

AGREEMENT BETWEEN
FLORIDA DEPARTMENT OF HEALTH,
MONROE COUNTY HEALTH DEPARTMENT, AND
FLORIDA KEYS AQUEDUCT AUTHORITY

Management of Decentralized Wastewater Systems

The Florida Department of Health, through the Division of Environmental Health, Bureau of Onsite Sewage Programs (DOH), the Monroe County Health Department (MCHD), and the Florida Keys Aqueduct Authority (FKAA) an Independent Special District of the State of Florida, collectively, the "parties," enter into this Agreement, as set forth below.

I. PURPOSE

This purpose of this Agreement is to provide for a partnership to complete the "*Centralized Management of Decentralized Wastewater Systems*" demonstration project (Project). This EPA grant funded project will provide upgrades of onsite sewage treatment and disposal systems (OSTDS) to Onsite Wastewater Nutrient Reduction System (OWNRS) as required by Section 381.0065, FS.

This Agreement applies to those areas of unincorporated Monroe County in which FKAA has wastewater service jurisdiction and that are not part of a Central Wastewater System designated in the approved Monroe County Master Wastewater Plan. This Agreement applies to those private properties on which the FKAA will own, operate and maintain the OWNRS in accordance with Interlocal Agreement regarding Wastewater Systems, dated September 6, 2005.

The EPA grant document, June 24, 2010, is provided herein as Attachment A. The referenced grant application submitted by FKAA to EPA on March 22, 2010, is provided herein as Attachment B. The grant application includes the project "Work Plan" which FKAA produced with input from DOH and MCHD. The Interlocal Agreement regarding Wastewater Systems is provided herein as Attachment C.

II. DEFINITIONS

Unless otherwise defined in this Agreement, all definitions and terms are as defined in Section 381.0065, FS, or Chapter 64E-6, FAC.

1. Decentralized Wastewater Systems – those systems which are located outside existing and currently planned central wastewater collection and treatment service areas. These systems serve

individual properties or a small cluster of properties. Each system is built to include independent treatment and disposal of wastewater to meet state standards.

2. Onsite Wastewater Nutrient Reduction System (OWNRS) - means an OSTDS, engineer-designed to meet the treatment standards for the Florida Keys required under Section 381.0065, FS. An OWNRS is a performance based treatment system under DOH jurisdiction. OWNRS shall provide the level of treatment that will produce an effluent that contains not more, on a permitted annual average basis, than the following concentrations:

1. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.
2. Total Suspended Solids (TSS) of 10 mg/l.
3. Total Nitrogen, expressed as N, of 10 mg/l.
4. Total Phosphorus, expressed as P, of 1 mg/l.

In addition, OWNRS discharging to injection wells shall provide basic disinfection as defined by DOH rule.

3. Project Service Area – includes properties determined to require OWNRS as a result of their distance from planned central wastewater and which are located in FKAA jurisdiction. This encompasses decentralized areas on the following keys: Geiger (Big Coppitt Service Area), Lower Sugarloaf, Upper Sugarloaf, Cudjoe, Summerland, Ramrod, Big Torch, Little Torch, Big Pine, No Name (Cudjoe Regional Service Area), and Long Key.

III. SCOPE OF SERVICES UNDER AGREEMENT

This Agreement provides the scope of services and associated budget for DOH and MCHD required to complete their portion of the Project.

A: FKAA

1. FKAA shall enter into an Agreement and Grant of Easement with each property owner that authorizes the FKAA to provide OWNRS to the subject property. The Agreement and Grant of Easement between the FKAA and the property shall be recorded by FKAA, at its cost, in the Official Records of the County. FKAA shall own the OWNRS or lease the OWNRS from Monroe County. FKAA shall act as agent for the system's design, construction, maintenance, and inspection of the OWNRS located in an easement granted to the FKAA by the property owner. FKAA shall establish fees for the ongoing maintenance, repair and replacement and the inspection of the OWNRS. Fees shall also be established for owner initiated requests for modification of systems.

2. FKAA shall provide maintenance and management of the each OWNRS it owns or leases. FKAA shall be permitted as a maintenance entity under Chapter 64E-6, FAC, or contract for the services of a permitted maintenance entity. FKAA shall provide quarterly reports to the MCHD as required by Chapter 64E-6, FAC. The quarterly report requirement may be met by submission through the DOH approved web reporting system for maintenance entities or by other electronic means or paper copy. Reports at a minimum shall include the name of the

property owner or lessee, the street address of the system, the date of the inspection, and a statement as to the maintenance performed.

B: DOH/MCHD

Task 1 – Evaluation of Treatment Systems

1. DOH is responsible for the review and approval of technologies to meet the required OWNRS levels of treatment for the Florida Keys. This includes a current research project on passive nitrogen reduction systems. DOH shall provide to FKAA a list of approved systems, including innovative systems. FKAA will have the opportunity to visit, study, and interface with DOH in this effort to determine best fit applications for the Florida Keys.

Task 2 – Inventory of Existing Systems

2. MCHD shall provide FKAA with a list of existing OSTDS in its electronic database in the service area. Information on the list shall include:

- System location
- System type, age
- Ownership - name and address
- Compliance record

Task 3 – Project Coordination

3. DOH/MCHD will attend progress meetings and participate in conference calls to facilitate the execution of the Project.

4. MCHD shall retain responsibility for construction permitting, construction inspections, and final inspections.

5. In consideration of services provided, DOH/MCHD shall waive fees for operating permits for OSTDS owned or leased by the FKAA

6. Except for systems with sewage flows in excess of 1500 gallons per day, the DOH/MCHD shall waive the requirement that the FKAA must test samples from individual OWNRS systems to meet state standards for treatment. The MCHD reserves the right to sample a system as part of a complaint investigation or a DOH approved research project. Installation of a DOH approved OWNRS shall be presumed to comply with Section 381.0065, Florida Statutes, regarding treatment standards for the Florida Keys.

7. DOH/MCHD shall retain jurisdiction of those OWNRS whose owners elect not to enter into an agreement with FKAA.

IV. PROJECT COST AND SCHEDULE

For the services it provides under Section III, MCHD shall be reimbursed for their costs by the EPA grant monies, as administered by FKAA. Reimbursements will be made within 30 days of receipt, unless backup information is not included or in compliance with the EPA grant conditions.

The budgeted costs for MCHD are \$178,162, as presented in Attachment D.

DOH/MCHD will work to provide information, as required, in a timely manner to maintain the EPA grant project schedule. Any potential delay in providing required information must be brought to FKAA's attention, and a remedy for such delays should be discussed and implemented.

V. MODIFICATION AND TERMINATION

Any party may seek a modification of this Agreement by notifying the other parties in writing. No modification shall become effective until it has been signed by all parties. This Agreement shall remain in force and effect until modified or terminated by the parties. If some or a portion of the Agreement is inconsistent with new statutes, that portion of the Agreement which is inconsistent shall become null and void. Any party wanting to terminate this Agreement shall notify the other parties in writing at least 90 days prior to the termination date.

VI. VENUE, INTERPRETATION, COSTS, AND FEES

1. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the DOH, MCHD, and FKAA agree that venue will lie in the appropriate court in Monroe County, Florida.
2. The parties agree that in any cause of action or administrative proceeding regarding the operation or enforcement of this Agreement, each party shall bear their own costs in regard to attorney fees, court costs, investigation, and out-of-pocket expenses.

VII. NON-RELIANCE BY NON-PARTIES

No person or entity shall be entitled to rely upon the terms of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit from any service or program contemplated hereunder. The parties agree that none of the parties or any agent, officer, or employee of any party 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.

VIII. RECORDS – ACCESS AND AUDITS

All parties shall maintain adequate and complete records for a period of four years after each fiscal year allocation or as required by the State of Florida Record Retention Laws. Each party, its officers, employees, agents and contractors shall have access to the other party's books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the parties shall occur at any reasonable time.

IX. RELATIONSHIP OF PARTIES

The parties are independent of each other and shall at no time be legally responsible for any negligence on the part of the other parties, their employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

X. TAXES

The governmental parties are not subject to taxes and assessments with regards to the funds shared under this Agreement.

XI. INSURANCE

The governmental parties to this Agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this Agreement.

Each party agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this Agreement are canceled, terminated or reduced in coverage, then the respective party must immediately substitute complying policies so that no gap in coverage occurs.

XII. HOLD HARMLESS

To the extent allowed by law, each party must release, discharge, indemnify and hold harmless the other parties, the members of their governing boards, officers and employees, agents and contractors, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to the operations under this Agreement. No party waives any of its sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

XIII. NON-DISCRIMINATION

The parties, each for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of premises or in the contracting for improvements to the premises.

The parties 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 as to the discriminating party without any further action on the part of any party, effective the date of the court order.

XIV. ASSIGNMENT

No party may assign this Agreement or assign or subcontract any of its obligations under this Agreement without the approval of the governing boards of the other parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the all Parties.

XV. SUBORDINATION

This Agreement is subordinate to the laws and regulations of the United States, and the State of Florida, whether in effect on commencement of this Agreement or adopted after that date.

XVI. INCONSISTENCY

If any item, condition or obligation of this Agreement is in conflict with other items in this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limit the responsibility and liability of each party.

XVII. CONSTRUCTION

This Agreement has been carefully reviewed by the parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

VIII. NOTICES

Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

FLORIDA KEYS AQUEDUCT AUTHORITY
Executive Director
1100 Kennedy Drive
Key West, FL 33040

FLORIDA DEPARTMENT OF HEALTH

Bureau of Onsite Sewage Programs and
4052 Bald Cypress Way, Bin A08
Tallahassee, FL 32399-1713

Monroe County Health Department
1100 Simonton Street
Key West, FL 33040

XIX. FULL UNDERSTANDING

This Agreement is the parties' final mutual understanding regarding the subject matter hereof. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

off ~~if~~ any term or provision of this Agreement is found to be illegal or
off unreasonable, the remainder of the Agreement shall remain in full
off force and effect, and such term or provision shall be stricken.

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THE FLORIDA DEPARTMENT
OF HEALTH

BY: Kimberly A. Bayfield

DATE: 02.17.11

THE MONROE COUNTY HEALTH
DEPARTMENT

BY: Robert B. Eadie
Robert B. Eadie, Administrator

DATE: 2/2/2011

FLORIDA KEYS
AQUEDUCT AUTHORITY

BY: James C. Reynolds
James C. Reynolds, Executive Director

DATE: 1/11/11

ATTEST:
BY: Carol

APPROVED AS TO FORM:

BY: Kirk C. Zuelch
Kirk C. Zuelch
FKAA General Counsel

DATE: 1-11-11

Board Approval Date: 11/22/10