

**INTERLOCAL AGREEMENT BETWEEN
MONROE COUNTY AND THE CITY OF KEY WEST FOR JOINT
OPERATION, USE AND MAINTENANCE OF
BERNSTEIN PARK, STOCK ISLAND**

THIS INTERLOCAL AGREEMENT (AGREEMENT) is entered into this 1st day of October, 2023, pursuant to Section 163.01, Florida Statutes, between MONROE COUNTY (COUNTY), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 and the CITY OF KEY WEST, a municipal corporation of the State of Florida (CITY), whose address is 1300 White Street, Key West, Florida 33040.

WHEREAS, the COUNTY and the CITY are authorized to enter into this Agreement and implement its provisions pursuant to Section 163.01, Florida Statutes, as amended, which permits local government units to make the most efficient use of their powers by enabling them to cooperate with each other for mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that accords best with geographic, economic, and other factors influencing the needs and development of local communities; and

WHEREAS, the COUNTY owns that certain parcel of land located on Stock Island, Monroe County, known as BERNSTEIN PARK, (PARK) at 6751 5th Street, Stock Island, FL 33040; and

WHEREAS, the COUNTY and the CITY intend to utilize the PARK fields for various sports programs, athletic events, and other uses consistent therewith for the benefit of the public; and

WHEREAS, the CITY desires to utilize the Park as overflow when needed by scheduling dates and times through the County for the use of the sports fields located at the PARK for the various sports entities and athletic leagues desiring to utilize the PARK for practice or competitive events so as to avoid scheduling conflicts between said PARK users and the general public's use of the sports fields; and

WHEREAS, the COUNTY shall have priority of use to avoid scheduling conflicts; and

WHEREAS, the COUNTY will be responsible for the operating and maintenance costs of the PARK, and for entering into contracts with vendors and contractors for maintenance and repair of the PARK, if necessary; and

WHEREAS, the CITY and the COUNTY are authorized by Section 163.01(4), Florida Statutes, to enter into an interlocal agreement to carry out their independent powers contemplated in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, representations, and promises set forth in this Agreement and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the COUNTY and the CITY hereby agree, stipulate, and covenant as follows:

1. **PURPOSE OF INTERLOCAL AGREEMENT.** The purpose of this Agreement is to establish the relationship, rights, and responsibilities between the CITY and the COUNTY for use and operation of the PARK at the location more fully described below in accordance with the Priority of Uses and this Agreement. The above Recitals are true, correct, and agreed to by the parties and are incorporated in this Agreement.

PARK LOCATION: The area described as follows: Lots 1, 2, 3, 4, and 5, Block 57, George L. McDonald's Plat of Part of Stock Island, less the Westerly eight feet of Lot 1 and less the Easterly 30 feet of Lot 5, according to the plat thereof as recorded in Plat Book 1, Page 55, of the Public Records of Monroe County, Florida. Also a parcel of submerged land lying South of such Block 57, less that portion sold to Stock Island Utility Company by Warranty Deed recorded in Official Records Book 866, Pages 2446-2450, of the Public Records of Monroe County, Florida, TWP. 67/68 RNG. 25 SEC. 35, 36 & 2 RE# 12385 OR 380-381-382. Parcel Identification Number: 00127300-000000

2. **SCOPE AND REQUIREMENTS.**

COUNTY AND CITY OBLIGATIONS:

COUNTY shall make the PARK fields available for CITY's use as provided for in this AGREEMENT. The CITY's use of the PARK fields shall be subject to and in accordance with: (i) the terms and conditions of this AGREEMENT; (ii) the COUNTY's rules, regulations and policies governing the use of the PARK fields; (iii) any grant or bond obligations pertaining to the use of the PARK fields; and (iv) all applicable local, state and federal laws.

Priority of Use(s) means the priority of uses when there are conflicting requests for the use of the PARK's fields. The COUNTY shall have priority of uses of all PARK fields and/or facilities at all times. When possible, COUNTY shall provide CITY with fourteen (14) days' notice of planned use.

COUNTY will be responsible for all regular and special maintenance of the PARK.

COUNTY will provide CITY with a minimum of fourteen (14) days' advanced notice of any planned PARK closures. In the event of a closure, the CITY will be responsible for coordinating and working with any sports leagues that might be affected by a closure.

In the event of inclement weather, the County, at its sole discretion, may require closure of the fields. In the event of a closure, the CITY will be responsible for coordinating and working with any sports leagues that might be affected by a closure.

Signs will be posted by COUNTY notifying the public of the closure.

Throughout each year that this ILA is in effect, CITY will be responsible for reservations, scheduling and program coordination of all sports league uses of the PARK fields Monday through Sunday, Sunrise to 9:00 p.m. as long as the CITY has provided notice as required by this Agreement and that those schedules do not conflict with other provisions of this Agreement.

CITY will not schedule day camps for the PARK during the typical Summer School Break months of June, July and August.

The COUNTY shall have right of first refusal. Priority shall be given to the scheduling of maintenance and capital improvements and community access for unorganized open play.

The CITY shall create and provide scheduling for all users of the PARK sports fields.

The CITY must provide to the Director and/or County Representative no less than fourteen (14) days prior to the start of each sport league's season the following:

- Practice and game schedule for each season where PARK will be utilized;
- Contact information, including but not limited to, cell phone number, for each team's coach and the respective league president; and
- Contact information, including but not limited to, cell phone number, for CITY's representative and/or personnel who is available at all times pursuant to the schedule.

County must be notified of any changes throughout the season immediately.

The CITY will prepare the fields for any scheduled games.

INSURANCE: CITY will require, collect and maintain records of current and effective certificates of general liability insurance from all teams, leagues and tournament organizer users of the PARK fields that name both COUNTY and CITY as certificate holders and additional insureds for all of their activities at the PARK including all uses, practices, games, and competitions as well as waivers of liability in favor of the County from the users. Such policies of insurance shall be effective for the entire season and schedule of activities, events, practices and games that the team, league or tournament intends to schedule at the PARK. Prior to any use of the PARK for any of these activities CITY must provide COUNTY facilities management staff with evidence of all required liability insurances and waivers and receive approval from designated COUNTY staff of acceptance of such insurance and waivers. Current and effective insurance policies and waivers must be on record at all times with the COUNTY and CITY offices before use of the fields will be permitted. If a special event or tournament organizer intends to use the fields for an event or tournament then any and all responsible organizers shall be required to

provide general liability insurance that names both COUNTY and CITY as certificate holders and additional insureds for all days, times and activities of the special event or tournament along with waivers. Minimum general liability insurance requirements are \$500,000 per occurrence.

MUTUAL COOPERATION: CITY and COUNTY will cooperate with each other to assist with field maintenance during tournaments or special events.

3. **TERM OF AGREEMENT.** Subject to and upon the terms and conditions set forth herein, this Agreement shall commence on the 1st day of October, 2023, and continue in force for five (5) years unless earlier terminated by either party by providing the other party written notice of termination, which must be given at least ninety (90) days in advance of the effective date of termination. The parties may otherwise agree to extend the term of this Agreement by a fully executed amendment to this Agreement made by each party's duly authorized representative or governing body. In the event of termination of this Agreement, CITY shall remain responsible for all team, league, special events and tournament events that are scheduled at the time of termination as is consistent with the CITY's responsibilities under this Agreement, unless relinquishment of the CITY's responsibilities is otherwise mutually agreed in writing by COUNTY and CITY officials.

4. **USE AND CONDITIONS.** COUNTY and CITY shall use the PARK premises for a common sports field for organized sports organizations as well as other uses by the general public consistent with common PARK uses. CITY shall not place on COUNTY premises any structure or improvements of any kind, whether temporary or permanent, unless agreed to in this Agreement or approved in writing by COUNTY. CITY shall be responsible for removal of any such structures or improvements placed by the CITY.

5. **RELATIONSHIP OF PARTIES.** The Parties are independent of each other and shall at no time be legally responsible for any negligence on the part of the other Party, its employees, agents, or volunteers resulting in either bodily or personal injury or property damage to any individual, property, or corporation.

6. **TAXES.** The Parties are not subject to taxes and assessments.

7. **INSURANCE.** The parties to this Agreement stipulate that each is a governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable General Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this Agreement.

Each party agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this agreement are canceled, terminated, or reduced in coverage, then the

respective party must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the other party whenever acquired or amended.

8. **HOLD HARMLESS.** Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the CITY shall promptly indemnify, defend, save and hold harmless the COUNTY, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the CITY'S exercise or attempted exercise of its responsibilities as set out in this AGREEMENT, including but not limited to, any act, action, neglect or omission by the CITY, its officers, agents, employees or representatives in any way pertaining to this AGREEMENT, whether direct or indirect, except that neither the CITY nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the negligence of the COUNTY. Nothing contained herein shall be construed to alter or waive the COUNTY or the CITY's sovereign immunity under 768.28, Florida Statutes.

The CITY'S obligation to indemnify, defend and pay for the defense of the COUNTY, or at the COUNTY's option, to participate and associate with the CITY in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the CITY'S receipt of a notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the COUNTY sends the notice in accordance with the formal notice mailing requirements set forth in Section 18 of this AGREEMENT.

The indemnification provisions of this section shall survive termination or expiration of this AGREEMENT, but only with respect to those claims that arose from acts or circumstances under this AGREEMENT.

The CITY's evaluation of liability or its inability to evaluate liability shall not excuse the CITY's duty to defend and indemnify the COUNTY under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the COUNTY was solely negligent shall excuse performance of this provision by the CITY.

The COUNTY's and the CITY's purchase of the insurance required under this AGREEMENT does not release or vitiate their respective obligations under this paragraph. The COUNTY and the CITY do not waive any of its sovereign immunity rights, including but not limited to, those expressed in Section 768.28, Florida Statutes, or Florida law.

9. **NON-DISCRIMINATION.** The CITY and the COUNTY hereby covenant and agree that no person on the grounds of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the PARK. COUNTY and CITY agree that there will be no

discrimination against any such person or group based on the above identified qualities or categories and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. COUNTY and CITY agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VII of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color, religion, sex, or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of disability; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 12101 Note), as amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch.14, Art. II Sec. 14-43, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

10. **ASSIGNMENT.** The CITY may not assign this AGREEMENT or assign or subcontract any of its obligations under this AGREEMENT without the approval of the COUNTY. All the obligations of this AGREEMENT will extend to and bind the legal representatives, successors, and assigns of the CITY and the COUNTY.

11. **SUBORDINATION.** This AGREEMENT is subordinate to the laws and regulations of the United States, the State of Florida, Monroe County, and the City of Key West, whether in effect on commencement of this AGREEMENT or adopted after that date.

12. **INCONSISTENCY.** If any item, condition, or obligation of this AGREEMENT is in conflict with other items in this AGREEMENT, the inconsistencies shall be construed so as to give meaning to those terms which limit the County's responsibility and liability.

13. **GOVERNING LAWS/VENUE.** This Agreement is governed by the laws of the State of Florida and the United States. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the parties agree that venue shall lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida. Neither this Agreement nor any of its terms is subject to

arbitration.

14. **ETHICS CLAUSE.** CITY warrants that it has not employed, retained, or otherwise had act on its behalf any former COUNTY officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the COUNTY may, in its discretion, terminate this Interlocal Agreement without liability and may also, in its discretion, deduct from the Interlocal Agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former COUNTY officer or employee. The parties agree that their officers and employees will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, F.S., regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

15. **CONSTRUCTION.** This AGREEMENT has been carefully reviewed by the CITY and the COUNTY. Therefore, this AGREEMENT is not to be construed against any party on the basis of authorship. Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement have been duly authorized by all necessary COUNTY and CITY corporate action, as required by law.

16. **AMENDMENT OF AGREEMENT.** This AGREEMENT may be amended only in a writing signed by an Authorized Representative of the COUNTY and the CITY.

17. **PUBLIC RECORDS.** The parties shall allow and permit reasonable access to, and inspection of, all documents, papers, letters, or other materials in each other's possession or under its control subject to the provisions of Chapter 119, F.S., and made or received by the COUNTY and CITY in conjunction with this Agreement. The parties covenant to abide by and comply with all requirements of the Florida Public Records Law, Chapter 19, Florida Statutes.

18. **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:
County Administrator
1100 Simonton Street
Key West, FL 33040

and

County Attorney
Monroe County Attorney's Office
1111 12th Street
4th Floor, Suite 408

CITY:
City Manager
1300 White Street
Key West, FL 33040

and

CITY Project Manager
P.O. Box 1409
Key West, FL 33041-1409

Key West, FL 33040

and

County Parks and Beaches Director
102050 Overseas Hwy.
Key Largo, FL 33037

19. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

[This space left blank. Signature page follows.]

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

Board of County Commissioners
of Monroe County

Attest:
Kevin Madok, Clerk

Deputy Clerk

Date: _____

By: _____
Craig Cates, Mayor

Date: _____

Attest:
Keri O'Brien, Clerk

City Clerk

Date: _____

CITY of Key West

By: _____
Teri Johnston, Mayor

Date: _____