

RESOLUTION NO. 20-050

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "INTERLOCAL AGREEMENT FOR ENGINEERING DESIGN, PERMITTING AND CONSTRUCTION SERVICES FOR DENNIS STREET PUMP STATION (KEY WEST) PROJECT" BETWEEN MONROE COUNTY AND THE CITY OF KEY WEST; AUTHORIZING ANY NECESSARY BUDGET ADJUSTMENTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, First Street and Bertha Street are maintained by Monroe County, within the municipal limits of Key West city limits; and

WHEREAS, the County needs to use the City's Dennis Street Pump Station to manage stormwater flows from Bertha Street for the First Street and Bertha Street Road Improvement project, and both parties agree that it is in the best interests of both entities to cost share the design, construction and maintenance of the pump station as set forth in the attached Interlocal Agreement, including its attachments; and

WHEREAS, staff recommends approval of the attached Interlocal Agreement, which would allow the County to reimburse the City for certain costs related to design,

permitting, construction and maintenance services for the  
Dennis Street Pump Station; and

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  
for Engineering Design, Permitting and Construction Services  
for Dennis Street Pump Station (Key West) Project" between  
Monroe County and the City of Key West is hereby approved.

Section 2: That the City has completed the  
engineering design and permitting phase of the project, and  
awarded a construction contract, with the county anticipated  
to reimburse the City up to 35.9% of the Dennis Street Pump  
scope of work, and any necessary budget adjustments are hereby  
authorized.

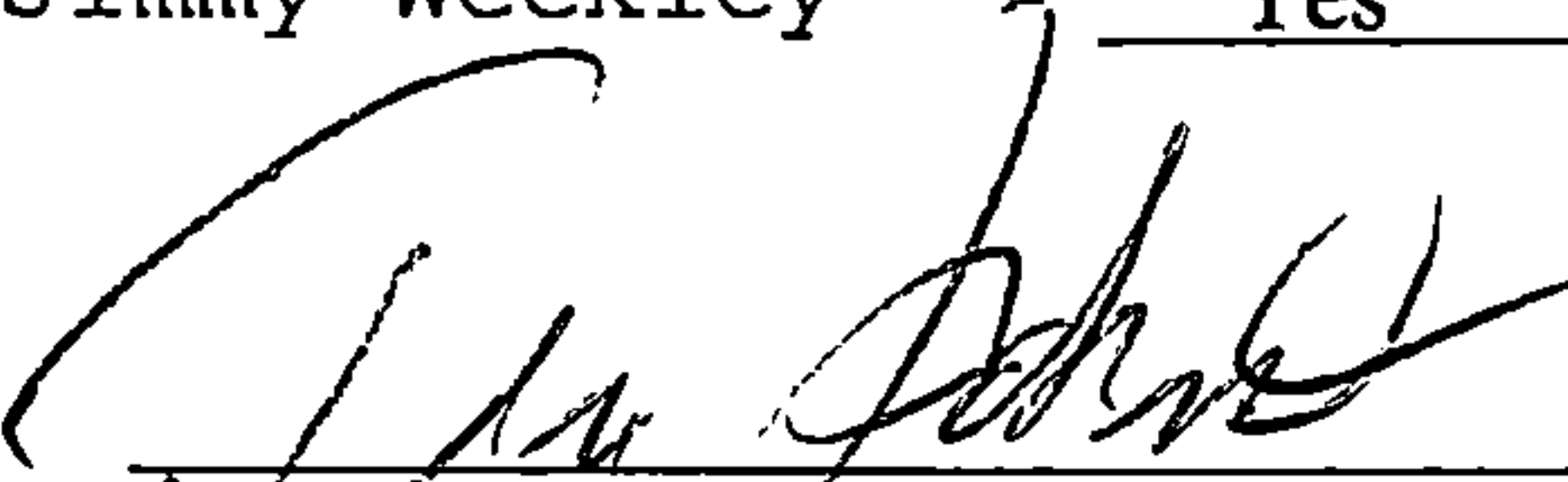
Section 3: That this Resolution shall go into effect  
immediately upon its passage and adoption and authentication  
by the signature of the Presiding Officer and the Clerk of  
the Commission.

Passed and adopted by the City Commission at a meeting held this 3rd day of March, 2020.


Authenticated by the Presiding Officer and Clerk of the Commission on 4th day of March, 2020.

Filed with the Clerk on March 4, 2020.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
\_\_\_\_\_  
TERI JOHNSTON, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

EXECUTIVE SUMMARY

**Date:** February 24th, 2020  
**To:** Greg Veliz, City Manager  
**From:** John Paul Castro, Director of Utilities  
**Cc:** Patti McLaughlin, Assistant City Manager

**Subject:** Interlocal Agreement with Monroe County BOCC for the Connection and Use of the City's Dennis St. Stormwater Pump Station

**Action Statement**

Requesting the City Commission enter into an interlocal agreement with the Monroe County Board of County Commissioners to allow the county road, Bertha St., stormwater system to connect into the Dennis St. stormwater pump station for a proportionate capital and operating fee.

**Background**

The utilities department operates the stormwater capital plan from the 2012 stormwater master plan. That master plan was initiated by a city-wide assessment of stormwater modeling and elevations. The plan consists of capital projects that improve low lying basins throughout the city.

Dennis St. and Venetia St. intersection next to the high school is one of the projects in the master plan. This low point has been known to stage water a foot or more. The flooding in the area disrupts traffic, school buses, and pedestrians as well as damages property. The city designed and bid a new pump station for the intersection in 2019. The project was awarded in February 2020 to the low bidder Charley Toppino and Sons, Inc.

**Purpose and Justification**

Monroe County owns First St. and Bertha St. in Key West. The roads have reached the end of their useful life and the county began designing the restoration of those roads in 2019. When the sea level rise and stormwater component of the project was considered the initial design components considered an outfall structure to the Atlantic. This would be difficult to install due to elevation and conflicts.

MEMORANDUM



City staff sent the neighboring projects, Patricia and Ashby piping and Dennis St. pump station for the county designer to use in the stormwater modeling.

Considering the difficulties of discharging stormwater with the county's property limitations and the neighboring pump station location the parties started to work on connecting the county road into the city pump station. Due to the staging differences in the two areas there was no need to redesign the pump station. The pump station will improve the discharge of stormwater for both areas and help negate the effects of sea level rise that would reduce a gravity systems effectiveness.

The city hired Raftelis through task order to assist in the calculations for appropriate proportionate charges and methodology. The city and county staff agreed on a simple percentage based on design flow. The county flow of the pump station is 35.9%.

The draft agreement was sent to the BOCC on February 19<sup>th</sup> where it was approved.

The county has agreed to pay 35.9% of the pump station capital cost which totals \$739,759. The county will also pay operating and maintenance fees of 35.9% of actual cost on an annual basis and 35.9% of repair and replacement costs.

#### **Financial**

The city stormwater fund will be reimbursed by Monroe County at 35.9% of design and construction cost estimated at \$739,759 and 35.9% of annual operating and maintenance costs.

#### **Recommendation**

City staff recommends approving the agreement with Monroe County for the improved stormwater collection and disposal on Bertha St.

**County of Monroe**  
**The Florida Keys**



**BOARD OF COUNTY COMMISSIONERS**

Mayor Heather Carruthers, District 3  
Mayor Pro Tem Michelle Coldiron, District 2  
Craig Cates, District 1  
David Rice, District 4  
Sylvia J. Murphy, District 5

Monroe County  
Engineering Department  
1100 Simonton Street  
Key West, FL 33040  
(305)295-4390  
(305)295-4321 (fax)

September 24, 2020

Teri Johnston, Mayor  
City of Key West  
1300 White Street  
Key West, FL 33040

Dear Ms. Johnston,

Enclosed you will find two (2) duplicate originals of the following item, executed on behalf of Monroe County, for your signature.

Interlocal Agreement with the City of Key West to contribute proportionate share to the design and construction cost of a new Dennis Street Pump Station that will handle stormwater from Bertha Street in the estimated amount of \$739,759.00 or 35.9% of the total cost. Upon the completion the County will pay its proportionate share (35.9%) of annual operations and maintenance costs.

Please return the fully executed original to our office.

If you have any questions, please feel free to contact me at the number above.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith Clarke".

Judith Clarke, P.E.  
Director of Engineering Services

Encl. (2)

**INTERLOCAL AGREEMENT  
FOR ENGINEERING DESIGN, PERMITTING AND CONSTRUCTION SERVICES  
FOR DENNIS STREET PUMP STATION (KEY WEST) PROJECT**

THIS INTERLOCAL AGREEMENT is made and entered into as of this 19<sup>th</sup> day of February 2020, 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).

**WHEREAS**, 1<sup>st</sup> Street and Bertha Street are COUNTY maintained roads within the municipal limits of the CITY and,

**WHEREAS**, the County needs to utilize the City of Key West's Dennis Street Pump Station to manage stormwater flows from Bertha Street for the 1<sup>st</sup> Street and Bertha Street Road Improvement project, and

**WHEREAS**, the CITY has completed the engineering design and permitting phase of the Dennis Street Pump Station Project (Project) with Black & Veatch, Inc. (Consultant) ; and

**WHEREAS**, the CITY has received bids and awarded a construction contract for the pump station, and

**WHEREAS**, the CITY and the COUNTY have agreed that the CITY's Dennis Street pump station can be utilized by both entities and it is in the best interest of both entities to cost share the design, construction and maintenance of the pump station as defined in "Attachment A"; and

**NOW THEREFORE**, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. The COUNTY, will enter into an Interlocal Agreement with the CITY for the cost sharing of the Dennis Street Pump Station Project (managed by the CITY) , specifically per the terms and conditions in Attachment A.
2. The Work will be performed in accordance with COUNTY and Florida Department of Transportation (FDOT) standards.
3. The CITY will provide to the COUNTY with the request for reimbursement, copies of all consultant pay applications and evidence of payment to the consultant by the CITY.
4. Additionally, in the construction phase of the project, the COUNTY will reimburse the CITY for a total of 35.9% of the itemized construction cost of the Dennis Street Pump Station (to be determined at substantial completion). The COUNTY will only pay for construction pay items and unit costs that are directly applicable to that work.



The CITY will make requests for reimbursements to the COUNTY based upon the Consultant's invoices, Construction Contractor's pay applications, and Maintenance Work Orders. The CITY will include copies of all contractor pay applications, evidence of payment to the construction contractor by the CITY, and releases of liens from the contractor and all subcontractors (if applicable), and proof of maintenance procedures such as photographic documentation.

5. The separate contracts for engineering design and construction and maintenance will be between the CITY and its contractors; the COUNTY may monitor the work but is not a party to the contract.

6. This Interlocal Agreement in no way relieves the CITY from its obligation to maintain any of the items for which it is responsible, nor does this alter the COUNTY's liability and responsibility regarding maintenance of the roadway from curb face to curb face and associated drainage of the road. This Agreement shall not alter the CITY or COUNTY'S maintenance responsibilities as proscribed by law.

7. This Interlocal Agreement shall become effective immediately upon execution by both parties and will remain in effect unless terminated as outlined in paragraph 11 below or if use of the pump station is discontinued

8. In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided herein, such action shall constitute a default under this Agreement.

9. 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. The defaulting party shall cure any such default within 30 days following the date of the Default Notice.

10. 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 the 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 the cure within the applicable cure period and thereafter diligently pursues the cure to completion of performance.

11. 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.

12. 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.



13. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the COUNTY and CITY do hereby agree to defend, indemnify and hold the other, its officers, agents or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorney's fees, costs, and expenses at both the trial and appellate levels) arising from the acts of omissions of the respective party or any third party vendor contracted by the respective party in connection with this Agreement.

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CITY and the COUNTY in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the COUNTY or CITY be required to contain any provision for waiver.

#### 14. Notices

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 Bldg.  
1100 Simonton Street  
Key West, Florida 33040

With a copy to: Christine Limbert- Barrows  
Assistant County Attorney  
P.O. Box 1026  
Key West, Florida 33041-1026

If to CITY: Greg Veliz  
City Manager  
City of Key West  
P.O. Box 1409  
Key West, Florida 33041

With a copy to: Shawn Smith, Esq.  
City Attorney  
City of Key West  
P.O. Box 1409  
Key West, Florida

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.

**15. Attorney's Fees and Waiver of Jury Trial.**

Subject to the sovereign immunity limits of F.S. 768.28, 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 trial and appellate levels.

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.

**16. Adjudication of disputes or Disagreements**

COUNTY and CITY agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

**17. Cooperation**

In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, COUNTY and CITY agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. COUNTY and CITY specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

**18. Governing Law.**

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, lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

**19. Entire Agreement/Modification/Amendment.**

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.

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.



**20. No Assignability.**

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

**21. Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of the 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.

**22. Independent Contractor.**

The COUNTY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractors and not agents or employees of the CITY 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.

**23. Waiver.**

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.

**24. Funding.**

**Except as set forth in this Agreement,** the parties agree that the COUNTY's responsibility under this Agreement is to primarily to provide a 35.9% portion of funding relating to the Dennis Street Pump Station scope of work.

**25. Survival of Provisions.**

Any terms or conditions of 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.

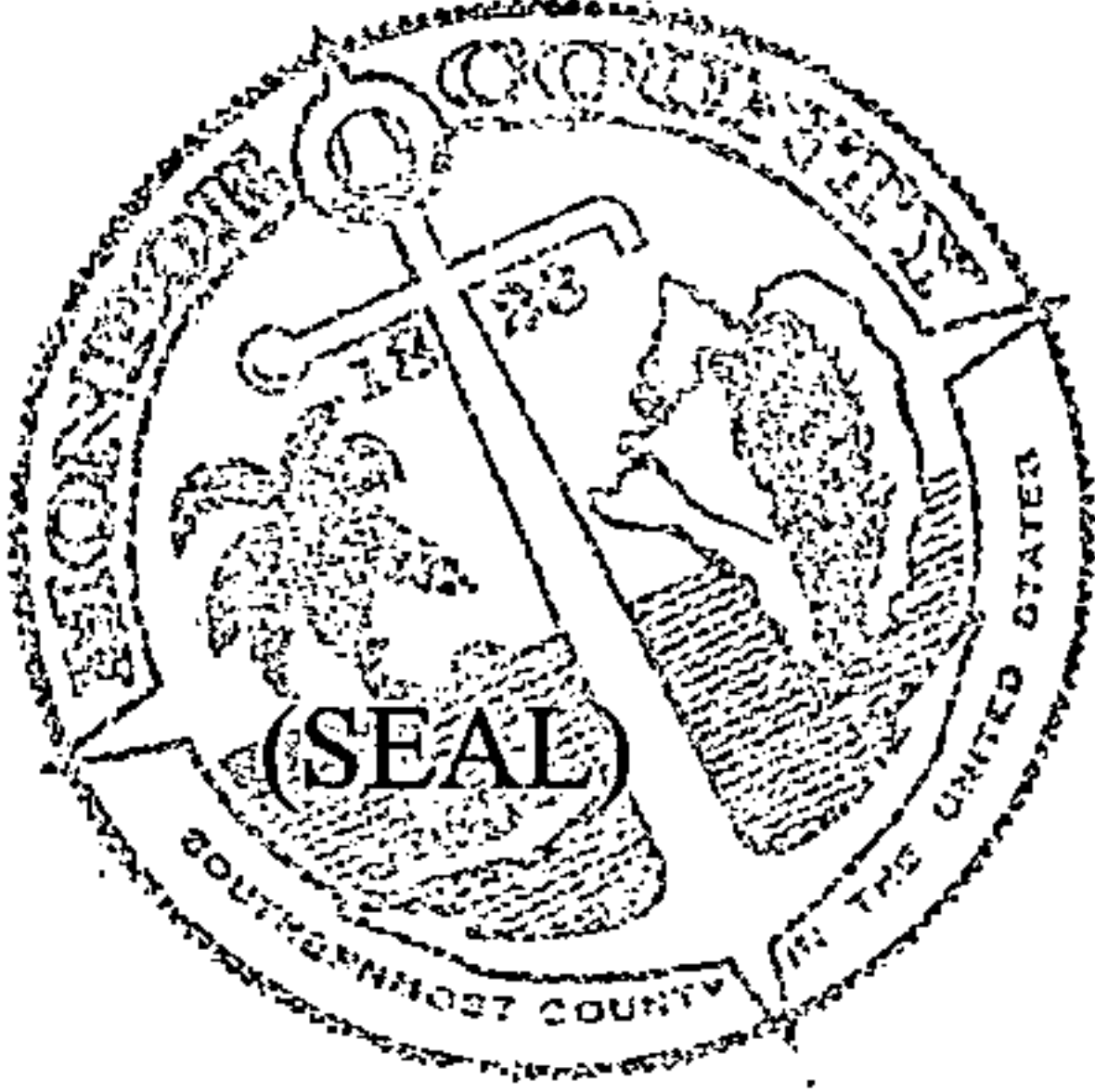
**26. Counterparts.**

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 seals the day and year first above written.

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA



By: *[Signature]*  
Mayor/Chairperson

KEVIN MADOK, Clerk

By: *[Signature]*  
Deputy Clerk

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
*[Signature]*  
CHRISTINE LIMBERT-BARROWS  
ASSISTANT COUNTY ATTORNEY  
DATE: 2/4/20

CITY OF KEY WEST, FLORIDA



By: *[Signature]*  
Mayor

*[Signature]*

# ATTACHMENT A

# ATTACHMENT A

## 1. Initial Capital Costs

1.1 The capital related costs of the Dennis Street Pump Station (“Pump Station”) shall include all costs related to planning, design, and construction of the Pump Station. The City of Key West (“City”) has represented that the total of these costs is estimated to be \$3,042,704. This amount represents the Initial Capital Cost of the Pump Station, which shall be apportioned between Monroe County (“County”) and the City.

1.2 The amount calculated as the Initial Capital Cost may be offset, or reduced, by the amount of grant monies obtained by the City for the sole purpose of, and whose monies are specifically restricted for use toward, the Pump Station. In such a circumstance, the total planning, design, and construction costs, minus the amount of applicable grant monies received by the City shall represent the Initial Capital Cost of the Pump Station, which shall then be apportioned between the County and the City.

1.3 The City represents that the total amount of grant monies whose use is specifically restricted to the Pump Station, and whose amount shall serve as an offset to the Pump Station’s planning, design, and construction related costs, is estimated to be \$982,094. Therefore, the Initial Capital Cost of the Pump Station shall be calculated as follows:

Planning, design and construction costs – Applicable grant funds = Initial Capital Cost

$$\$3,042,704 - \$982,094 = \$2,060,610$$

1.4 In the event that the actual cost of planning, designing, and constructing the Pump Station, or the amount of the applicable grant funds, differs from the amounts identified above, such amounts shall be adjusted to actual cost amounts.

1.5 The Initial Capital Cost shall be apportioned between the County and the City based on the proportional use of the Pump Station’s peak capacity by the County and the City, respectively. The peak stormwater flows attributable to the County and the City, as represented by the City, are as follows:

Peak stormwater flow attributable to County = 8.55 cubic feet per second (“CF/s”)

Peak stormwater flow attributable to City = 15.28 CF/s

Therefore, the proportional use of the Pump Station’s peak capacity shall be as follows:

$$\text{County portion} = 8.55 \text{ CF/s} \div (8.55 \text{ CF/s} + 15.28 \text{ CF/s}) = 35.9\%$$

$$\text{City portion} = 15.28 \text{ CF/s} \div (8.55 \text{ CF/s} + 15.28 \text{ CF/s}) = 64.1\%$$

1.6 The County’s proportional use of the Pump Station’s peak capacity shall be thirty-five-point-nine-percent (35.9%) and the County agrees to repay the City for thirty-five-point-nine-percent (35.9%) of the Initial Capital Cost of the Pump Station. Based on the cost estimates provided by the City, the County’s share of the Initial Capital Cost of the Pump Station is \$739,759, which has been determined according to the following calculation.

Initial Capital Cost × County portion = County share of Initial Capital Cost

$$\$2,060,610 \times 35.9\% = \$739,759$$



1.7 If the City elects to use grant funding whose purpose is at the discretion of the City, and whose funds are not specifically restricted for use toward the Pump Station, such grant monies shall not serve as an offset in the calculation of the County's share of the Initial Capital Cost. However, the City may use such funds to pay for its own share of the Initial Capital Cost.

1.8 County Payment of Initial Capital Cost:

The City shall substantiate all applicable Initial Capital Costs associated with the Pump Station and provide such cost substantiation to the County. The Initial Capital Cost apportioned to the County shall be paid to the City by the County upon substantial completion of the construction of the Pump Station and within 45 days of the County's receipt of cost substantiation documentation from the City.

**2. Capital Repair and Replacement Costs:**

2.1 From time-to-time over the service life of the Pump Station, certain capital repairs and/or replacements may be needed. The decision to undertake repair and/or replacement work on the Pump Station shall be at the sole discretion of the City. The City shall notify the County at the earliest time practicable that the City will incur Capital Repair and Replacement Costs associated with the Pump Station.

2.2 The County shall be responsible for, and pay to the City, thirty-five-point-nine-percent (35.9%) of all future Capital Repair and Replacement Costs related to the Pump Station.

2.3 Future Capital Repair and Replacement Costs apportioned to the County shall be recoverable from the County and payable to the City in the fiscal year in which the Capital Repair and Replacement Costs are made.

2.4 Capital Repair and Replacement Costs will be identified as such solely by the City and differentiated from on-going operating and maintenance expenses by the City on a case-by-case basis using the following criteria:

- a. The repair and/or replacement work completed is not routine in nature.
- b. The repair and/or replacement work completed extends the expected service life of the Pump Station.
- c. The total cost of the repair and/or replacement work completed exceeds the minimum capitalization threshold for the City.

2.5 The County shall pay the City for its proportionate share of the Capital Repair and Replacement Cost within 45 days of the County's receipt of cost substantiation documentation from the City.

**3. Future Upgrades and Expansion of Capacity:**

3.1 If additional capacity is determined to be needed at the Pump Station due to increased City or County stormwater flows, the City may undertake capacity expansion related work on the Pump Station at its sole discretion. The City shall notify the County of plans to upgrade and expand the Pump Station during the planning phase and prior to the construction of such upgrade or expansion. The parties shall work in good faith to arrive at an agreement of the proportion of the upgrade or expansion that shall be apportioned between the County and the City based on the proportional use of the peak capacity that has been added.

3.2 The Upgrade Capital Cost apportioned to the County shall be paid to the City by the County upon substantial completion of the construction of the Pump Station upgrade or expansion and within 45 days of the County's receipt of cost substantiation documentation from the City.

**4. Operating and Maintenance Expenses:**

4.1 The County shall be responsible for, and pay to the City on an annual basis, operation and maintenance ("O&M") expenses associated with the Pump Station for each year that the Pump Station provides stormwater pumping service to the County.

4.2 On-going O&M expenses associated with the Pump Station shall include costs incurred by the City related to the day-to-day operation and maintenance of the Pump Station. Such expenses may include, but not be limited to, salaries and wages, employee benefits, indirect costs, electricity, supplies, materials, routine repairs and maintenance, and incremental contractual management costs incurred by the City or its contract operator associated with operating and maintaining the Pump Station.

4.3 The County shall be responsible for, and pay to the City, thirty-five-point-nine-percent (35.9%) of the annual O&M expenses identified by the City as pertaining to the Pump Station.

4.4 To determine the dollar amount of O&M expenses related to the Pump Station that the County shall be responsible for, and pay to the City in each year, the City shall use the following method:

*Actual Cost Method:* The annual amount of O&M expenses shall be determined by the City subsequent to the end of the fiscal year based on the total costs related to operating and maintaining the Pump Station, as reflected in the City's financial records for the fiscal year, and then multiplied by thirty-five-point-nine-percent (35.9%).

**5. Discontinuation of Service:**

If the Pump Station is taken out of service or retired prior to the completion of a fiscal year based on *Actual Cost Method*, used to compute the amount of O&M expenses due from the County, the County is responsible for 35.9% up to the point when service is discontinued.