

**AGREEMENT CONCERNING WELL INSTALLATION
AND DELIVERY OF WELL WATER**

THIS AGREEMENT and Easement is made and entered into this 26 day of March, 2003, by and between the CITY OF KISSIMMEE, a municipal corporation, organized and existing under the laws of the State of Florida (hereinafter referred to as City), and KISSIMMEE UTILITY AUTHORITY, a body politic (hereinafter referred to as KUA), for the installation of five water supply wells on KUA's Cane Island Power Park property and the delivery of water from those wells to KUA for use at the Cane Island Power Park.

WITNESSETH:

WHEREAS, KUA is a body politic, organized under the laws of the State of Florida, empowered among other things to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, or extend electric generation, transmission, and distribution projects; and

WHEREAS, the City is a municipal corporation empowered among other things to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, or extend public water supply facilities; and

WHEREAS, KUA and the City both serve residents of the City and the surrounding area providing the essential services of electricity and water supply; and

WHEREAS, KUA owns an electrical generating unit site, the Cane Island Power Park; and

WHEREAS, KUA has entered a joint participation agreement with the Florida Municipal Power Agency (FMPA) for the ownership and operation of electrical generating units at the Cane Island Power Park; and

WHEREAS, FMPA has designated KUA as its agents; and

WHEREAS, KUA must obtain water for process, service, potable, and emergency cooling uses for all existing and future units to be constructed at the Cane Island Power Park; and

WHEREAS, it is to the mutual benefit of KUA, the City and their customers for the City to install wells on Cane Island Power Park and for KUA to use the City's well water at the Cane Island Power Park;

NOW THEREFORE, in consideration of the premises and other valuable consideration given one party to the other, the City and KUA hereby agree as follows:

1. WELL INSTALLATION.

- A KUA shall allow the City to permit, install and operate five (5) public water supply wells and the associated delivery system on the Cane Island Power Park. The well and delivery system locations shall be approved in writing by KUA.
- B The City shall own the well locations and shall accept easements from KUA required for pipeline and delivery facilities.
- C KUA will use its best efforts to have the well locations removed from the Cane Island Power Park Site Certification issued under the Florida Electrical Power Plant Siting Act.

2. TERMS: Volume and Deliver Schedule.

- A The City shall deliver and KUA shall accept and use Floridan Aquifer well water for the existing Cane Island Units 1-3 and future units to be constructed on Cane Island Power Park in quantities set forth herein. This Agreement shall be effective for a term of thirty (30) years. This Agreement shall be extended for additional terms of five (5) years unless written notification is given by KUA or any successor in interest to KUA at least eighteen (18) months prior to the expiration of the initial thirty (30) year term. KUA agrees to notify the City at least thirty (30) days prior to the date it expects to actually accept the well water. Notwithstanding this provision, in the event changes in State or Federal law subsequently prohibit the use of well water in the manner contemplated by this Agreement, the Agreement shall be terminated as a matter of law.
- B Upon the receipt of DEP well clearance for wells #3, #4, or #5 or the installation of Cane Island Unit 4, then the City shall deliver raw (untreated) well water to KUA for potable and process use at the Cane Island Power Park. The City shall deliver up to 330,000 gallons per day for Cane Island Units 1-4 through the term of the Agreement. Raw water quantities for future power generation requirements will be established prior to the delivery date but the total maximum gallon per day shall not exceed 0.5 million gallons per day. KUA shall notify the City in writing of its intent to request additional well water a minimum of two (2) years in advance of the delivery date. KUA may request in writing a waiver of the two (2) year advance notification request period. The City may grant or deny the waiver request in writing within thirty (30) days of the request based on the City's ability to provide the requested increased requirements.
- C The City must give KUA prior written notice of its inability to supply the well water to KUA as soon as practicable under the circumstances upon

the initial discovery by the City. KUA acknowledges that from time to time there may be interruption of flow or significant diminution of flow due to failure of mechanical equipment at the wells, failure of the delivery system, or aquifer performance. The City agrees to notify KUA at least sixty (60) days in advance of scheduled outages, maintenance, or repairs of the wells or supporting delivery equipment and to cooperate with KUA during the outages. The City agrees to repair the wells or supporting delivery equipment failures within seventy-two (72) hours of the initial discovery and/or notification or as soon as practicable.

3. USE OF WELL WATER.

- A It is contemplated by the parties hereto that KUA will use the well water as make-up supply for process, service, potable water uses at the Cane Island Power Park. However, the parties agree that KUA may use well water made available by the City for any onsite purposes and in any manner determined by KUA; provided, however, that KUA's use of well water shall at all times be consistent with all Local, State and Federal guidelines and requirements.
- B In the event the City is unable to supply treated sewage effluent under the Agreement and Easement Concerning Delivery and Use of Treated Sewage Effluent dated April 28, 1993, KUA may use the City well water for emergency cooling water to the extent the City has excess well water available.

4. CONNECTION AND METERING.

- A The City shall be responsible for connecting to the Cane Island Power Park water supply to deliver the well water from the City wells. The City shall be responsible for the connection, all costs of well installation and well water delivery, and agrees that it will be responsible for all damages associated with the loss of use, or damage to or destruction of the Cane Island Power Park water supply system resulting from the City connection.
- B The City shall submit plans and procedures for connecting to the Cane Island Power Park water supply system for review and approval by KUA. KUA shall review and approve or disapprove the engineer, contractor, and connection plans within thirty (30) days of receipt from the City.
- C Within thirty (30) days of execution of this Agreement, the City agrees to make application to FDEP and/or the SFWMD to obtain and/or modify all necessary permits for the initial two (2) wells as may be required by FDEP and/or SFWMD to install the wells, withdraw the

Floridan Aquifer groundwater, and allow the City to connect to the Cane Island Power Park water supply system. The City will use due diligence to obtain permit approval as soon as possible thereafter. KUA agrees to use best efforts to obtain all permits required by KUA to accept/connect to the City well water supply system and to notify the City when such approvals are obtained.

- D KUA shall provide metering of the well water delivered to the Cane Island Power Park from the City's water wells. The meter(s) and the meter location(s) shall be subject to approval by the City, and will be easily accessible for reading, testing, and maintenance. The City shall be responsible for testing and maintaining the meter(s). Unless an emergency arises, the City shall give KUA a 24-hour notice should delivery be interrupted due to meter maintenance or testing activity.

5. COST RESPONSIBILITY.

- A The City shall be responsible for all costs of installing the wells and the delivery system up to the point of interconnection with the Cane Island Power Park system.
- B The City shall be responsible for all maintenance costs associated with the wells and the delivery system up to the point of interconnection with the Cane Island Power Park system.
- C KUA shall provide power to all the well pumps, and the City shall pay for the power under KUA's lowest rates and policies applicable.
- D KUA shall sell to the City the portions of the Cane Island Power Park necessary for the installation of the wells for a price of \$10.00. KUA shall convey by warranty deed to the City. The legal description for these portions of the Cane Island Power Park are contained in Attachment B.
- E KUA shall convey an easement to the City, on a nonexclusive basis, for the portions of the Cane Island Power Park necessary for the installation of the delivery system for wells #1 and #2 for a price of \$10.00. The legal description for these easements is contained in Attachment C.
- F KUA shall convey an easement to the City, on a nonexclusive basis, for the portions of the Cane Island Power Park necessary for the installation of the delivery system for wells #3, #4 and #5 when those wells are installed for a price of \$10.00. The location of the easement will depend upon the location of existing and planned generating units

at Cane Island Power Park. One alternative for the easements is shown in Attachment A.

- G The City shall provide to Cane Island Power Plant, up to 330,000 gallons per day as an inkind exchange for the consideration of the conveyance of the real property for the five (5) well sites and utility easements given to the City by KUA.

6. WELL INSTALLATION SCHEDULE.

The City anticipates installing the two wells located on the southern portion of the Cane Island Power Park first. While only the first two wells are installed, KUA will continue to operate Cane Island Units 1-3 using KUA's existing wells. The City shall connect the City's delivery system to the Cane Island Power Park's system upon the installation of new generating units at Cane Island Power Park. If the operation of the City's wells has an adverse effect on the operation of the existing wells at Cane Island Power Park, the City shall determine the most cost effective solution to maintain the capability of KUA wells or connect the City's delivery system to the Cane Island Power Park system.

7. ASSIGNMENT AND DAMAGES.

- A The City shall have the right to transfer all or any part of the withdrawal or delivery facilities to another entity, and to assign all or any part of its rights and obligations under this Agreement to an alternate entity, who shall be bound by, accept, and be exclusively responsible for all applicable terms and conditions of this Agreement.
- B If the City improperly refuses to supply the agreed upon allocation of well water for any reason and KUA has otherwise complied with the terms of this Agreement and all applicable permits, the City shall be liable to KUA for its reasonable costs to acquire replacement water. If exercised by KUA, these costs shall be invoiced to the City within one year of the refusal to supply the well water. Failure to invoice these costs within one year of the refusal to supply the well water shall constitute a waiver by KUA for reimbursement of these costs, but failure to exercise this right by KUA shall not constitute a waiver by KUA for reimbursement upon subsequent breaches of this Agreement. For the purposes of this paragraph "improperly refused" is defined as: the City having the well water available and not be subject to a force majeure event relative to withdrawal or delivery.
- C KUA shall have the right to assign all or any part of its rights and obligations under this Agreement to an alternate entity, who shall be bound by, accept, and be exclusively responsible for all applicable terms and conditions of this Agreement.

8. DEFAULT.

If there is a material default due and punctual observance or performance of any provision contained herein, including the obligation to pay money, and such default continues for at least thirty (30) days following written notice to the defaulting party. Upon the occurrence of an event of default, the non-defaulting party shall be entitled to pursue all remedies available under law or equity, including without limitation, terminating this agreement upon thirty (30) days prior written notice.

9. NOTICES.

All notices required or authorized under this Agreement shall be given in writing, and shall be served by United States Mail, hand-delivered, or overnight delivery to the parties at the addresses listed below (or as such addresses may be changed from time to time in the same manner):

City: City of Kissimmee
City Manager
101 N. Church Street
Kissimmee, FL 34741

Copy to: City of Kissimmee
Director of Water Resources
101 N. Church Street
Kissimmee, FL 34741

KUA: Kissimmee Utility Authority
President and General Manager
1701 W. Carroll Street
Kissimmee, FL 34741

10. INSPECTION.

With proper identification the City shall have the right to enter the Cane Island Power Park to review and inspect KUA's operating practices as such practices relate to this Agreement.

11. JOINDER.

This Agreement is being executed by KUA as acknowledgement on their part that this Agreement impacts them and further acknowledges their acceptance of the terms.

12. SEVERABILITY.

If any part in this Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Agreement if the right and obligations of

the parties contained herein are not materially prejudiced, and if the intentions of the parties can continue to be effectuated. To that end, this Agreement is declared severable.

13. LAND USE APPROVALS.

This Agreement shall not be construed as granting, or assuring, or indicating any future grant of any land use or zoning approvals, permissions, variances, special exceptions or rights thereof with respect to the land.

14. ENTIRE AGREEMENT.

- A This Agreement as executed by both parties supersedes all previous agreements or representations, either verbal or written, heretofore in effect between the City and KUA that may have concerned the matters covered herein. No additions, alterations, or variations to the terms of this Agreement shall be valid, nor can the provisions of this Agreement be waived by either party unless such additions, alterations, or waivers are expressly set forth in writing in a document of import equal to this Agreement and duly executed by the parties hereto.
- B This Agreement as executed by both parties shall not affect the hunting rights of Thomas J. Addison, Sr. and Wilma M. Addison on the Conservation Area as granted and available under the agreement between KUA and Thomas J. Addison, Sr. and Wilma M. Addison, dated August 28, 1991, and as renewed.

15. TIME IS OF THE ESSENCE.

Time is of the essence in this Agreement.

16. WAIVER OF JURY TRIAL, VENUE.

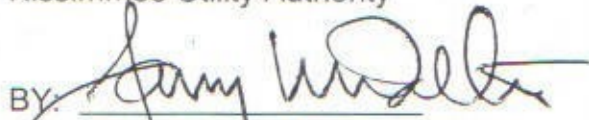
Venue of all actions shall lie in Osceola County, Florida. Each party waives the right to a jury trial.

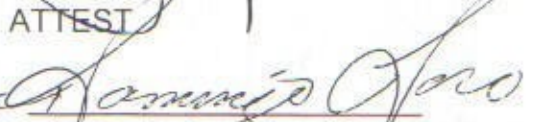
17. INDEMNIFICATION.

To the extent allowed by State law, including but not limited to Chapter 768, Florida Statutes, KUA and the City agree, (a) to hold the other harmless from the negligent acts or its omissions of itself, its officers, employees, agents, or gross negligence of its officers, employees or agents; (b) to hold the other harmless from third party suits against the indemnifying party which results from the performance of this agreement. Neither KUA or the City shall, by virtue of entering into this agreement, waive the sovereign immunity limits established by State law.

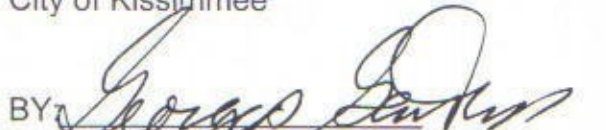
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, and copied delivered to each party, as of the day and year first above stated.

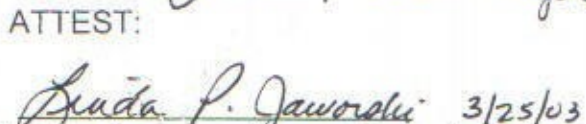
Kissimmee Utility Authority

BY: 
Larry Walter, Chairman

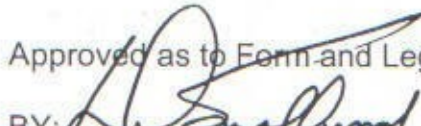
ATTEST:

Domingo Toro, Secretary

City of Kissimmee

BY: 
George A. Gant, M.D. Mayor

ATTEST:

Linda P. Jaworski - City Clerk

Approved as to Form and Legality

BY: 
City Attorney

BY: 
KUA Attorney