required by State of Florida certification standards. These training programs will be patterned after THE CONTRACTOR programs currently utilized at other THE CONTRACTOR-operated facilities. The cost of these programs will be the sole responsibility of THE CONTRACTOR as part

of "Direct Cost". Where appropriate, said training will be made available to other Utilities Department personnel.

3.2.3. Equipment.

THE CONTRACTOR shall, at its own cost and expense, provide all materials and equipment necessary for the operation and maintenance of the Facilities. THE CONTRACTOR shall also maintain and furnish to the City on the first day of each Fiscal Year, a current inventory listing the tools and equipment acquired by it for the City with budgeted funds during the previous Fiscal Year, containing the following information: reasonably detailed description of such tools and equipment; the date of purchase; the identification number, if any; and the manufacturer's name.

Such tools and equipment acquired by the City or by THE CONTRACTOR for the City with budgeted funds will remain a part of the Facilities upon termination of this Agreement. Upon the termination of this Agreement, THE CONTRACTOR will provide the City with the same quantity of fuel and chemicals, or the equivalent thereof, as are on hand at the commencement of operation of the Facilities. THE CONTRACTOR shall take all steps necessary to preserve and maintain any warranties on any of the tools, equipment, and Facilities components and to keep the City informed in a timely manner of any and all steps taken to preserve and maintain such warranties.

3.2.4. Operation of Facilities. THE CONTRACTOR shall, at a minimum, provide the following services during the continuing operation of the Facilities:

- 3.2.4.a. Respond immediately to, and immediately commence resolution of, any and all complaints concerning the Facilities made by the City, any other governmental agency, or any other person, agency, or body;
- 3.2.4.b. Periodically utilize all dormant equipment to ensure the proper functioning and maintenance of such equipment;
- 3.2.4.c. Maintain throughout the contract all Collection Systems, Effluent Systems and Pump Stations/Lift Stations;
- 3.2.4.d. Comply with any and all terms of the Navy Easement of which it has control, and assist the City in complying with all other terms thereof;

- 3.2.4.e. Operate the Facilities unmanned for up to eight hours at a time as required by the Navy and at any time specified by the Navy. When THE CONTRACTOR vacates the Facilities pursuant to the Navy's request, the Facilities shall be operating properly and shall continue to so operate under normal conditions for Key West, Florida, during the entire time that THE CONTRACTOR is required to leave the Facilities unmanned;
- 3.2.4.f. Observe all rules and regulations concerning the exercise of the rights of ingress and egress to and from the Facilities;
- 3.2.4.g. Operate, maintain and repair the Pump Stations/Lift Stations described in Exhibit B as consistent with normal wastewater treatment plant practices;
- 3.2.4.h. Operate, maintain and repair the WWTP described in Exhibit B as consistent with normal wastewater treatment Plant practices;
- 3.2.4.i. Operate, maintain and repair the entire City sewage collection system and discharge force mains of the Lift Stations described in Exhibit B and through the outfall pipe to mean high tide and or injection well;
- 3.2.4.j. Operate the Plant, except for the incinerator, continuously, as consistent with normal wastewater treatment plant practice so as to maximize the efficient treatment of Wastewater;
- 3.2.4.k Clean, maintain and minor repair of approximately 49,500 feet of storm sewer pipe with catch basins and injection wells;
- 3.2.4.l Clean, maintain and repair Effluent Deep Injection Well(s);
- 3.2.4.m Installation of new small basins and french drains. Repair minor structural damage to stormwater system including up to 200 LF of stormwater collection system pipe;
- 3.2.4.n. Navy Flow Meters. Operate and maintain the Navy Flow Meters described in Exhibit B as consistent with normal

wastewater treatment plant practices;

3.2.4.o. Provide twenty-four-hour access to the Facilities for the City's personnel. Visits to the Plant by the City's personnel may be made at any time by any of the City's employees so designated by the City's Representative. Keys to the Plant shall be provided to the City by THE CONTRACTOR. All visitors to the Facilities shall comply with THE CONTRACTOR's operating and safety procedures;

3.2.4.p. Provide adequate security of the Facilities at all times;

3.2.4.q. Continue training programs for all of THE CONTRACTOR's employees.

3.2.5. Additional Services. THE CONTRACTOR shall provide and perform any other services that are outside of, or in addition to, the scope of services as provided herein, upon direction by the City. Such services will be invoiced to the City at THE CONTRACTOR's actual cost plus fifteen percent (15%).

3.2.6. Direct Cost. THE CONTRACTOR shall pay all Direct Cost incurred in the normal operation of the Facilities.

3.2.7. Wastewater Treatment. THE CONTRACTOR shall manage, operate, and maintain the Facilities to the extent that the design capacity and capability of the Facilities permit such operation so that, at a minimum, the effluent discharge from the Facilities meets the requirements specified in Exhibit E attached hereto, as may be amended from time to time, and, by this reference, incorporated herein. It is expressly recognized that the facility is not currently designed as an AWT facility; however, until the facility is retrofitted, THE CONTRACTOR will make best efforts to meet 3Mg/l Total Nitrogen and 1 Mg/l Total Phosphorus effluent quality. THE CONTRACTOR may reasonably alter the process and/or Facilities to achieve the objectives of this Agreement, provided, however, that no alteration which costs in excess of \$2000 shall be made without the City's prior written approval.

3.2.7.a. Acceptance of Processible Waste. THE CONTRACTOR shall accept all Processible Waste delivered to the Facilities.

3.2.7.b. Removal of Non-Processible Waste. THE

CONTRACTOR shall remove non-processible Waste from the refuse storage pit of the Facilities at its sole cost and expense. All Non-Processible Waste removed by THE CONTRACTOR shall be removed from the site promptly by THE CONTRACTOR and delivered to the City's Stock Island Transfer Station or such other landfill as may be designated by the City at THE CONTRACTOR's sole cost and expense, except that the City shall pay for the increase in transportation costs for transportation of the Non-Processible Waste to such other landfill as part of the annual Budgeted Direct Cost.

3.2.7.c. Removal of Process Residue. THE CONTRACTOR shall remove all Process Residue (i.e., screenings, grit and sludge) resulting from the processing of Processible Waste in the Facilities at its sole cost and expense. All Process Residue removed by THE CONTRACTOR shall be removed from the site promptly by THE CONTRACTOR and delivered to the City's transfer station or such other landfill as may be designated by the City at THE CONTRACTOR's sole cost and expense, except that the City shall pay for the increase in transportation costs for transportation and tip fee, if any, of the Process Residue to such other landfill as part of the annual Budgeted Direct Cost.

3.2.8. Maintenance, Repair and Replacement.

3.2.8.a. General. THE CONTRACTOR shall, at its sole cost and expense, maintain the Facilities in good condition and repair, including making any and all necessary repairs and replacements consistent with standard wastewater treatment plant practices. THE CONTRACTOR shall maintain the safety of the Facilities at a level consistent with applicable law and normal wastewater treatment plant practices for facilities of similar magnitude. THE CONTRACTOR shall maintain the site, access roads, drives, parking lots, buildings, and other such appurtenances in good repair and in a neat, orderly, and litter-free condition in order to protect the Facilities against deterioration and to maintain the aesthetic quality of the Facilities. THE CONTRACTOR shall correct any material deficiencies, inefficient operation and maintenance of the Facilities throughout the term hereof

pursuant to the provisions hereof for normal conditions in Key West, Florida, and in accordance with standard wastewater treatment practices. The City shall have the right to inspect all records in detail during normal business hours. THE CONTRACTOR shall maintain the Facilities in such a manner as to keep all warranties in full force and shall not act, or allow any other party to act, so as to interfere with the effectiveness of such warranties.

3.2.8.b. Preventive Maintenance. THE CONTRACTOR shall create and implement a plan for a preventive maintenance program for the Facilities and all related equipment, structures, and vehicles consistent with good preventive maintenance practice or the manufacturer's specifications, utilizing its computerized maintenance management system. Such preventive maintenance program shall include, at a minimum, the Collection System, Pump Stations/Lift Stations and all facilities at the WWTP. Collection System preventive maintenance must include line cleaning and Inflow/Infiltration remedial work.

3.2.8.c. Corrective Maintenance and Repair. To the limits provided below, THE CONTRACTOR will provide corrective maintenance and repairs for the Facilities and all related equipment, structures, and vehicles consistent with good corrective maintenance and repair practices or the manufacturer's specifications, utilizing its computerized maintenance management system. Corrective maintenance and repairs are deemed to be those non-preventive maintenance or repairs which cost less than \$5,000, other than repair of damages caused by Force Majeure, as hereinafter defined. During the term of this Agreement, THE CONTRACTOR shall use methods of operation and maintenance which shall keep the Facilities in as good or better condition than at the start of this Agreement, excepting normal wear and tear.

3.2.8.d. Capital Expenditures and Replacements. Capital expenditure and replacement are deemed to be any repairs or replacements which cost \$5,000 or more or which are caused by Force Majeure. THE CONTRACTOR shall make no unreasonable requests and shall ensure that items requested are reasonable and justifiable to carry out the

terms of this Agreement in accordance with professional engineering practices. The City shall consent to all reasonable and justifiable capital expenditures and replacements, which consent shall not be unreasonably withheld. The City's cost of repairing and replacing these items shall be paid for either by reimbursement to THE CONTRACTOR or by direct purchase by the City. Emergency items which are identified and which are needed for the safety of workers, will be given first priority. THE CONTRACTOR shall submit to the City, by May 30 of each Fiscal Year, a list and estimate of capital expenditures and replacements, if any, to be provided by the City for the succeeding year. Because the City will be responsible for equipment replacement, THE CONTRACTOR will submit documentation of the cost effectiveness of "repair versus replace" decisions recommended by THE CONTRACTOR.

- 3.2.9. Analysis. THE CONTRACTOR shall provide any and all laboratory testing necessary for monitoring of process control activities and compliance with the NPDES Permit. THE CONTRACTOR shall employ and train all laboratory staff to the extent necessary and shall purchase all equipment and supplies necessary for the operation of the laboratory.
- 3.2.10. Annual Budget. THE CONTRACTOR shall submit to the City, by May 30 of each year, a budget for the upcoming fiscal year. The budget shall be in City format and shall detail Total Budgeted Direct Cost and the Total Budgeted Amount.
- 3.2.11. Reporting and Documentation.
- 3.2.11.a. NPDES Permit Reports. THE CONTRACTOR shall prepare all NPDES Permit reports and submit them to the City no later than five (5) days prior to the due date for delivery of such reports to the appropriate government body.
 - 3.2.11.b. EPA Reports. THE CONTRACTOR shall submit all EPA reports required of the operator of a wastewater treatment facility.
 - 3.2.11.c. FDEP Reports. THE CONTRACTOR shall prepare all FDEP reports and submit them to the City no later than

five (5) days prior to the due date for delivery of such reports to the appropriate government body.

3.2.11.d. Monthly Operating Reports. THE CONTRACTOR will ensure that a certified operator prepares and signs any monthly operating report required by state, federal, or local government bodies or agencies and shall submit them to the City no later than five (5) days prior to the due date for delivery of such reports to the appropriate government body or agency.

3.2.11.e. Reports to the City. THE CONTRACTOR shall provide a monthly report to the City of the Direct Cost for the operation of the Facilities for the month covered by such report. THE CONTRACTOR shall provide an annual report to the City of all dormant equipment and tools, and of all equipment and tools required to be purchased in the next fiscal year. THE CONTRACTOR shall provide an annual report to the City comparing the Total Actual and Budgeted Direct Cost and an explanation of all budget variances. THE CONTRACTOR shall also provide any other reports to the City that are reasonably requested by the city in the time period and in the manner reasonably requested by the City.

3.2.11.f. Records. THE CONTRACTOR shall maintain all records related to the operation, maintenance, and management of the Facilities, including copies of all governmental reports and all financial documents, at the Facilities. Representatives of the City may review said records at any time. THE CONTRACTOR shall maintain said records in accordance with sound business practices and generally accepted accounting practices or generally accepted accounting standards adopted by the Government Accounting Standards Board and the Government Financial Officers Association.

3.2.12. Licenses and Permits. THE CONTRACTOR shall act in a timely fashion to initiate an application for, and to maintain, with the City's assistance, all licenses, permits, and warranties necessary for the initial and continued operation of the Facilities. Unless stated otherwise herein, during the term hereof, THE CONTRACTOR shall have the obligation to maintain all such licenses, permits, and warranties. THE CONTRACTOR shall maintain all such licenses, permits, and

warranties on behalf of, and in the name of, the City, at THE CONTRACTOR's sole cost and expense. The City shall sign and certify applications for NPDES permits and any other permits in accordance with applicable state and federal laws and regulations.

3.2.13. Force Majeure. THE CONTRACTOR shall not be deemed to be in default hereof if performance of the obligations required by this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, hurricane, fire, civil commotion, epidemic, act of government, its agencies or officers, or any other legitimate cause beyond the control of the parties, except any action required to be taken pursuant to the Navy Easement ("Force Majeure"). Upon the occurrence of any such event, THE CONTRACTOR shall operate the Facilities on a best effort basis and shall not be responsible for effluent or product water quality/ quantity/characteristics, or damages, fines, penalties or claims resulting therefrom. In the event labor stoppage by employee groups (e.g , picketing) causes a disruption of THE CONTRACTOR employees entering and working at the Facilities, THE CONTRACTOR shall seek appropriate legal injunctions or court orders to terminate such disruption.

3.3. Obligations of the City.

3.3.1. Taxes. The City shall pay all property, franchise, or other taxes assessed against either the Facilities or the operation of the Facilities, except that THE CONTRACTOR shall be responsible for any sales tax related to the Facilities, or any corporate or income taxes related to its operation, maintenance, and management of the Facilities.

4. Term and Termination.

4.1. Term. The initial term of this Agreement shall be for (5) years commencing on March 1, 1999 and upon mutual agreement, will be renewable for two consecutive five year periods.

4.2. Termination. The City or THE CONTRACTOR shall have the right to terminate this Agreement, with or without cause, upon ninety-(90) days written notice to either party. Either party hereto may terminate this Agreement upon a material breach of the terms hereof by the other party, provided that the non-breaching party gives written notice of the breach to the breaching party and allows said breaching party thirty (30) days to cure, or to take all reasonable steps to commence to cure, said breach.

4.3. Operation of the Facilities After Termination. Upon termination of this

Agreement, by failure to renew or by termination as provided above, THE CONTRACTOR shall continue to provide the operations, maintenance, and management services required hereunder for a period of up to one-hundred eighty (180) days from said termination. During this period, THE CONTRACTOR shall assist the City, or any party designated by the City, in assuming the operation, maintenance and management of the Facilities. The City shall pay THE CONTRACTOR all direct costs plus fifteen percent (15%) for costs incurred by THE CONTRACTOR during this period within thirty (30) days of receipt of an invoice for such costs from THE CONTRACTOR.

5.0 Compensation.

- 5.1. Fee. Subject to the adjustments contained in Sections 5.2 and 5.3 hereof, the City shall pay to THE CONTRACTOR as compensation for services performed for each Fiscal Year of this Agreement a fee (the "Fee"), which shall consist of the Total Budgeted Amount. **At least Fifty percent (50%) of the Fee shall be fixed and not subject to the adjustment made pursuant to Section 5.3 hereof (the "fixed" portion of the Fee). The Fee shall not exceed a specified amount determined pursuant to Section 5.2 hereof for each subsequent Fiscal Year. The Fee shall be paid in equal monthly installments.**
- 5.2. Total Budgeted Amount. The fee paid to THE CONTRACTOR as compensation for services performed shall be sixteen and six tenths percent (16.6%) markup over Total Budgeted Direct Cost, plus Total Budgeted Direct Cost. Total Budgeted Direct Cost expended for each Fiscal Year under this Agreement shall be negotiated annually commencing no later than five (5) months prior to the end of the then current Fiscal Year. If the parties fail to agree on the revision to the Fee by August 15 of each Fiscal Year, the Fee will be subject to Section 5.4 (iii) hereof, and be determined by arbitration pursuant to Section 9 hereof unless said date is mutually extended.
- 5.3. Annual Adjustments. Within sixty (60) days after the end of each Fiscal Year, THE CONTRACTOR shall prepare and present to the City, a final financial report of the Direct Cost of the Facilities for such Fiscal Year, comparing the Total Actual and Budgeted Direct Cost. If the Total Actual Direct Cost exceed the Total Budgeted Direct Cost, then no adjustment shall be made for that fiscal year to the Fee. If the Total Actual Direct Cost for any Fiscal Year are less than the Total Budgeted Direct Cost for said Fiscal Year, then THE CONTRACTOR shall be entitled to retain a portion of the estimated Fee paid for such fiscal Year pursuant to Section 5.1 hereof, based on the following formula:
1. Total Actual Direct Cost plus

2. Sixteen and sixth tenths percent (16.6%) of Total Actual Direct Cost plus;
3. Fifty percent (50%) of the difference between Total Actual Direct Cost and Total Budgeted Direct Cost, up to a maximum difference of One Hundred Thousand Dollars (\$100,000.00).

The balance of the Fee, calculated above, paid by the City for said Fiscal Year shall be rebated to the City in one lump sum payment with the final financial report described above. The Fee as adjusted herein shall be subject to the parameters in Section 5.4

- 5.4 **Fee Parameters.** Any annual compensation negotiated between the City and THE CONTRACTOR pursuant to Section 5.2 of this Agreement shall be subject to the following parameters: (i) at least fifty percent (50%) of the annual compensation of THE CONTRACTOR under this Agreement is based upon a periodic fixed amount and shall not be subject to any incentive based upon output of the Facilities; (ii) the annual compensation of THE CONTRACTOR shall not be based (in whole or in part) on a share of the net profits of the Facilities; and (iii) in the event that the Fee is determined by arbitration pursuant to Section 5.2 and Section 9 hereof, the Fee so determined shall be subject to and comply with the provisions of Rev. Proc 82-14, 1982-1 C.B. 459 as amended by Section 1301 (c) of the Internal Revenue Code of 1986, as amended (the "Code").
- 5.4.1 **Fixed Fee.** The Fixed Fee shall be One Million Seven Hundred Eighty-Three Thousand, Eight Hundred and Ninety-nine dollars (\$1,783,899.00) and shall remain fixed for the term of the contract except for annual adjustments equal to Consumer Price Index for all Urban Consumers (CPI-U) (all items national).
- 5.4.2 **Variable Fee.** The fee as calculated in 5.2 above less the Fixed Fee as calculated in 5.4.1. In no case shall the Variable Fee exceed the Fixed Fee.
- 5.4.3 **Fee Paid to THE CONTRACTOR.** The fee paid to THE CONTRACTOR shall be the Fixed Fee plus the Variable Fee. In no case shall the total fee retained exceed twice the Fixed Fee
- 5.5 **Change in Scope.** In the event of a change in the scope of services provided by THE CONTRACTOR pursuant to this Agreement, the City and THE CONTRACTOR shall negotiate, within the fee parameters described in Section 5.4 hereof, a commensurate adjustment in the Fee.
- 5.6 **Initial Period Fee.** The Fee for the initial period shall be One Million Five Hundred Fifty-two Thousand, Two Hundred and Forty-three Dollars and

Seventy-Seven Cents (\$1,552,243.77) Total Budgeted Direct Cost and markup of sixteen and six tenths percent (16.6%). Annual adjustments and Fee parameters under Section 5.3 and 5.4 shall be applied on a prorata basis where applicable (i.e., \$50,000 cap and Fixed Fee amount).

6. Insurance.

6.1. THE CONTRACTOR.

6.1.1. Worker's Compensation. THE CONTRACTOR shall maintain, during the term hereof, Worker's Compensation Insurance for all of the persons employed at the Facilities in the amount required by state law or regulation. In case any work is sublet to a party other than THE CONTRACTOR, THE CONTRACTOR shall require said subcontractor to provide Worker's Compensation Insurance for all of said subcontractor's employees unless such employees are covered by the protection provided by THE CONTRACTOR.

6.1.2. Comprehensive General Liability Insurance. THE CONTRACTOR shall maintain, during the term hereof, a comprehensive policy of general and public liability insurance, including, but not limited to, products and completed operations liability and blanket contractual coverage's applying to, at a minimum, this Agreement, insuring against claims of liability, contingent and otherwise, for injury to, or death of, any person or persons, or damage to real or personal property, arising out of, by reason of, or in connection with, THE CONTRACTOR's operations contemplated herein, and also to defend against all claims, demands, actions, or legal proceedings made or brought by any person or persons by reasons of any such injury, death, or damage, and to pay all judgments, interest, costs, or other expenses arising out of or in connection therewith. The limits of liability of such policy shall be not less than Five Million Dollars (\$5,000,000.00) combined single limit.

6.1.3. Automotive Liability Insurance. THE CONTRACTOR shall maintain, during the term hereof, automotive liability insurance for all vehicles owned by the City or leased by THE CONTRACTOR and that are used in connection with the facilities. Those vehicles owned by the City, but insured by THE CONTRACTOR will be operated solely by THE CONTRACTOR employees during the term hereof.

6.1.4. Property Damage. THE CONTRACTOR shall maintain, during the term hereof, a property damage insurance policy for all property owned or acquired by THE CONTRACTOR during the term hereof used in connection with the Facilities.

6.1.5. Premiums. The cost of the premiums (self insurance cost allocation method) for the insurance required to be obtained and maintained by THE CONTRACTOR pursuant to this Section 6.1 shall be included in Direct Cost, and all other insurance related costs, including, but not limited to, deductibles and loss retention, shall be at THE CONTRACTOR's sole cost and expense.

6.2. City.

6.2.1. Property Damage. The City shall maintain, during the term hereof, a property damage insurance policy for all property, except automobiles and equipment insured by the THE CONTRACTOR, used in connection with Facilities, including the Facilities themselves.

6.3. General.

6.3.1. Obtaining Insurance. THE CONTRACTOR shall not commence work pursuant to this Agreement until it shall have obtained all insurance required in this Section 6, and such insurance shall have been approved by the City or the City's Representative, as to form, amount and carrier, nor shall THE CONTRACTOR allow any subcontractor to commence work.

6.3.2. Additional Insured. The party responsible for obtaining the insurance under this Section 6 shall provide that the other party shall be named as an additional insured under such insurance policy, provided, however, the foregoing provision that a party be named as an additional insured shall not create or be deemed to create any liability on the part of said additional insured which would not otherwise exist under the laws of the State of Florida.

6.3.3. Proof of Insurance. Both parties shall furnish, through their authorized representative, concurrently with the execution of this Agreement, satisfactory proof of coverage of the insurance required to be obtained under the provisions of this Section 6. All policies of insurance shall be endorsed providing that such policy or policies shall not be canceled or materially modified by the carrier thereof until the non-obtaining party shall have been provided at least sixty (60) days prior written notice of such cancellation or material modification thereof. If THE CONTRACTOR chooses to self-insure any of the obligations required in this Section 6, it shall furnish to the City a letter certifying that THE CONTRACTOR has provided for this coverage in THE CONTRACTOR's insurance system and that such coverage in THE

CONTRACTOR's insurance system shall be subject to the terms hereof.

6.3.4. Waiver of Subrogation. To the extent permitted by law, and only if such action does not invalidate the insurance carried by either party, THE CONTRACTOR and the City, on behalf of themselves and their insurers, waive their rights of subrogation with respect to losses occurring to property of the other party insured as required hereunder.

7. Indemnification and Penalties.

7.1. THE CONTRACTOR.

7.1.1. Indemnification. THE CONTRACTOR will indemnify and hold harmless the City, its elective and appointed boards, officers, agents, and employees from and against all liabilities, claims, damages, losses and expenses, including attorneys' fees, arising out of, or resulting from, the negligent performance of its duties and obligations under this Agreement and the Navy Easement, including, without limitation, acts and omissions of THE CONTRACTOR, its employees, agents, officers, and subcontractors except that such indemnity and hold harmless agreement shall not apply to any liabilities, claims, damages, losses, and expenses arising out of the City's sole negligence. This covenant shall survive the termination of this Agreement.

7.1.2. Fines and Penalties. THE CONTRACTOR shall be liable for (i) any fines or civil penalties which may be imposed by any governmental or quasi-governmental agency body or (ii) any judgments or liabilities arising from actions by non-governmental or quasi-governmental agencies or bodies for violations of the effluent guarantees specified herein arising out of, or resulting from, the performance or its duties and obligations under this Agreement, including, without limitation, acts and omissions of THE CONTRACTOR, its employees, agents, officers and subcontractors. The City will assist THE CONTRACTOR in any contest of any such fines or civil penalties in administrative and/or court proceedings; provided, however, that THE CONTRACTOR shall pay such fines or civil penalties prior to such protest if such payment is required prior to making such protest. THE CONTRACTOR shall be solely responsible for all costs, including attorneys' and accountants' fees, of protesting any such fines or civil penalties. THE CONTRACTOR shall also not be responsible for any fines or civil penalties due to EPA proceedings concluded prior to execution of this Agreement unless such fines or civil penalties are the direct result of an act or omission of THE CONTRACTOR pursuant to the terms hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

THE CITY OF KEY WEST

ATTEST:

Cheri Smith

Julio Avel
JULIO AVAEL
CITY MANAGER

OPERATIONS MANAGEMENT
INTERNATIONAL, INC.

ATTEST:

Robert J. Moore
CFO

E. Forrest Forbes
VICE-PRESIDENT
E. FORREST FORBES

431564

OFF REC 0971 PASSED 003

GRANT OF EASEMENT

THIS INDENTURE, made the 31st day of March 1986, between THE UNITED STATES OF AMERICA, herein called the Government, acting by and through the Department of the Navy, and THE CITY OF KEY WEST, FLORIDA, herein called the Grantee.

WHEREAS, the Government owns that certain real property identified as Fleming Key and Trumbo Point Annex, Naval Air Station, Key West, FL, herein called the Station, and

WHEREAS, the Grantee has requested an easement for the construction, installation, operation, maintenance, repair and replacement of a wastewater treatment plant and utility lines, herein called the Plant and Lines, on that portion of the Station hereinafter described, including ingress thereto and egress therefrom; and

WHEREAS, in accordance with 10 U.S.C. 2668 the Government has the authority to grant such easement; and

WHEREAS, as provided in 40 U.S.C. 319 the Government shall receive fair market value of said easement as a credit to be deducted from charges for Government's connection to the Grantee's proposed sewer system;

WHEREAS, the Secretary of the Navy has found that the grant of such easement on the terms and conditions hereinafter stated will not be incompatible with the public interest:

NOW THEREFORE, this indenture witnesseth that, in consideration of a credit of SIX HUNDRED AND EIGHT THOUSAND AND NO/100 DOLLARS (\$608,000.00), said credit amount to be deducted from the connection charge or any other capital contribution which may be required of the Government to procure sewer service from the proposed City of Key West sewer system, the Government hereby grants to the said City of Key West, its successors and assigns, in perpetuity from the date hereof, an easement for the construction, installation, operation, maintenance, repair and replacement of a wastewater treatment plant and utility lines appurtenant thereto, together with ingress thereto and egress therefrom, such easement being on that portion of the Station hereinafter called the Premises, and described as follows:

A parcel of land in Township 67 South, Range 25 East, on Fleming Key, Monroe County, Florida, being more particularly described as follows:

COMMENCE at the U.S. Army Corps of Engineers Control Station Pier D-2, the coordinates of which are N 85,337.68 and E 233,429.18 based on U.S. Coast and Geodetic Survey Mercator Grid Coordinate System (East Zone) which has for its zero coordinate a point at latitude 24° 20' North and 500,000 feet west of Longitude 81° 00' West, THENCE N 75° 17' 14.5" E, 1,888.45 feet to THE POINT OF BEGINNING;

THENCE N 00° 00' 20" E, 379.77 feet;
 THENCE N 45° 00' 33" E, 117.22 feet;
 THENCE N 00° 01' 00" E, 314.87 feet;
 THENCE N 44° 43' 06" W, 438.70 feet;
 THENCE S 45° 16' 54" W, 621.17 feet;
 THENCE S 56° 41' 13" E, 167.43 feet;
 THENCE S 32° 11' 13" E, 380.00 feet;
 THENCE S 42° 11' 23" E, 221.23 feet;
 THENCE S 67° 00' 49" E, 191.32 feet
 to THE POINT OF BEGINNING.

The above described parcel contains 10.145 acres, more or less, all as shown on map marked Exhibit "A" attached hereto and made a part hereof.

ALSO

A 25' wide strip of land in Township 67 South, Range 25 East, Monroe County, Florida, 12.5 feet on each side of the following described centerline:

COMMENCE at the U.S. Army Corps of Engineers Control Station Pier D-2, the coordinates of which are N 85,337.68 and E 233,429.18 based on U.S. Coast and Geodetic Survey Mercator Grid Coordinate System (East Zone) which has for its zero coordinate a point of latitude 24° 20' North and 500,000 feet West of longitude 81° 00' West; THENCE N 75° 17' 14.5" E, 1,888.45 feet;
 THENCE N 00° 00' 20" E, 15.47 feet to THE POINT OF BEGINNING;

THENCE S 89° 59' 40" E, 52.78 feet;
 THENCE S 82° 32' 33" E, 321.99 feet;
 THENCE S 00° 00' 06" W, 417.38 feet;
 THENCE S 11° 04' 30" W, 939.00 feet;
 THENCE N 80° 33' 38" W, 431.36 feet;
 THENCE S 09° 26' 22" W, 16.00 feet, more or less, to the northerly line of the housing authority of Key West property conveyed in deed book G-9, Page 406 of the public records of Monroe County, Florida, and the POINT OF TERMINUS.

Above described parcel contains 1.250 acres, more or less, all as shown on map marked Exhibit "B" attached hereto and made a part hereof

In further consideration of the granting of this easement, the Grantee agrees to construct a wastewater treatment facility on said land and, further, to offer the Navy 23% of the capacity of the facility and requisite appurtenances upon payment of a connection charge. This charge shall be computed by multiplying the aggregate cost of constructing the facility times 23%. In addition, upon said payment, the Grantee shall offer the Navy

wastewater services (under the existing contract, or a new contract to be negotiated) at a user charge rate that excludes debt service associated with the Wastewater Facilities Plan, March 1986 and the contract shall include all provisions consistent with Federal and Florida law. If agreement is not reached regarding the connection charge and user charge rate as above described, the Navy will pay for service, including Sigsbee Park, in accordance with the terms of its existing contract with the Grantee.

THIS EASEMENT is granted subject to the following terms and conditions:

1. In the event the Government and the Grantee fail to reach an agreement on the sewage service contract within one year from the date of this easement, the consideration cited above shall be paid immediately to the Government in cash, plus interest from the date of this easement. The interest rate per annum shall be the interest rate in effect which has been established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, as of the date the amount becomes due.
2. The grantee shall be responsible for obtaining any and all permits required in connection with the construction, operation, installation, maintenance, repair and replacement of the Plant and Lines, and shall comply with all Federal, State, County and local laws and regulations.
3. The Plant will be designed to allow unmanned operation for periods up to eight (8) hours. On-site personnel will be required to vacate the Plant during movement of ordnance, upon notice by the Commanding Officer, Naval Air Station, Key West, FL, or his designated representative.
4. The plant will be designed and constructed to withstand reasonable blast overpressures, including installation of shatter-proof windows. No occupied buildings or structures will be constructed within the Explosive Safety Quantity Distance (ESQD) arcs as identified by the Commanding Officer, Naval Air Station, Key West, FL.
5. The Grantee shall indemnify and save harmless the Government, its officers, agents, servants and employees from all liability under the Federal Tort Claims Act (62 Stat. 869,982; 28 U.S.C. Sec 2671, 2680) or otherwise, for death or injury to all persons, or loss or damage to the property of all persons resulting from the use of the premises by the Grantee, and the Government will be held harmless for damages caused by an ordnance incident, or otherwise.
6. The Plant and its grounds will be kept clear of extraneous material not required for Plant operations and all appropriate measures will be incorporated to reduce odor problems.
7. All work in connection with the construction, installation, operation, repair and replacement of the Plant and Lines shall be done without cost or expense to the Government, except for the prorata share of the connection charge or the Government's capital contribution which may be required, less the credit as above provided, to procure sewer service from

the Grantee's sewer system in the event the Grantee and the Government enter into a sewage service contract. All construction will be in accordance with plans and specifications previously approved by the Commanding Officer, Southern Division, Naval Facilities Engineering Command.

8. The Grantee shall maintain the Premises, the Plant and the Lines in good conditions at all times, and shall promptly make all repairs thereto that may be necessary for the preservation of the condition of the Premises and the continued operation and maintenance of the Plant and the Lines.

9. The Grantee's rights hereunder including ingress and egress shall be subject to such reasonable rules and regulations as may be prescribed by the Government to assure that the exercise of such rights will not interfere with Government activities at the Station.

10. Upon termination of this easement, the Grantee, at its expense, shall remove, to the extent requested by the Government, improvements installed or constructed hereunder, and shall restore the Premises to the same or as good a condition as that which existed prior to the exercise by the Grantee of its rights hereunder. Such restoration shall be done in a manner satisfactory to the Commanding Officer, Southern Division, Naval Facilities Engineering Command.

11. All or any part of this easement may be terminated upon failure by the Grantee to comply with any of its terms and conditions; upon abandonment of the rights granted herein; or upon nonuse of such rights for a period of two consecutive years.

12. The Government may use the Premises for any purpose that does not unreasonably interfere with the use and enjoyment by the Grantee of the rights granted by this easement.

IN WITNESS WHEREOF, the Government, acting through the Department of the Navy, has caused this instrument to be executed the day and year written first above.

WITNESS

Josephine Parker
Josephine Parker, City Clerk

CITY OF KEY WEST, FL
By Tom Sawyer, Mayor

WITNESS

Mary H. Elliott

THE UNITED STATES OF AMERICA

By Wm. Robey
Contracting Officer

431564

OFF REC 0971 PAGE 307

STATE OF FLORIDA)
COUNTY OF MONROE)

Personally appeared before me, Tom Sawyer, Mayor, who being duly sworn, says that he, with Josephine Parker, saw the within named _____ sign and seal the foregoing Easement, accepting it on behalf of the City Of Key West, FL, and that said acceptance was authorized by Resolution No 86-86 dated March 20, 1986 of the Commissioners of the City of Key West, FL.

Lotus Marie Cionara

Sworn to before me this 21th day of March, 1986, _____, Notary Public in and for the State of Florida.

Notary Public, State of Florida
My Commission Expires March 22, 1986

My commission expires _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally appeared before me E. R. Nelson, Jr., who being duly sworn, says that he saw the within named W. M. Robinson, Jr. sign and seal the foregoing Grant of Easement, in behalf of the United States of America, and that he with Mary G. Hiott witnessed the execution thereof.

E. R. Nelson, Jr.

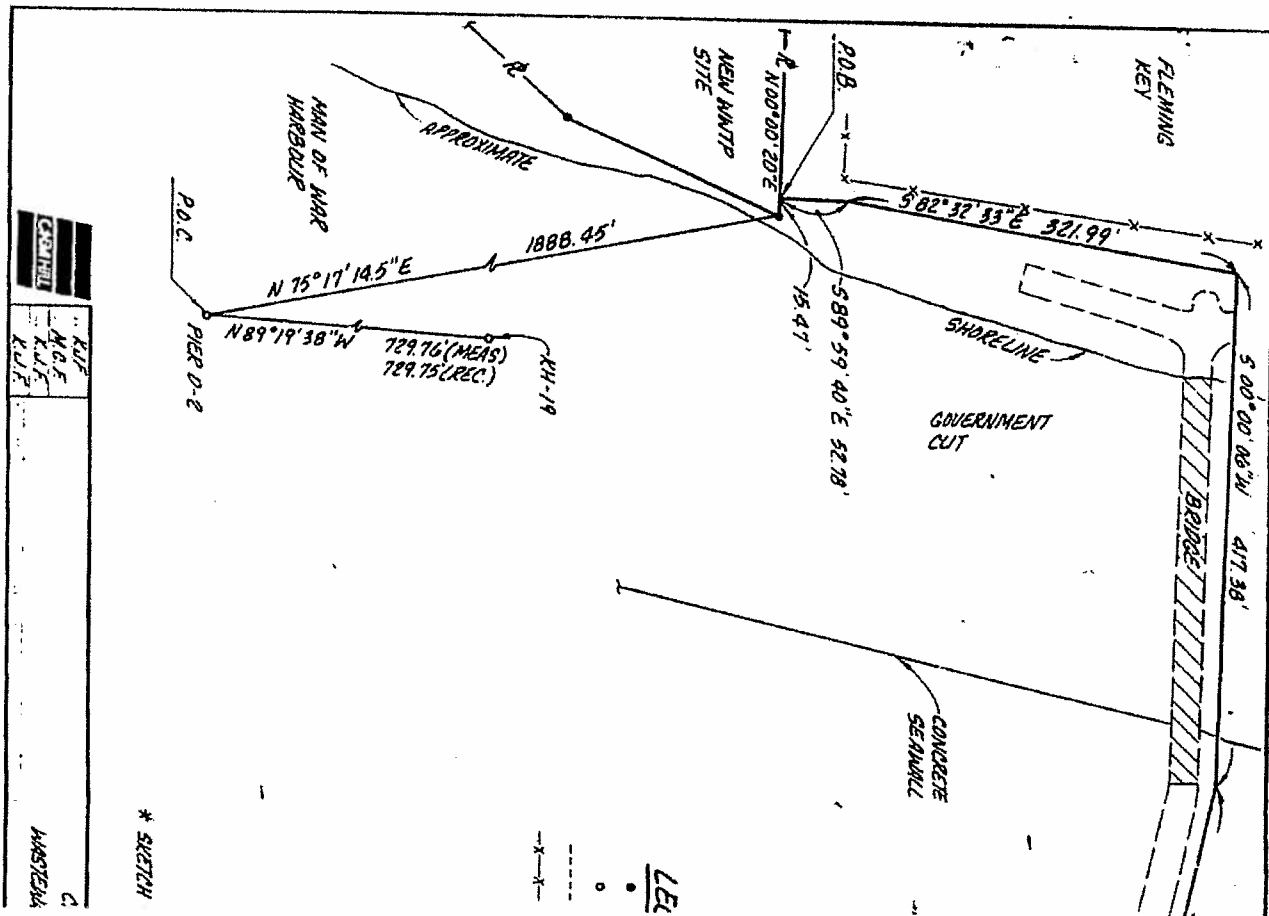
Sworn to before me this 31st day of March, 1986,
Judith H. Owens, Notary Public in and for the State of South Carolina.

Judith H. Owens

MY COMMISSION EXPIRES 8-17-1991

431564

REC 0971 TABLO 016



AMENDMENT TO EXHIBIT A

NAVY EASEMENT

This section will be amended once the easement for the Deep Well Injection project has been approved and finalized.

EXHIBIT B

FACILITIES

The Facilities shall include the following:

1. All equipment, vehicles, grounds, facilities, and appurtenances thereto that will be in existence at the time of commencement of operation of the City's wastewater treatment facility on the property described as follows:

A parcel of land in Township 67 South, Range 25 East on Fleming Key, Monroe County, Florida, being more particularly described as follows:

COMMENCE at the U. S. Army Corps of Engineers Control Station Pier 0-2, the coordinates of which are N 85,337.68 and E 233,429.18 based on U. S. Coast and Geodetic Survey Mercator Grid Coordinate System (East Zone) which has for its zero coordinate a point at Latitude 24 20' North and 500,000 feet west of Longitude 81 00' West, THENCE N 75 17' 14.5" E, 1,888.45 feet to THE POINT OF BEGINNING;

THENCE N 00 00' 20" E, 379.77 feet;
THENCE N 45 00' 33" E, 117.22 feet;
THENCE N 00 01' 00" E, 314.87 feet;
THENCE N 44 43' 06" W, 438.70 feet;
THENCE S 45 16' 54" W, 621.17 feet;
THENCE S 56 41' 13" E, 167.43 feet;
THENCE S 32 11' 13" E, 380.00 feet;
THENCE S 42 11' 23" E, 221.23 feet;
THENCE S 67 00' 49" E, 191.32 feet;
to THE POINT OF BEGINNING.

The above-described parcel contains 10.145 acres, more or less, all as shown on map marked Exhibit "A" attached hereto and made a part hereof.

ALSO

A 25' wide strip of land in Township 67 South, Range 25 East, Monroe County, Florida, 12.5 feet on each side of the following described centerline:

COMMENCE at the U. S. Army Corps of Engineers Control Station Pier D-2, the coordinates of which are N 85,337.68 and E 223,429.18 based on

U. S. Coast and Geodetic Survey Mercator Grid Coordinate System (East Zone) which has for its zero coordinate a point of Latitude 24 20' North and 500,000 feet West of Longitude 81 00' West; THENCE N 75 17' 14.5" E, 1,888.45 feet' THENCE N 00 00 20" E, 15.57 feet to THE POINT OF BEGINNING;

THENCE S 89 59' 40" E, 52.78 feet;
 THENCE S 82 32' 33" E, 321.99 feet;
 THENCE S 00 00' 06" W, 417.38 feet;
 THENCE S 11 04' 30" W, 939.00 feet;
 THENCE N 80 33' 38" W, 431.36 feet;
 THENCE S 09 26' 22 "W, 16.00 feet, more or less, to the northerly line of the housing authority of Key West property conveyed in deed book G-9, Page 406 of the public records of Monroe County, Florida, and the POINT OF TERMINUS.

2. All of the pipe system, including lift stations and appurtenances thereto, running between the Plant Lift Station "A".

3. Lift Stations:

"A"	250 Amelia St.
"B"	631 Greene St.
"C"	699 Palm Ave.
"D"	1329 Seminary St.
"DA"	1391 Atlantic Blvd.
"E"	2430 Government Rd.
"F"	1460 Fourteenth St.
"G"	3545 Flagler Ave.
"H"	250 Trumbo Rd.
"I"	3105 N. Roosevelt Blvd.
"J"	3906 S. Roosevelt Blvd.
"K"	3485 S. Roosevelt Blvd.
"L"	3557 S. Roosevelt Blvd.
"M"	3805 S. Roosevelt Blvd.
"N"	2001 S. Roosevelt Blvd.
"O"	Venetian Dr.
"P"	Garrison Bight
"R"	Buttonwood Court
"S"	Hilton Haven

4. Navy flow meters:

Station "D1" Trumbo Point Annex front gate
 Station "D2" Trumbo Point Annex backflow preventer
 Station "D3" Trumbo Point Annex back gate
 Station "E2" Lift station "A"
 Station "E3" Truman Ave. and Fort St.
 Station "E5" Angela St. and old City Electric System building
 Station "B" Poinciana Housing
 Station "C" Sigsbee
 Station "A" Medical Center

Permit . FL0025976
Major POTW

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.; the "Act"),

City of Key West
P.O. Box 1409
Key West, Florida 33041

is authorized to discharge from a facility located at

Richard A. Heyman Wastewater Treatment Plant
Trumbo Annex, Flemming Key
Monroe County
Key West, Florida

to receiving waters named

The Atlantic Ocean
Latitude: 24 deg. - 32 min. - 06 sec.
Longitude: 81 deg. - 48 min. - 48 sec.

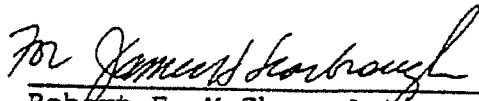
in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The permit consists of this cover sheet, Part I 8 pages, Part II 16 pages, Part III 3 pages, and Part IV 2 pages.

This permit shall become effective on January 1, 1995.

This permit and the authorization to discharge shall expire at midnight, October 31, 1999.

October 28, 1994

Date Issued



Robert F. McGhee, Acting Director
Water Management Division

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - Final

1. These limitations are to be achieved by the effective date of the permit, and shall remain in effect until permit expiration for outfall Serial Number 001, sanitary wastewater.

Such discharges shall be limited and monitored by the permittee as specified below:

PARAMETERS

DISCHARGE LIMITATIONS
Other Units (Specify)

MONITORING REQUIREMENTS

Flow, MGD	Annual Average	Monthly Average	Weekly Average	Report	Report	Measurement Frequency	Sample Type	Sampling Point
	--	Report	Report	Report		Continuous	Recording flow meter & totalizer	Effluent
Carbonaceous Biochemical Oxygen Demand (5-Day)	20.0 mg/l	25.0 mg/l	40.0 mg/l	Report	--	5 days/week	24-hr. Composite	Effluent Influent
Total Suspended Solids	20.0 mg/l	30.0 mg/l	45.0 mg/l	Report	--	5 days/week	24-hr. Composite	Effluent Influent
Fecal Coliform Bacteria (#/100 ml)		See Item 3 on Page I-3				5 days/week	Grab	Effluent
pH		See Item 4 on Page I-3				Continuous	Recorder	Effluent
Total Residual Chlorine		See Item 8 on Page I-4				5 days/week	Grab	Effluent
Acute Whole Effluent Toxicity		See Item 9 on Page I-4				See Part IV	Grab	Effluent
Total Nitrogen, as N (mg/l)	--	Report	--	Report	--	1/month	24-hr. Composite	Effluent
Total Phosphorus, as P (mg/l)	--	Report	--	Report	--	1/month	24-hr. Composite	Effluent
Dissolved Oxygen, mg/l		See Item 12 on Page I-4				7 days/week	Grab	Effluent

The sample point shall be Pump Station A.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - Final - Continued

1. These limitations are to be achieved by the effective date of the permit, and shall remain in effect until permit expiration for outfall Serial Number 001, sanitary wastewater.
 Such discharges shall be limited and monitored by the permittee as specified below:

PARAMETERS

DISCHARGE LIMITATIONS
 Other Units (Specify)

<u>Annual Average</u>	<u>Monthly Average</u>	<u>Weekly Average</u>
-----------------------	------------------------	-----------------------

See Item 13 on Page I-5

<u>Measurement Frequency</u>	<u>Sample Type</u>	<u>Sample Point</u>
------------------------------	--------------------	---------------------

1/month	24-hr. Composite	Effluent
---------	------------------	----------

MONITORING REQUIREMENTS

<u>Measurement Frequency</u>	<u>Sample Type</u>	<u>Sample Point</u>
------------------------------	--------------------	---------------------

1/month	24-hr. Composite	Effluent
---------	------------------	----------

Total Recoverable Copper, ug/l

PART I (CONTINUATION)
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. In addition to the specified limits, the monthly average effluent CBOD₅ and suspended solids concentrations shall not exceed 15% of the respective influent values (i.e., 85% removal). The % removal shall be reported on a Discharge Monitoring Report (DMR) Form (EPA #3320-1). Also, the daily maximum concentration of CBOD₅ and TSS shall not exceed 60.0 mg/l.
3. The arithmetic average of the monthly geometric mean fecal coliform values, collected during an annual period, shall not exceed 200 colonies per 100 ml of effluent sample. The geometric mean of the fecal coliform values collected during a period of 30 consecutive days (monthly average) shall not exceed 200 colonies per 100 ml of effluent sample. No more than ten percent of the samples collected (the 90th percentile value) during a period of 30 consecutive days shall exceed 400 colonies per 100 ml of sample. Note: To report the 90th percentile value, list the fecal coliform values obtained during that month in ascending order. Report the value of the sample that corresponds to the 90th percentile (multiply the number of samples by 0.9). For example: report the corresponding fecal coliform value for the 27th value in ascending order. Any one sample shall not exceed 800 colonies per 100 ml of effluent sample.
4. The pH of the effluent shall be monitored continuously with a recorder. The pH shall not deviate outside the range of 6.5 standard units to 8.5 standard units more than 1% of the time in any calendar month and no individual excursion shall exceed 60 minutes. An "excursion" is an unintentional and temporary incident in which the pH value of discharged wastewater exceeds the range set forth in the permit.
5. There shall be no discharge of floating solids or visible foam in other than trace amounts.
6. The effluent shall not cause a visible sheen on the receiving water.
7. Any bypass of the treatment facility which is not included in the effluent monitored above, is to be monitored for flow and all other parameters (except acute whole effluent toxicity). For parameters other than flow, at least one grab sample per day shall be monitored. Flow shall be monitored or estimated, as appropriate, to obtain reportable data. All monitoring results shall be reported on a DMR Form.

8. a. The daily maximum concentration for total residual chlorine (TRC) shall not exceed 0.01 mg/l. This limit is included to prevent toxic effects from chlorine in the receiving waters. This limit does not provide for a zone of mixing from TRC in the receiving water. The permittee may apply for a mixing zone for TRC from the Florida Department of Environmental Protection (FDEP) if the permittee determines such to be a benefit. If a mixing zone for TRC is granted by FDEP and concurred in by EPA, the permittee may apply for a modification of the above limit from EPA.
- b. Testing for TRC shall be conducted according to either the low-level amperometric titration method or the DPD colorimetric method as specified in Section 4500-C1 E. or 4500-C1 G., respectively, Standard Methods for the Examination of Water and Wastewater, 18th Edition, or the most current edition.
9. An LC₅₀ of 100% or less in a test of 96 hours duration or less will constitute a violation of Florida Administrative Code (FAC) Section 17-4.244(3)(a) (February 2, 1994) and the terms of this permit. The testing for this requirement must conform with Part IV of this permit.
10. Unless otherwise specified, samples taken in compliance with the effluent monitoring requirements specified above shall be taken at the nearest accessible point after final treatment but prior to actual discharge to the receiving water.
11. If the results for a given sample analysis are such that any parameter (other than fecal coliform) is not detected at or above the minimum level for the test method used, a value of zero will be used for that sample in calculating an arithmetic mean value for the parameter. If the resulting calculated arithmetic mean value for that reporting period is zero, the permittee shall report "NODI=B" on the DMR. For fecal coliform, a value of 1.0 shall be used in calculating the geometric mean. If the resulting fecal coliform mean value is 1.0, the permittee shall report "NODI=B" on the DMR. For each quantitative sample value that is not detectable, the test method used and the minimum level for that method for that parameter shall be attached to and submitted with the DMR. The permittee shall then be considered in compliance with the appropriate effluent limitation and/or reporting requirement.
12. The dissolved oxygen effluent concentration shall not be less than 1.5 mg/l.

13. The daily maximum for total recoverable copper shall not exceed 2.9 ug/l. This limit does not provide for a zone of mixing for this parameter in the receiving water. The permittee may apply for a mixing zone for total recoverable copper from the Florida Department of Environmental Protection (FDEP) if the permittee determines such to be a benefit. If a mixing zone for total recoverable copper is granted by FDEP and concurred in by EPA, the permittee may apply for a modification of the above limit from EPA.
14. The permittee shall identify all wastewater discharges, at locations not authorized as permitted outfalls, that occur prior to the headworks of the wastewater treatment plant covered by this permit. The permittee shall submit, with the scheduled Discharge Monitoring Report (DMR) Form, the following information for each discharge event at each source that occurs during the reporting period covered by the DMR:
 - a.) the cause of the discharge;
 - b.) duration and volume (estimate if unknown);
 - c.) description of the source, e.g., manhole cover, pump station;
 - d.) type of collection system that overflowed, i.e., combined or separate;
 - e.) location by street address, or any other appropriate method;
 - f.) date of event;
 - g.) the ultimate destination of the flow, e.g., surface waterbody, land use location, via municipal separate storm sewer system to a surface waterbody, (show location on a USGS map or copy thereof); and
 - h.) corrective actions or plans to eliminate future discharges.

The permittee shall refer to Part II of this permit, paragraph D.8, Twenty-Four Hour Reporting, to report any unpermitted discharge events which may endanger health or the environment. Submittal or reporting of any of this information does not provide relief from any subsequent enforcement actions for unpermitted discharges to waters of the United States.

B. SLUDGE MANAGEMENT PRACTICES

1. Annually, the permittee shall sample and analyze the sludge and report to EPA the quantitative data for the 125 priority pollutants listed in 40 CFR Part 122, Appendix D, Tables II and III. Quantitative data for 2,3,7,8 - tetrachlorodibenzo-p-dioxin (TCDD) must also be submitted if the permittee knows or has reason to believe that TCDD is or may be present in the sludge.
 - a. The permittee shall submit the above data within 1 year of the effective date of this permit.
 2. Quarterly, the permittee shall sample and analyze the sludge and report to EPA the quantitative data for arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc.
 - a. The permittee shall submit the above data within 1 year of the effective date of this permit, and report quarterly thereafter.
 - The permittee shall submit within 30 days of the effective date of this permit the sludge production volume (specify if daily or annual; if actual volume is not known, estimate the quantity of sludge being handled and so indicate) and the sludge disposal practice.
 - The permittee shall provide sludge inventory data to the State and EPA, as part of EPA's inventory updates as requested. The data should include, but not be limited to, sludge quantity and characteristics.
- Reopener. If an applicable "acceptable management practice" or numerical limitation for pollutants in sewage sludge promulgated under Section 405(d)(2) of the Clean Water Act, as amended by the Water Quality Act of 1987, is more stringent than the sludge pollutant limit or acceptable management practice in this permit, or controls a pollutant not limited in this permit, this permit shall be promptly modified or revoked and reissued to conform to the requirements promulgated under Section 405(d)(2). The permittee shall comply with the limitations by no later than the compliance deadline specified in the applicable regulations as required by Section 405(d)(2)(D) of the Clean Water Act.
- Notice of change in sludge disposal practice. The permittee shall give prior notice to the Regional Administrator of any change planned in the permittee's sludge disposal practice.
- Cause for modification. 40 CFR §122.62(a)(1) provides that the following is a cause for modification but not revocation and reissuance of permits except when the permittee requests or agrees.
- (a) Alterations. There are material and substantial changes or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

8. Upon review of information provided by the permittee as required by the above items, or results from an on-site inspection, the permit shall be subject to modification to incorporate appropriate requirements.
9. The permittee shall annually analyze for the parameters listed in 40 CFR §261.24, Table I. The data shall be compared to the regulatory levels listed in 40 CFR §261.24, Table I. If the data is less than the regulatory levels in 40 CFR §261.24, Table I, the permittee does not have to perform a Toxicity Characteristic Leaching Procedure test (TCLP). If the data is greater than the regulatory levels in 40 CFR §261.24, Table I, the permittee shall perform a TCLP test in accordance with 40 CFR 261, as published on March 29, 1990, Volume 55, Number 61 Federal Register 11798. The test results shall be reported on the anniversaries of the effective date of this permit. Test results from any additional tests that are performed shall also be reported. In addition, the test shall be performed if the permittee knows or has reason to believe that its sewage sludge may fail the TCLP test as a result of changes in its sewage sludge characteristics. Should a sewage sludge fail the TCLP test, the permittee shall immediately halt all sludge use or disposal activities. In addition, the permittee shall submit written notification to EPA within ten (10) calendar days of test failure.
10. Should the permittee's sludge be disposed of in a solid-waste landfill, the permittee shall demonstrate the absence of free liquids in its sewage sludge through the utilization of Test Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication No. SW-846). These tests shall be conducted on representative samples of all sewage sludge prior to each disposal at solid-waste landfills. A successful demonstration must be performed before the permittee's sewage sludge is allowed to be disposed of at a solid-waste landfill. The permittee shall: 1) report on the DMR only the number of tests that failed during the quarter and 2) in any quarter where one or more tests failed, submit a separate report attached to the DMR which shows the date of each failed and subsequent passing test along with their respective results. Prior notice must be given to the EPA of any changes in disposal practice resulting from test failures.
1. The permittee shall ensure that the sludge generated by its facility will comply with the requirements of 40 CFR Part 503.
2. Based on Table 1 of 40 CFR §503.16, the frequency of monitoring for all requirements of 40 CFR §503.16(a) shall be quarterly.

C. SCHEDULE OF COMPLIANCE

1. The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the following schedule:

Discharge 001:

Operational level attained Effective Date of Permit

2. No later than 14 calendar days following a date identified in the above schedule of compliance, the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

Part II

STANDARD CONDITIONS FOR NPDES PERMITS

SECTION A. GENERAL CONDITIONS

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation, and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

Any person who violates a permit condition is subject to a civil penalty not to exceed \$25,000 per day for each violation. Any person who negligently violates any permit condition is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment for not more than 1 year, or both. Any person who knowingly violates permit conditions is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. Also, any person who violates a permit condition may be assessed an administrative penalty not to exceed \$10,000 per violation with the maximum amount not to exceed \$125,000. [Ref: 40 CFR 122.41(a)]

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Permit Modification

After notice and opportunity for a hearing, this permit may be modified, terminated, or revoked for cause including, but not limited to, the following:

- a. Violation of any terms or conditions of this permit;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
- c. A change in any conditions that requires either temporary interruption or elimination of the permitted discharge; or
- d. Information newly acquired by the Agency indicating the discharge poses a threat to human health or the environment.

If the permittee believes that any past or planned activity would be cause for modification or revocation and reissuance under 40 CFR 122.62, the permittee must report such information to the Permit Issuing Authority. The submittal of a new application may be required of the permittee. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Toxic Pollutants

Notwithstanding Paragraph 4, above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation of such pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

6. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" Section B, Paragraph B-3, and "Upsets" Section b, Paragraph B-4, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 or the Act.

8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

9. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

10. Onshore or Offshore Construction

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any waters of the United States.

11. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

12. Duty to Provide Information

The permittee shall furnish to the Permit Issuing Authority, within a reasonable time, any information which the Permit Issuing Authority may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Permit Issuing Authority upon request, copies of records required to be kept by this permit.

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this permit.

3. Bypass of Treatment Facilities

a. Definitions

- (1) "Bypass means the intentional diversion of waste streams from any portion of a treatment facility, which is not a designed or established operating mode for the facility.

- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs c. and d. of this section.

c. Notice

- (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.
- (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section D, Paragraph D-8 (24-hour notice).

d. Prohibition of bypass

- (1) Bypass is prohibited and the Permit Issuing Authority may take enforcement action against a permittee for bypass, unless:
-
- (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- (c) The permittee submitted notices as required under Paragraph c. of this section.
- (2) The permit Issuing Authority may approve an anticipated bypass, after considering its adverse effects, if the Permit Issuing Authority determines that it will meet the three conditions listed above in Paragraph d.(1) of this section.

4. Upsets

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventive maintenance, or careless or improper operation. An upset constitutes an affirmative defense to an action brought for non-compliance with such technology based permit limitation if the requirements of 40 CFR 122.41(n)(3) are met.

5. Removed Substances

This permit does not authorize discharge of solids, sludge, filter backwash, or other pollutants removed in the course of treatment of control of wastewaters of the United States unless specifically limited in Part 1.

SECTION C. MONITORING AND RECORDS

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Permit Issuing Authority.

2. Flow Measurements

Appropriate flow measurements devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than $\pm 10\%$ from the true discharge rates throughout the range of expected discharge volumes. Once-through condenser cooling water flow which is monitored by pump logs, or pump hour meters as specified in Part I of this permit and based on the manufacture's pump curves shall not be subject to this requirement. Guidance in selection, installation, calibration, and operation of acceptable flow measurement devices can be obtained from the following references:

- (1) "A Guide of Methods and Standards for the Measurement of Water Flow", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 97 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by SD catalog No. C13.10:421.)
- (2) "Water Measurement Manual", U.S. Department of Interior, Bureau of Reclamation, Second Edition, Revised Reprint, 1974, 327 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by catalog No. 127.19/2:W29/2, Stock No. S/N 24003-0027.)
- (3) "Flow Measurement in Open Channels and Closed Conduits", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Available in paper copy or microfiche from National Technical Information Service (NTIS), Springfield, VA 22151. Order by NTIS No. PB-273 535/5ST.)
- (4) "NPDES Compliance Flow Measurement Manual", U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, September 1981, 135 pp. (Available from the General Service Administration (GSBC), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO. 80255.)

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

4. Penalties for Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or imprisonment for not more than 2 years, or both.

5. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by the Permit Issuing Authority at any time.

6. Record Contents

Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual(s) who performed the sampling of measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analysis.

7. Inspection and Entry

The permittee shall allow the permit Issuing Authority, or a authorized representative, upon the presentation of credentials and other documents as may be required by law, to;

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit.
- c. Inspect at reasonable time any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

SECTION D. REPORTING REQUIREMENTS

1. Change in Discharge

The permittee shall give notice to the Permit Issuing Authority as soon as possible of any planned physical alterations or additions to the permitted Facility. Notice is required only when:

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source; or

- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D, Paragraph D-10(a).

2. Anticipated Noncompliance

The permittee shall give advance notice to the Permit Issuing Authority of any planned change in the permitted facility or activity which may result in noncompliance with permit requirements. Any maintenance or facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Permit Issuing Authority.

3. Transfer of Ownership or Control

A permit may be automatically transferred to another if:

- a. The permittee notifies the Permit Issuing Authority of the proposed transfer at least 30 days in advance of the proposed transfer date;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The Permit Issuing Authority does not notify the existing permittee of his or her intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph b.

4. Monitoring Reports

See Part III of this permit.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased frequency shall also be indicated.

6. Averaging of Measurements

Calculations for limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Permit Issuing Authority in the permit.

7. Compliance Schedules

Reports of compliance or noncompliance with, or any progress on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

8. Twenty-Four Hour Reporting

The permittee shall orally report any noncompliance which may endanger health or the environment, within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including the exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. The Permit Issuing Authority may verbally waive the written report, on a case-by-case basis, when the oral report is made.

The following violations shall be included in the 24 hour report when they might endanger health or the environment:

- a. An unanticipated bypass which exceeds any effluent limitation in the permit.
- b. Any upset which exceeds any effluent limitation in the permit.

9. Other Noncompliance

The permittee shall report in narrative form, all instances of noncompliance not previously reported under Section D, Paragraphs D-2, D-4, D-7, and D-8 at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D-8.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Permit Issuing Authority as soon as it knows or has reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic substance(s) (listed at 40 CFR 122, Appendix D, Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

- (1) One hundred micrograms per liter (100 ug/l);

- (2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony; or
 - (3) Five (5) times the maximum concentration value reported for that pollutant(s) in the application.
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant (listed at 40 CFR 122, Appendix D, Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
- (1) Five hundred Micrograms per liter (500 ug/l);
 - (2) One milligram per liter (1 mg/l) for antimony; or
 - (3) Ten (10) times the maximum concentration value reported for that pollutant(s) in the permit application.

11. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit. The Permit Issuing Authority may grant permission to submit an application less than 180 days in advance but not later than the permit expiration date.

Where EPA is the Permit Issuing Authority, the terms and conditions of this permit are automatically continued in accordance with 40 CFR 122.6, only where the permittee has submitted a timely and complete application for a renewal permit and the Permit Issuing Authority is unable, through no fault of the permittee, to issue a new permit before expiration date.

12. Signatory Requirements

All applications, reports, or information submitted to the Permit Issuing Authority shall be signed and certified.

- a. All permit applications shall be signed as follows:

- (1) For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (2) the manager of one or more manufacturing production facilities employing more than 250 persons or having gross annual sales or expenditures exceeding 25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - (3) For a municipality, State, Federal, or other public agencies by either a principal executive officer or ranking elected official.
- b. All reports required by the permit and other information requested by the Permit Issuing Authority shall be signed by a person described above or by a duly authorized representative only if:
- (1) The authorization is made in writing by person described above;
 - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may this be either a named individual or any individual occupying a named position.); and
 - (3) The written authorization is submitted to the Permit Issuing Authority.
- c. Certification. Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

13. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Permit Issuing Authority. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

14. Penalties for Falsification of Reports

The Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Clean Water Act, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 2 years, or both.

SECTION E. DEFINITIONS

1. Permit Issuing Authority

The Regional Administrator of EPA Region IV or his designee, unless at some time in the future the State receives authority to administer the NPDES program and assumes jurisdiction over the permit; at which time, the Director of the State program receiving the authorization becomes the issuing authority.

2. Act

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Public Law 92-500, as amended by Public Laws 95-217, 95-576, 96-483, 97-117, and 100-4, 33 U.S.C. 1251 et seq.

3. Mass/Day Measurements

- a. The "average monthly discharges" is defined as the total mass of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month. It is therefore, an arithmetic mean found by adding the weights of the pollutant found each day of the month and then dividing this sum by the number of days the tests were reported. The limitation is identified as "Daily Average" or "Monthly Average" in Part I of the permit and the average monthly discharge value is reported in the "Average" column under "Quantity" on the Discharge Monitoring Report (DMR).
- b. The "average weekly discharge" is defined as the total mass of all daily discharges sampled and/or measured during the calendar week on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such week. It is, therefore, an arithmetic mean found by adding the weights of pollutants found each day of the week and then dividing this sum by the number of days the tests were reported. This limitation is identified as "Weekly Average" in Part I of the permit. Enter the highest weekly average of sample measurements obtained during the reporting period in the "Maximum" column under "Quantity" on the DMR.
- c. The "maximum daily discharge" is the total mass (weight) of a pollutant discharged during a calendar day. If only one sample is taken during any calendar day the weight of pollutant calculated from it is the "maximum daily discharge". This limitation is identified as "Daily Maximum", in Part I of the permit and the highest such value recorded during the reporting period is reported in the "Maximum" column under "Quantity" on the DMR.
- d. The "average annual discharge" is a rolling average equal to the arithmetic mean of the mass measured in all discharges sampled and/or measured during consecutive reporting periods which comprise one year. For parameters that are measured at least once per month, the annual average shall be computed at the end of each month and is equal to the arithmetic mean of the monthly average of the month being reported and the monthly average of each of the previous eleven months. This limitation is defined as "Annual Average" in Part I of the permit and the average annual discharge value is reported in the "Average" column under "Quantity" on the DMR.

4. Concentration Measurements

- a. The "average monthly concentration", other than for fecal coliform bacteria, is the sum of the concentrations of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month (arithmetic mean of the daily concentration values). The daily concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during that calendar day. This limitation is identified as "Monthly Average" or "Daily Average" under "Other Limits" in Part I of the permit and the average monthly concentration value is reported under the "Average" column under "Quality" of the DMR.
- b. The "average weekly concentration", other than for fecal coliform bacteria, is the sum of the concentrations of all daily discharges sampled and/or measured during a calendar week on which daily discharges are sampled and measured divided by the number of daily discharges sampled and/or measured during such week (arithmetic mean of the daily concentration values). The daily concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during that calendar day. This limitation is identified as "Weekly Average" under "Other Limits" in Part I of the permit. Enter the highest weekly average of sample measurements obtained during the reporting period in the "Maximum" column under "Quality" on the DMR.
- c. The "maximum daily concentration" is the concentration of a pollutant discharged during a calendar day. It is identified as "Daily Maximum" under "Other Units" in Part I of the permit and the highest such value recorded during the reporting period is reported under the "Maximum" column under "Quality" on the DMR.
- d. The "average annual concentration", other than fecal coliform bacteria, is the rolling average equal to the arithmetic mean of the effluent or influent samples collected during consecutive reporting periods which comprise one year. For parameters that are measured at least once per month, the annual average shall be computed at the end of each month and is equal to the arithmetic mean of the monthly average of the month being reported and the monthly average of each of the previous eleven months. This limitation is identified as "Annual Average" under "Other Limits" in Part I of the permit and the average annual concentration value is reported under the "Average" column under "Quality" on the DMR.

5. Other Measurements

- a. The effluent flow expressed as million gallons per day (MGD) is the 24 hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in Part I of the permit the flow rate values are reported in the "Average" column under "Quantity" on the DMR.
- b. An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.
- c. Where monitoring requirements for pH, dissolved oxygen or fecal coliform bacteria are specified in Part I of the permit, the values are generally reported in the "Quality or Concentration" column on the DMR.
- d. The "average annual discharge" for fecal coliform bacteria shall be calculated in the same manner as that for mass limitations (see item II.E.3.d.).

6. Types of Samples

- a. Composite Samples: A "composite sample" is a combination of not less than 8 influent or effluent portions, of at least 100 ml, collected over the full time period specified in Part I.A. The composite sample must be flow proportioned by either time interval between each aliquot or by volume as it relates to effluent flow at the time of sampling or total flow since collection of the previous aliquot. Aliquots may be collected manually or automatically.
- b. Grab Samples: A "grab sample" is a single influent or effluent portion which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.

7. Calculation of Means

- a. Arithmetic Mean: The "arithmetic mean" of any set of values is the summation of the individual values divided by the number of individual values.
- b. Geometric Mean: The "geometric mean" of any set of values is the N^{th} root of the product of the individual values where N is equal to the number of individual values. The geometric mean is equivalent to the antilog of the arithmetic mean of the logarithms of the individual values. For purposes of calculating the geometric mean, values of zero (0) shall be considered to be one (1).

- c. **Weighted by Flow Value:** "Weighted by flow value" means the summation of each concentration times its respective flow divided by the summation of the respective flows.

8. Calendar Day

A "calendar day" is defined as the period from midnight of one day until midnight of the next day. However, for purposes of this permit, any consecutive 24-hour period that reasonably represents the calendar day may be used for sampling.

9. Hazardous Substance

A "hazardous substance" means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act.

10. Toxic Pollutants

A "toxic pollutant" is any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act.

Part III

Other Requirements

A. Reporting of Monitoring Results

Monitoring results obtained for each calendar month shall be summarized for that month and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed calendar month. (For example, data for January shall be submitted by February 28.) Signed copies of these, and all other reports required by Section D of Part II, Reporting Requirements, shall be submitted to the Permit Issuing Authority at the following address:

Environmental Protection Agency
Region IV
Enforcement Section
Water Permits and Enforcement Branch
Water Management Division
345 Courtland Street, N.E.
Atlanta, GA 30365

If no discharge occurs during the reporting period, sampling requirements of this permit do not apply. The statement "No Discharge" shall be written on the DMR form. If, during the term of this permit, the facility ceases discharge to surface waters, the Permit Issuing Authority and the State shall be notified immediately upon cessation of discharge. This notification shall be in writing.

B. Reopener Clause

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2)(C) and (D), 307(a)(2), and 405(d)(2)(D) of the Clean Water Act, as amended, if the effluent standard, limitation, or sludge disposal requirement so issued or approved:

- a. Contains different conditions or is otherwise more stringent than any condition in the permit; or
- b. Controls any pollutant or disposal method not addressed in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

In accordance with regulations promulgated under Section 403 (40 CFR Part 125.123(d)(4)) of the Clean Water Act, this permit shall also be modified or revoked at any time if, on the basis of any new data or information, the Regional Administrator determines that continued discharges may cause unreasonable degradation of the marine environment.

C. Special POTW Requirements

1. Change in Discharge

In the case of a publicly owned treatment works (POTW) any anticipated changes in the facility discharge, including any new significant industrial discharge or significant changes in the quantity or quality of existing industrial discharges to the treatment system which will result in new or increased discharges of pollutants, must be reported to the Permit Issuing Authority. Modifications to the permit may then be made to reflect any necessary effluent limitations for any pollutants not identified and limited herein. The permittee may be required to develop a local pretreatment program, if the industrial wastes are regulated by Federal Categorical Standards or cause interference at the POTW.

2. Control of User Discharges to the System

- a. Under no circumstances shall the permittee allow introduction of the following pollutants into the waste treatment system:
- (1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140°F or 60°C using the test methods specified in 40 CFR § 261.21;
 - (2) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the treatment works is specifically designed to accommodate such discharges;
 - (3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in sewers, or other interference with the operation of the POTW;
 - (4) Any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a discharge of such volume or strength as to cause interference in the POTW;
 - (5) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the treatment works influent exceeds 40°C (104°F) unless the treatment works is designed to accommodate such heat;
 - (6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

- (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and/or
 - (8) Any trucked or hauled pollutants, except at discharge points designated by the POTW.
- b. The permittee shall notify the Permit Issuing Authority of any of the following changes in user discharge to the system no later than 180 days prior to change in discharge:
- (1) New introduction into such works of pollutants from any source which would be a new source as defined in Section 306 of the Act, if such source were discharging pollutants.
 - (2) New introduction of pollutants into such works from a source which would be subject to Section 301 or Section 307 of the Act, if it were discharging such pollutants.

This notice shall include information on the quantity and quality of the wastewater introduced by the new source into the publicly-owned treatment works, and on any anticipated impact on the effluent discharged from such works.

Whole Effluent Toxicity Testing Program

As required by Part I of this permit, the permittee shall initiate the series of tests described below beginning in January, 1995 to evaluate whole effluent toxicity of the discharge from outfall 001. All test species, procedures and quality assurance criteria used shall be in accordance with Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms, EPA/600/4-90/027F, or the most current edition. The dilution/control water and effluent used will be adjusted to a salinity of 20 parts per thousand using artificial sea salts as described in EPA/600/4-90/027F, Section 7 (or the most current edition). A standard reference toxicant quality assurance test shall be conducted concurrently with each species used in the toxicity tests and the results submitted with the discharge monitoring report (DMR). Alternatively, if monthly QA/QC reference toxicant tests are conducted, these results must be submitted with the DMR.

1. a. The permittee shall conduct 96-hour acute static-renewal multi-concentration toxicity tests using the mysid shrimp (Mysidopsis bahia) and the inland silverside (Menidia beryllina). All tests shall be conducted on four separate grab samples collected at evenly-spaced (6-hr) intervals over a 24-hour period and used in four separate tests in order to catch any peaks of toxicity and to account for daily variations in effluent quality. All tests shall be conducted on a control (0%) and the following dilution concentrations: 100.0%, 50.0%, 30.0%, 12.5%, and 6.25%.
b. If control mortality exceeds 10% for either species in any test, the test(s) for that species (including the control) shall be repeated. A test will be considered valid only if control mortality does not exceed 10% for either species.
2. The toxicity tests specified above shall be conducted once every six months for the duration of the permit, unless notified otherwise by the permit issuing authority. These tests are referred to as "routine" tests.

3. a. If unacceptable acute toxicity (an LC_{50} of 100% or less occurs in either test species in any of the four separate grab sample tests within the specified time) is found in a "routine" test, the permittee shall conduct two additional acute toxicity tests in the same manner as the "routine" test on the specie(s) indicating unacceptable toxicity. For each additional test, the sample collection requirements and test acceptability criteria specified in Section 1 above must be met for the test to be considered valid. The first test shall begin within two weeks of the end of the "routine" tests, and shall be conducted weekly thereafter until two additional, valid tests are completed. The additional tests will be used to determine if the toxicity found in the "routine" test is still present.
- b. Results from additional tests, required due to unacceptable acute toxicity in the "routine" test(s), must be reported on the Discharge Monitoring Report (DMR) Form for the month in which the test was begun. Such test results must be submitted within 45 days of completion of the second additional, valid test.

EXHIBIT D

DESCRIPTION OF EASEMENT PROPERTY

A parcel of land in Township 67 South, Range 25 East on Fleming Key, Monroe County, Florida, being more particularly described as follows:

COMMENCE at the U. S. Army Corps of Engineers Control Station Pier 0-2, the coordinates of which are N 85,337.68 and E 223,429.18 based on U. S. Coast and Geodetic Survey Mercator Grid Coordinate System (East zone) which has for its zero coordinate a point at latitude 24 20' North and 500,000 feet west of Longitude 81 00' West, THENCE N 75 17' 14.5" E, 1,888.45 feet to THE POINT OF BEGINNING;

THENCE N 00 00' 20" E, 379.77 feet;
THENCE N 45 00' 33" E, 117.22 feet;
THENCE N 00 01' 00" E, 314.87 feet;
THENCE N 44 43' 06" E, 438.70 feet;
THENCE S 45 16' 54" W, 621.17 feet;
THENCE S 56 41' 13" E, 167.43 feet;
THENCE S 32 11' 13" E, 380.00 feet;
THENCE S 42 11' 23" E, 221.23 feet;
THENCE S 67 00' 49" E, 191.32 feet
to THE POINT OF BEGINNING.

The above described parcel contains 10.145 acres, more or less, all as shown on map marked Exhibit "A" attached hereto and made a part hereof.

ALSO

A 25' wide strip of land in Township 67 South, Range 25 East, Monroe County, Florida, 12.5 feet on each side of the following described centerline:

COMMENCE at the U. S. Army Corps of Engineers Control Station Pier D-2, the coordinates of which are N 85,337.68 and E 233,429.18 based on U. S. Coast and Geodetic Survey Mercator Grid Coordinate System (East Zone) which has for its zero coordinate a point of latitude 24 20' North and 500,000 feet West of longitude 81 00' West; THENCE N 75 17' 14.5" E, 1,888.45 feet; THENCE N 00 00' 20" E, 15.47 feet to THE POINT OF BEGINNING.

THENCE S 89 59' 40" E, 52.78 feet;
THENCE S 82 32' 33" E, 321.99 feet;
THENCE S 00 00' 06" W, 417.38 feet;
THENCE S 11 04' 40" W, 939.00 feet;
THENCE N 80 33' 38" W, 431.36 feet;
THENCE S 09 26' 22" W, 16.00 feet, more or less, to the northerly line
of the housing authority of Key West property conveyed in deed book G-9,
Page 406 of the public records of Monroe County, Florida, and the POINT
OF TERMINUS.

EXHIBIT E

EFFLUENT CHARACTERISTICS

1. OMI will operate the Facilities so that the effluent will meet the requirement of the NPDES Permit.
2. In the event any one of the influent characteristics, suspended solids, BOD5, or flow exceeds the design parameters stated above, OMI shall return the Plant effluent to the characteristics required by the NPDES Permit in accordance with the following schedule after the influent characteristics return to within design parameters.

<u>Characteristics Exceeding Design Parameters By</u>	<u>Recovery Period Maximum</u>
10% or Less	5 days
Above 10% Less than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then OMI will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

3. OMI shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, or does not contain Adequate Nutrients, contains Biologically Toxic Substances, and the subsequent recovery period, unless such condition is caused by OMI.

Key West

- 1 Agreement – dated December 30, 1988
- 2 Amendment – dated October 16, 1989
- 3 Ordinance adopting 10/01/89 annual budget – dated September 29, 1989
- 4 Ordinance adopting 10/01/90 annual budget – dated September 18, 1990
- 5 Annual Budget – dated September 10, 1991
- 6 Annual Budget – dated September 22, 1992
- 7 Contract Extension – dated January 28, 1994
- 8 Contract Extension – dated March 28, 1994
- 9 Contract Extension - dated April 29, 1994
- 10 Agreement - dated May 9, 1994

RESOLUTION NO. 99-69

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AWARDING TO OPERATIONS MANAGEMENT INTERNATIONAL, INC. THE CONTRACT FOR OPERATION AND MAINTENANCE OF THE WASTEWATER TREATMENT PLANT; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the contract for the operation and maintenance of the Wastewater Treatment Plant is hereby awarded to Operations Management International, Inc., subject to further negotiation by the City Manager on the Term, Indemnification and Arbitration clauses.

Section 2: 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.

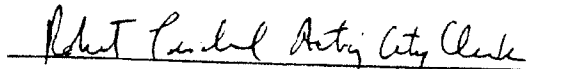
Passed and adopted by the City Commission at a meeting held this 2ND day of MARCH, 1999.

Authenticated by the presiding officer and Clerk of the Commission on MARCH 8, 1999.

Filed with the Clerk MARCH 8, 1999.


SHEILA K. MULLINS, MAYOR

ATTEST:


ROBERT TISCHENKEL, ACTING CITY CLERK