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THE CITY OF KEY WEST

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To: The City Commission for the City of Key West
From: Ronald J. Ramsingh, City Attorney
Meeting Date: February 8, 2024
Agenda Item: Approval of a Lease Agreement between The City of Key West and the Utility Board of the City of Key West (Keys Energy) regarding the Park and Ride Garage.
Sponsor: Ronald J. Ramsingh, City Attorney

COVER MEMO

Action Statement:

The Resolution approves or denies the proposed 20-year, plus 10-year option Lease Agreement between the City of Key West and the Utility Board of the City of Key West (Keys Energy) for a 26,500 square foot parcel of land at 300 Grinnell Street that comprises approximately half of the area beneath the Park and Ride Garage.

Background:

In 1993, the City of Key West entered into a 30-year lease with the Utility Board of the City of Key West (City Electric System; now Keys Energy) for a 26,500 square foot parcel of land located at 300 Grinnell Street. That parcel was historically used as a surface parking lot for City Electric System employees. After the split between CES and the City in 1969 when the FL Legislature created a separate utility body, the City of Key West retained ownership of an adjoining 21,500 square foot parcel of land that faces James Street. Together, the parcels were proposed to comprise the land needed to build a new 318 space park and ride transit and parking facility funded by a FDOT grant. The terms of that 1993 lease were approved in Resolution #93-533. The Agreement was for 30 years at a one-time cost of Ten Dollars (\$10.00). In exchange, the City provided 50 marked and reserved parking spaces for CES/Keys employees on the ground level with an entrance on James Street. The City was to retain all parking fees and retain sole control of the facility during the term of the lease. The City was also responsible for all insurance and maintenance concerning the garage. Construction began in 1994 and the facility was completed in 1995. Over the years, Keys has requested no-cost modifications to the Agreement regarding parking of their employees and assets. The first amendment was to accommodate 21 Keys vehicles and 7 personal vehicles of essential Keys personnel during named storm events that was approved in 2011 (Resolution #11-121). The second amendment was to accommodate 12

additional employee parking spaces on the ramp leading to the 2nd floor when Keys renovated their offices in 2016 and their parking plan changed. The City also converted some office space on the Caroline Street side of the building and leased out market-rate commercial space to Paradise Porters and We've Got the Keys.

Additionally, the City entered into a "linked" parking agreement with neighboring Conch Harbor, Inc. in 1998 for 120 customer parking spaces in order to help facilitate the development of that privately owned parcel. The City has also entered into a linked parking agreement with Harborside, LLC (The Marker Resort) for 14 parking spaces at the parking garage to accommodate employee parking that was required of their development agreement.

The original lease expired on December 31, 2023. The terms of the 1993 lease requires demolition of the garage; paid for by the City if a renewal cannot be reached that continues the operation of a parking facility. Informal estimates of demolition are in the \$2 million to \$3 million range. Discussions between the City and Keys have taken place intermittently since approximately 2016 for the renewal of the Lease. Keys legal counsel submitted a "Tenancy At Sufferance" letter on December 7, 2023 indicating that Keys would not seek to enforce the terms of termination of the lease until February 1, 2024 in order to facilitate further lease negotiations between the parties. The Sufferance letter served to effectively create a month-to-month relationship, while reserving Keys' rights to the termination provisions of the 1993 lease.

Since the summer of 2023, there were meetings and correspondence between City and Keys representatives regarding lease terms. On October 23, 2023, Keys proposed a new 30-year lease with some ramp up provisions as follows:

- Year 1: \$75k
- Year 2: \$150k
- Year 3: \$250k
- Years 4-8: \$417k
- Years 9-30: \$320 plus CPI adjusted every 5 years.
- All non-monetary provisions remain from 1993 lease (Keys parking, maintenance, insurance, and demolition)

After some discussions, on December 13, 2023, Keys proposed the following revised terms:

- Year 1: \$75k
- Year 2: \$150k
- Year 3: \$250k
- Years 4-30: \$320 plus CPI adjusted annually.
- All non-monetary provisions remain from 1993 lease (Keys parking, maintenance, insurance, and demolition)

On December 19, 2023, the City proposed the following terms:

- 20-year lease
- Zero Dollars to Oct 1, 2024
- Year 2-20: \$200k

- CPI-U adjustments for years 3-20
- Parties to share demolition costs equally;
- All non-monetary provisions remain from 1993 lease (Keys parking, maintenance, and insurance)

On January 4, 2024, Keys submitted the following counteroffer:

- 20-year lease with a 10-year option beginning Feb 1, 2024;
- Year one: \$10.00
- Year 2-20: 250k per year with 3% increases beginning on Feb 1, 2026
- Increase in hurricane parking from 28 to 85 spaces.
- All non-monetary provisions remain from 1993 lease (Keys parking, maintenance, insurance, and demolition)

During the January 11, 2024 City Commission meeting, the City Attorney requested and received general direction to reach a compromise with Keys in order to renew the Lease, and that demolition is not the preferred option.

On January 16, 2024, The City Attorney met with Keys GM & CEO Lynne Tejeda and Keys' Counsel Nick Batty at the Keys' offices. The attached proposed Agreement is a product of that meeting. On January 17, 2024, the proposed attached Agreement was considered and unanimously approved by the Utility Board. The salient terms of the proposed Agreement are as follows:

- 20-year term with a 10-year extension with mutual consent;
- \$10.00 from January 1, 2024 to January 1, 2025; \$225k annually thereafter with a flat 2.5% annual increase beginning on January 1, 2026;
- Existing exclusive ground floor and Keys ramp parking for business hours and 60 top deck parking for Keys-owned assets during named storm events **(Exhibit A)**;
- Reopener clause for any declared national or state declarations of emergency lasting longer than one month;
- City will continue to operate a commercial parking garage, commercial retail space, or any lawful commercial purpose that does not impair the rights of Keys and City shall retain all proceeds therefrom;
- City to construct a non-permeable barrier within one year between the Keys ground floor parking adjacent to the City-owned bus parking lot **(Exhibit B)**;
- Keys to control the ground floor fenced storage area located under the 2nd floor ramp **(Exhibit C)**;
- City to maintain General Liability Insurance. All other policies previously required are waived.
- City to continue to be responsible for maintenance of the facility.
- City to demolish the facility and restore pre-1993 Keys parking at the end of the term or non-renewal within 18 months of termination.

Procurement/Financial:

The proposed Lease does not have any substantial financial impact until January 1, 2025 when the first payment of \$225k is due. This gives the City an opportunity to program this new expense into our existing grant allocations. Based on conversations with Transit and Finance, there is a good likelihood that up to half of the lease payments can be paid for with existing grant funding. This ramp-up period also affords the City an opportunity to actually secure the referenced additional funding, which can take up to a year to achieve.

In 2023, the City recorded gross income from the Park and Ride in the amount of \$1,050,650.74. In 2022, gross was recorded at \$1,156,823,92. In 2019 (pre-Covid), gross revenue was reported at \$898,464.31. After expenses are paid into the Transportation Alternative Fund (TAF), insurance, utilities, and parking related salaries the City reported a net of \$638,322.62 in 2022¹. If the predicted grant funding comes to fruition the City's net will be approximately \$525,822.62. If the additional grant funding is not secured, the projected net will be approximately \$413,322.62².

Options:

1. Approve the proposed Lease with Keys. Although this option results in an unanticipated annual expenditure of \$225k, the City has 11 months to program those costs for FY 24-25 and there is a reliable path to be reimbursed half of that expenditure. The garage operates in the black, but by all accounts there is room for improvement in revenues. Additionally, the City will save 2 existing linked parking agreements that are tied to significant development agreements in the seaport.
2. Deny the proposed Lease with Keys. The City will be required to demolish the facility at a cost of \$2-\$3 million dollars. This option also has the effect of eliminating approximately one million dollars a year in gross revenues. Additionally, the City would be unilaterally dissolving 2 existing parking agreements that are tied to significant development agreements in the seaport which could have unintended consequences in pending litigation.

Recommendation:

To approve the proposed Lease.

¹ The net revenue for 2023 is substantially the same as 2022, but for an oversight on the reported line item for insurance.

² Although the garage has a positive balance sheet, the net revenues are used to fund other expenditures of the City, which logically will need to be reallocated. Alternatively, gross revenues would need to increase for a zero net delta.