

BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

SPECIAL MEETING

ADD ON

Meeting Date: February 12, 2002

Division: County Attorney

AGENDA ITEM WORDING:

Approval of agreement with Hawk's Cay Investors Ltd., the Florida Keys Aqueduct Authority, Duck Key Wastewater Cooperative, Inc., and Utility Island, LLC, for the Funding and Construction of Wastewater Collection Infrastructure.

ITEM BACKGROUND:

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATIONS:

TOTAL COST:

BUDGETED: Yes No

COST TO COUNTY:

APPROVED BY: County Attorney OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:


JAMES T. HENDRICK

DOCUMENTATION:

Included

To Follow

Not Required

AGENDA ITEM # _____

**AGREEMENT FOR THE FUNDING AND CONSTRUCTION OF
WASTEWATER COLLECTION INFRASTRUCTURE**

THIS AGREEMENT is entered into by Monroe County, a political subdivision of the State of Florida, ("County"), Hawk's Cay Investors Ltd., a Florida limited partnership, ("Hawk's Cay"), the Florida Keys Aqueduct Authority, a Florida independent special district ("FKAA"), Duck Key Wastewater Cooperative, Inc., a Florida non-profit corporation, ("Co-op") and Utility Island, LLC, a Florida limited liability company ("UI").

WHEREAS, Hawk's Cay owns a central wastewater treatment facility, (the "Facility"), operated by the Co-op pursuant to a lease, which furnishes service to the Hawk's Cay Development of Regional Impact, (the "DRI");

WHEREAS, The Facility currently has sufficient capacity to provide wastewater treatment service to Conch Key and Walker Key and sufficient land to accommodate expansion of the Facility to provide service to Duck Key, in all cases if the infrastructure is built to connect those Keys to the Facility (Conch Key, Walker Key, Duck Key and portions of the Indies Island which are not within the DRI are referred to herein as the "New Service Area");

WHEREAS, County desires to assist in funding the construction of the needed collection and treatment infrastructure to connect the New Service Area to the Facility, to improve the Facility to meet the advanced wastewater treatment standard (as defined by Florida Department of Environmental Protection) and to expand the Facility to service Duck Key (all of which work is collectively referred to herein as the "Project");

WHEREAS, FKAA, by virtue of its enabling legislation, has jurisdiction over central wastewater treatment facilities and their related infrastructure in the unincorporated area of the County;

WHEREAS, UI is simultaneously entering into a contract with Co-op for the design and construction of the Project;

WHEREAS, FKAA desires to approve an agreement among County, Co-op and Hawk's Cay for the Project and also desires to retain a funding pass through role in such an agreement.

NOW, THEREFORE, in consideration of the mutual promises, benefits, and covenants set forth below, the parties agree as follows:

1. Definitions and Basic Terms.

a) Hawk's Cay Development of Regional Impact Amendment ("DRI Amendment"), means the amendment to the DRI set forth in Exhibit A. Exhibit A is attached to this agreement and made a part of it.

b) Equivalent Dwelling Unit ("EDU"), is a standard unit of wastewater consumption. The total number of EDUs within the DRI and the New Service Area is listed on Exhibit B, attached and made a part of this Agreement. In no event shall a single family home be allocated more than one (1) EDU per single-family lot, nor shall

the property presently owned by Hawks' Cay be allocated more than one hundred eighty (180) EDUs (the maximum number of EDUs corresponding to the development potential of that property).

c) All design, permitting and construction costs referred to in this Agreement will be increased in a percentage equal to the amount of the increase in the CPI (U.S. city average, all items). The CPI increases will become applicable starting on the one-year anniversary of the effective date of this Agreement and on each anniversary thereafter.

d) Co-op may assign its duties under this Agreement to other entities but such assignment will not relieve Co-op of its obligation to carry out any and all of the duties assigned.

2. Operation of Facility.

a) Co-op agrees that during the term of this Agreement it will, at all times, reserve sufficient capacity to serve the present wastewater treatment demands of Conch Key and Walker Key and will accept and treat all wastewater generated at Conch Key and Walker Key and, when the Facility is expanded, all of the New Service Area. Such wastewater shall be delivered to the Facility through the wastewater collection infrastructure provided for in this Agreement. During the term of this Agreement, Co-op agrees to operate and maintain the Facility in compliance with all applicable state, federal and local laws, regulations and ordinances.

b) Upon completion of the Project, Co-op's board will reconstitute itself with two additional members not associated with Hawk's Cay Investors, one of whom shall be elected from the Class A members owning property on Duck Key, and the other of whom shall be elected from the Class A and B members owning property on Conch Key, Walker Key and Indies Island. Three (3) years after the completion of the Project, Hawk's Cay's entitlement to elect a majority of Co-op's Board of Directors shall cease, whereupon two Co-op board members shall be elected from the Class A members owning property on Duck Key and two shall be elected from the Class A and B members owning property on Conch Key, Walker Key, and Indies Island, and one shall be appointed by Hawk's Cay Investors.

c) Within 42 months of the effective date of this Agreement or at such sooner time as the Facility is expanded to serve Duck Key, Co-op agrees that it will cause the entire Facility to be upgraded to meet the advanced wastewater treatment standard (as described above).

3. Term. The term of this Agreement is 30 years beginning on the effective date described below, unless terminated sooner as provided for in this Agreement.

4. Project Timing. The parties agree that the design, permitting and construction of the wastewater collection infrastructure for the New Service Area, to the extent not already performed by FCAA, and the expansion of the Facility and the upgrade of the Facility to the advanced wastewater treatment standard, is the responsibility of Co-op. The design, permitting and construction schedule for the foregoing is as follows:

(i) Within 6 months of the effective date of this Agreement, all aspects of the Conch Key and Walker Key wastewater collection infrastructure must be designed and permitted;

(ii) Within 18 months of the effective date of this Agreement, the Conch Key and Walker Key wastewater collection infrastructure will be completed and on line providing collection and treatment service to Conch Key and Walker Key;

(iii) Within 9 months of the effective date of this Agreement, all aspects of the Duck Key wastewater collection infrastructure will be designed and permitted;

(iv) Within 42 months of the effective date of this Agreement, the Duck Key wastewater collection infrastructure will be completed and on line, providing collection and treatment service to Duck Key;

(v) Within 42 months of the effective date of this Agreement, but in no event later than the completion date of the Duck Key wastewater collection infrastructure, the Facility expansion will be complete and the Facility upgrade to meet the advanced wastewater treatment standard will be complete.

The above completion schedule shall be extended if delayed by the permit approval process, delays in County's acquisition of a parcel as contemplated in Paragraph 7 (a) below, legal challenges, disputes (including litigation with contractors employed to construct the collection infrastructure or Facility expansion or upgrade), acts of God, or lack of timely funding from government agencies.

5. Project Funding.

a) County agrees to reimburse Co-op for the cost, in an amount not to exceed \$683,954.00, of designing and permitting the Project. The infrastructure includes, (by way of illustration and not limitation) pipes, pumps and lift and vacuum stations, but excluding the laterals located on private property needed to connect wastewater generating properties to the main wastewater collection lines. The individual property owners are responsible for the installation of laterals when notified by Co-op of service availability. In order to receive payment for the design costs, Co-op must submit an invoice to the County Engineer, in a form satisfactory to the Engineer and the County Clerk that provides documentary evidence of the costs incurred by Co-op in designing the wastewater collection infrastructure. Travel costs are reimbursable only in the amounts set forth in Sec. 112.061, FS. County shall pay the amount requested in the invoice, as long as it does not cause the total amount paid under this subparagraph to exceed \$683,954.00.

b) County agrees to reimburse Co-op for the construction of the Project, on a progress payment basis, according to a schedule of values to be submitted by UI and approved by the County Engineer. The parties agree that the payment will not exceed \$10,023,253.00 (approximately \$6,809 per EDU as calculated in Exhibit B). In order to fund the reimbursement, County agrees that it will hold a public hearing to create, pursuant to Sec. 125.01(1), FS, and prior to the commencement of the Project, a municipal service benefit unit (the "MSBU") for the DRI and the New Service Area. While the MSBU will have the power to utilize grant funds and other funds from any lawfully available source, the only power the MSBU will have to assess property owners

within the MSBU for the capital costs of building the Project is the power to levy non-ad valorem assessments pursuant to Sec. 197.3632, FS, or its successor statute, and to pledge those assessments for the issuance of bonds, the proceeds of which may be used to reimburse Co-op for the permitting and construction set forth in this Agreement. The parties understand that the MSBU cannot levy that non-ad valorem capital cost assessment until fiscal year 2003-2004. The MSBU may pledge the non-ad valorem assessment revenue, as well as any other grant funds or other lawfully available non-ad valorem revenue, as payment on bonds issued by the MSBU for the reimbursement to Co-op for its costs incurred in the design, permitting and construction of the Project. The MSBU may not, under any circumstances, be required to levy ad valorem taxes. No ad valorem revenue from the County, even if lawfully available to the MSBU, may be pledged for the payment and redemption of any MSBU bonds or other MSBU debt, however denominated. The County does not, by its approval of this Agreement, waive its legislative discretion with respect to the decisions whether to create the MSBU and whether to levy a non-ad valorem assessment in an amount that suffices to fully fund the Project. However, should the MSBU not be created, or should the MSBU decline to levy a capital cost assessment sufficient to fund the Project, then this Agreement will terminate with the County under no liability or obligation to pay any damages or claims to any party to this Agreement, or to any third parties who may have relied on this Agreement, except for the County's obligation to pay unreimbursed design and permitting costs incurred by the Co-op. Notwithstanding any other provision of this Agreement, Co-op and UI shall be under no obligation to proceed with construction of the Project until receipt of County's written notice to proceed, which notice may not be issued until the County has created the MSBU and the MSBU has levied a capital cost assessment sufficient to fund the Project.

c) County also agrees that the MSBU will, separate from the capital assessment referenced above, assess an annual service fee, determined as provided by law, and will collect same through the non-ad valorem assessment method, for operation and maintenance costs, including reserves, of the wastewater collection infrastructure and the Facility. The parties estimate the initial amount of that operating cost assessment to be \$20.00 per EDU. This recitation shall not be construed to preclude the use of other methods for charging and collecting operating and maintenance costs, should the use of an alternative to the flat-fee assessment be required by law. The capital assessment and service fee assessment will be levied separately, with separate ordinances or resolutions authorizing each and with all statutorily required public notices clearly indicating that they are two distinct non-ad valorem assessments.

d) Vacant, buildable lots within Duck Key, Indies Island, Conch Key, the DRI, and Walker Key, will be subject to the capital cost non-ad valorem assessment, but not the operations and maintenance assessment until a certificate of occupancy is issued for a structure thereon. Notwithstanding the foregoing, the operational and maintenance non-ad valorem assessment may be increased (or decreased) to match the costs of operating and maintaining the Facility and wastewater collection infrastructure.

6. FCAA Authorization.

a) FCAA consents to the funding, design, construction, operation and ownership of the Facility and Project as set forth in this Agreement. FCAA further consents to the expansion, upgrade and ownership of the Facility as set forth in this Agreement. FCAA

agrees to cooperate in the construction to the Project and the Facility upgrade to meet the advanced wastewater treatment standard.

b) County agrees to reimburse FKAA for any costs incurred by FKAA prior to the effective date of this Agreement in designing or permitting the Project contemplated by this Agreement in an amount not to exceed \$_____ Co-op, UI and County further agree that FKAA must be reimbursed for any work done after the effective date of this Agreement by its employees or contractors in assisting County or UI in designing, permitting and constructing the Project.

c) FKAA agrees to grant County and Co-op a perpetual easement(s), for \$10 per year, for the use of FKAA's right-of-way and adjacent real property as depicted in Exhibit C for use for the wastewater collection infrastructure contemplated by this Agreement and to use for wastewater collection the existing but discontinued pipe also shown on Exhibit C. The easement(s) will automatically lapse and be of no further force and effect if the property subject to the easement ceases to be used for the purposes authorized by this Agreement. Exhibit C is attached to this Agreement and made a part of it.

d) FKAA agrees to assist County in obtaining and keeping available grant funds for the Project. The parties agree, however, that the funding agency, in consultation with FKAA and County, has the authority to determine if the costs incurred by Co-op are eligible for reimbursement from any available grant funds, the amount thereof, the manner of payment, and any record keeping and audit requirements.

7. County Authorization.

a) County agrees to authorize and permit the construction, maintenance and operation of the Project on the County owned property in the New Service Area depicted on Exhibit D. Exhibit D is attached to this Agreement and made a part of it. County's authorization and permission set forth in this subparagraph continues for as long as the County owned property is used for wastewater collection infrastructure. County agrees to acquire one parcel on Conch Key, up to four parcels on Duck Key and one parcel on Walker Key for lift stations at no cost to Co-op. The parcels are also depicted on Exhibit D. The County will own the lines and equipment on such parcels and County will grant Co-op an easement for same.

b) After the installation of the pipes and any other subterranean infrastructure under the streets within a County right-of-way, County will promptly repave the streets.

8. Construction Documents. On the effective date of this Agreement, Co-op will provide County with its contract with UI for the design, permitting, and construction of the Project. The contract must contain firm prices for all tasks required. The sum of (i) the total contract price and (ii) FKAA reimbursement costs provided for elsewhere in this Agreement, less (iii) grant proceeds paid for project costs, is the amount that the MSBU must raise through the sale of bonds and the pledge of non-ad valorem revenue. The total amount due from County as funding under this Agreement shall not exceed \$10,707,207. Any cost over-run (amounts owed the contractor(s) in excess of the contract price) is the responsibility of UI except to the extent attributable to delays caused by County or MSBU. UI shall provide payment and performance bonds in the full amount of the contract, naming County and Co-op as dual obligees.

9. Funding and Records.

a) County shall notify Co-op when reimbursement funds are available, and Co-op shall cause UI to begin the permitting and construction within 45 days of date of notification. All requests for payment must be delivered to the County Engineer, be in a form satisfactory to the County Clerk, and if required by bond covenants or requested by the County Attorney, also approved by the County's bond counsel, the bond trustee or other representative of the bondholders, and be approved by the County Engineer. The County will make payments within 20 days of the County Engineer's receipt of the request, unless any of the persons just enumerated determines that additional information needed or that a correction must be made. In that case, the request will be returned with a written explanation of the additional information needed or the needed correction

b) Co-op shall keep all its financial records pertaining to the Project contemplated by this Agreement according to generally accepted accounting principles. Co-op shall make those records available upon request to auditors employed by the Clerk, County, FKAA, or any agency supplying grant funds. If an audit exception is found requiring repayment, Co-op shall promptly make such repayment with interest accruing at the rate set forth in Sec. 55.04, FS, accruing from the date the event triggering the audit exception occurred, unless the remedy of an agency supplying grant funds requires a different result.

10. Ownership.

a) The parties agree that, during the term of this Agreement, all wastewater collection and treatment infrastructure built pursuant to this Agreement shall be owned by the County, upon completion of the Project. Any real property acquired by County for lift stations, pumps, or rights-of-way, will be and remain the property of County. The parties further agree that the County will, upon completion of the Project, enter into a management agreement with the Co-op, whereby the Co-op will operate and maintain the system at cost. The provisions of the management agreement shall conform to all requirements imposed by tax law to assure that the bonds issued to finance construction of the Project retain tax-exempt status.

b) Hawk's Cay agrees to transfer ownership of the Facility and land sufficient for the Facility upgrade and expansion to the Co-op, as depicted on Exhibit G, when the MSBU has been established and a Notice of Commencement for the expansion of the Facility is required per Chapter 713, FS. Hawk's Cay shall provide Co-op with an owner's policy of title insurance showing that the conveyance of the Facility is not subject to the claims of any creditors of Hawk's Cay.

c) County will retain ownership of its right-of-way and real property owned by the County on Conch Key, Walker Key, Indies Island, and Duck Key. County shall grant Co-op a license to use the right-of-way and County real property not specifically acquired for wastewater infrastructure for as long as the right-of-way and real property are used by Co-op for wastewater collection infrastructure. However, after the initial completion of the infrastructure, any new construction or expansion of the infrastructure on County owned property, or within any County right-of-way, must be approved by the

County Administrator and County Engineer. This subparagraph will survive the expiration of this Agreement.

11. Co-op Responsibilities. Until completion of the Project, Co-op shall be responsible for the construction and maintenance of the wastewater collection infrastructure and the Facility. UI will construct the Project in compliance with the laws, rules and orders of all governmental agencies having jurisdiction over the Facility and wastewater collection infrastructure. Any fines, penalties, or order(s) to make corrections/improvements to the Facility and infrastructure, incurred prior to the time that the Project is turned over to the Co-op by UI in accordance with the provisions of their contract, shall be at the sole cost and obligation of UI and UI agrees to indemnify and hold harmless County from any and all such fines, penalties and order(s), including reasonable fair market value attorney's fees, and costs (including expert fees) incurred by the County in defending against any penalties, fines or orders arising out of the construction, operation or maintenance of the wastewater infrastructure.

12. Insurance. During the wastewater collection infrastructure construction phase, Co-op and UI will each keep in full force and affect the insurance required in Exhibit E-1. Once a portion or portions of the infrastructure becomes operational Co-op must keep in full force and affect the insurance required in Exhibit E-2. For a period of six months beginning every five years measured from the date the first portion of the infrastructure becomes operational, the County's Risk Management Director (or successor official) may require a modification of the insurance requirements, if, in her opinion, the insurance requirements of the preceding five years leave County, FKAA or Co-op exposed to an unacceptable level of liability risk. When the construction of the infrastructure is complete, the Director of Risk Management may release Co-op and/or UI from all, or a portion of, the requirements of Exhibit E-1. Exhibits E-1 and E-2 are incorporated into this Agreement and made a part of it.

13. Indemnification. Notwithstanding the insurance required above, Co-op and UI agree to indemnify and hold harmless the County and FKAA for claims, demands, causes of action, losses, damages and liabilities that arise out of the negligent act(s) or omission(s) of any Co-op or UI officer, employee, contractor (including subcontractors employed by UI or any other Co-op contractor) and agents in connection with the maintenance, construction and operation of the Facility and wastewater collection infrastructure, including those acts or omissions that result in environmental damage or pollution.

14. Re-Use Water. Simultaneously with the execution hereof, Co-op and Hawk's Cay shall enter into the Re-Use Water Agreement in the form shown as Exhibit F. Exhibit F is attached to this Agreement and made a part of it.

15. Notices. All notices, demands, requests or other communications by any party under this Agreement shall be in writing and sent by (a) first class U.S. certified or registered mail, return receipt requested, with postage prepaid, or (b) overnight delivery service or courier, or (c) telefacsimile or similar facsimile transmission with receipt confirmed as follows:

If to Co-op: Duck Key Wastewater Cooperative
 61 Hawk's Cay Blvd.
 Duck Key, FL 33050

- If to Hawk's Cay: Hawk's Cay Investors, Ltd.
61 Hawk's Cay Blvd.
Duck Key, FL 33050

- If to UI: Utility Island, LLC
c/o Toppino's Inc.
P.O. Box 787
Key West, FL 33041

- If to FCAA: Florida Keys Aqueduct Authority
1100 Kennedy
Key West, FL 33040

- If to County: Monroe County
Gato Building
1100 Simonton Street
Key West, FL 33040

16. Governing Law. This Agreement is governed by the laws of the State of Florida. Venue for any litigation under this Agreement must be in a court of competent jurisdiction in Monroe County, Florida, unless otherwise required by a governmental agency other than County or FCAA. In the event of litigation, the prevailing party is entitled to a reasonable market value attorney's fee plus costs from the non-prevailing party.

17. Entire Agreement. This written Agreement constitutes the entire agreement among the parties and supersedes any prior writings or oral representations made amongst the parties. This Agreement may not be modified except in a writing signed by all parties.

18. Binding Effect. This Agreement shall be binding on the parties' heirs, successors, and assigns, in the same manner as this Agreement binds the original parties.

19. No Third Party Beneficiaries. This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third party beneficiaries. The parties to this Agreement intend that the provisions of this Agreement confer no such benefits or standard.

20. No Conflict. Co-op and UI Investors warrant that neither had employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibitions of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 020-1990. For breach or violation of this provision the County may, in its discretion, terminate this contract without liability and may also, in its discretion, deduct from the contract or purchase price, or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid to the former County officer or employee.

21. Development Order Compliance. County recognizes and agrees that this Agreement is in substitution for the previous obligation of Hawk's Cay, as set forth in the Development Order for the DRI, to convey the Facility to County.

22. Effective Date. This Agreement must be signed by all parties in order to be binding but will not take effect until the DRI amendment becomes effective. It is further agreed that no building permits may be issued for Hawk's Cay hotel units until UI delivers the bonds provided for in Section 8 of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year below written.

(SEAL)
Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk
Date _____

By _____
Mayor / Chairman
Date _____

(SEAL)
Attest:
By _____
Secretary
Date _____

HAWK'S CAY INVESTORS, LIMITED, a
Florida limited partnership

By: Hawk's Cay Management, Inc., a Florida
corporation, general partner

By _____
President
Date _____

(SEAL)
Attest:
By _____
Secretary
Date _____

UTILITY ISLAND, LLC

By: _____
Managing Member

(SEAL)
Attest:
By _____
Secretary
Date _____

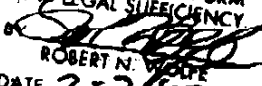
FLORIDA KEYS AQUEDUCT AUTHORITY

By _____
Chairman
Date _____

(SEAL)
Attest:
By _____
Secretary
Date _____

DUCK KEY WASTEWATER COOPERATIVE,
INC.

By _____
President
Date _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

ROBERT N. WHITE
DATE 2-7-02

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EXHIBIT "F"
DUCK KEY WASTEWATER COOPERATIVE
REUSE WATER AGREEMENT

THIS AGREEMENT is made and entered into as of the ___ day of _____, 2002 between **DUCK KEY WASTEWATER COOPERATIVE, INC.**, a Florida corporation not-for-profit ("DKWC"), and **HAWK'S CAY INVESTORS, LTD.**, a Florida limited partnership ("User").

WITNESSETH:

A. User intends to transfer the "Utility Island" wastewater transmission and treatment system (the "System") to DKWC.

B. In consideration for such transfer, DKWC will provide all reuse water, and User is entitled to the use of all reuse water, generated by the System.

C. User desires to utilize such reuse water for irrigation of lands owned or controlled by User as set forth on Exhibit "A" by reference made a part hereof or lands owned or controlled by User's designee(s).

D. DKWC is willing to deliver this reuse water for such irrigation.

E. Accordingly, DKWC and User wish to enter into this Agreement providing for the delivery of reuse water to User's property and the property of any designee of User.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, DKWC and User do hereby agree as follows:

1. Term. The term of this Agreement shall commence on the date of the transfer of the System to DKWC and shall remain in effect for so long as User desires to make use of the reuse water.

2. Quantity and Quality. DKWC agrees to provide a minimum of 100,000 gallons per day of reuse water, subject to Section 6 hereof. DKWC does hereby agree that User shall have the exclusive right, without charge, to use all reuse water generated by the System and to designate other users of same, also without charge, as long as the reuse water is used within the service area of the System.

3. Use of Reuse Water. User shall accept the reuse water delivered by DKWC and use it for the irrigation of lands described on Exhibit "A" and lands owned by its designees in any manner determined by User.

4. Point of Delivery. The Point of Delivery of the reuse water from DKWC to User is shown on Exhibit "B" hereto, it being specifically recognized that the pumps and related equipment and installations for the transmission of the reuse water are located after the point of delivery and are therefore User's responsibility.

123 07 02 10 00 FROM HONORABLE COUNTY CLERK OFFICE TO 0002020010 PAGE 14/18

5. Easements and Piping. Each party shall execute all easements, in form and substance reasonably acceptable to the other party, necessary for the operation and maintenance of reuse water lines to and beyond the Point of Delivery.

User shall be responsible for all operation and maintenance costs and other expenses relating to pumps or additional piping required from the Point of Delivery to User's irrigation system. User shall be responsible for all costs associated with required sampling and analysis for its reuse water application site.

DKWC shall be responsible for all operation and maintenance costs relating to the operation of the System as well as the reuse water and transmission system to the Point of Delivery.

6. Emergency Situations. DKWC shall not be held liable by User and User hereby agrees not to hold DKWC liable for failure to deliver reuse water if an event occurs preventing such delivery, provided that DKWC diligently pursues to completion all repairs, corrections, decontamination and other actions necessary to restore reuse water delivery. Such events shall include, but not be limited to:

(a). A lack of reuse water due to loss or lack of flow to the treatment plant or due to process failure.

(b) Equipment or material failure in reuse water delivery including storage, pumping and piping.

(c) Acts of God, public enemy, war, national emergency, allocation or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities.

7. Designees of User. User may designate another person or entity to receive and use reuse water generated by the System by written notice to DKWC. In such case, User's designee shall be fully bound by the terms and conditions of this Agreement.

Other than as to a designee of User as aforesaid, this Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

8. Severability. If any part of the Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effected.

9. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue in any action shall lie in Monroe County, Florida.

10. Extent of Agreement. This Agreement constitutes the entire Agreement between the parties as to the use of reuse water made available by DKWC and has been entered into voluntarily and with independent advice and legal counsel and has been executed by the authorized representative of each party on the date written above. This Agreement shall not be valid or enforceable until it has been signed by both parties. Modifications to and waivers of the provisions herein shall be made in writing and signed by the parties hereto. This Agreement shall be binding on the parties hereto and their successors and assigns.

11. Attorneys' Fees and Costs. Should either party employ an attorney to enforce any of the provisions of this Agreement, or defend any action instituted by the other party, the prevailing party shall be entitled to be reimbursed by the other party for all reasonable costs, charges and expenses including attorneys' fees, expended or incurred in connection therewith including same on appeal.

12. Notices. All notices required pursuant to this Agreement shall be in writing, sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

DKWC:

Duck Key Wastewater Cooperative
P. O. Box 500209
Marathon, Florida 33050
Attention: John White

User:

Hawk's Cay Investors, Ltd.
1200 North Federal Highway
Suite 200
Boca Raton, Florida 33432
Attention: Donald H. Johnson

13. Recordation. A copy of this Agreement shall be recorded in the public records of Monroe County, Florida.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this ____ day of _____, 2002.

WITNESSES:

Print Name

Print Name

DUCK KEY WASTEWATER
COOPERATIVE, INC., a Florida
corporation not-for-profit

By: _____

Print _____

Title _____

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this ____ day of _____, 2002 by _____ as _____ of Duck Key Wastewater Cooperative, Inc., a Florida corporation not-for-profit, on behalf of the corporation, who ____ is personally known to me or ____ who produced a _____ as identification.

My Commission Expires:

Notary Public, State of Florida

Print Name

WITNESSES:

Print Name

Print Name

HAWK'S CAY INVESTORS, LTD., a
Florida limited partnership

By: Hawk's Cay Management, Inc., a
Florida corporation, its general partner

By: _____

Print _____

Title _____

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this ____ day of _____, 2002 by _____ as _____ of Hawk's Cay Management, Inc., a Florida corporation, the general partner of Hawk's Cay Investors, Ltd., a Florida limited partnership, on behalf of the corporation and partnership, who ____ is personally known to me or who ____ produced a _____ as identification.

My Commission Expires:

Notary Public, State of Florida

Print Name

**ISLAND UTILITIES - EXPANSION OF SEWER COLLECTION SYSTEM AND
WWTP FOR DUCK KEY AND CONCH KEY
February 6, 2002**

EDU ESTIMATE TABLE		
HARBOUR, CENTER, PLANTATION, AND YACHT CLUB ISLAND		
PARCEL DESCRIPTION	NUMBER OF PARCELS/UNITS	TOTAL EDU'S
Single Family	294	294
Clubhouse - 3000s.f	10	2
Multi Family-1 unit	11	22
Multi Family-2 units	20	40
Multi Family-3 units	1	3
Multi Family-4 units	1	4
Multi Family- vacant with 4 units possible	10	40
Institutional	1	1
Submerged Lots	23	0
Vacant Single Family	367	367
Sub-Total:		773
INDIES ISLAND AND UTILITY ISLAND		
PARCEL DESCRIPTION	NUMBER OF PARCELS/UNITS	TOTAL EDU'S
Villas - new	247	247
Villas - exist	22	22
Villas - future	28	28
Employee houses - Hawks Cay Resort	20	20
Condominiums	24	24
Clubhouse- Hawks Cay Resort	1	1
Hotel - Hawks Cay Resort	178	115
Commercial Building- Hawks Cay Resort	1	6
Marina - 53 full service slips- Hawks Cay Resort	1	24
Marina - 32 other slips	1	10
Utility Island Marina	1	9

Laundry Facilities – 3 mach. – Hawks Cay Resort	1	14
Other Lots	5	6
Sub-Total:		526
CONCH KEY		
NUMBER OF PARCELS/UNITS		TOTAL EDU'S
PARCEL DESCRIPTION		
Motel – office	1	1
Motel – rooms	9	6
Motel – bar	1	2
Conch Trailer Court	15	15
Fire Department	1	1
Nichols Seafood – 2000 s.f.	1	9
Nichols Marina – 12 slips	1	4
Multi-Family Lots	5	15
Single-Family Units	48	48
Single-Family-Special	7	7
Coral Key Village	45	45
Walker Island-office	1	1
Walker Island – single units	15	15
Walker Island – mobile homes	4	4
Sub-Total:		173
TOTAL EDU'S		1472