

RESOLUTION NO. 21-111

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT" (AMENDMENT/MODIFICATION NUMBER 7) TO CONTRACT NUMBER N69450-12-RP-00166, BETWEEN THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING COMMAND SOUTHEAST, AND THE CITY OF KEY WEST, FOR THE OUTER MOLE PIER; APPROVING ANY NECESSARY BUDGET AMENDMENTS/ADJUSTMENTS; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE ANY NECESSARY DOCUMENTS UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 14-034 the City Commission approved a Public Benefit Lease Agreement with the United States of America, by and through the Department of the Navy, Naval Facilities Engineering Command Southeast, for use of a portion of the Outer Mole Pier; and

WHEREAS, on December 14, 2020, the City submitted a request for modification of the Contract, as cruise ships remain under a "No Sail Order" related to the COVID-19 pandemic, pursuant to the Centers for Disease Control; and

WHEREAS, the City Commission finds that the amendments set forth in the attached Amendment of Solicitation/Modification of Contract are mutually agreeable to both parties.

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

Section 1: That the attached "Amendment of Solicitation/Modification of Contract" [Modification No. 7] to Contract Number N69450-12-RP-00166 between the United States, acting by and through the Department of the Navy, Naval Facilities Engineering Command Southeast and the City of Key West, for use of the Outer Mole Pier is hereby approved.

Section 2: That necessary budget adjustments or amendments are hereby approved.

Section 3: That the Interim City Manager is authorized to execute the "Amendment of Solicitation/Modification of Contract" and any related documentation on behalf of the City, upon consent of the City Attorney.

Section 4: 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 2nd day of June, 2021.


Authenticated by the Presiding Officer and Clerk of the Commission on 3rd day of June, 2021.

Filed with the Clerk on June 3, 2021.

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>Absent</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
3140 Flagler Ave Key West, FL 33040 (305) 809-3700

EXECUTIVE SUMMARY

TO: Patti McLauchlin, City Manager

CC: Todd Stoughton, Assistant City Manger
George Wallace, Assistant City Attorney

FROM: Doug Bradshaw, Port and Marine Services Director

DATE: May 18, 2021

SUBJECT: Resolution approving the modification to the Public Benefit Lease Agreement Between the United States of America and the City of Key West for use of the US Navy Outer Mole Pier

ACTION STATEMENT:
This Resolution approves the modification of the Public Benefit Lease Agreement Between the United States of America and the City of Key West for use of the US Navy Outer Mole Pier.

BACKGROUND:
In January 2014 the City entered into a lease with the United States of America (Navy) that allowed for the docking of cruise ships at the Navy's Outer Mole pier. The rent terms of that lease were as follows:

- \$3.75 per passenger for the first 200,000 passenger, \$3.50 per passenger thereafter, but in no case less than fair market value of \$225,000 per year.

The World Health Organization declared the novel coronavirus (COVID-19) outbreak a global pandemic on March 11, 2020. The Director of the Center for Disease Control and Prevention (CDC) issued a No Sail Order for cruise ships, effective March 14, 2020. Because of the no sail order the rent reverted to the minimum amount of \$225,000 with the City collecting no revenues. On December 14, 2020 the City submitted a letter to the Navy requesting a twenty-four month abatement of any rental payments which may have occurred after the March 2020 pandemic closure as well as any future minimum payments required under the lease.

On May 7, 2021 the Navy sent the City a modification to the lease which changed the rent as follows:

- Removed the requirement of minimum rent of \$225,000,
- Still require the \$3.75 per passenger for the first 200,000 passenger, \$3.50 per

Key to the Caribbean - Average yearly temperature 77° F.

EXECUTIVE SUMMARY

- passenger thereafter,
- Added a payment of \$714.28 per day for use of the Premises for annual powerboat races,
 - Agreed that no rent shall be due for the period of 19 May 2020 through the effective date of the Modification
 - Removed the allowed use of the pier for sailboat races

FINANCIAL IMPACT:

By the Navy modifying the rental terms and not requiring the City to pay a minimum yearly fee the City has saved approximately \$225,000 for the period of May 2020 to May 2021.

RECOMMENDATION:

Staff recommends that the City accept the lease modification.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 2	
2. AMENDMENT/MODIFICATION NUMBER 7	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQUISITION NUMBER N/A	5. PROJECT NUMBER (if applicable) N/A		
6. ISSUED BY NAVFAC Southeast Box 30, Bldg. 903, AM12 Jacksonville, FL 32212-0030	CODE AM12	7. ADMINISTERED BY (if other than Item 6)		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (Number, street, county, State and ZIP Code) City of Key West Post Office Box 1409 3132 Flagler Avenue Key West, FL 33040			<input checked="" type="checkbox"/> 9A. AMENDMENT OF SOLICITATION NUMBER N/A	<input type="checkbox"/> 9B. DATED (SEE ITEM 11)	
			<input checked="" type="checkbox"/> 10A. MODIFICATION OF CONTRACT/ORDER NUMBER N69450-12-RP-00166	<input type="checkbox"/> 10B. DATED (SEE ITEM 13) 05/19/2014	
CODE	FACILITY CODE				

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended. is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing items 8 and 15, and returning _____ copies of this amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted;
 or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)

N/A

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NUMBER AS DESCRIBED IN ITEM 14.

CHECK ONE <input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NUMBER IN ITEM 10A.
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (Specify type of modification and authority) In-Scope Modification



E. IMPORTANT: Contractor is not is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

WITNESSETH: WHEREAS, the World Health Organization declared the novel coronavirus (COVID-19) outbreak a global pandemic on March 11, 2020; WHEREAS, in light of the public health emergency caused by the COVID-19 pandemic, the Director of the Center for Disease Control and Prevention (CDC), a component of the U.S. Department of Health and Human Services, issued a No Sail Order for cruise ships, effective March 14, 2020;

CONTINUED TO SECOND PAGE...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as hereinafter changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Patty McLaughlin, Interim City Manager, City of Key West		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Ferdinand L. Salomon, Real Estate Contracting Officer	
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED 2/13/24	16B. UNITED STATES OF AMERICA  (Signature of Contracting Officer)	16C. DATE SIGNED 29 June 2021

Previous edition unusable

STANDARD FORM 30 (REV. 11/2016)
Prescribed by GSA FAR (48 CFR) 63.243

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT (SF 30)
Continuation Page for N69460-12-RP-00166, Modification No. 7

BLOCK 14 DESCRIPTION OF AMENDMENT/MODIFICATION
Continued as follows:

WHEREAS, the CDC's No Sail Order remains in effect for cruise ships operating within U.S. waters through November 1, 2021 unless a cruise ship operator obtains a COVID-19 Conditional Sailing Certificate from the CDC;

WHEREAS, this Lease provides LESSEE occasional use of the Leased Premises for cruise ship berthing, passenger disembarkation and embarkation, and annual boat races, which uses have been precluded by the COVID-19 pandemic and the No Sail Order;

WHEREAS, the terms of this Lease inadvertently require LESSEE to pay annual rent whether or not LESSEE has used the Leased Premises;

WHEREAS, the Parties intended that LESSEE would pay rent only for LESSEE's occasional use of the Leased Premises; and

WHEREAS, LESSEE is undertaking in-kind consideration projects for Government, and Government has identified additional in-kind consideration projects it desires Lessee to complete;

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions contained herein, Government and LESSEE hereby modify this Lease as follows:

1. In Paragraph 3. CONSIDERATION, the first sentence of subparagraph 3.1 and subparagraph 3.1.(a) are deleted and replaced with the following:

3.1. Rent. LESSEE shall pay GOVERNMENT rental consideration of:

(a) \$714.28 per day for use of the Premises for annual powerboat races;

2. In consideration of the COVID-19 pandemic and the CDC's No Sail Order, which constitute *force majeure* events outside of the Parties' control and precluded LESSEE from using the Leased Premises, Government and LESSEE agree that no rent shall be due for the period of 19 May 2020 through the effective date of this Modification.

3. In Paragraph 5. USE OF LEASED PREMISES, under subparagraph 5.2., the following sentence is added after the existing sentence: "When LESSEE is not using the Premises for berthing of cruise ships and passenger disembarkation and embarkation or the annual power boat races, LESSEE understands and acknowledges the GOVERNMENT's right to access and use the Premises for other uses."

4. In Paragraph 5. USE OF LEASED PREMISES, under subparagraph 5.3., the words, "one annual sailboat race and" are deleted. The LESSEE no longer requires use of the Premises for the sailboat races.

Nothing below this line

RESOLUTION NO. 21-111

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT" (AMENDMENT/MODIFICATION NUMBER 7) TO CONTRACT NUMBER N69450-12-RF-00166, BETWEEN THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING COMMAND SOUTHEAST, AND THE CITY OF KEY WEST, FOR THE OUTER MOLE PIER; APPROVING ANY NECESSARY BUDGET AMENDMENTS/ADJUSTMENTS; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE ANY NECESSARY DOCUMENTS UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 14-034 the City Commission approved a Public Benefit Lease Agreement with the United States of America, by and through the Department of the Navy, Naval Facilities Engineering Command Southeast, for use of a portion of the Outer Mole Pier; and

WHEREAS, on December 14, 2020, the City submitted a request for modification of the Contract, as cruise ships remain under a "No Sail Order" related to the COVID-19 pandemic, pursuant to the Centers for Disease Control; and

WHEREAS, the City Commission finds that the amendments set forth in the attached Amendment of Solicitation/Modification of Contract are mutually agreeable to both parties.

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

Section 1: That the attached "Amendment of Solicitation/Modification of Contract" [Modification No. 7] to Contract Number N69450-12-RP-00166 between the United States, acting by and through the Department of the Navy, Naval Facilities Engineering Command Southeast and the City of Key West, for use of the Outer Mole Pier is hereby approved.

Section 2: That necessary budget adjustments or amendments are hereby approved.

Section 3: That the Interim City Manager is authorized to execute the "Amendment of Solicitation/Modification of Contract" and any related documentation on behalf of the City, upon consent of the City Attorney.


Section 4: 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 2nd day of June, 2021.

Authenticated by the Presiding Officer and Clerk of the Commission on 3rd day of June, 2021.

Filed with the Clerk on June 3, 2021.

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>Absent</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weakley	<u>Yes</u>


TERI JOHNSTON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

1300 WHITE STREET
KEY WEST, FLORIDA 33040
www.keywestcity.com

City Manager Office
(305) 809-3888

December 14, 2020

Sue Romanelli
Real Estate Contracting Officer
Naval Facilities Engineering Systems Command Southeast
Box 30, Bldg. 135N, Ajax Street
Jacksonville, FL 32212-0030

RE: Lease Contract No. N69450-12-RP-00166

Dear Ms. Romanelli,

Thank you and the rest of the Navy contingent who participated in our phone call of December 11, 2020 pertaining to the status of the City of Key West's lease agreement for the outer mole in Key West.

As we discussed the City's use of the Mole Pier was effectively eliminated this past year due to the Covid-19 pandemic.

The outcome of three recent voter referendum is expected to severely restrict the City's use of the pier regardless of the pandemic barring a successful legal challenge by the Cruise industry. The City cannot predict whether such a legal challenge may be forthcoming.

The City is requesting a twenty-four-month abatement of any rental payments which may have accrued after the March 2020 pandemic closure as well as any future minimum payments required under the lease agreement.

The City proposes that the remaining terms and conditions of the agreement remain in full force and affect including, but not limited to, the City's oversight of existing and proposed in-kind capital projects for the Navy's benefit.

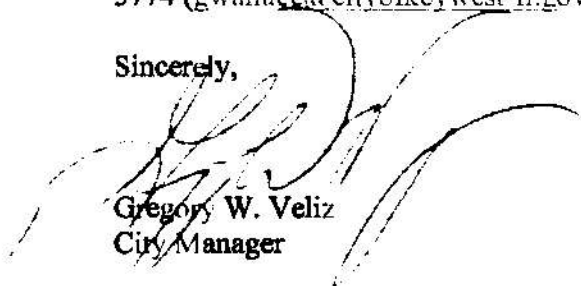
At the present time the City reflects \$1,390,135.87 of unencumbered funds for future in-kind projects.

The City and the Navy should re-visit the status of the agreement upon the expiration of the abatement period.

Key to the Caribbean - Average Yearly Temperature 77° F

If you have questions or need additional information, please do not hesitate to contact the undersigned at 305-809-3888, Assistant City Manager Patti McLauchlin at 305-809-3782, (pmclauchlin@cityofkeywest-fl.gov) or Assistant City Attorney George B. Wallace at 305-809-3774 (gwallace@cityofkeywest-fl.gov)

Sincerely,



Gregory W. Veliz
City Manager

cc: Shawn Smith, City Attorney
Patti McLauchlin, Assistant City Manager
George Wallace, Assistant City Attorney
Steven P. McAlearney, Director of Engineering
Doug Bradshaw, Director of Port and Marine Services
Mark Finigan, Finance Director
File

Key to the Caribbean - Average Yearly Temperature 77°
F.