

CONTRACTUAL AGREEMENT FOR UTILIZATION OF WASTEWATER
TREATMENT FACILITIES BETWEEN THE CITY OF CLEARWATER, FLORIDA,
AND THE CITY OF SAFETY HARBOR, FLORIDA

This Agreement is made and entered into on this ____ day of _____, 2018, by and between the following municipal corporations located in Pinellas County, Florida, specifically, the CITY OF CLEARWATER, FLORIDA, a municipal corporation (hereinafter, CLEARWATER), and the CITY OF SAFETY HARBOR, FLORIDA, a municipal corporation (hereinafter, SAFETY HARBOR), pursuant to the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes.

This Agreement shall be in existence for a period of thirty (30) years, commencing on August 1, 2018, and ending on July 31, 2048, unless sooner terminated as provided herein. The expiration or termination of this Agreement shall not terminate the equitable interest of SAFETY HARBOR in its allocated sanitary treatment capacity at the Clearwater Northeast Water Reclamation Facility and its appurtenants.

WITNESSETH:

WHEREAS, CLEARWATER and SAFETY HARBOR have previously entered into three separate agreements, two of which were dated October 22, 1976, and one dated September 23, 1981, for the joint utilization of wastewater transmission and treatment facilities; and

WHEREAS, CLEARWATER and SAFETY HARBOR mutually revised and consolidated those three previous agreements into one agreement, which began on August 1, 1988 and ends on July 31, 2018; and

WHEREAS, such agreement allocated to SAFETY HARBOR four (4) million gallons per day maximum annual average of wastewater treatment capacity at the Clearwater Northeast Water Reclamation Facility and its appurtenants (hereinafter, the "Facility"); and

WHEREAS, such agreement established fees related to the expenses attributable to the operation, maintenance, transmission, renewal, replacement, and administration generated by the transmission, treatment, and disposal of wastewater at the Facility; and

WHEREAS, such agreement improved and expanded the treatment plant process at the Facility, in accordance with the Grizzle/Figg Advanced Waste Treatment Bill (Chapter 87-303, Laws of Florida); and

WHEREAS, CLEARWATER and SAFETY HARBOR mutually desire to enter into a new agreement for the utilization of wastewater transmission and treatment at the Facility; and

WHEREAS, arrangements must be made for the use and payment for future capital improvements and modifications at the Facility; and

WHEREAS, CLEARWATER and SAFETY HARBOR have determined that it would be in the best interest of the general public and to the economic advantage of both Parties to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES THAT THE ABOVE TERMS, RECITALS AND REPRESENTATIONS ARE TRUE AND ACCURATE AND ARE INCORPORATED HEREIN BY REFERENCE AND THE PARTIES FURTHER AGREE AS FOLLOWS:

1. CLEARWATER agrees to provide SAFETY HARBOR an allotment of no more than four (4) million gallons per day maximum annual average capacity at the Facility.

2. Capital improvements and modifications to the collection, treatment and disposal facilities may become necessary due to changes in regulatory agency requirements for treatment quality or effluent disposal, to decrease operational expenses, or for other good cause. The total costs for these capital improvements and modifications shall be shared by both CLEARWATER and SAFETY HARBOR on a prorata basis. The proportionate share of costs for each Party shall be the same as the percentage of treatment plant capacity allotted to that Party at the time of the construction of the capital improvement or modification. SAFETY HARBOR shall be given a written notification for fiscal planning at least six months in advance of the financial commitment for any such capital improvements and modifications. All authority and responsibility for the complete operation, maintenance and modification of the Facility shall belong to CLEARWATER.

The Parties agree that SAFETY HARBOR has an allotment of four (4) million gallons per day wastewater treatment capacity at the Facility. The Parties agree that the total designed capacity for wastewater treatment at the Facility is thirteen and one half (13 ½) million gallons per day.

3. SAFETY HARBOR agrees to pay CLEARWATER a fee related to the expenses attributable to the operation, maintenance, transmission, renewal, replacement and administration generated by the transmission, treatment, and disposal of wastewater contributed by SAFETY HARBOR, as described in paragraph 4 below.

4. (a) CLEARWATER agrees to establish a monthly fee based upon actual use by SAFETY HARBOR for treatment and disposal of wastewater at the Facility. The quantity of wastewater collected from SAFETY HARBOR shall be determined based on monthly readings by CLEARWATER by calculating the difference in quantity registered from the previous reading of each meter.

The initial monthly fee shall be \$3,016.50 per million gallons of wastewater treatment and disposal which is based on projected operating costs for the 2017-2018 fiscal year. This initial monthly fee will remain in effect until September 30, 2018 at which time an estimated fee of \$3,888.50 for fiscal year 2018-2019 will take effect. This estimated fee is provided to SAFETY HARBOR for budgeting purposes. In subsequent years, an estimated fee for wastewater treatment and disposal will be provided to SAFETY HARBOR prior to April 30 each year, for use during the following fiscal year. The estimated fee will be based upon the actual costs from the previous fiscal year plus a reasonable percentage of escalation.

(b) In addition to the monthly fees in paragraph 4(a), a five percent (5%) additional charge will be made for renewal and replacement costs relating to the Facility and transmission lines. The Parties agree that renewal and replacement include repairs or work to restore or replace damaged or worn-out assets, systems or components to normal operating condition or an exchange of one fixed asset for another that has the same capacity to perform the same function.

Either Party, by notice in writing no sooner than August 1, 2023 and every five (5) years thereafter, may request to negotiate the five (5) percent additional charge provided for in this

paragraph 4(b). Upon such notice, the Parties agree to re-negotiate within sixty (60) days from the date of receipt of such written request. Any agreement reached as a result of such re-negotiation shall be executed by the Parties as a written amendment to this Agreement, and shall not be retroactive.

(c) A determination of actual costs for wastewater treatment and disposal during each fiscal year will be made as soon as practical following completion of the audit for the fiscal year. In determining the actual costs for the fiscal year, CLEARWATER shall compute its total annual cost of operation for wastewater treatment for the fiscal year and divide this sum by the total annual millions of gallons of sanitary wastewater treated during the fiscal year. The total actual costs of wastewater treatment and disposal performed for SAFETY HARBOR shall be compared to the total of estimated fees collected from SAFETY HARBOR by CLEARWATER during the fiscal year. The wastewater treatment operating costs shall include those items shown in Exhibit One attached hereto.

(d) The difference between the estimated fees collected and the actual costs for a fiscal year shall represent either an overpayment or an underpayment and shall be payable between the Parties as an equally adjusted monthly billing during the remaining periods of the fiscal year in which the determination is made. For the final year of this Agreement, any overpayment or underpayment shall be paid by the party owing the difference to the other party within thirty (30) days of the expiration of this Agreement.

(e) A copy of the audited financial statements used to determine actual operating costs shall be made available to SAFETY HARBOR, if requested.

(f) CLEARWATER and SAFETY HARBOR will each have the right to perform an audit of the other party's records concerning flow volumes, operating cost, building permits, subdivision permits, and other information directly related to this Agreement.

5. CLEARWATER agrees to bill SAFETY HARBOR for the fees and costs provided herein on a monthly basis. Each bill shall itemize services rendered and the amount of wastewater delivered from SAFETY HARBOR system to the Facility for the preceding month.

Calculation of payment due dates and payment for services rendered will be made in accordance with §§218.70 - 218.79, Fla. Stat., the Local Government Prompt Payment Act (2017).

6. SAFETY HARBOR agrees to maintain and to regulate by ordinance the use of its sanitary wastewater collection system, to minimize infiltration and prevent harmful wastes from being deposited into its facilities, such as would overload or cause damage to the Facility or interfere with the sewage treatment process.

(a) Inasmuch as Hydrogen Sulfide is a particularly hazardous and harmful waste to both operating personnel and equipment, SAFETY HARBOR agrees to remove all presence of hydrogen sulfide from SAFETY HARBOR's wastewater prior to delivery to the Facility. Where removal of hydrogen sulfide from SAFETY HARBOR's wastewater influent is performed by CLEARWATER, SAFETY HARBOR shall pay its pro-rata share of the cost of this removal on a monthly basis.

(b) SAFETY HARBOR further agrees to require adequate pre-treatment of strong or harmful commercial or industrial wastes, at the source of generation, prior to permitting such wastes to be discharged into its system for treatment and disposal at the Facility. In providing adequate pre-treatment of waste, SAFETY HARBOR shall be governed by the same standards applicable to CLEARWATER.

7. SAFETY HARBOR agrees to establish and maintain a record of all Certificates of Occupancy for buildings, building permits issued and sewer hook-up permits issued in the SAFETY HARBOR area, to prepare projections of permit increases due to subdivision approval, and to provide regular monthly reports to CLEARWATER of the aforesaid records and projections.

8. (a) CLEARWATER agrees that the amount of wastewater treatment capacity assigned to SAFETY HARBOR by the provisions of this Agreement will be honored by CLEARWATER and that CLEARWATER will not infringe upon the capacity allotted to SAFETY HARBOR, whether SAFETY HARBOR may be contributing its full allotted waste volume or not.

(b) SAFETY HARBOR agrees that it will not exceed its allotted waste volume capacity provided by this Agreement and will not infringe upon CLEARWATER's capacity, whether

CLEARWATER may be contributing its full allotted waste volume or not, or whether the treatment facility may be loaded at its rated volume capacity or not.

9. CLEARWATER agrees to permit SAFETY HARBOR to discharge wastewater either into CLEARWATER transmission lines to be connected to the Facility, if available, or directly into the treatment facility providing, however, no connection shall be made until a correctly designed and installed flow meter is ready for flow measurement at the connection.

CLEARWATER shall determine the point of connections into CLEARWATER's transmission lines for SAFETY HARBOR. CLEARWATER agrees to maintain flow meters.

SAFETY HARBOR shall pay its pro-rata share of the cost based on relative portions of peak design flow of constructing any transmission line to provide service for SAFETY HARBOR; or SAFETY HARBOR may, at its own option, provide its own transmission line.

10. The Parties in providing retail sanitary sewer services shall be bound by the service area designated in Exhibit Two attached hereto. The Parties shall have the exclusive right to provide retail sanitary service within the area allocated to such Party and each Party agrees not to compete with the other as to the provision of such sewer outside its designated area. This Agreement makes no provision for, or implication of, a boundary designation for the annexation of real property into the corporate limits of either CLEARWATER or SAFETY HARBOR.

11. No provision of this Agreement shall be construed in any way to obligate CLEARWATER or SAFETY HARBOR to provide sanitary sewer service to any particular user within the respective retail service areas.

12. CLEARWATER agrees that acceptance of wastewater from SAFETY HARBOR under this Agreement shall be continuous at all times; provided, however, that disruption or interruption of service at any time caused by an act of God, fire, strike, casualty, war, terrorism, natural disaster, accident, federal, state, regional or local governmental action or order, necessary maintenance work, breakdown of or damage to machinery, pumps or pipelines, act or omission of any federal, state, regional or local governmental authority, civil or military authority, insurrection, riot, or any cause beyond the reasonable control of CLEARWATER shall not constitute breach of this Agreement by CLEARWATER, and CLEARWATER shall not be liable

to SAFETY HARBOR or any of its customers for any claims, damages, injuries, liabilities, losses, costs or expenses resulting from such unavoidable disruption or interruption of service. CLEARWATER agrees to correct any and all disruptions or interruptions that may occur and restore service as soon as practicable to the extent it is within CLEARWATER's reasonable control to do so.

13. At any time during this Agreement, if SAFETY HARBOR is more than three (3) months in arrears on any payment required under this Agreement, then such will constitute a default. SAFETY HARBOR shall have a period of thirty (30) days to cure the default following a written demand for payment by CLEARWATER. If said default is not cured within thirty (30) days, CLEARWATER may impose interest, at the highest rate allowable by law, on the arrears, dating back to the beginning of the arrears, until the arrears have been repaid in full.

14. All disputes relating to the interpretation and performance of this Agreement shall be resolved through the procedures set forth in Chapter 164, Fla. Stat., the Florida Governmental Conflict Resolutions Act (2017).

15. Both Parties shall comply with all federal, state, county, and local laws, regulations, and ordinances at all times.

16. Both Parties shall be fully responsible for their own acts of negligence and their respective agents' acts of negligence, when such agents are acting within the scope of their employment; and shall be liable for any damages resulting from said negligence to the extent permitted by Section 768.28 Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by either Party. Nothing herein shall be construed as consent by either Party to be sued by third Parties in any matter arising out of this Agreement.

17. All requests and notices required to be given by either party under this Agreement shall be in writing, addressed to the other party as follows, and delivered by certified mail, return receipt requested, or by hand delivery:

CLEARWATER:	Public Utilities Director City of Clearwater 1650 N. Arcturus Avenue, Bldg C Clearwater, FL 33765
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WITH COPY TO: City Manager
City of Clearwater
112 South Osceola Avenue
Clearwater, FL 33756

SAFETY HARBOR: City of Safety Harbor
Public Works Director
750 Main Street
Safety Harbor, FL 34695

WITH COPY TO: City Manager
City Attorney
750 Main Street
Safety Harbor, FL 34695

Either party may, by written notice to the other party as provided above, change the address for subsequent notice. Any request or notice may be given by electronic mail in addition to but not in lieu of the written notice delivered in accordance with the requirements set forth above in this section.

18. This Agreement may not be assigned.

19. Should any section or part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or any part of any section of this Agreement.

20. This Agreement constitutes the entire agreement between the Parties, and no change will be valid unless made by supplemental written agreement executed by both Parties.

21. No act of omission or commission of either Party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be affected only through a written modification to this Agreement.

22. Each Party to this Agreement represents and warrants to the other Party that (i) it is duly organized, qualified and existing entities under the laws of the State of Florida, and (ii) all appropriate authority exists so as to duly authorize the persons executing this Agreement to so execute the same and fully bind the party on whose behalf they are executing.

23. CLEARWATER shall be responsible for filing this Agreement with the Pinellas County Clerk of Court, pursuant to Section 163.01(11), Florida Statutes.

24. Notwithstanding anything contained in this Agreement, should SAFETY HARBOR desire to implement a reclaimed water infrastructure program and CLEARWATER has the availability and capacity for reclaimed water, the Parties agree to work together collaboratively to reach an equitable arrangement capable of being instituted by both Parties and such arrangement shall be executed by the Parties as a written amendment to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized representatives on the day and year first above written.

CITY OF SAFETY HARBOR, FLORIDA
A municipal corporation and
political subdivision of the State of Florida

CITY OF CLEARWATER, FLORIDA
A municipal corporation and
political subdivision of the State of Florida

Joe Ayoub
Mayor

George N. Cretekos
Mayor

Matthew Spoor
City Manager

William B. Horne II
City Manager

ATTEST:

ATTEST:

Karen Sammons
City Clerk

Rosemarie Call
City Clerk

Approved as to form and correctness:

Alan Zimmet
City Attorney

Owen Kohler
Assistant City Attorney

EXHIBIT ONE

The operating expenses used for estimate preparation, as listed in the City of Clearwater Annual Fiscal Report, are as follows:

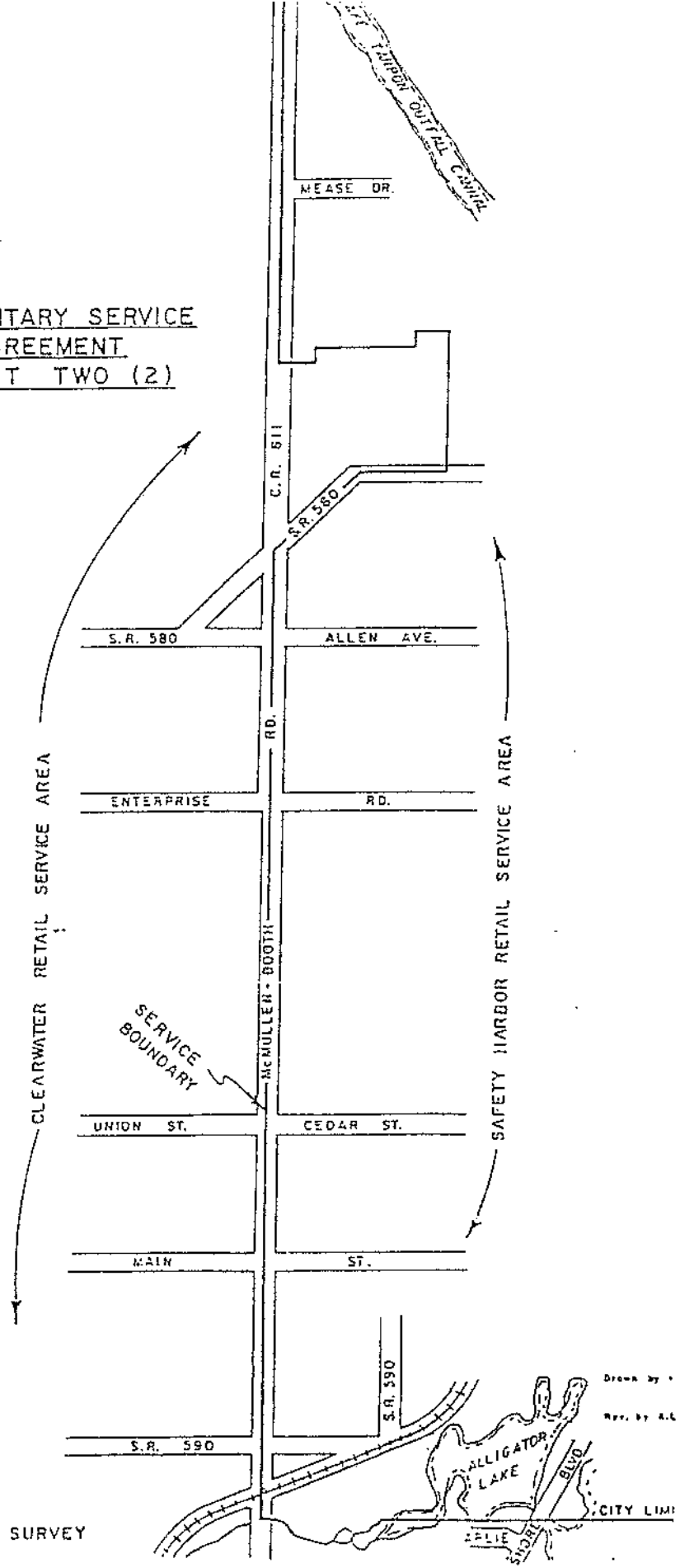
- Personal Services
- Operating Materials and Supplies
- Professional Fees
- Communications
- Transportation
- Insurance
- Utility Service
- Repairs and Maintenance
- Interfund Administrative Charge
- Data Processing
- Miscellaneous

These costs are to include administrative overhead, operating personnel, maintenance, utilities of the plants, supplies necessary to operate the plant and disposal of sludge and effluent.



Scale: 1" = 100' S.

RETAIL SANITARY SERVICE
AREA AGREEMENT
EXHIBIT TWO (2)



Note: This is not a SURVEY

Drawn by
Rev. by A.L.