

1ST RENEWAL AGREEMENT
OPERATION AND MAINTENANCE
SEWAGE TREATMENT PLANT – PLANTATION KEY GOVERNMENT CENTER

THIS 1ST RENEWAL AGREEMENT is made and entered into this ____ day of _____, 20__, between MONROE COUNTY (hereinafter "County" or "Owner"), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040, and U. S. WATER SERVICES CORPORATION, a Florida corporation, whose address is 4939 Cross Bayou Boulevard, New Port Richey, Florida 34652 (hereinafter "Contractor").

WHEREAS, the parties hereto did on January 19, 2011 enter into an agreement for operation and maintenance of sewage treatment plant for the PLANTATION KEY GOVERNMENT CENTER, Monroe County (hereinafter "Original Agreement"); and

WHEREAS, the parties have found the Original Agreement to be mutually beneficial and;

WHEREAS, the parties find that it would be mutually beneficial to enter into this 1st Renewal Agreement; now therefore

NOW THEREFORE, IN CONSIDERATION of the mutual promises and covenants set forth below, the parties agree as follows:

In accordance with the original agreement, Paragraph 5, TERMS OF AGREEMENT,

- a. The County exercises option to renew the Original Agreement for the first of the two (2) terms. This term will commence on **January 28, 2012** and terminate **January 27, 2013**.
- b. The Contract amount is being adjusted 1.5% in accordance with the percentage change in the U. S. Department of Commerce Consumer Price Index (CPI-U) for all Urban Consumers as reported by the U.S. Bureau of Labor Statistics and shall be based upon the CPI-U computation at December 31 of the previous year as follows: Monthly operation and maintenance service amount from \$686.60 to **\$696.90**, for an annual amount of \$8,362.80; labor for repairs (as described in the original agreement) during normal working hours from \$53.00 to **\$53.80** and emergency service calls from \$79.50 to **\$80.69**.

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

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By _____
Mayor/Chairperson

Witnesses for CONTRACTOR:

U. S. WATER SERVICES CORPORATION

Denita K. Haller
Signature

12/8/2011
Date

Barbara Grodzinski
Signature

12/8/2011
Date

By David B. Schultz

Print Name DAVID B. SCHULTZ

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

Pedro Mercado
PEDRO MERCADO
ASSISTANT COUNTY ATTORNEY

Date 12/19/11

**AGREEMENT FOR OPERATION AND MAINTENANCE
WASTEWATER TREATMENT PLANT – PLANTATION KEY GOVERNMENT CENTER**

This Agreement is made and entered into this 19th day of January, 2011, between MONROE COUNTY, FLORIDA ("COUNTY"), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040, and U. S. WATER SERVICES CORPORATION ("CONTRACTOR"), a Florida corporation, whose address is 4939 Cross Bayou Boulevard, New Port Richey, FL 34652.

WHEREAS, COUNTY desires to provide operation and maintenance of wastewater treatment plant for the PLANTATION KEY GOVERNMENT CENTER, Monroe County, and

WHEREAS, CONTRACTOR desires and is able to provide operation and maintenance of wastewater treatment plant for the PLANTATION KEY GOVERNMENT CENTER, Monroe County; and

WHEREAS, it serves a legitimate public purpose for CONTRACTOR to provide operation and maintenance of wastewater treatment plant for the PLANTATION KEY GOVERNMENT CENTER Monroe County, now therefore,

IN CONSIDERATION of the mutual promises and covenants contained herein, it is agreed as follows:

1. **THE AGREEMENT**

The Agreement consists of this document, the bid documents, exhibits, and any addenda only.

2. **SCOPE OF THE WORK**

A. The Contractor's services shall include all DEP requirements stipulated in the Operating Permit (attached as Exhibit A) in order to operate the facility efficiently and reliably, and to maintain the facility according to the Permit. The Contractor shall invoice the County for the operation and maintenance services on a monthly basis, in arrears, at the fee schedule rate.

i. Comply with all conditions specified within the current Permit for this facility.

ii. Comply with all DEP rules, Florida Statutes, and county and local regulations pertaining to the operation and maintenance of wastewater facilities, systems of treatment and control, and related appurtenances.

iii. Notify the County Facilities Maintenance Department, by written notice, of changes in DEP rules, Florida Statutes, county and local regulations, as they apply to plant permitting or operations.

iv. Become familiar with all Permit requirements, DEP rules, Florida Statutes, and county and local regulations which affect the above referenced wastewater facility. In addition, the contractor shall advise and make recommendation to the County on matter

concerning the operation of the facility, and shall provide written notification to the County of any and all deficiencies encountered that may result in a non-compliance operating violation. This notification shall include the observation of the deficiencies, recommended corrections, and cost estimates. Said notification shall be delivered to the Facilities Maintenance Director for review and approval. In the event that the County shall receive a notice on non-compliance or of potential violation, written notice shall be given the contractor.

v. Provide, and maintain on site, records as required by the Permit conditions. The Contractor shall submit supplemental copies of record documents and monthly operation reports (MOR) to the Facilities Maintenance Director.

vi. Inspect and maintain the facility's equipment, practices, and operation regulated or required by the Permit conditions.

vii. Perform all other routine operation and maintenance tasks for the facility as part of the monthly service and included in the monthly fee such as, but not limited to, the following:

a. Operate the wastewater facility according to the manufacturer's specifications and pursuant to the Federal, State, County, and local regulatory rules with particular attention to Florida Laws, Chapter 403 and the Florida Administrative Codes, 62-600, 62-604, 62-610, 62-611, 62-640, F.A.C., and other applicable sections;

b. Inspect and lubricate all equipment which requires lubrication in accordance with the manufacturer's specification and recommendations

c. Supply, monitor, and record chlorine feed and effluent residuals regularly. Chlorine costs shall be included in the monthly operation and maintenance fee.

d. Replace motor/blower belts when required (labor and parts furnished by the Contractor);

e. Clean blower filters on a regular basis;

f. Repair minor electrical and plumbing problems at the contractors cost of \$500.00 and below;

g. Perform minor repairs of pump station equipment and controls at the contractors cost of \$500.00 and below;

h. Maintain proper adjustment of all apparatus controls;

i. Maintain all painted surfaces;

j. Record the daily flow in gallons per day;

k. Record the Ph of effluent;

l. Daily maintain air to all required components of the treatment plant. The contractor shall individually check and clean all air diffusers and skimmers as required, then adjust aeration as required to maintain plant balance;

m. Check sludge return;

n. Transfer sludge as required to various plant components and concentrate into the digester as necessary to maintain plant operating efficiency;

o. Mechanically check standby equipment weekly;

p. Clean and hose down plant regularly to maintain good housekeeping of the facility, and remove all unsightly debris and materials from facility area on a regular basis;

q. Provide all digester sludge removal services: Maximum of four removals annually, when required. Any additional removals in excess of 1,200 gallons require the County's prior written approval; the contractor shall notify the Facilities Maintenance Department when such additional removals are anticipated. The cost breakdown for any removals beyond the four cited above shall consist of the disposal cost to the contractor plus 10% handling charge. The Contractor shall be solely responsible for all sludge removal services and any required testing. The Contractor shall submit to the Facilities Maintenance department a copy of the landfill inbound charge (dump) ticket(s) after every sludge removal service; and

viii. Provide for emergency standby pumping services for the facility (inclusive of all necessary equipment, materials, and labor) in the event that an unusual occurrence makes it necessary to immediately pump out a plant to prevent untreated wastewater from improperly escaping into the environment. The Contractor shall perform this function to the best of the Contractor's ability considering the circumstances surrounding the unusual occurrence, and such occurrences shall qualify this as an emergency service.

ix. Provide sampling, testing, results, and monitoring of any substances or parameters at any locations reasonably necessary to assure compliance with the Permit conditions or DEP rules.

x. Protect the County from any condition which may result in non-compliance with DEP rules, Florida Statutes, or county or local regulations to the best extent possible. Inform the County immediately and in writing at once upon recognition of a potential problem.

xi. Maintain a copy of the current Operating Permit on site.

xii. Maintain monitoring and record keeping as required by the Permit conditions, DEP rules, county and local regulations.

B. REPAIRS

The Contractor shall make all repairs as necessary to assure that the facility is operating efficiently, reliably, and in accordance with all requirements of the DEP and the DEP Operating Permit. When the Contractor deems a repair to be necessary, and over \$500.00, the Contractor shall prepare a detailed cost estimate based on the fee schedule rates stipulated in the contract for labor, actual cost of parts needed to make the repairs, plus the handling charge as indicated in the contract, and present it to the County for approval. The Contractor shall initiate the approved repairs within 48 hours of said approval. Upon completion of the repairs, the Contractor shall document the work performed as is required by the DEP Operating Permit and other on-site service logs.

Any invoice in which the total for Repairs (as defined above) does not exceed \$500.00, the Contractor will not invoice said amount to County and the Contractor will be responsible for said amount.

Any invoice in which Repairs (as defined above) exceed \$500.00, the Contractor will invoice and the County will pay the full amount stated on the invoice pursuant to the contract provisions.

C. EMERGENCY SERVICE

The County shall contact the Contractor immediately when an emergency call is needed. The Contractor shall also notify the County immediately in the event of a facility emergency. The Contractor and the County shall make entries into a log, which shall include;

the date and time the problem was discovered, a description of the problem, the date and time the contractor was notified, the date and time the contractor arrived at the facility, the date and time the Contractor departed, and a summary of the steps taken to rectify the problem. The Contractor shall respond to all emergency calls which occur during normal working hours and holidays and weekends within three hours of notification by the County (see Section 2.E. EXCEPTIONS). The Contractor and the County shall simultaneously log the time the County contacted the contractor for an emergency service documentation of the above time requirements. The Contractor shall invoice the County for after-hour, weekend and holiday emergencies based on the applicable hourly rate indicated in the contract, the actual costs of any parts used to rectify the problem, plus the applicable percentage as stipulated in the contract.

D. ADDITIONAL SERVICES

When requested by the County, the Contractor shall advise and recommend, in writing to the County, any needed improvements, and shall invoice the County at the fee schedule rates for labor as specified in the contract.

E. EXCEPTIONS

All of the above described tasks or requirements shall be considered routine duties of the contractor except:

i. Repairs which are over the \$500.00 invoice limit, as defined in Section 2.B. REPAIRS, shall be based on the fee schedule rates for labor for "Emergency Service Calls (Monday – Friday after normal working hours)" outlined in the contract.

ii. The Contractor shall not be held responsible for the inability to perform due to factors beyond the Contractor's control.

F. MAJOR COMPONENT FAILURE

In the event of a major component failure or system breakdown, the COUNTY, when deemed as an emergency situation, shall have the option to request from the CONTRACTOR only, a proposal/quote for replacement equipment in an amount that could exceed Five Thousand Dollars (\$5,000). Any proposal over \$5,000 up to and including \$10,000 must be approved and signed by the Division Director and/or the County Administrator. Any proposal over \$10,000 up to and including \$25,000 must be approved and signed by the Division Director and the County Administrator.

3. CONTRACT AMOUNT

The County shall pay to the Contractor for the faithful performance of the Contract, in lawful money of the United States, as follows:

- | | |
|---|---|
| 1) Monthly Operation and Maintenance Services
(as outlined in the contract specifications) | \$686.60 per month
\$8,239.20 per year |
| 2) Repairs beyond the \$500.00 invoice limit (routine, prior approval required). Normal working hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding holidays | \$53.00 per hour |
| 3) Emergency service call. Overtime rate for | |

- hours other than normal hours as stated above,
including weekends and holidays. **\$79.50 per hour**
- 4) Handling fee for parts required for operation,
maintenance, repairs and emergency services. **Cost + 10 %**
- 5) Sludge removal (beyond four per year required as
as regular maintenance) **Cost + 10 %**

Note: There are no additional costs for travel, mileage, meals, or lodging.

The Contractor's request for payment must itemize each of the costs stated above.

4. PAYMENTS TO CONTRACTOR

A. COUNTY shall pay in accordance with the Florida Local Government Prompt Payment Act; payment will be made after delivery and inspection by COUNTY and upon submission of invoice by CONTRACTOR.

B. CONTRACTOR shall submit to COUNTY invoices with supporting documentation acceptable to the Clerk, on a monthly schedule in arrears. Acceptability to the Clerk is based on generally accepted accounting principles and such laws, rules and regulations as may govern the Clerk's disbursement of funds.

C. Any invoice in which the total for Repairs (as defined above) does not exceed \$500.00, the Contractor will not invoice said amount to County and the County will not be responsible for said amount.

Any invoice in which Repairs (as defined above) exceed \$500.00, the Contractor will invoice and the County will pay the full amount stated on the invoice pursuant to the contract provisions.

5. TERM OF AGREEMENT

This Agreement shall commence on January 28, 2011 and ends upon January 27, 2012 unless terminated earlier under paragraph 18 of this Agreement.

The COUNTY shall have the option to renew this Agreement for up to an additional two (2) one year periods at terms and conditions mutually agreeable to the parties, exercisable upon written notice given at least 30 days prior to the end of the initial term. Unless the context clearly indicates otherwise, references to the "term" of this Agreement shall mean the initial term of one (1) year.

The Contract amount shall be adjusted annually in accordance with the percentage change in the U.S. Department of Commerce Consumer Price Index (CPI-U) for all Urban Consumers as reported by the U.S. Bureau of Labor Statistics and shall be based upon the CPI-U computation at December 31 of the previous year..

5. ACCEPTANCE OF CONDITIONS BY CONTRACTOR

CONTRACTOR has, and shall maintain throughout the term of this Agreement, appropriate licenses. Proof of such licenses and approvals shall be submitted to the COUNTY upon execution of this agreement.

6. FINANCIAL RECORDS OF CONTRACTOR

CONTRACTOR shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the COUNTY or Clerk determines that monies paid to CONTRACTOR pursuant to this Agreement were spent for purposes not authorized by this Agreement, the CONTRACTOR shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to CONTRACTOR.

7. PUBLIC ACCESS

The COUNTY and CONTRACTOR shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY and CONTRACTOR in conjunction with this Agreement; and the COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by CONTRACTOR.

8. HOLD HARMLESS AND INSURANCE

Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, Contractor shall defend, indemnify and hold the COUNTY and the COUNTY's elected and appointed officers and employees harmless from and against (i) any claims, actions or causes of action, (ii) any litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) any costs or expenses that may be asserted against, initiated with respect to, or sustained by, any indemnified party by reason of, or in connection with, (A) any activity of CONTRACTOR or any of its employees, agents, sub-contractors or other invitees during the term of this AGREEMENT, (B) the negligence or willful misconduct of CONTRACTOR or any of its employees, agents, sub-contractors or other invitees, or (C) CONTRACTOR's default in respect of any of the obligations that it undertakes under the terms of this AGREEMENT, except to the extent the claims, actions, causes of action, litigation, proceedings, costs or expenses arise from the intentional or sole negligent acts or negligent acts in part or omissions of the COUNTY or any of its employees, agents, contractors or invitees (other than CONTRACTOR). Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this AGREEMENT, this section will survive the expiration of the term of this AGREEMENT or any earlier termination of this AGREEMENT.

Prior to execution of this agreement, CONTRACTOR shall furnish the COUNTY Certificates of Insurance indicating the minimum coverage limitations in the following amounts:

WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE: Where applicable, worker's compensation coverage to apply for all employees at minimum statutory limit as required by Florida Law, and Employee's Liability coverage in the amount of \$100,000.00 bodily injury by accident, \$500,000.00 bodily injury by disease, policy limits, and \$100,000.00 bodily injury by disease, each employee.

COMPREHENSIVE AUTOMOBILE VEHICLE LIABILITY INSURANCE: Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$100,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. If single limits are provided, the minimum acceptable limits are \$100,000.00 per person, \$300,000.00 per occurrence, and \$50,000.00 property damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

COMMERCIAL GENERAL LIABILITY: Commercial general liability coverage with limits of liability of not less than \$300,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.

POLLUTION LIABILITY – The minimum limits of liability shall be: \$500,000 per Occurrence combined single limit, \$1,000,000 Aggregate

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS MUST BE NAMED AS ADDITIONAL INSURED ON ALL POLICIES EXCEPT WORKER'S COMPENSATION.

CERTIFICATES OF INSURANCE. Original Certificates of Insurance shall be provided to the COUNTY at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the COUNTY before any policy or coverage is canceled or restricted. The underwriter of such insurance shall be qualified to do business in the State of Florida. If requested by the County Administrator, the insurance coverage shall be primary insurance with respect to the COUNTY, its officials, employees, agents and volunteers.

9. NON-WAIVER OF IMMUNITY

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of COUNTY and CONTRACTOR 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 Agreement entered into by the COUNTY be required to contain any provision for waiver.

10. INDEPENDENT CONTRACTOR

At all times and for all purposes under this agreement CONTRACTOR is an independent contractor and not an employee of the Board of COUNTY Commissioners of Monroe COUNTY. No statement contained in this agreement shall be construed so as to find CONTRACTOR or any of his employees, subs, servants, or agents to be employees of the Board of COUNTY Commissioners of Monroe COUNTY.

11. NONDISCRIMINATION

CONTRACTOR agrees 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. CONTRACTOR agrees 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 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2)

Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to COUNTY and CONTRACTOR to, or the subject matter of, this Agreement.

12. ASSIGNMENT/SUBCONTRACT

CONTRACTOR shall not assign or subcontract its obligations under this agreement to others, except in writing and with the prior written approval of the Board of County Commissioners of Monroe County and CONTRACTOR, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or sub shall comply with all of the provisions of this agreement. Unless expressly provided for therein, such approval shall in no manner or event be deemed to impose any additional obligation upon the board.

13. COMPLIANCE WITH LAW AND LICENSE REQUIREMENTS

In providing all services/goods pursuant to this agreement, CONTRACTOR shall abide by all laws of the Federal and State government, ordinances, rules and regulations pertaining to, or regulating the provisions of, such services, including those now in effect and hereinafter adopted. Compliance with all laws includes, but is not limited to, the immigration laws of the Federal and State government. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the Board to terminate this Agreement. CONTRACTOR shall possess proper licenses to perform work in accordance with these specifications throughout the term of this Agreement.

14. DISCLOSURE AND CONFLICT OF INTEREST

CONTRACTOR represents that it, its directors, principles and employees, presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required by this contract, as provided in Sect. 112.311, et. seq., Florida Statutes. COUNTY agrees that officers and employees of the COUNTY recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

COUNTY and CONTRACTOR 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 the provision, the CONTRACTOR 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.

15. NO PLEDGE OF CREDIT

CONTRACTOR shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this contract.

16. NOTICE REQUIREMENT

Any notice required or permitted under this agreement shall be in writing and hand delivered or mailed, postage prepaid, to the other party by certified mail, returned receipt requested, to the following:

FOR COUNTY:

Monroe County
Facilities Maintenance Department
3583 South Roosevelt Boulevard
Key West, FL. 33040

and

Monroe County Attorney
Post Office Box 1026
Key West, FL 33041-1026

FOR CONTRACTOR:

U. S. Water Services Corporation
ATTN: _____
4939 Cross Bayou Boulevard
New Port Richey, FL 34652

17. TAXES

COUNTY is exempt from payment of Florida State Sales and Use taxes. CONTRACTOR shall not be exempted by virtue of the COUNTY'S exemption from paying sales tax to its suppliers for materials used to fulfill its obligations under this contract, nor is CONTRACTOR authorized to use the COUNTY'S Tax Exemption Number in securing such materials. CONTRACTOR shall be responsible for any and all taxes, or payments of withholding, related to services rendered under this agreement.

18. TERMINATION

A. The COUNTY may terminate this Agreement with or without cause prior to the commencement of work.

B. The COUNTY or CONTRACTOR may terminate this Agreement for cause with seven (7) days notice to CONTRACTOR. Cause shall constitute a breach of the obligations of either party to perform the obligations enumerated under this Agreement.

C. Either of the parties hereto may cancel this agreement without cause by giving the other party sixty (60) days written notice of its intention to do so with neither party having any further obligation under the terms of the contract upon termination.

19. GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to Agreements 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 CONTRACTOR agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

20. MEDIATION

The COUNTY and CONTRACTOR agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding. 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.

21. 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 CONTRACTOR 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.

22. ATTORNEY'S FEES AND COSTS

COUNTY and CONTRACTOR 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 attorney's fees and attorney's fees, in appellate proceedings. Each party agrees to pay its own court costs, investigative, and out-of-pocket expenses whether it is the prevailing party or not, through all levels of the court system.

23. ADJUDICATION OF DISPUTES OR DISAGREEMENTS

COUNTY and CONTRACTOR agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of COUNTY and CONTRACTOR. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of COUNTY and

CONTRACTOR, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

24. 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 CONTRACTOR 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 CONTRACTOR specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

25. BINDING EFFECT

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of COUNTY and CONTRACTOR and their respective legal representatives, successors, and assigns.

26. AUTHORITY

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

27. CLAIMS FOR FEDERAL OR STATE AID

CONTRACTOR and COUNTY agree that each shall be, and is, empowered 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.

28. 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, or employees of any public agents or employees of the COUNTY, 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.

29. LEGAL OBLIGATIONS AND RESPONSIBILITIES

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 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 statute, and case law.

30. 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 the CONTRACTOR agree that neither the COUNTY nor the CONTRACTOR or any agent, officer, or employee of either 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.

31. ATTESTATIONS

CONTRACTOR agrees to execute such documents as the COUNTY may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

32. 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 Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

33. EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of COUNTY and CONTRACTOR hereto may execute this Agreement by signing any such counterpart.

34. 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.

35. PUBLIC ENTITY CRIME INFORMATION STATEMENT

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

36. MUTUAL REVIEW

This agreement has been carefully reviewed by Contractor and the County therefore, this agreement is not to be construed against either party on the basis of authorship

37. **INCORPORATION OF BID DOCUMENTS**

The terms and conditions of the bid documents are incorporated by reference in this contract agreement.

38. **ANNUAL APPROPRIATION**

The County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the Board of County Commissioners. In the event that the County funds on which this Agreement is dependent are withdrawn, this Agreement is terminated and the County has no further obligation under the terms of this Agreement to the Contractor beyond that already incurred by the termination date.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR hereto have executed this Agreement on the day and date first written above in four (4) counterparts, each of which shall, ~~with respect to~~ for accounting for the other counterparts, be deemed an original contract.



M. KOLHAGE, CLERK

C. De Santis

Deputy Clerk

Date: 1-19-11

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *Heather Carruthers*

Mayor Heather Carruthers

Date: 1-19-11

Witnesses for CONTRACTOR:

Edna M. Mauck

Signature

December 1, 2010

Date

Melissa Kottewal

Signature

December 1, 2010

Date

U.S. WATER SERVICES CORPORATION

David B. Schultz

Signature of person authorized to
legally bind Corporation

Date: December 1, 2010

David B. Schultz, Vice President

Print Name

Address: 4939 Cross Bayou Boulevard, NPR
866-753-8292 FL 34652

Telephone Number

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
Suzanne A. Hutton

SUZANNE A. HUTTON
COUNTY ATTORNEY
12/2/10