

June 13th

2005

**KEY LARGO WASTEWATER TREATMENT DISTRICT BOARD OF
COMMISSIONERS SPECIAL CALL MEETING**

AGENDA



Monday, June 13, 2005 at 6:00 PM

Key Largo Civic Club, 209 Ocean Bay Drive

Key Largo, FL

Charles Brooks

Gary Bauman

Andrew Tobin

Glenn Patton

Claude Bullock

Chairman

Vice Chairman

Secretary-Treasure

Commissioner

Commissioner

.....
Charles F. Fishburn

Thomas Dillon

Carol Walker

General Manager

District Counsel

Board Clerk

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the KLWTD Board, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate in the meeting should contact the Board Clerk at 305-451-5105 at least 48 hours in advance to request accommodations.

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

D. APPROVAL OF AGENDA WITH ANY ADDITIONS OR DELETIONS

E. PUBLIC COMMENT

F. DRAFT INTER-LOCAL AGREEMENT WITH MONROE COUNTY

G. ADJOURNMENT

June 13, 2005

Call to order 6:03 pm

Pledge: CHARNE

Roll Call

Member	Yes	No	Other	Present
Commissioner Andrew Tobin				<i>Absent</i>
Commissioner Gary Bauman				<i>✓</i>
Commissioner Glenn Patton				<i>✓</i>
Commissioner Claude Bullock				<i>✓</i>
Chairman Charles Brooks				<i>✓</i>

Put on G.22 Agenda
FOR RATIFICATION

Chuck
MARTY
ED

Approval of Agenda

TOM- EMERGENCY ACTION has to be RATIFIED

Motion *Claude*

Second *Glenn*

Member	Yes	No	Other	Present
Commissioner Andrew Tobin				
Commissioner Gary Bauman				
Commissioner Glenn Patton				
Commissioner Claude Bullock				
Chairman Charles Brooks				

4/0

Draft inter-local agreement

BRIAN Armstrong Recommending ILA As Amended

Pg 19- CONNECTION KL System NORTH Comp? Tom will ADAPT
System wide

Pg 26 - Adjudication of Disputes - Tom works 2 ways
work 2 ways?

Pg 32 NO. Comp vs KY system (3 places in 1st para)

* 9.02 - ED Aggressive but can be done - #5 - All permits
concerned with

APPENDIX A - ADMIN. COST. CATEGORY

* CLARIFY APPENDIX B - 3A.

Claude
Motion

CONCEPTIONAL Approve ILA SUBJECT TO CHANGES

KL Sew - NO CHARL TO 3A Appendix "B" ADMIN COST

Second Glen

Member	Yes	No	Other	Present
Commissioner Andrew Tobin			Absent	
Commissioner Gary Bauman	✓			
Commissioner Glenn Patton	✓			
Commissioner Claude Bullock	✓			
Chairman Charles Brooks	✓			

4-0

Public Comment

N/A

Motion

Second

Member	Yes	No	Other
Commissioner Tobin			
Commissioner Bauman			
Commissioner Bullock			
Commissioner Patton			
Chairman Brooks			

Motion

Second

Member	Yes	No	Other
Commissioner Tobin			
Commissioner Bauman			
Commissioner Bullock			
Commissioner Patton			
Chairman Brooks			

Motion

Second

Member	Yes	No	Other
Commissioner Tobin			
Commissioner Bauman			
Commissioner Bullock			
Commissioner Patton			
Chairman Brooks			

Motion to adjourn: Glenn

Seconded by: Claude

Adjournment: Time 7:07

Glenn - comment Charlie



"Excellence in Engineering"

6630 Front Street, Stock Island
Key West, Florida 33040
(305) 295-3301 ph
(305) 295-0143 fax

MEMORANDUM

To: Charlie Brooks, Chairman

From: Ed Castle, P.E.

Date: June 13, 2005

Re: Interlocal Agreement

I have the following comments regarding the draft interlocal agreement:

- The definition of "North Components" may be inaccurate. The WWTP design is actually intended for the entire service area, not just the north side. However, I don't think this is an issue of importance.
- Section 3.05 (3) Monitoring – refers to the County reviewing engineering designs and plans. I don't see a requirement for approval of designs by the County. I also don't see any restriction on the District proceeding with design or construction prior to receiving any comments or approvals by the County. If this is correct, then they won't be holding us up. If it is otherwise, it may slow down design and permitting.
- Section 4.01, Project Changes – County approval of addenda or change orders has a potential to delay the project, but it appears that this is restricted to changes that might incur penalties to the County. This should not be a problem unless reviews take too much time.
- Section 9.02 (1) – award a contract for construction of the Project no later than March 31, 2006. We will most likely have two or more contracts for construction. We can have the contract for the force main permitted in this time frame, but will likely not have all construction contracts permitted or awarded by then.
- Section 9.02 (5) – "obtain all necessary permits and begin construction no later than June 30, 2006." Again, no problem for the force main, but the WWTP permit and especially the deep well permitting may take longer, although if the Engineers put the necessary manpower on the design, this schedule can be met.

Overall, the only real potential for the interlocal agreement to interfere with our project appears to be the requirement for review of designs by the County. If the County Engineer wishes to participate in the design development process, we should request that he abide by the time constraints on the Submittal Protocol.

MEMORANDUM

FROM: Thomas M. Dillon, Attorney at Law
P.O. Box 370736
Key Largo, Florida 33037-0736

Tel: 305-240-1767
Fax: 305-853-2693
E-mail: lawtmd@bellsouth.net

To: Key Largo Wastewater Treatment District

Date: June 10, 2005

Subject: Revised Interlocal Agreement

I have reviewed the revised interlocal agreement received this morning. My comments follow:

Page 5

The definition of "Equivalent Dwelling Units" continues to incorporate restrictions on the way in which the District may define EDU's.

Page 11

§ 3.02(9) requires the District to construct the Project in accordance with the schedule in § 9.03. Comments on § 9.03 appear below.

Page 12

§ 3.02(13) is a new paragraph inserted at my request so that the District would know what types of actions it is prohibited from taking with respect to assignment of management functions for the facilities. An IRS informational publication on tax-exempt bonds may be found at the following web address:

<http://www.irs.gov/pub/irs-pdf/p4079.pdf>

Page 18

§ 4.08 continues to require a certification by the County Engineering Department that amounts submitted for reimbursement are proper Project Costs. On 6/9/05, I spoke with Finance Officer Waits, who advised me that this process is currently in use for MSTU funds and does not cause any undue delays. On that basis, I am withdrawing my earlier objection to this process.

Pages 19 – 20

§ 4.09 does not include the requested terms for replenishment of the \$1,000,000 advance. Finance Officer Waits has advised that the advance is sufficient for the District's needs. On that basis, I am withdrawing my earlier advice that a replenishing advance is needed.

Pages 23 – 24

§ 6.01 includes a new subsection (6) defining the term "substantial compliance." However, the word "substantial" was not inserted into subsection (1), as requested. I am assuming that this is a scrivener's error.

Page 36

§ 9.02 sets forth revised project milestones. At my request, the introductory paragraph has been amended to provide that the District will proceed diligently to meet these milestones. I recommend that the District review the milestones for reasonableness and accept them only if it is confident that they are reasonably achievable.

Other

I am still concerned that the District does not have an estimate of the County Costs that will be deducted from the Reimbursement Amount. At this point it is not possible to estimate the amount available to the District for Project design and construction.

MEMORANDUM

FROM: Thomas M. Dillon, Attorney at Law
P.O. Box 370736
Key Largo, Florida 33037-0736

Tel: 305-240-1767
Fax: 305-853-2693
E-mail: lawtmd@bellsouth.net

To: Key Largo Wastewater Treatment District

Date: June 7, 2005

Subject: Interlocal Agreement redraft

I received the revised Interlocal Agreement this morning. My comments follow:

General:

There are a number of instances in which the draft Agreement expressed the requirement for County approvals or decisions. In my earlier comments, I inserted the requirement that the approvals or decisions be made in the reasonable discretion of the County. The County has rejected these suggestions. Although my preference would be to include the additional terms, I believe that their inclusion is not critical, since the obligation of good faith and fair dealing is implied in every Florida contract.

1. The definition paragraph for "Bond Documents" makes reference to the County Bond Resolution No. 077-2003 and "all other documents pertaining to the issuance by the County of the County Bonds." I have the Bond Resolution, but I do not know the nature or contents of the other documents.

2. The Agreement incorporates several terms relating to costs, and the terms are defined inconsistently, to wit:

- "County Costs" (pp. 4 – 5) include two kinds of costs: the costs incurred by the County in connection with bond issuance, and the costs incurred by the County in connection with drafting and administering the Agreement.
- "Project Costs" (p. 6) include the costs of designing, permitting, and constructing the North Components, as well as any other "Costs" as defined in Bond Resolution No. 077-2003. That definition includes the costs incurred by the County in connection with bond issuance, a component of "County Costs." However, the definition of "Project Costs" excludes "County Costs." Therefore, it is not clear exactly what is included in "Project Costs." It appears that
 - the District costs of designing, permitting, and constructing the North Improvements is included;
 - the County's costs of drafting and administering the Agreement are excluded; and

- the County's costs in connection with bond issuance are included and excluded at the same time, a logical impossibility.
 - For some reason, none of the "County Costs" are included in the preliminary list of Project Costs in Appendix A. As noted below with respect to "Reimbursement Amount," without knowing the amount of the County Costs, the District cannot determine how much of the \$20,000,000 is available to the District for design, permitting, and construction.
3. The definition paragraph for "Equivalent Dwelling Unit" specifies that each single family home, condominium unit, and mobile home is at least one EDU. I believe this to be consistent with the approach the District may elect. However, since the Board has not yet done so, I recommend deletion.
 4. The definition paragraph for "Project Costs" includes a new sentence that costs expended by the District prior to the effective date of the Agreement are subject to review and approval by the County's bond counsel. It is appropriate to make the expenditures subject to bond counsel review and approval, but the Agreement should include the standard of review, i.e., whether use of the bond funds for the expenditures is consistent with the requirements of Section 3.02(12) of the Agreement. Further, the Agreement should provide that such Project Costs are reimbursable unless bond counsel determines that reimbursement would not meet the standard of review.
 5. The term "Senior Revenue Obligations" has no meaningful place in this Agreement, since it refers to District obligations that cannot occur. I recommend deletion.
 6. In the definition paragraph for "Reimbursement Amount", that amount is defined as \$20,000 less County Costs, i.e., costs incurred by the County in connection with issuing the bond, as well as costs incurred by the County to perform the review, inspection, audit and monitoring functions identified in this Agreement. See pp. 4 -5. Since County Costs are not quantified in the Agreement, the amount available for reimbursement to the District for design, permitting, and construction is not known, and that amount could be significantly less than \$20,000,000.
 7. In the definition paragraph for "System Development Charge," the words "levied upon and collected by the District from new users of the System as a contribution toward their equitable share" should be changed to "collected by the District as a contribution toward costs."
 8. § 2.01. The word "System" should be changed to "North Components." Also, the District should review the numbers in this section to determine their accuracy.
 9. § 3.02(6). This paragraph requires the District to release the County and its personnel and contractors. The County rejected my suggestion to limit the District's release of County personnel and contractors from any claim in connection with the District's actions or omissions in connection with the project. The District suggested that only county personnel "involved in effectuating this Agreement" be released. I believe that without the limitation, the release may lead to unintended consequences, i.e., that the release may be applied in favor of persons whose actions give rise to a claim against the District, but whose activities were not related to effectuation of the Agreement. For example, the release, as written, would benefit a County employee or

contractor who negligently causes an accident that leads to a claim against the District. It is difficult to see why the District should agree in advance to release that County employee or contractor from liability.

10. § 3.02(9). This paragraph requires the District to guarantee the schedule for the work. It is a well-known and commonly-accepted fact that a construction project without delays is an extremely rare occurrence. The District should not make a commitment greater than the commitment to exercise due diligence to comply with the schedule. The County rejected my suggestion to change this paragraph.

11. § 3.02(13). This new paragraph requires County approval of any District management contract, imposes a significant restriction on the District's flexibility to manage the facilities. It would require County approval of a contract with a General Manager, Finance Officer, Clerk, or plant operator. It should be deleted. Note that this term was formerly in Section 3.03, and the District requested deletion of the term.

12. § 4.08. This section requires that the County's Engineering Department approve all requests for reimbursement. I have no knowledge allowing me to conclude that the County has adequate or capable engineering staff to conduct reviews in a timely manner, raising Prompt Payment Act questions. I am also concerned that the District will be charged for extensive County staff reviews that are redundant to the District's own engineering reviews, reducing funds available for construction. I had suggested that the certification by the District and its engineer would be sufficient, but this suggestion has been rejected.

13. § 4.09. This new section allows for a one-time advance of \$1,000,000 to the District. I question whether a one-time advance is adequate, and I recommend that the advance be replenished as the District expends the funds. Otherwise, I am concerned about prompt payment issues.

14. § 5.05(3). In my earlier comments, I recommended deletion of the following sentence:

The County and the District recognize that the total capital cost of providing wastewater service to future users of the Key Largo Sewer System exceeds Ten Thousand Dollars (\$10,000) per EDU.

The suggestion was rejected. Unless the District agrees that this statement is true, I recommend deletion of the sentence.

15. § 6.01 (1) and (2). These paragraphs require strict compliance with the provisions of the Agreement. I had suggested that the District's obligations be to comply substantially with the Agreement. Substantial compliance means that the District will be responsible for compliance with all material provisions of the Agreement, but that minor or insignificant deviations that do not cause prejudice to the County will not result in the District being in default.

16. § 7.07. This new section permits either party to

apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant

proposals, and funding solicitations shall be approved by each party prior to submission.

The purpose of this section is unclear. To the extent that it applies only to the improvements to be made with funds given the District under this Agreement, the provision may be acceptable. If the section is intended to preclude the District from ever applying for federal or state funds without County approval, the section would severely limit the District's ability to obtain state and federal funding. The section also gives the District the authority to veto County requests for state and federal funding.

17. §8.02. This section includes the following sentences:

The proceeds of insurance policies received as a result of damage to, or destruction of, the Project or other parts of the Key Largo Sewer System as may be required to operate the Project shall be used to restore or replace damaged portions of the facilities. If such proceeds are insufficient, the District shall provide additional funds to restore or replace the damaged portions of the Project or other portions of the Key Largo Sewer System.

I had suggested removal of the second sentence, but my suggestion was rejected. I think that it is not appropriate for this Agreement to impose a replacement requirement on the District, either for components that are part of the Project, or for other components. The District should retain the discretion to provide wastewater service in any way that is reasonable at the time of the incident, as opposed to being required to replace specific components that may be functionally obsolete or otherwise not desirable.

Page 35

§ 9.02(1). This paragraph requires the District to use the design/build method of project delivery. I had earlier requested that requirement be deleted, but my suggestion was rejected.

§ 9.02(2). This paragraph does not reflect changes made to § 4.02, which shows that most project components will be in easements. The District will not, to the best of my knowledge, be obtaining any new property interests for the northern expansion.

§ 9.02(3) – (6). These dates need to be reviewed.

Pages 35 – 36.

§ 9.04. This paragraph improperly requires the District to provide a legal opinion to the County as to the effects of delays on County bonds. This should be revised to require only that the District will advise the County of any schedule changes.

INTERLOCAL AGREEMENT
BETWEEN
THE BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, FLORIDA,
AND
THE KEY LARGO WASTEWATER TREATMENT DISTRICT

_____, 2005

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INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into pursuant to section 163.01, Florida Statutes, by and between Monroe County, a political subdivision of the State of Florida (the "County"), and the Key Largo Wastewater Treatment District, an independent special district existing as a public agency under the laws of the State of Florida (the "District").

WHEREAS, the County possesses home rule authority and, in addition, is authorized by section 125.01(1), Florida Statutes, to provide, assist in providing, and fund centralized wastewater treatment systems and the County may enter into agreements with the District relative to such activities; and

WHEREAS, the County's Comprehensive Plan requires that certain wastewater treatment levels be achieved in unincorporated areas of the County by 2010, levels which can best be achieved by the installation of central wastewater treatment systems; and

WHEREAS, the District was formed in 2002 by the Legislature of the State of Florida pursuant to House Bill 471, Chapter 2002-337, Laws of Florida, for the purpose of performing such acts as shall be necessary for the sound planning, acquisition, development, operation and maintenance of a wastewater management system within the district, including all business facilities necessary and incidental thereto; and

WHEREAS, Chapter 2002-337, Laws of Florida, provides the District with exclusive jurisdiction over the acquisition, development, operation and management of a wastewater management system in and for the District boundaries; and

WHEREAS, the County, the District and the Florida Keys Aqueduct Authority (the "Authority") entered into an interlocal agreement on February 21, 2003, pursuant to which the parties agreed to transfer wastewater funds and functions from the Authority to the District; and

WHEREAS, the Monroe County Sanitary Wastewater Master Plan (the "Master Plan") identified and acknowledged the benefits to Monroe County, its residents, visitors and environs from the installation of regionalized central sewer systems and identified areas and projects which should be given priority attention, referred to as "Hot Spots;" and

WHEREAS, the County, the District and the Authority have worked to identify funding sources and grants from local, state and federal sources to advance the provision of central wastewater services and programs on a priority basis and guided by the Master Plan's identification of "Hot Spots;" and

WHEREAS, it is imperative to the health, safety and welfare of the citizens of Monroe County that the delivery of such wastewater facilities and programs be expeditiously advanced, and therefore, the County, the Authority and the District entered into certain joint resolutions and interlocal agreements to utilize the resources of two grants and County Capital Infrastructure Sales Surtax Funds for the benefit of the District, and the County created a Municipal Services Taxing Unit ("MSTU") to assist the District; and

WHEREAS, the County has the legal authority to provide funding to the District as provided herein to accomplish its purposes; and

WHEREAS, the District has approached the County with a request for additional financial assistance to initiate design, permitting and construction of a portion of a regional wastewater system for service within the District's boundaries to be identified as certain North Key Largo sewer system components (the "North Components"); and

WHEREAS, the County has determined that it currently has cash reserves on hand which previously were obtained by issuance of infrastructure sales surtax bonds levied pursuant to section 212.055(2), Florida Statutes, and possesses capacity for the issuance of additional infrastructure sales surtax bonds sufficient to fund a commitment to the District in an amount of Twenty Million Dollars (\$20,000,000) (referred to collectively hereafter as the "Infrastructure Sales Surtax Bond Proceeds"); and

WHEREAS, the construction of the North Components will provide central wastewater service to additional "Hot Spot" areas identified in the Master Plan; and

WHEREAS, the District has informed the County that the design and construction processes for the Project can commence upon the County's agreement to reimburse the District for up to Twenty Million Dollars (\$20,000,000) (less County Costs as defined herein, the "Reimbursement Amount") of the costs to be expended by the District to design, permit and construct the Project; and

WHEREAS, the County has determined that it is in the best interest of all of the citizens of the County that a portion of the Infrastructure Sales Surtax Bond Proceeds shall be applied to satisfy the Reimbursement Amount to be provided for the construction of the North Components;

NOW, THEREFORE, in consideration of the mutual covenants, representations and promises set forth in this Agreement and for other good and valuable consideration

each to the other, receipt of which is hereby acknowledged by each party, the County and the District hereby agree, stipulate and covenant as follows:

ARTICLE I

DEFINITIONS

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

"Agreement" means this Interlocal Agreement.

"Authority" means the Florida Keys Aqueduct Authority.

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

"County Bonds" means the Infrastructure Sales Surtax Revenue Bonds previously issued by the County and any other indebtedness incurred by the County to fund its obligations hereunder and shall include Resolution No. 077-2003, adopted by the County on February 19, 2003, as amended and supplemented.

"County Clerk" means the Clerk of the Circuit Court for Monroe County, Florida, as ex-officio Clerk of the Board of County Commissioners of Monroe County, Florida, and such other person as may be duly authorized to act on his or her behalf.

"County Costs" includes all costs of preparation and issuance of the County Bonds, any underwriter's discount, insurance premiums, including legal and financial advisory fees and expenses, original issue discount for the bonds and other "Costs" (as defined in Bond Resolution No. 077-2003), costs incurred by the County to compensate legal, engineering and other advisors associated with supplements to the Master Plan,

review and oversight of the Project, and preparation of interlocal agreements and other resolutions and agreements required to permit the County to issue and use the proceeds of the Infrastructure Sales Surtax Bond Proceeds for the purposes identified in this Agreement. County Costs also shall include any costs of a similar nature incurred by the County to perform the review, inspection, audit and monitoring functions identified in this Agreement.

"District" means the Key Largo Wastewater Treatment District.

"Equivalent Dwelling Units" or "EDUs" means the standard unit of applying System Development Charges, as described later in this Agreement. For residential improved parcels, a minimum of one EDU shall be applied to each family residential dwelling, condominium unit and mobile home. EDUs for multi-family structures is determined by the number of dwelling units (i.e., six units in a multi-family structure will constitute six EDUs). For non-residential improved parcels of property, the number of EDUs will be calculated based on a formula to be determined by the District. A minimum of one (1) EDU shall apply to each parcel.

"North Components" means the wastewater treatment, collection, transmission and disposal facilities to be designed, permitted and constructed by the District as specifically identified in this Agreement to provide wastewater service to a portion of the Key Largo area of unincorporated Monroe County.

"Operations and Maintenance Expenses" means the costs of operating and maintaining the System determined pursuant to generally accepted accounting principles (as applied to state and local governments), exclusive of interest on any debt

payable from system revenues, depreciation, and any other items not requiring the expenditure of cash.

"Project" means the design, permitting, construction and operation of the North Components. The Project, and projected Project Costs, are described in greater detail in Appendix A, which is attached hereto and incorporated herein.

"Project Costs" means the cost of designing, permitting, and constructing the North Components, including the labor, materials and equipment and general and administrative costs in connection with the design and construction of the North Components under contracts to be entered by the District with respect to the Project. Project Costs may include costs expended by the District in connection with the design and construction of the North Components, regardless of the date of expenditure, and regardless of whether they were expended prior to the date of this Agreement. Project Costs incurred prior to the date of this Agreement shall be reimbursable subject to approval of the County's bond counsel as being consistent with Section 3.02(12) of this Agreement. Project Costs shall not include Operations and Maintenance Expenses or County Costs. The County and the District acknowledge and agree that the Project Costs will exceed Twenty Million Dollars (\$20,000,000) and both parties agree that the District will be obligated to secure additional financing to complete the Project.

"Reimbursement Amount" means the County's reimbursement to the District of Project Costs expended by the District to design, permit and construct the North Components which will be an amount of Twenty Million Dollars (\$20,000,000), less County Costs. The Reimbursement Amount shall include an advance of funds in the

amount of One Million Dollars (\$1,000,000) to the District payable by the County as provided in Section 4.09 of this Agreement.

"System Development Charges" means connection fees, capital expansion fees, utility improvement fees or other similar fees and charges collected by the District as a contribution toward costs.

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

ARTICLE II

INTERLOCAL AGREEMENT

SECTION 2.01. PURPOSE OF INTERLOCAL AGREEMENT. The purpose of this Agreement is to continue the cooperative efforts between the County and the District to develop centralized wastewater treatment, collection and disposal services on a regional basis in the most efficient manner and at the most reasonable cost practicable so as to best meet the public's needs and serve the public interest. By this Agreement, the District agrees to initiate and complete construction of the North Components which will serve approximately 2,500 Equivalent Dwelling Units ("EDUs") initially and 13,000 EDUs upon completion of the entire regional system.

The Master Plan identifies the area to be served by the North Components as including the four highest priority areas for central wastewater service in the upper keys. Centralized wastewater services currently are not available to businesses and

residences to be served by the North Components. The prevailing method of wastewater collection, treatment and disposal in the area to be served by the North Components currently is the utilization of on-site sewage treatment and disposal systems, including package plants, cess pits and septic systems. The cess pits, package plants and septic systems provide inadequate sewage treatment resulting in pollution of near shore water, damaging of the living coral reefs, and other adverse affects on the health and welfare of the citizens of the County and the County's tourist based economy. The County is required to eliminate the use of cess pits and septic systems in the Key Largo area of the lower keys and desires to make available to the residences and businesses of the Key Largo area a regional wastewater collection, treatment and disposal system. The construction of the North Components will improve, maintain and protect the health, safety and welfare of the citizens of the County and serves a public purpose.

ARTICLE III

WARRANTIES, REPRESENTATIONS AND COVENANTS

SECTION 3.01. WARRANTIES, REPRESENTATIONS AND COVENANTS OF THE COUNTY.

The County warrants, represents and covenants that:

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

(2) The County currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution,

charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

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

(4) The County covenants that this Agreement is entered into for the purpose of formalizing the agreement of the County to use Infrastructure Sales Surtax Bond Proceeds in an amount sufficient to reimburse the District for Project Costs up to the Reimbursement Amount identified in this Agreement and that such expenditure of bond proceeds will in all events serve a public purpose. The County covenants that it will coordinate with the District and audit the District records as may be necessary to monitor whether the Project is progressing in the manner contemplated herein and shall be completed to fulfill the public need identified in this Agreement.

SECTION 3.02. WARRANTIES, REPRESENTATIONS AND COVENANTS OF THE DISTRICT.

The District warrants, represents and covenants that:

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

(2) The District currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution,

charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

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

(4) All permits, real property interests, and approvals required to construct and complete the Project have been or will be obtained for construction and use of the Project. The District knows of no reason why any future required permits, real property interests or approvals are not obtainable.

(5) The District shall undertake the Project on its own responsibility and shall apply proceeds of the County Bonds only to pay or reimburse valid Project Costs.

(6) To the maximum extent permitted by law, the District shall release and hold harmless the County, its officers, members, employees and contractors from any claim proximately caused by the District's actions or omissions in its planning, engineering, administration, and construction activities regarding the Project and the District's operation of the Project.

(7) The District shall comply with all applicable State and Federal laws, rules, and regulations. To the extent that any assurance, representation, or covenant of the District contained herein requires a future action, the District shall take such action as is necessary for compliance.

(8) The District shall maintain records using accounting principles established and accepted by the Governmental Accounting Standards Board. As part of its

bookkeeping system, the District shall keep accounts associated with the Project separate from all other accounts of the District and it shall keep accurate records of all expenses and expenditures relating to the Project so as to facilitate to the greatest extent possible the County's ability to review and audit Project Costs in the manner provided by this Agreement.

(9) The District agrees to construct the Project in accordance with the Project schedule provided in Section 9.02 hereof.

(10) The District shall secure any additional funds necessary in an amount sufficient to complete the Project on or before the date identified in the Project schedule and shall pursue completion of the Project in the most expeditious manner possible considering the public purpose to be served by this Agreement but also with proper consideration for the need for sound utility management in the completion of the Project.

(11) The District covenants that this Agreement is entered into for the purpose of formalizing the agreement of the County to use Infrastructure Sales Surtax Bond Proceeds in an amount sufficient to reimburse the District for funds expended to design, permit and construct the Project up to the Reimbursement Amount identified in this Agreement and that such expenditure of bond proceeds will in all events serve a public purpose.

(12) The District shall take no action or omit to take necessary action that will adversely affect the tax-exempt status of the County Bonds; the District will take such action as is reasonably requested by the County in connection with the County Bonds so as to allow the County to retain the tax-exempt status of the County Bonds. The

holders of the County Bonds shall be considered third party beneficiaries for purposes of this covenant.

(13) The District shall not enter into any contract or other instrument as described in Internal Revenue Service Revenue Procedure 97-13, sections 141 through 145 of the Internal Revenue Code of 1986, and applicable regulations, as may be amended, with respect to the management of the Key Largo Sewer System without the prior written consent of the County.

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

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

SECTION 3.05. AUDIT AND MONITORING REQUIREMENTS. The District

agrees to the following audit and monitoring requirements.

(1) Final Audit Report. Within six (6) months after completion of the Project, as demonstrated by the District placing the Project into service, the District shall submit to the County a Project-specific audit report (the "Final Audit Report") identifying all related Project Costs. The Final Audit Report shall identify all Reimbursement Amounts received from the County, total Project Costs, and otherwise describe the District's compliance with the terms of this Agreement. The District shall cause its auditor to notify the County immediately if anything comes to the auditor's attention during the examination of records that would lead the auditor to question whether any costs are allowable Project Costs under this Agreement. The final determination of whether such costs are appropriate Project Costs shall be made by the County.

(2) Record Retention. The District shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date that the Final Audit Report is issued, and shall allow the County, or its designee, or the County Clerk, access to such records upon request. The District shall ensure that audit working papers also are made available to the County, or its designee, or the County Clerk, upon request, for a period of five years from the date that the Final Audit Report is issued.

(3) Monitoring. The District agrees that the County's monitoring procedures may include, but not be limited to, review of contracts related to the Project as well as engineering designs and plans, on-site visits by County staff or other designee at Project sites and the District's administrative offices, limited scope audits, and/or other

procedures. By entering into this Agreement, the District agrees to comply and cooperate with any monitoring procedures and processes deemed appropriate by the County. In the event the County determines at any time that a limited scope audit of the District is appropriate, the District agrees to comply with any additional instructions provided by the County to the District regarding such audit. The District further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the County Clerk or other auditor of County business. Any costs incurred by the County to perform any review, audit and other monitoring activities permitted under this Agreement shall be included as County Costs.

(4) Reporting. The District shall provide to the County a copy of any reports, management letters, or other information required to be submitted to lenders or other persons as may be required pursuant to the terms of the District's Senior Revenue Obligations, state revolving loan fund documents and any documents related to the Project. Such copies shall be forwarded to the County at the same time as such documents are provided to third parties pursuant to the terms of the respective documents.

ARTICLE IV

PROJECT INFORMATION

SECTION 4.01. PROJECT CHANGES. Proposed Project changes and addenda other than potential extensions of wastewater facilities to additional areas within the District shall be submitted to the County prior to acceptance by the District to permit the County to insure that such changes will not adversely affect exclusion from gross income for federal income tax purposes of interest on the County Bonds, or

otherwise cause the County to incur any penalties, costs or reporting requirements under the terms of the County Bonds. The District shall not approve any change or addendum if the County objects and such objection is based upon the County's determination that any of the events identified in the preceding sentence could occur if the change or addendum were to be approved by the District. The District and the County will agree to procedures allowing for prompt review of any changes and addenda, and the parties will use their best efforts to minimize any delays in review and approval of them.

SECTION 4.02. TITLE TO PROJECT SITE. The District shall have an interest in real property sufficient for the construction and location of the Project free and clear of liens and encumbrances which would impair the usefulness of such sites for the intended use. Evidence of clear title shall be a condition precedent to the County's obligation to reimburse the District for Project Costs. The County understands and acknowledges that, except for the wastewater treatment plant and other facilities for which the District believes a possessory interest in land is required, the District intends to construct all project components within easements.

SECTION 4.03. PERMITS AND APPROVALS. The District shall obtain all permits and approvals required for construction of the Project or portion of the Project funded under this Agreement.

SECTION 4.04. ENGINEERING SERVICES. One or more professional engineers, registered in the State of Florida, shall be employed by, or under contract with, the District to oversee design, permitting and construction of the Project.

SECTION 4.05. PROHIBITION AGAINST ENCUMBRANCES. The District is prohibited from selling, leasing, or disposing of any part of the North Components unless the written consent of the County is first secured. The County shall consent to a proposed sale, lease or disposition solely upon the condition that the County is able to obtain an opinion of counsel that such sale, lease or disposition shall not adversely affect exclusion from gross income for federal income tax purposes of interest on the County Bonds, or otherwise cause the County to incur penalties, costs or reporting requirements under the terms of the County Bonds. This prohibition shall continue until the County Bonds reach maturity or are otherwise redeemed in full in accordance with the terms of the County Bonds.

SECTION 4.06. COMPLETION MONEYS. In addition to the Reimbursement Amount to be reimbursed to the District by the County hereunder; the District covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the Project in operation on, or prior to, the date specified in this Agreement. Failure of the County to approve a Reimbursement Amount above the level identified in this Agreement shall not constitute a waiver of the District's covenants to complete and place the Project in operation in a manner consistent with the terms of this Agreement.

SECTION 4.07. CLOSE-OUT. The County shall have the right to conduct a final inspection of the Project and Project records subsequent to notification by the District that the Project has been placed into service. Following the inspection, deadlines for submitting additional reimbursement requests, if any, shall be established along with deadlines for completing additional requirements as may be necessitated by

the County Bonds, if any. Deadlines and the identification of additional requirements, if any, shall be incorporated into this Agreement by amendment.

SECTION 4.08. REIMBURSEMENTS. Reimbursements to the District shall be made only by the County Clerk and only when the requests for such reimbursements are accompanied by a certification from the County's Engineering Department that such costs are proper Project Costs. Reimbursements shall be made directly to the District for Project Costs. Reimbursement for Project Costs shall be made only after receipt by the County of the following from the District:

(1) A completed reimbursement request form in the form attached hereto as Appendix B signed by the District's Authorized Representative. Such requests must be accompanied by an itemized disclosure of the materials, labor, or services provided in sufficient detail to identify the nature of the work performed; the cost or charges for such work; and the person providing the service or performing the work.

(2) A certification signed by the District's Authorized Representative as to the current estimated costs of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received and applied to the Project; and that the District was required to incur such Project Costs under the terms and provisions of the contract(s) between the District and third parties providing services necessary to completion of the Project.

(3) A certification by the engineer responsible for overseeing construction indicating the percentage of the Project completed as of the date of such certification; stating that the equipment, materials, labor and services represented by the construction invoices have been satisfactorily purchased or received, and applied to the

Project in accordance with construction contract documents; stating that payment is in accordance with construction contract provisions; stating that construction, up to the point of the reimbursement request, is in compliance with the contract documents; and identifying all additions or deletions to the Project which have materially altered the Project's performance standards, scope, or purpose.

(4) Such other certificates or documents by engineers, attorneys, accountants, contractors, or suppliers as may reasonably be required by the County.

SECTION 4.09. ADVANCE. The County and the District recognize that the District is in need of capital funds to initiate the Project. Recognizing this need, the County agrees to provide the District with an advance of funds to be used by the District solely to pay Project Costs in the amount of One Million Dollars (\$1,000,000) (the "Advance"), which sum shall be credited against the Reimbursement Amount which the County is obligated to provide to the District under this Agreement. The Advance shall be paid by the County to the District within thirty (30) days of execution of this Agreement by the County. As the Advance is spent by the District, the District shall complete the Reimbursement Requisition form provided in Appendix B and supply the County such other documents and information as required in this Agreement as necessary to permit the County to confirm that the Advance (including all investment earnings thereon) has been used solely for Project Costs. The District agrees not to invest the Advance in investments yielding greater than 3.66% per annum. The District shall provide the County with biannual reports of the investments and earnings relating to the Advance until such time as the Advance and all investment earnings thereon have been spent.

ARTICLE V

RATES AND USE OF THE SEWER SYSTEM

SECTION 5.01. NO FREE SERVICE. Except as may be required by applicable law, the District shall not permit connections to, or furnish any services afforded by, the North Components without making a charge therefor based on the District's connection policies.

SECTION 5.02. MANDATORY CONNECTIONS. The District shall adopt, as necessary, and enforce requirements consistent with applicable laws for the owner, tenant or occupant of each building located on a lot or parcel of land for which the Key Largo Sewer System is available to connect such building to the Key Largo Sewer System.

SECTION 5.03. MAINTENANCE OF THE NORTH COMPONENTS. The District shall operate and maintain the Key Largo Sewer System in a proper, sound and economical manner and shall make all necessary repairs, renewals and replacements.

SECTION 5.04. ADDITIONS AND MODIFICATIONS. After completion of the Project, the District may make any additions, modifications or improvements to the North Components which the District deems desirable and which do not materially reduce the operational integrity of any part of the Key Largo Sewer System. All such renewals, replacements, additions, modifications and improvements shall become part of the Key Largo Sewer System.

SECTION 5.05. COLLECTION OF SYSTEM DEVELOPMENT CHARGES.

(1) The District shall collect System Development Charges to fund a portion of the capital costs of the North Components. The District and the County recognize that

System Development Charges should be established at sufficient levels so as to equitably assign the capital costs of constructing sewer systems to those users that are imposing the need for construction of the system as well as benefiting from the enhanced use and enjoyment of developed property bestowed by the existence of a central sewer system. The existence of a central sewer system enhances the use and enjoyment of improved property by: (a) facilitating the development of property and increasing the use and enjoyment thereof; (b) positively affecting the marketability and market value of the property; (c) providing a means to best protect the quality of the surrounding water supplies; (d) properly and safely disposing of sewage generated from improved property; and (e) enhancing improved property through the environmentally responsible use and enjoyment of the property.

(2) The County and the District further recognize that the commitment to collect an equitable and reasonable portion of the capital cost of constructing the Key Largo Sewer System from the proposed users of the Key Largo Sewer System will facilitate and maximize access of the County and the District to additional Federal and State funding assistance for the Project and similar regional sewer projects, including system expansions, to be constructed by the County and the District.

(3) The District has confirmed that has retained an expert in utility rates and financial planning to deliver a report recommending an appropriate System Development Charge per EDU to be collected from users of the Key Largo Sewer System. The County and the District recognize that the total capital cost of providing wastewater service to future users of the Key Largo Sewer System may exceed Ten Thousand Dollars (\$10,000) per EDU. By establishing a System Development Charge

in an appropriate amount, the District and the County acknowledge that they will be able to maximize the level of no cost and/or low cost Federal and State funding assistance for the construction and future expansion of the Key Largo Sewer System and similar systems to be constructed in unincorporated Monroe County. The County and the District further recognize that the collection of System Development Charges serves to reduce the monthly cost of service to users and thus reduces the rates which users would be required to pay to the District on a monthly basis.

(4) The County and the District further agree that the System Development Charge may be collected by the District and paid by the users of the Key Largo Sewer System over a period of time and that the District may also recover the capital costs of the Project through such other capital recovery mechanisms as may be available to the District including, but not limited to, non-ad valorem assessments.

ARTICLE VI

DEFAULTS AND REMEDIES

SECTION 6.01. EVENTS OF DEFAULT. Each of the following events is hereby declared an event of default:

(1) Failure by the District to comply substantially with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement if such failure shall continue for a period of 60 days after written notice thereof to the District by the County.

(2) Any warranty, representation or other statement by, or on behalf of, the District contained in this Agreement or in any information furnished by the District in

compliance with, or in reference to, this Agreement, is reasonably believed by the County to be materially false or misleading.

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

(4) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the District under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the District, is not dismissed within sixty (60) days after filing.

(5) The District shall give the County immediate written notice if any bankruptcy, insolvency or other similar proceeding is instituted by or against the District or if a receiver is appointed.

(6) For purposes of this Article VI, substantial compliance means that the District will be responsible for compliance with all material provisions of this Agreement, but that minor or insignificant deviations that do not cause prejudice to the County will not result in the District being in default.

SECTION 6.02. REMEDIES. Upon any event of default, and after first attempting to resolve the issue pursuant to Section 7.08 of this Agreement, the County may enforce its rights by any of the following remedies:

(1) By refusing to reimburse the District for any Project Costs incurred by the District subsequent to the date that the County provides written notice by facsimile copy or overnight delivery that the District is in default under this Agreement and the County

shall be relieved of any liability for such Project Costs unless otherwise agreed to by the County in writing;

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

(3) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the County.

(4) By applying to a court of competent jurisdiction for the appointment of a receiver to manage the District, establish and collect fees and charges, or issue debt, and apply the revenues to the completion of the Project and the District's obligations under this Agreement.

SECTION 6.03. DELAY AND WAIVER. No delay or omission by the County or the District to exercise any right or power accruing upon an event of default shall impair any such right or power nor shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver of any default under this Agreement shall extend to or affect any subsequent event of default, whether concerning the same or different provision of this Agreement, nor shall such waiver impair consequent rights or remedies of the County or the District hereunder.

ARTICLE VII

GENERAL PROVISIONS

SECTION 7.01. ACCESS TO PROJECT SITE AND PLACES OF DISTRICT RECORD RETENTION. The District shall provide County representatives with access to Project sites and administrative offices (as well as other offices where District records

may be retained) during normal business hours. The District shall cause its engineers and contractors to cooperate in the fulfillment of the District's obligations hereunder and shall require cooperation with County representatives during Project inspections including, but not limited to, making available working copies of contracts, invoices, purchase documents, plans, maps and specifications.

SECTION 7.02. ASSIGNMENT OF RIGHTS UNDER AGREEMENT. Neither the County nor the District shall have the right to assign rights or obligations created by this Agreement to any third party without the prior written consent of the other party.

SECTION 7.03. AMENDMENT OF AGREEMENT. This Agreement may be amended in writing, except that in no event shall any amendment be permitted which is inconsistent with the terms and covenants of the County Bonds.

SECTION 7.04. ANNULMENT OF AGREEMENT AND THE DISTRICT'S RESPONSIBILITY TO THE COUNTY. The County may unilaterally annul this Agreement if the District has not drawn any reimbursements of Project Costs within eighteen (18) months after the effective date of this Agreement or if the County possesses reasonable certainty, in the County's sole discretion, that such inaction would adversely effect the exclusion from gross income for federal income tax purposes of interest on the County Bonds or otherwise cause the County to incur any penalties, costs or reporting requirements under the terms of the County Bonds. In the event that the tax exempt status of the County Bonds is impaired, arbitrage or other tax penalties are incurred or the County incurs any other costs or penalties resulting from the District's actions or inaction, the District shall be responsible to pay all costs incurred by the County as a result of such event or events, including attorneys fees, penalties and

costs of any kind or manner associated with such impairment of tax exempt status, arbitrage or other tax penalties or other event.

SECTION 7.05. SEVERABILITY. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and District agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

SECTION 7.06. ATTORNEY'S FEES AND COSTS. The County and District agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

SECTION 7.07. CLAIMS FOR FEDERAL OR STATE AID. County and District agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the Project; provided that all applications, requests, grant proposals, and funding solicitations shall be provided to the other party prior to submission.

SECTION 7.08. ADJUDICATION OF DISPUTES OR DISAGREEMENTS. County and District agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within thirty (30) days after the first meet and confer session, the issue or issues shall be discussed at a joint public meeting of the governing bodies of the County and District. If the issue or issues are still not resolved to the satisfaction of both the County and District, then either shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law; provided, however, the unresolved issue or issues shall be submitted to mediation prior to the institution of any administrative or legal proceeding.

SECTION 7.09. NONDISCRIMINATION. County and District agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County and District agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or

national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 794), which prohibits discrimination on the basis of handicap; (3) The Age Discrimination Act of 1975, as amended (42 U.S.C. ss. 6101-6107), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office And Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse And Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527, (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Florida Civil Rights Act of 1992, (Chapter 760, Florida Statutes, and Section 509.092, Florida Statutes), as may be amended from time to time, relating to nondiscrimination; (9) The Monroe County Human Rights Ordinance (Chapter 13, Article VI, Sections 13-101 through 13-130), as may be amended from time to time, relating to nondiscrimination; and (10) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

SECTION 7.10. COOPERATION. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and District agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of

the services under this Agreement. County and District specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement or any Attachment or Addendum to this Agreement.

SECTION 7.11. COVENANT OF NO INTEREST. County and District covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

SECTION 7.12. CODE OF ETHICS. The County and District agree that the officers and employees of the County and District recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

SECTION 7.13. NO SOLICITATION/PAYMENT. County and District warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the District agrees that the County shall have the right to terminate this Agreement without liability

and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

SECITON 7.14. PUBLIC ACCESS TO RECORDS. County and District shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by County and District in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by District.

SECTION 7.15. NON-WAIVER OF IMMUNITY. Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the County and District in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by County or District be required to contain any provision for waiver.

SECTION 7.16. PRIVILEGES AND IMMUNITIES. All of the privileges and immunities from liability; exemptions from laws, ordinances, and rules; and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, volunteers, or employees of the County and District, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

SECTION 7.17. LEGAL OBLIGATIONS AND RESPONSIBILITIES; NON-DELEGATION OF CONSTITUTIONAL OR STATUTORY DUTIES. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any other participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statutes, case law, and, specifically, the provisions of Chapters 125 and 163, Florida Statutes, and Chapter 2002-337, Laws of Florida (2002).

SECTION 7.18. NON-RELIANCE BY NON-PARTIES. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and District agree that neither the County nor the District or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

SECTION 7.19. NO PERSONAL LIABILITY. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of the County or the District in his or her individual capacity,

and no member, officer, agent or employee of County or District shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

SECTION 7.20. SECTION HEADINGS. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

SECTION 7.21. GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and District agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

ARTICLE VIII

CONSTRUCTION CONTRACTS AND INSURANCE

SECTION 8.01. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS. The District shall submit to the County copies of all contracts associated with the Project, all contractor insurance certifications and all District notices to proceed with construction within fourteen (14) days after receipt or issuance by the District.

SECTION 8.02. INSURANCE REQUIRED. The District shall cause the Project, during construction, and the Key Largo Sewer System to be insured by an insurance company or companies licensed to do business in the State of Florida against

such damage and destruction risks as are customary for the operation of Projects and systems of like size, type and location.

The proceeds of insurance policies received as a result of damage to, or destruction of, the Project or other parts of the Key Largo Sewer System as may be required to operate the Project shall be used to restore wastewater service to the damaged portions of the Key Largo Sewer System. If such proceeds are insufficient, the District shall provide additional funds to restore wastewater service to the damaged portions of the Key Largo Sewer System. Repair, construction or replacement shall be promptly completed.

ARTICLE IX

ADDITIONAL PROJECT COMMITMENTS OF THE DISTRICT

SECTION 9.01. PROJECT COSTS. The District and the County acknowledge that the actual Project Cost has not been determined as of the effective date of this Agreement. The District and the County agree to the preliminary estimates of Project Costs reflected in Appendix A hereto while recognizing that Project Cost adjustments may be made as a result of construction bidding or Project changes.

SECTION 9.02. SCHEDULE. The District agrees by execution hereof to proceed diligently to:

(1) design the Project and to award a contract for construction of the Project no later than March 31, 2006.

(2) provide the County with evidence of clear title to Project sites, if any, for the treatment, collection, transmission and disposal facilities by no later than December 31, 2005.

(3) submit required permit application(s) to the appropriate regulatory agencies by no later than December 31, 2005.

(4) secure additional financing above the Reimbursement Amount (as may be required to complete the Project) by no later than March 31, 2006.

(5) obtain all necessary permits and begin construction no later than June 30, 2006.

(6) complete Project construction by December 31, 2008.

SECTION 9.03. PUBLIC PURPOSE REQUIREMENT. The District acknowledges and agrees that the County must use the proceeds of the County Bonds for a public purpose and that County Bonds proceeds must be expended promptly after issuance of the County Bonds to avoid potential adverse tax consequences for the County Bonds. In recognition of these facts, the District covenants and agrees to inform the County of any facts or events which may arise which could reasonably cause the District to be unable to spend the Reimbursement Amount in the manner set forth herein within forty-eight (48) hours of the District's becoming aware of such fact or event.

ARTICLE X

EXECUTION OF AGREEMENT

SECTION 10.01. COUNTERPARTS. This Agreement shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

SECTION 10.02. SUPERCEDES OTHER AGREEMENTS. The County and the District agree that this Agreement represents their mutual agreement and replaces and

supercedes any prior agreements, understandings, or communications on the subject of the financing of the North Components, whether written or oral.

SECTION 10.03. FILING AND EFFECTIVE DATE. A copy of this Agreement shall be filed with the Clerk of the Circuit Court of Monroe County and this Agreement will take effect on the date such copy executed by both parties is so filed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by the County Chairman and the District Chairman.

**BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, FLORIDA**

(SEAL)

By: _____
Mayor/Chairperson

Danny L. Kolhage, Clerk

By: _____
Deputy Clerk

**KEY LARGO WASTEWATER
TREATMENT DISTRICT**

(SEAL)

By: _____
Chairman

ATTEST:

Clerk

APPENDIX A
PROJECT DESCRIPTION

APPENDIX A

PROJECT DESCRIPTION

The District's conceptual design for the North Components includes a wastewater treatment plant with a design capacity of 2.25 million gallons per day average daily flow. The District owns a treatment plant site located at mile marker 100.5. The conceptual design for the North Components includes a treatment plant, transmission line, and collection systems. Effluent quality will meet AWT standards and effluent and sludge disposal will be accomplished consistent with applicable law.

PRELIMINARY PROJECT COSTS

CATEGORY	COST(\$)
Design and permitting costs	\$ 1.8 million
Wastewater treatment plant construction	\$17.6 million
Transmission line construction	\$ 4.8 million
Collection system construction	\$10.8 million
Contingency (15%)	\$ 4.5 million
TOTAL	\$39.5 million

APPENDIX B

FORM OF REIMBURSEMENT REQUISITION

REIMBURSEMENT REQUISITION NO. _____

Key Largo Wastewater Treatment District (the "District") Request to the Board of County Commissioners of Monroe County, Florida (the "County"):

Amount Requested: \$ _____

Total Reimbursements to Date (Exclusive of this Request): \$ _____

1. Each obligation for which a reimbursement is hereby requested is described in reasonable detail in Exhibit A hereto together with the name and address of the person, firm or corporation to whom payment was made by the District. The first requisition submitted by the District also includes information confirming that the \$1,000,000 Advance provided by the County has been used solely for Project Costs.

2. The bills, invoices or statements of account for each obligation referenced in Exhibit A are on file with the District.

3. The District hereby certifies that:

(a) each obligation mentioned in Exhibit A has been properly incurred, is a proper Project Cost, was required to be incurred and has been paid in compliance with the contracts between the District and third parties providing services necessary to complete the Project, and has not been the basis for any previous reimbursement;

(b) no part of the reimbursement requested hereby will be used to pay for materials not yet delivered to the Project for prompt incorporation or for services not yet performed in connection therewith;

(c) no Event of Default exists under the Interlocal Agreement between the County and the District dated _____, 2005 (the "Agreement") relating to the Project;

(d) no item in Exhibit A represents any portion of an obligation which the District is, as of the date hereof, entitled to retain under any retained percentage agreement;

(e) to the best knowledge and belief of the District, insofar as any obligation described in Exhibit A was incurred for labor, services, materials, supplies or equipment (i) such labor and services were actually performed in a satisfactory manner in

connection with the acquisition, construction and equipping of the Project and (ii) such materials, supplies and equipment were actually used in connection with the acquisition, construction and equipping of the Project or were delivered to the site of the Project (and remain at the site of the Project) for that purpose;

(f) all sums previously advanced by the County have been used solely for purposes permitted by the Agreement and the specific items which are the subject of this reimbursement request will be so used;

(g) there has not been served upon the District any lien, notice of any lien, right to lien or attachment upon or claim affecting the right to receive payment of, any moneys payable to any of the persons or firms named in this reimbursement request, which has not been released or will not be released simultaneously with the payment of such obligation;

(h) the use of the reimbursements requested hereunder will not result in the covenants made by the District in the Agreement being violated;

(i) the current estimated cost of completing the project is \$_____;

(j) the percentage of completion of the Project at the time of submission of this reimbursement request is _____%;

(k) all warranties, representations and covenants in the Agreement are true and correct on the date hereof;

(l) all outstanding claims for labor and materials through the date of the last reimbursement request have been paid, and all liens therefore have been waived;

(m) to the best knowledge and belief of the District, all work on the Project prior to this reimbursement request has been performed in a good and workmanlike manner in accordance with the construction agreements entered by the District with third parties for construction of the Project;

(n) any required payment and performance bond remains in full force and effect and free from default on the date hereof;

(o) the additions or deletions that have been made to the Project, pursuant to County consent, which have altered the Project's performance standards, scope or purpose since the submission of the last reimbursement requisition are itemized on the attachments hereto; and

(p) the District has or anticipates that it shall have available sufficient moneys to complete the Project.

4. All capitalized terms herein, unless otherwise defined herein, shall have the meanings assigned to them in the Agreement, or in the documents pertaining to the issuance by the County of the Infrastructure Sales Surtax Revenue Bonds, Series 2005.

This _____ day of _____, 20_____.

APPROVED:

KEY LARGO WASTEWATER TREATMENT
DISTRICT

Authority Engineer

By: _____
Authorized Representative

APPROVED:

ENGINEERING DEPARTMENT
MONROE COUNTY, FLORIDA

By: _____

EXHIBIT A

<u>Name</u>	<u>Purpose</u>	<u>Amount</u>	<u>Account</u>
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