

**AGREEMENT FOR  
TRANSFER OF WASTEWATER SYSTEM**

**THIS AGREEMENT**, is made and entered into as of the 28<sup>th</sup> day of April, 2006 by **DUCK KEY WASTEWATER COOPERATIVE, INC.**, a Florida corporation not-for-profit ("DKWC"); **HAWK'S CAY INVESTORS, LTD.**, a Florida limited partnership ("HCI"); and the **FLORIDA KEYS AQUEDUCT AUTHORITY** ("FKAA").

**RECITALS:**

- A. HCI is the developer of the Hawk's Cay Resort Development of Regional Impact (the "DRI") pursuant to the Development Order for same issued by the Board of County Commissioners of Martin County, Florida ("BOCC") on September 5, 1986 as subsequently amended from time to time.
- B. DKWC is the operator of the wastewater transmission and treatment system (the "System") serving the DRI and neighboring properties, the primary facility for which is located on a portion of "Utility Island" within the DRI and is leased by HCI to DKWC.
- C. The DO includes various executory requirements of HCI, including one in which HCI agreed to the transfer of the System as described below.
- D. FKAA operates, or will operate, a wastewater transmission and treatment system or systems in unincorporated Monroe County, Florida pursuant to the Memorandum of Understanding between BOCC and FKAA as passed and adopted by BOCC on May 23, 1998 (the "MOU").
- E. In paragraph 12 of Monroe County Resolution No. 335A-1996 amending the DO, HCI agreed to enter into an agreement to transfer title to the System and the underlying portion of Utility Island to BOCC under certain conditions set forth therein.
- F. Because of the MOU, FKAA now desires to have the title to the System transferred to it (in lieu of BOCC) and to operate the System, to which HCI and FKAA are agreeable.
- G. DKWC desires to join into this agreement by virtue of their involvement in its subject matter as described above and as provided for in the terms and conditions set forth below.

**NOW, THEREFORE**, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree:

1     Incorporation of Recitals. All of the foregoing recitals are true and correct and are incorporated herein by this reference.

2. Title Transfer. HCI has, simultaneously herewith, conveyed title to the real property constituting a portion of Utility Island to FKAA by executing and recording a Warranty Deed in the form attached hereto as Exhibit "A". DKWC has transferred title to all equipment, pipes, pumps, transmission lines, collection pipes, meters and other fixtures and tangible personal property (including all books, records, logs, plans, drawings and warranties in its possession) constituting the System (excluding, however, the reuse water pumps and lines running outward from same) to FKAA by executing and delivering a Bill of Sale in the form attached hereto as Exhibit "B". Simultaneously, HCI and DKWC have executed a termination of DKWC's lease of the Facility from HCI in the form attached hereto as Exhibit "C".

3. Condition of Facility. FKAA acknowledges and agrees that it has had ample opportunity to perform such inspections, testing, records review and other investigations of Utility Island and the System and its operational history and, accordingly, agrees to accept Utility Island and the System in their "AS IS, WHERE IS, WITH ALL FAULTS" condition without any representations or warranties by HCI or DKWC whatsoever, except for the warranties of title in the Warranty Deed and Bill of Sale in the forms attached hereto.

Without limiting the generality of the foregoing, neither HCI nor DKWC have made and they do not hereby make any express or implied representations or warranties whatsoever with respect to Utility Island or the System including, without limitation, any representation or warranty regarding: (i) the quality of construction, workmanship, merchantability or fitness for any particular purpose of any improvements located on Utility Island or with respect to the System; or (ii) the revenues to be received from operation of the system or the expenses to be incurred with respect thereto.

FKAA ACKNOWLEDGES AND AGREES THAT HCI HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION OR POLLUTION LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, AS MAY BE AMENDED FROM TIME TO TIME, OR THE DISPOSAL OR EXISTENCE, IN, ON OR AROUND THE PROPERTY, OF ANY HAZARDOUS SUBSTANCE, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER OR THE DISPOSAL OR EXISTENCE OF ANY PETROLEUM OR PETROLEUM BASED PRODUCTS IN, ON OR AROUND THE PROPERTY OR THE CONDITION, STATUS, SUITABILITY, SUITABILITY OF ANY STORAGE TANKS IN OR ON THE PROPERTY OR COMPLIANCE WITH PROVISIONS OF FLA. STAT. ' 376.011 ET SEQ. OR THE FLA. ADMIN. CODE. FKAA FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, IT IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY HCI.

4 Reuse Water. HCI and FKAA have entered into a Reuse Water Agreement in the form attached hereto as Exhibit "D", the terms and provision of which are hereby ratified and confirmed.

5. Rate Structure. FKAA acknowledges that the System and Utility Island were acquired and constructed at considerable expense, but are being conveyed to FKAA without charge. Therefore, in consideration of the transfer and receipt of the System and Utility Island, FKAA agrees that, for so long as the existing System is being utilized to treat waste generated by the existing members of the DKWC, their successors and assigns, the rate charged for same shall include only the following components:

(a) Actual operating expenses for the System and Utility Island (including general and administrative expenses); and

(b) Reasonably projected capital assessments to provide for the repair and replacement of the System (excluding any incremental costs associated with system expansion).

FKAA acknowledges and agrees that the water meters listed on Exhibit "E" hereto are solely or partially for non-domestic water and, therefore, are not to be used for determining wastewater usage or billing, except as and to the extent noted on Exhibit "E".

6. Plant Upgrade. The Parties acknowledge that FKAA will be required to upgrade the System to meet 2010 AWT requirements. FKAA agrees that (i) no member of DKWC or any successors in title thereto will be required to pay more than fifty three and twenty eight one-hundredths percent (53.28%) of the actual costs of such upgrade (specifically, HCI at no more than 24.2%, Village at Hawk's Cay at no more than 25.94% and others at no more than 3.06%, (ii) such costs shall not include the costs of any expansion of the System (whether for extending service to additional users, increasing capacity for those users or otherwise) and (iii) should any future user of the System be charged for upgrade costs already collected from HCI. and others shall be rebated to HCI or applicable other party on a pro rata basis.

7. General Matters.

A. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida.

B. This Agreement shall not be amended except by a written instrument executed by the parties intended to be bound by such amendment.

C. No person or entity shall be deemed to in any manner have any third party beneficiary rights or other rights to the benefit or enforcement of this Agreement.

D. All of the Exhibits attached hereto are hereby incorporated into this Agreement by this reference.

E. This Agreement constitutes the entire agreement among the parties with respect to its subject matter and no written or verbal agreements in such regard shall be binding or enforceable unless expressly provided herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

**WITNESSES:**

[Signature]  
Print Name: Charles W. Edgerton, III

[Signature]  
Print Name: DENISE M. SCHERER-WAGNER

**DUCK KEY WASTE WATER COOPERATIVE, INC.,** a Florida corporation not-for-profit

By: [Signature]  
Title: PRESIDENT

(Corporate Seal)

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

**WITNESSES:**

[Signature]  
Print Name: Charles W. Edgerton, III

[Signature]  
Print Name: DENISE M. SCHERER-WAGNER

By: **HAWK'S CAY MANAGEMENT, INC.,** a Florida corporation, its general partner

By: [Signature]  
Name: DEWADO H. CHRISTENSEN  
President

(Corporate Seal)

**FLORIDA KEYS AQUEDUCT AUTHORITY**

[Signature]  
Print Name: Kirk C. Zvalich

[Signature]  
Print Name: Elvira D. Schyer

By: [Signature]  
Name: JAMES C. REYNOLDS  
-Its Chair

Title: EXECUTIVE DIRECTOR