

RESOLUTION NO. 11-047

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING AN INTER-LOCAL AGREEMENT BETWEEN THE CITY AND THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS FOR REIMBURSEMENT OF CERTAIN PUBLIC ACCESS WATER-RELATED EXPENSES; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Monroe County administers the Florida Boating Improvement program, which reimburses municipalities for money spent for improvements to public access water-related facilities;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached interlocal agreement between the City and the Monroe County Board of County Commissioners is hereby approved.

Section 2: That the interlocal agreement authorizes acceptance of reimbursement funds allocated through the Florida Boating Improvement Fund program in the amount of \$14,308.00 from the Monroe County Boating Improvement Funds for the replacement of worn materials at the Key West Mooring Field; and for funding to cover the 25% grant match for a new pump out vessel in the amount of \$21,667.00.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 15 day of February, 2011.

Authenticated by the presiding officer and Clerk of the Commission on February 16, 2011.

Filed with the Clerk February 16, 2011.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into as of this 20th day of April, 2011, between Monroe County, a political subdivision of the State of Florida (hereinafter, the COUNTY) and the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter, the CITY).

WITNESSETH:

WHEREAS, the County routinely uses Boating Improvement Funds for recreational boating related projects within the various municipalities, and

WHEREAS, the CITY requests that the COUNTY provide reimbursement in the amount of \$14,308.00 from Boating Improvement Funds for materials purchased for maintenance and replacement of twenty five mooring assemblies in the Garrison Bight mooring field; and

WHEREAS, the CITY requests that the COUNTY provide reimbursement in the amount of \$21,667.00 from Boating Improvement Funds, representing 25% of the City's cost associated with the purchase of a pump-out vessel utilized to remove sewage from recreational and commercial vessels; and

WHEREAS, the above expenditures are qualified expenditures from the Boating Improvement Fund.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed between the COUNTY and the CITY as follows:

Section 1. Payment. The COUNTY agrees to reimburse the CITY for incurred boating related costs as follows:

- 1.1 Payment in the amount of \$14,308.00 for materials used for the maintenance and replacement of twenty five (25) mooring assemblies in the Garrison Bight mooring field.
- 1.2 Payment in the amount of \$21,667.00, representing 25% of the City's cost associated with the purchase of a pump-out vessel utilized to remove sewage from recreational and commercial vessels.
- 1.3 To receive payment, the CITY shall submit all requests for payment and applicable invoices to the Senior Administrator of the COUNTY's Marine Resources Office (the "Senior Administrator"). The invoices must describe the services performed, together with proof that payment has been made to the CITY'S contractor(s). All documentation shall be forwarded to the County Clerk for payment. Any other documentation requested by the Clerk shall be provided.

Section 2. Term.

- 2.1 This Agreement shall become effective upon execution by both parties.
- 2.2 If such Notice of Termination as specified in Section 3 is given, this Agreement shall terminate within five (5) days thereof, and following such five day period, the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.

Section 3. Termination and Default.

- 3.1 In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided for herein such action shall constitute a default under this Agreement.
- 3.2 Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a "Default Notice") shall state in reasonable detail the actions the defaulting party must take to cure the same.
- 3.3 The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
- 3.4 Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance.
- 3.5 In the event the defaulting party fails to affect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon written Notice to the defaulting party, to terminate this Agreement.
- 3.6 If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.

Section 4. Indemnification.

- 4.1 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY, to the extent of the

COUNTY'S potential liability pursuant to Section 768.28, Florida Statutes, does hereby agree to defend, indemnify and hold the COUNTY, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the CITY or any third party vendor contracted by the CITY in connection with this Agreement.

Section 5. Notices.

- 5.1 All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to County: Roman Gastesi, Jr.
County Administrator
Monroe County
Historic Gato Building
1100 Simonton Street
Key West, Florida 33040

With a copy to: Suzanne Hutton, Esq.
Monroe County Attorney's Office
P.O. Box 1026
Key West, Florida 33041-1026

If to City: James Scholl
City Manager
525 Angela Street
Key West, Florida 33040

With a copy to: Shawn Smith, Esq.
City Attorney
525 Angela Street
Key West, Florida 33040

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

Section 6. Regulatory Powers.

- 6.1 Nothing contained herein shall be construed as waiving either party's regulatory approval or enforcement rights or obligations as it may relate to regulations of general applicability, which may govern the Agreement.

- 6.2 Nothing herein shall be deemed to create an affirmative duty of either party to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

Section 7. Attorneys Fees and Waiver of Jury Trial.

- 7.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 7.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

Section 8. Governing Law.

- 8.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

Section 9. Entire Agreement/Modification/Amendment.

- 9.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 9.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

Section 10. Access to Records and Audits.

- 10.1 City shall keep such records as are necessary to document the performance of the Agreement and expenses as incurred, and give access to these records at the request of County, the State of Florida, the Federal Government, or authorized agents and representatives of said government bodies. City shall also provide access to the personal property reports, permits, and equipment purchased or utilized under this Agreement. It is the responsibility of City to maintain appropriate records in accordance with generally accepted accounting principles consistently applied to insure a proper accounting of all funds and expenditures. Records shall be kept for a period of five (5) years following execution of this Agreement. City understands that it shall be responsible for repayment of any and

all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. County shall bill City for the amount of the audit exception and City shall promptly repay any audit exception. However, County warrants and represents that it has full authority to fund the Project under the terms and conditions specified herein. The County and City shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and City in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by City.

- 10.2 The COUNTY may cancel this Agreement for refusal by the CITY, or the CITY's subcontractor, to allow access by the County Administrator or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.
- 10.3 The term Records shall refer to any documents, books, data (electronic or hard copy), papers and financial records that result from the CITY or its subcontractors performance of the Services provided in this Agreement.
- 10.4 If the inspection or audit discloses that County funds paid to the City under this Agreement were used for a purpose not authorized by this Agreement, then the CITY must refund the funds improperly spent with interest calculated pursuant to Section 55.03, Florida Statutes, with interest running from the date the COUNTY paid the improperly spent funds to the CITY. This paragraph will survive the termination of this Agreement.

Section 11. Nonassignability.

- 11.1 This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

Section 12. Severability.

- 12.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

Section 13. Independent Contractor.

- 13.1 The CITY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the COUNTY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership,

association or any other kind of joint undertaking, enterprise or venture between the parties.

Section 14. Waiver.

14.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

Section 15. Funding.

15.1 The parties agree that the COUNTY's responsibility under this Agreement is to provide funding only.

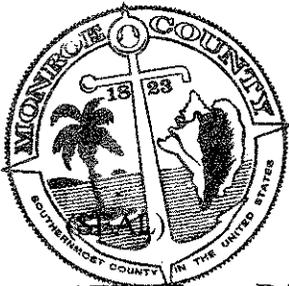
Section 16. Survival of Provisions.

16.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

Section 17. Counterparts.

17.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first written above.



ATTEST: DANNY L. KOLHAGE, CLERK

BY: Isabel C. De Santis
Deputy Clerk

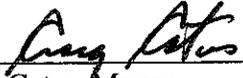
BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA

BY: [Signature]
Mayor/Chairperson

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: [Signature]
Office of the County Attorney

THE CITY OF KEY WEST, FLORIDA



Craig Cates, Mayor

ATTEST: 

Cheryl Smith
City Clerk
(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF KEY WEST, FLORIDA ONLY:

BY: 

Office of the City Attorney

EXECUTIVE SUMMARY

TO: City Commission

CC: Jim Scholl

FROM: Mark Tait
Marilyn Wilbarger

DATE: January 3, 2011

SUBJECT: Reimbursement from Monroe County Boating Improvement Funds



ACTION ITEM: The purpose of this item is to;

1. Authorize the acceptance of a reimbursement in the amount of \$14,308 from the Monroe County Boating Improvement Funds through an inter-local agreement (ILA) for the replacement of worn materials in the Key West Mooring Field.
2. Authorize the Mayor of Key West to sign the attached ILA between the City of Key West and Monroe County Florida for reimbursement of the \$14,308 for mooring field parts and \$21,667 for the 25% grant match for the second new pump out vessel which was previously approved in Resolution 10-148. Total amount to be reimbursed to the City of Key West by Monroe County is \$35,975.

BACKGROUND: The City of Key West Mooring Field is managed by the City Marina at Garrison Bight. There are 149 mooring buoys in the Mooring field. Mooring field rates are \$16.90 daily and \$298.02 monthly. The Key West Mooring field is inspected three times a year for worn parts which are replaced during the inspection. Monroe County administers the Florida Boating Improvement fund program which reimburses municipalities for money spent for improvements to public access water related facilities such as the Key West Mooring Field. Staff is requesting the approval to request and accept funding from Monroe County in the amount of \$14,308 for reimbursement of material purchased for necessary repairs to maintain the Key West Mooring field infrastructure.

In addition Key West Pump out has just received a second new pump out vessel which was funded in part by the state for 75% of it's cost. On May 5th 2010 the City Commission approved accepting \$21,667 from Monroe County to cover the balance of the total cost of the new pump out vessel in Resolution 10-148.

OPTIONS/ ADVANTAGES/ DISADVANTAGES:

1. The City Commission can approve the request and acceptance of funding as described from Monroe County.
2. The City Commission can deny the request and acceptance of funding as described from Monroe County.
 - If approved an Inter-local agreement would be signed by the Mayor of the City of Key West and Monroe County
 - With this process in place the future cost of repairs in Key West Mooring field would be supported by Monroe County's funding program therefore reducing the cost of annual repair to Key West Mooring field.
 - The 25 % grant match for the second pump out vessel would be funded by the county which means the second vessel would be 100% funded by state and county funding and no cost to the city.
 - There are no foreseeable disadvantages to accepting the funding.

FINANCIAL ISSUES

The City of Key West would receive \$14,308 from Monroe County for Mooring field repairs and \$21,667.00 to reimburse the 25% balance of the second new pump out vessel that was paid when the vessel was delivered. The total amount reimbursed by Monroe County to the City of Key West will be \$35,975. This money would put into City Marina's operating account.

RECOMMENDATION

City Staff recommends that the City Commission approve the reimbursement offer from the Monroe County Boating Improvement Fund for the cost of the mooring field replacement parts and sign the ILA agreement to facilitate the reimbursement.

Attachments: KW-BOCC Reimbursement ILA
Resolution 10-148

RESOLUTION NO. 10-148

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ACQUISITION OF TWO NEW PUMP-OUT VESSELS (SEWAGE REMOVAL) FROM PUMP-OUT USA, FOR KEY WEST PUMP-OUT SERVICE USING STATE OF FLORIDA GRANT FUNDING AVAILABLE FROM THE DEPARTMENT OF ENVIRONMENTAL PROTECTION; AUTHORIZING THE TRADE IN OF THE CURRENT PUMP-OUT BOAT TO PUMP-OUT USA AS THE 25% MATCH FOR A STATE GRANT TO PURCHASE ONE NEW PUMP-OUT BOAT; ACCEPTING FUNDING FROM MONROE COUNTY AS THE 25% MATCH FOR A STATE GRANT TO PURCHASE THE SECOND NEW PUMP-OUT BOAT; AUTHORIZING NECESSARY BUDGET TRANSFERS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Key West has been awarded grant funding in the amount of \$130,000.50 for purchase of two new pump-out vessels through the State of Florida Department of Environmental Protection Clean Vessel Act;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the acquisition of two new pump-out vessels from Pump-out USA, utilizing grant funding is hereby authorized.

Section 2: That the trade in of a pump out vessel currently owned by the City to Pump-out USA is authorized to cover the 25% match for one pump-out boat pursuant to Code of Ordinances section 2-797(4)(b).

Section 3: That the City is authorized to accept funding from Monroe County as the 25% match for the second new pump-out boat.

Section 4: That budget transfers necessary to effectuate this reimbursement grant program are hereby approved.

Section 5: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 4th day of May, 2010.

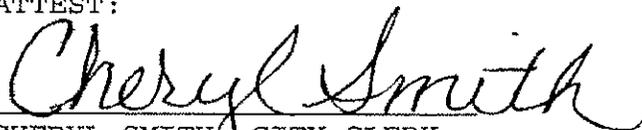
Authenticated by the presiding officer and Clerk of the Commission on May 5, 2010.

Filed with the Clerk May 5, 2010.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK