

ORIG
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**INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND
THE CITY OF KEY WEST FOR JOINT PARTICIPATION IN
GRANT AGREEMENT # ARS010**

THIS INTERLOCAL AGREEMENT is made and entered into this 15th day of December, 2010, by and between the MONROE COUNTY BOARD OF COMMISSIONERS, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL 33040 ("COUNTY") and the CITY OF KEY WEST, whose address is _____ ("CITY").

WITNESSETH

WHEREAS, the STATE OF FLORIDA, EXECUTIVE OFFICE OF THE GOVERNOR, FLORIDA ENERGY COMMISSION ("COMMISSION") has entered into a Grant Agreement NO. ARS010 ("Grant Agreement") with the COUNTY to provide financial assistance for the Energy Efficiency and Conservation Project in which the COUNTY is the named grantee on the Grant Agreement, and

WHEREAS, the United States Department of Energy (USDOE) awarded funding to the COMMISSION pursuant to USDOE through American Recovery and Reinvestment Act (AARA) Grant Agreement No. DE-E0000241, and

WHEREAS, the COUNTY and the CITY developed a mutual project, which would include mutual participation with various entities to assist both the incorporated and unincorporated areas of the Florida Keys to improve energy conservation for the citizens of Monroe County, and

WHEREAS, the CITY has agreed to participate along with the COUNTY under the Grant Agreement #ARS010, and the CITY has developed certain project tasks for the benefit of its citizens. The CITY agrees to participate, contribute its resources pursuant to the requirements of the Grant Agreement in order to secure funding for the project tasks defined by the CITY.

WHEREAS, The sole purpose of this Interlocal Agreement is to define the contributions of the parties under the Grant Agreement, and

WHEREAS, CITY acknowledges that COUNTY will serve as the grantee/recipient under the Grant Agreement, and

WHEREAS, CITY hereby agrees to abide by the requirements of the Grant Agreement entered into between the COMMISSION and the COUNTY, and

WHEREAS, this Interlocal Agreement is entered into pursuant to the authority provided in Florida Statute 163.01, known as the Florida Interlocal Cooperation Act of 1969, and

NOW THEREFORE, in consideration of the mutual understandings and agreements set forth herein, the COUNTY and CITY agree as follows:

1. **INCORPORATION BY REFERENCE** - The provisions of that certain document entitled "FLORIDA ENERGY AND CLIMATE COMMISSION GRANT AGREEMENT NO. ARS010" (Grant Agreement) and its attachments is incorporated by reference as

Exhibit A to this Interlocal Agreement and made a part hereof as if fully set forth in the body of the Interlocal Agreement and all laws, rules and regulations relating thereto are also incorporated by reference.

2. PROJECT TASKS – CITY has developed certain project tasks to be funded by the Grant Agreement, and CITY and COUNTY agree that they are to be bound by the Grant Agreement, and CITY is responsible to provide COUNTY all the documentation and/reporting relative to the CITY'S project tasks which are required under the Grant Agreement.
3. TERM - The term of this Agreement begins on the date of execution by both parties and ends no later than April 30, 2012, the date the Grant Agreement ends unless earlier terminated or extended under the provisions of the Grant Agreement.
4. DOCUMENT REVIEW AND COMPLIANCE – CITY agrees to comply with the Grant Agreement and its attachments in its entirety, references in this agreement to specific paragraphs of the Grant Agreement are for convenience only. For purposes of the agreement between COUNTY and CITY any obligations called for under the Grant Agreement to be performed by the grantee related to CITY project tasks will also apply as if fully set out between the CITY and COUNTY.
5. RESPONSIBILITY OF CITY - CITY agrees to perform those project tasks attributable to CITY in the Grant Agreement and to provide the matching funds either in-kind or financial as provided in the Grant Agreement; and to provide to the COUNTY all the required reports, attachments fully completed, invoices or other documentation required by COMMISSION in order for CITY to be approved for reimbursement related to a project task.
6. FUNDS – CITY acknowledges and agrees that funding for its tasks under the Grant Agreement will be provided from the COMMISSION through the COUNTY on a reimbursement rather than an up-front basis; and that COUNTY is not financially responsible to CITY for funds expended by CITY which are not approved by COMMISSION. CITY also acknowledges and agrees that expended funds will be reimbursed as approved by the COMMISSION and related to each individual request for reimbursement submitted to the COUNTY by the CITY. All funds shall be distributed and expended in accordance with the Grant Agreement. CITY agrees that it shall not receive advances of any type from the COUNTY. All reimbursements to CITY are dependent on approval of specific reimbursement requests submitted from the CITY as paid by the COMMISSION.
7. REIMBURSEMENT. All reimbursement requests from CITY shall be submitted to COUNTY, not directly to the COMMISSION.
 - (a) Reimbursement requests shall be submitted to COUNTY and properly documented by CITY as required in the Grant Agreement. All reimbursement requests under this Interlocal Agreement and the Grant Agreement shall be submitted using the Attachment B of the Grant Agreement, Payment Request Summary Form, format in detail sufficient for a proper pre-audit and post-audit thereof. CITY shall submit to

COUNTY a properly completed Attachment B, Payment Request Summary Form, with supporting documentation of allowable costs, including the final reimbursement request, as described in paragraph 4.D. of the Grant Agreement.

- (b) CITY agrees and acknowledges that pursuant to the Grant Agreement at paragraph 4.C., ten percent (10%) of each approved reimbursement request shall be retained by the COMMISSION pending the compliance with Section 8 of the Grant Agreement, and that this amount will not be distributed to CITY prior to being received by COUNTY.
 - (c) If a Request for Reimbursement from CITY does not comply with the Grant Agreement requirements under the Grant Agreement the COUNTY will confer with CITY to identify what the COMMISSION requires in order for the CITY to be able to comply and receive reimbursement. It is the responsibility of the CITY to provide the necessary documentation or other requirements.
 - (d) Upon distribution of funds from the COMMISSION to the COUNTY, the COUNTY shall distribute the reimbursement received from the COMMISSION to the CITY for items related to the individual reimbursement request being paid by the COMMISSION.
 - (e) All reimbursements under the Grant Agreement shall be in compliance with the laws, rules, and regulations applicable to the expenditure of State and Federal funds. The State of Florida guidelines for allowable costs include, but not limited, to the Florida Department of Financial Services' Reference Guide for State Expenditures located at <http://www.myfloridacfo.com>. Federal program guidelines for allowable costs and related topics are listed in Attachment E of the Grant Agreement, Federal Regulations and Attachment F of the Grant Agreement, Federal Funding Grantee, Sub-grantee and Contractor Provisions. The CITY shall provide to COUNTY a detailed listing of expenditures made under the Grant Agreement as support for the Payment Request Summary Form. The listing shall include, at a minimum, a description of the goods or services purchased, date of the transaction, check or voucher number, amount paid and vendor name.
 - (f) In addition, to the requirements contained in paragraphs 4.C. & D of the Grant Agreement, the COMMISSION may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Grant Agreement pursuant to State of Florida guidelines. When requested by the COMMISSION related to a transaction performed by the CITY, the CITY shall provide the required information to COUNTY within 20 calendar days of such request, so that COUNTY can comply with the Grant Agreement and provide this information to the COMMISSION within 30 calendar days of receipt of such request pursuant to paragraph 4.E. of the Grant Agreement.
8. REPORTING – The Grant Agreement requires various reports, including but not limited to Monthly Progress Reports, Annual Reports, and Final Reports. CITY shall complete

reports, provide documents or information as requested by COUNTY in the manner described in the Grant Agreement for the project tasks under its control and for its benefit. CITY recognizes that failure to comply with the reporting jeopardizes funding for the entire grant for CITY, COUNTY and for other cities. CITY agrees to complete Monthly Reports in a timely manner and to provide the reports, documents or information documents or information to COUNTY at least 48 hours before the Monthly report is due from the COUNTY to the COMMISSION, at least 5 calendar days before the Annual documents or information report is due from the COUNTY to the COMMISSION, and at least 5 calendar days before the Final Report is due from the COUNTY to the COMMISSION.

9. COMPLIANCE MONITORING – CITY agrees to cooperate with the COUNTY and to participate in any compliance monitoring which may be required pursuant to the Grant Agreement, including but not limited to the requirements of paragraph 10 of the Grant Agreement. CITY further agrees to provide to the COUNTY the documentation required by the COMMISSION related to CITY’S project tasks due to compliance monitoring.
10. TERMINATION – If the COMMISSION terminates the Grant Agreement this Interlocal Agreement will automatically be terminated; termination by COMMISSION is set out in the Grant Agreement, including but not limited to, paragraphs 10C, 11, 12, 13, 14, and 15. Termination may also occur by mutual agreement of the parties.
11. NOTICES - Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, and sent to:

FOR COUNTY
County Administrator
1100 Simonton Street
Key West, Florida 33040

FOR CITY
City Manager
Jim Scholl
Key West, Florida 33040

AND

Monroe County Grants Administrator
1100 Simonton Street
Key West, FL 33040

Either of the parties may change, by written notice as provided above, the addresses or persons for receipt of notices.

12. UNAVAILABILITY OF FUNDS - If the COUNTY learns that funding cannot be obtained under the Grant Agreement or cannot be continued at a level sufficient to allow for the services specified herein, this Interlocal Agreement may then be terminated immediately, at the option of the COUNTY, by written notice of termination delivered in person or by mail to the CITY at its address specified above. The parties acknowledge that the COUNTY has no funding without the funding by the COMMISSION and agree

that the COUNTY has no liability for funds expended by the CITY that were not covered for any reason by the COMMISSION.

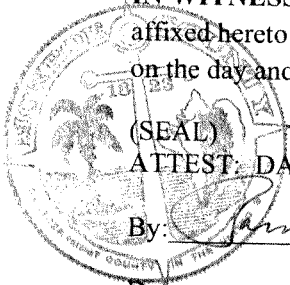
13. **PERFORMANCE AND OBLIGATION** – The COUNTY’S performance and obligation to pay under this Interlocal Agreement is contingent upon an annual appropriation by the Board of County Commissioners and upon the COMMISSION’S performance and obligation to pay under the Grant Agreement which is contingent upon annual appropriation by the Legislature of the State of Florida and the availability of federal funding for the specific purpose of funding the COMMISSION’S obligations under the Grant Agreement. In the event of a State revenue shortfall, withdrawal of State budget authorization and/or rescission of federal funding, the total funding will be reduced accordingly. The COMMISSION, in accordance with direction from the Governor and/or the Florida Legislature, shall be the final determiner of the availability of any funds.
14. **COMPLIANCE WITH LAWS AND REGULATIONS** - In providing all services pursuant to this Interlocal Agreement, the CITY shall abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provision of, such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this agreement.
15. **MAINTENANCE OF BOOKS AND RECORDS** - CITY agrees to maintain books, records, and documents directly pertinent to performance under the Grant Agreement and this Interlocal Agreement in the same manner as set out in paragraph 17 of the Grant Agreement. CITY agrees to provide the books, records and documents to the COUNTY in order for the COUNTY to comply with the Grant Agreement.
16. **SUBCONTRACTING** – Parties may hire contractors to achieve the individual project tasks applicable to their jurisdiction under the Grant Agreement. CITY agrees to comply with, and to include in subcontracts, all the applicable federal, state, and local health and safety rules and regulations required in the Grant Agreement or this Interlocal Agreement.
17. **FLORIDA STATUTE SECTION 768.28** – Each party agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.
18. **DISPUTES** - COUNTY and CITY agree that they will seek to resolve any disputes between them regarding their responsibilities as soon as possible and at the lowest level reasonable, in order to conserve the resources of the parties. The parties further agree to use their best efforts to assure speedy and non-confrontational resolution of any and all disputes between them. In the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Interlocal Agreement, the prevailing party shall be entitled to reasonable attorney’s fees and court costs, as an award against the non-prevailing party, and shall include attorney’s fees and courts costs in appellate proceedings, as an award against the non-prevailing

party. Mediation proceedings initiated and conducted pursuant to this Interlocal Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

19. AMENDMENT AND ASSIGNMENT - No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Interlocal Agreement, unless executed with the same formality as this document with approval of the COMMISSION. This Interlocal Agreement or duties under the Grant Agreement shall not be assignable by either party unless such assignment is first approved by the COMMISSION.
20. SEVERABILITY - If any term, covenant, condition or provision of this Interlocal Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. COUNTY and CITY agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
21. INDEPENDENT CONTRACTORS, WORKERS COMPENSATION –
 - (a) CITY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractors and not agents or employees of the COUNTY or the COMMISSION with respect to all of the acts and services performed by and under the terms of this agreement. COUNTY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractors and not agents or employees of the CITY or the COMMISSION with respect to all of the acts and services performed by and under the terms of this Interlocal Agreement.
 - (b) CITY will be self-insured against or will secure and maintain during the life of this agreement, Workers Compensation for all of its employees connected with the work of this agreement. CITY shall require their subcontractors similarly to provide Workers Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the CITY. Such coverage shall comply fully with Florida's Worker's Compensation Law. 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.
22. WAIVER OF PROVISIONS - The failure of either party to this Interlocal 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.

23. PROCESS FOR APPROVAL - This Interlocal Agreement shall be approved by the CITY initially and after approval by the CITY shall be presented to the Board of County Commissioners for approval of the COUNTY. The Interlocal 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.
24. AUTHORITY - Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary governmental action, as required by law.
25. ENTIRE AGREEMENT -
- (a) It is understood and agreed that the entire agreement of the parties is contained herein and that this Interlocal Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.
- (b) Any alterations, amendments, deletions, or waivers of the provisions of this Interlocal Agreement shall be valid only when expressed in writing and duly signed by the parties.

IN WITNESS WHEREOF, the parties to this Interlocal Agreement have caused their names to be affixed hereto by the proper officers thereof for the purposes herein expressed at Monroe County, Florida, on the day and year first written above.



(SEAL)
 ATTEST: DANNY L. KOLHAGE, Clerk
 By: *Danny L. Kolhage*
 Deputy Clerk
 Date: _____

BOARD OF COUNTY COMMISSIONERS
 OF MONROE COUNTY FLORIDA
 By: *Sylvia J. Murphy*
 Mayor/Chairman
 Date: DEC 15 2010

CITY OF KEY WEST
 By: *Craig Peters*
 Title: Mayor
 Date: 10-21-10

Angela Brooke
 Witness for Key West
 Print Name: ANGELA BROOKE
 Date: 10-21-10

MONROE COUNTY ATTORNEY
 APPROVED AS TO FORM
Natleene W. Casrel
 NATILEENE W. CASREL
 ASSISTANT COUNTY ATTORNEY
 Date: 11-24-10