

Key Largo Wastewater Treatment District Board of Commissioners Meeting Agenda Item Summary

Meeting Date:
July 2, 2024

Agenda Item Number: O-2

Action Required:
No

Department:
Legal

Sponsor:
Nick Mulick

Subject:

Consideration of entering into the attached Mutual Assistance Agreement

Summary:

In light of recent use of District wastewater treatment facilities by Ocean Reef Club, Inc. to accept and treat effluent while Ocean Reef Club, Inc.'s package plant was inoperative, the Board requested that District Counsel draft a Mutual Assistance Agreement between the District and Ocean Reef Club, Inc.

Reviewed / Approved

Financial Impact

Attachments

Operations: _____
Administration: _____
Finance: _____
District Counsel: _____
District Clerk: _____
Engineering: _____

\$ None

Funding Source:
N/A

Budgeted:
N/A

1. Mutual Assistance Agreement

Approved By: _____

General Manager



Date: _____

6/27/2024

MUTUAL ASSISTANCE AGREEMENT
BETWEEN
OCEAN REEF CLUB, INC.
AND
KEY LARGO WASTEWATER TREATMENT DISTRICT

THIS MUTUAL ASSISTANCE AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____ 2024 by and between OCEAN REEF CLUB, INC., a Florida not-for-profit corporation (“Ocean Reef Club”), operating a private residential community located in North Key Largo, Florida (“Ocean Reef”), and KEY LARGO WASTEWATER TREATMENT DISTRICT (“District”), an Independent Special District established in 2002, pursuant to Chapter 2002-37, Laws of Florida, whose address is 103355 Overseas Highway, Key Largo, Florida (collectively, “Party” or “Parties”).

WHEREAS, Ocean Reef Club owns and operates a private sewage treatment facility serving the Ocean Reef private residential community located in North Key Largo; and

WHEREAS, the District owns and operates a public sewage treatment facility serving customers within its service area encompassing Tavernier, Key Largo, and Cross Key, with the exception of Ocean Reef; and

WHEREAS, the Parties own certain equipment and facilities, and provide sewage treatment services, which the other may have need of in the event of an emergency or other extraordinary circumstances; and

WHEREAS, the Parties desire to enter into a formal agreement defining the terms and conditions under which the Parties will provide aid and assistance to one another in the event of emergencies or other extraordinary circumstances.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

1. The foregoing recitals are incorporated herein by reference.
2. For the purposes of this Agreement, the Party supplying the equipment, facilities and/or services shall be designated as the “Provider” and the Party receiving the equipment and/or using the facilities and services shall be designated as the “User.”
3. Equipment, facilities and/or services shall be provided to either Party upon reasonable request at mutually convenient times or locations. Provider retains the right to refuse to honor a request: (a) if the equipment, facilities and/or services are needed for other purposes; (b) if providing the equipment, facilities and/or services would be unduly inconvenient; or (c) if, for any other reason, Provider determines, in good faith, that is not in its best interest to provide equipment, facilities or services at the requested time.
4. Upon taking custody of equipment, User shall execute and deliver to Provider a receipt that contains the information listed in Exhibit “A” attached hereto.
5. User shall return equipment within 10 days of receipt of written request from Provider.
6. User receiving equipment shall take proper precautions in its operation, storage, and maintenance. Equipment shall be used only for its intended purpose.
7. User shall permit the equipment to be used only by properly trained, properly licensed, and supervised operators.
8. User shall be responsible for repairs to Provider’s equipment and/or facilities necessitated by misuse or negligent operation, and for the maintenance and/or replacement of high-wear items.
9. Provider shall endeavor to provide equipment in good working order and to inform User of any information reasonably necessary for the proper operation of the equipment. The equipment is provided “as is,” with no representations or warranties as to its condition or its fitness for a particular purpose. User shall be solely responsible for selecting the proper equipment for its needs and inspecting equipment prior to use.

10. Before accessing Provider's facilities, User shall contact Provider's employees, agents or representatives and receive permission to enter the facility. User's employees, agents or representatives must be accompanied at all times by Provider's designated employee, agent or representative. No equipment or machinery on Provider's facilities shall be operated by User except with explicit approval of Provider's designated employee, agent or representative.
11. Each Party shall be solely responsible for its own acts and those of its employees, agents or representatives under this Agreement. No Party shall be responsible or liable for consequential damages to another Party arising out of providing or using equipment, facilities, and/or services under this Agreement.
12. Neither Party shall charge the other for use of the equipment, facilities or services by the other Party. However, in the event that Provider's equipment is lost or destroyed while in User's possession, or Provider's facilities are damaged by User, User shall cover any and all costs associated with the replacement or repair of damage to Provider's facilities or the lost/damaged equipment. User shall reimburse Provider for any damages suffered or costs incurred within 10 days of receipt of a written request itemizing the nature and amount of the damages or costs incurred from Provider.
13. Each Party shall bear the risk of its own actions, as it does with its own day-to-day operations, and shall determine for itself what kinds of insurance, and in what amounts, it should carry. Nothing herein shall act or be construed as a waiver of any sovereign immunity or other exemption or limitation of liability that a Party may enjoy.
14. The Parties acknowledge and agree that User is solely responsible for the proper utilization and operation of any equipment borrowed from Provider or facilities used or services provided to User. User shall indemnify and hold Provider harmless from and against any and all liability, damages, judgments or claims of any nature by anyone whatsoever, including attorneys' fees, incurred by Provider, arising out of or relating to the utilization or operation of any borrowed equipment and/or use of any facilities or services provided by the other.
15. This Agreement shall take effect upon adoption by the Board of Commissioners of the District and execution by an Ocean Reef Club Authorized Representative.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed in duplicate by their Authorized Officers and have affixed their corporate seals hereon.

KEY LARGO WASTEWATER
TREATMENT DISTRICT

By: _____
Peter Rosasco, General Manager

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
Shannon McCully, District Clerk

By: _____
Nicholas W. Mulick, General Counsel

OCEAN REEF CLUB, INC.,
a Florida not-for-profit corporation

By: _____
Alessandro Tonarelli, President

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
Ryan T. Steele, Secretary

By: _____
Erica L. English, Corporate Counsel

Exhibit “A”

Upon taking custody of equipment, User shall execute and deliver to Provider a receipt containing (at a minimum) the following information:

1. Description of item(s) borrowed;
2. Name of User responsible for the item(s);
3. Name, make and/or manufacturer of item(s), if applicable;
4. Year and/or model of item(s), if applicable; and
5. Manufacturer’s serial number of item(s), if any and if applicable.