

RESOLUTION NO. 02-310

A RESOLUTION OF THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST (LRA) APPROVING THE ATTACHED MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE UNITED STATES NAVY AND THE LRA; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY, AS FOLLOWS:

Section 1: That the attached MOU between the United States Navy and the LRA is hereby approved.

Section 2: 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 Authority.

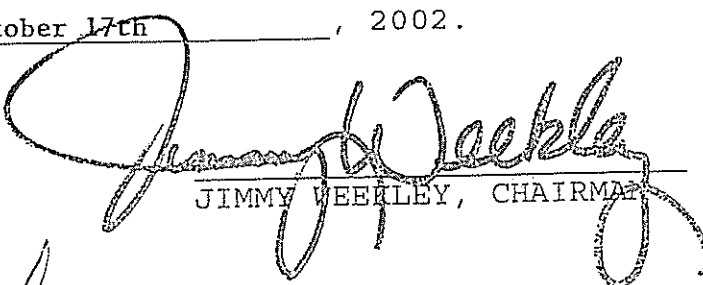
Passed and adopted by the Naval Properties Local Redevelopment Authority at a meeting held this 16th day of October, 2002

Authenticated by the presiding officer and Clerk of the Authority on October 17th, 2002.

Filed with the Clerk October 17th, 2002.

ATTEST:


CHERYL SMITH, CITY CLERK


JIMMY WEERLEY, CHAIRMAN

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CITY OF KEY WEST
FOR THE TRANSFER AND JOINT USE
OF PORTIONS OF THE TRUMAN ANNEX MOLE PIER AND HARBOR

PARTIES

1. THIS MEMORANDUM OF UNDERSTANDING (MOU) is made as of the ____ day of _____ 2002, by and between the United States of America, acting by and through the Secretary of the Navy, or his designee (hereinafter referred to as "Government") and the City of Key West, Florida, a municipality organized and existing under the laws of the State of Florida, and recognized as the Local Redevelopment Authority, (hereinafter referred to as "City") by the Office of Economic Adjustment on behalf of the Secretary of Defense.

PURPOSE

2. This MOU records the intentions and understandings between the Government and the City with regard to ownership, management and use of portions of the Government's Truman Annex Harbor property. The Government is in the process of analyzing various operational alternatives and, to the extent that property would become excess to the Government as a result of its decision-making, the options discussed below will be considered. First, and to the maximum extent practicable, and subject to obtaining necessary approvals and completing relevant real estate documents, the Government will expedite efforts to convey certain properties, identified below, to the City, which property the City has submitted an application for a no-cost Economic Development Conveyance (EDC). The City intends, if the EDC is approved, to develop the property upon terms and conditions to be mutually agreed between parties. Second, the Government has deferred efforts to transfer certain other properties, (suspending BRAC transfer) identified below, to the City and State while determining whether retention of the property is necessary to meet operational requirements. While the determination is pending, the Government will continue allowing City use of the Outer Mole Berth, which is a portion of the property under consideration for retention. If the Government determines it necessary to retain the property, the Government intends to negotiate with the City for a long-term lease of, or other appropriate mechanism, the Outer Mole Berth.

3. Parties to this MOU intend to coordinate and cooperate, with maximum flexibility for use of the Truman Annex, to facilitate Government and City use of the Truman Annex Mole Pier and Harbor. Contingent upon compliance with the National Environmental Policy

Act and other applicable laws, the Parties will develop appropriate separate Agreements and Real Estate documents that will be consistent with the intentions expressed in this MOU.

BACKGROUND

4. The Government is the owner of certain real property, improvements and other rights appurtenant thereof together with all personal property located thereon, located at Truman Annex, Naval Air Facility, Key West, Florida. Pursuant to the Defense Base Realignment and Closure (BRAC) Act of 1990, as amended, (Pub. L. No. 101-510), the Government is required to dispose of all property not required to support operational commitments, including certain portions of Truman Annex and Trumbo Point (including piers, wharves and buildings). By Federal Register Notice of May 1996, the Government identified portions of the Truman Annex property, including piers, wharves and buildings that, at that time, were no longer operationally required and the Government undertook discussions with the City to transfer this property to the City. These discussions resulted in actions including the following:

- a. On July 19, 1996, the City and Government signed a license by which the Outer Mole Berth at Truman Annex could be used to dock cruise ships as part of City port activities; this license was subsequently modified on multiple occasions.
- b. On September 17, 1997, the City adopted a Naval Base Reuse Plan for the Truman Annex Property, which received appropriate Department of Housing and Urban Development approval on August 11, 1998, pursuant to BRAC 95. Subsequently, the City submitted conveyance applications for the Truman Annex Property to the Navy and other appropriate federal agencies. This Plan included an Agreement stipulating Parties' intent to share ship-berthing facilities with express conditions.
- c. On December 3, 2001, the Government notified the City that they were deferring the conveyance of the property discussed in this MOU, pending confirmation of whether the properties were necessary to meet new operational requirements.
- d. On May 1, 2002, the Government notified the City that the Government would expedite efforts to convey a portion of the property, but must still defer the BRAC 95 transfer of the remaining portion of property that had been previously identified for excess but not yet been transferred.

DEFINITIONS

5. The property, herein referred to as the Truman Annex Mole Pier and Harbor, is illustrated and labeled in Attachment "A". For purposes of this Agreement, the following definitions apply:

- a. Mole Pier: refers to the breakwater pier at the Western portion of Truman Annex, which separates Truman Harbor from the Florida Bay ship channel. This pier contains three primary ship berths: the Outer Mole, North Inner Mole, and South Inner Mole.
- b. Outer Mole Berth: refers to the large 650-foot single berth on the channel side of the Mole Pier.
- c. Inner Mole: refers to the two berths on the Truman Harbor side of the Mole Pier. The North Inner Mole Berth and the South Inner Mole berth are each 600 feet long.
- d. Ramp: refers to the boat ramp located in the southeast corner of the harbor bordered on the north by the East Quay and on the west by the South Quay.
- e. East Quay: refers to the 1511-foot wharf on the eastern border of Truman Harbor. The East Quay currently consists of the six 200-foot berths and the 311-foot berth.
- f. Truman Harbor: refers to all of the berths comprising the Inner Mole, Pier 8, South Quay, Ramp, East Quay and the body of water enclosed in this Perimeter.
- g. Mallory Dock: refers to the wharf adjacent to Mallory Square, Northeast of the Mole Pier.
- h. Port of Key West, as referred to in this MOU: refers to all of the above defined locations and Anchorage areas.
- i. Pier 8: refers to the 367-foot finger pier extending north from the South Quay.
- j. South Quay: refers to the 1149-foot bulkhead on the southern border of Truman Harbor. It extends from the eastern base of the Mole Pier to the western opening of the large boat ramp. The National Oceanographic and Atmospheric Administration (NOAA) owns 260 feet of the South Quay structure starting 60 feet west of the western ramp face.
- k. Naval vessel: Government access to property transferred by deed, license or lease may include, but not be limited to, access for personnel, vessels and reasonable amounts of support equipment required to facilitate

missions of the United States. The terms "Navy access", "Navy use", "Navy vessel", and "Government" as used in this MOU are understood to include all such use and to include any vessel, equipment or resources, supporting missions or interests of the United States Department of Defense and U.S. Coast Guard regardless of whether such vessel belongs to the Navy.

l. Conveyance property: 32.98-acre parcel identified in Attachment B and labeled as proposed conveyance property.

m. Deferral property: 16.1-acre parcel, identified in Attachment B, proposed for conveyance to the City of which 4.17 would be conveyed to the State.

DISPOSITION OF PROPERTY

6. As stated in paragraph 2, above, the Government intends to expedite BRAC 95, conveyance of approximately 32.98 acres of property to the City subject to approvals (e.g., no cost-Economic Development Conveyance or other appropriate transfer mechanism) and necessary real estate documents. The Government will defer the BRAC 95 transfer of a 16.1 parcel of property pending confirmation of necessity to retain. While the determination is pending, the Government will continue allowing City use of the Outer Mole Berth, which is a portion of the 16.1-acre parcel. If the Government concludes it is necessary to retain the property, Parties will negotiate an appropriate mechanism to enable the City's use of and access to the Outer Mole Berth. Any such agreement would include a provision for Government use of City-controlled berthing in lieu of the Outer Mole Berth if both Parties agree. The cost of the alternative berthing and services, including utilities and tug services, for the Government would not exceed that which would have been incurred for berthing at the Outer Mole Berth. Parties intend to enter appropriate licenses, leases, easements, and other relevant agreements for these purposes.

7. Parties intend to continue normal levels of police and fire protection. The Government and City have a Mutual Aid Agreement that addresses mutual fire protection assistance and would be relevant to conveyed, leased or retained property of both Parties. Existing concurrent jurisdiction of Government property is germane to police authority at retained property.

8. Conveyance Property:

- a. Contingent upon Government approval of the Economic Development Conveyance to be submitted by the City, or any other appropriate conveyance mechanism (e.g., a public benefit Conveyance), the Government intends to convey the property described in Attachment B, attached and incorporated by reference herein pursuant

to BRAC 95. The deed and associated documents will contain appropriate covenants, restrictions, licenses and easements granting continuous right of way access and utility rights to the Government and ensuring that future use and development by the City will be consistent with Government use of the Truman Annex Properties, Piers and Harbor and this MOU.

- b. The City will covenant, in subsequent transfer documents, that no additions to, or major alterations of, including capital improvements and ground or submerged land excavation, shall be made in or at the Truman Annex properties, piers or Harbor without the prior written consent of Government.
- c. The Government is currently reviewing the City's proposed EDC. If this proposal is approved, it will provide a concept upon which conveyance of the property may be pursued. The EDC and its associated Memorandum of Agreement will specify what further approval will be necessary to undertake specific plans that are intended under the EDC concept. These documents will also establish an approval process for development plans. This approval process will ensure a method by which the Government's written consent may be granted in a reasonable timeframe. If the Government identifies any interference, or potential interference, that the City plans may cause to Government use of the Truman Annex Property, Piers and Harbor, the Government shall inform the City and parties shall work to identify what, if any, modifications can be made to proceed.
- d. Parties will agree in subsequent conveyance, license and or other appropriate real estate agreements that the City will allow the Government continued use of the transferred boat ramp property, to which the Government seeks access and use, in its current condition to accommodate Naval vessels. To the extent to which the City seeks to have the Navy use the East Quay, Parties will agree in subsequent documents that the City will maintain the East Quay in its current condition to accommodate Naval vessels.

9. Deferral Property:

- a. Deferral Property will be retained by the Government pending the Government's further determination whether retention of ownership is necessary for the Government to meet operational commitments.

- b. If the Government does not retain the Deferral Property, the City may modify and submit its original Port Conveyance Application, or any other appropriate conveyance application, for obtaining the property at no cost.
- c. The Government and the City agree that the Outer Mole Berth, identified in Attachment "B", is a portion of that property over which transfer has been deferred. The Government intends to allow the City's continued use of the Outer Mole Berth during the deferral period. If the Government determines that it is necessary to retain ownership of the property, the Government intends to enter a lease with the City of the Outer Mole Berth, pursuant to 10 USC 2667: the Parties will also determine an appropriate mechanism to ensure City use of and access to the Outer Mole Berth.

1) Parties agree that a 10 USC 2667 lease would include, but not be limited to, the following:

- a) 10 USC 2667 requires that rent/consideration must be assessed at a fair market value (FMV). In lieu of cash rental, City shall provide consideration in-kind that includes, but is not limited to, maintenance and repair services to NAF Key West properties. Parties shall agree upon a schedule of recurring maintenance and repair services and other appropriate in-kind consideration, the aggregate value of which is not less than FMV rent. Government will ensure that all legally relevant factors are considered in the determination of FMV. This includes, but is not limited to, City's use of the Outer Mole Berth contingent on the Government's need, the requirement to provide alternative berthing, and impacts of force protection. Parties shall develop a plan for appropriate record keeping and government review of such records as well as a method to ensure funds available for such consideration. The express approval of the Deputy Assistant Secretary of the Navy (Installations & Facilities) of any proposal for in-kind consideration will be required. Parties shall determine a mutually agreeable frequency for evaluating and confirming the FMV.
- b) For periods when the Government agrees to displace its vessels from the Outer Mole to support City sponsored ship berthing, the City agrees to provide all services required to provide dockage in the Port of Key West,

including the Inner Mole and the East Quay, at no additional cost to the Government beyond those costs necessary for the Government to berth at the Outer Mole Berth. Additional necessary lease or license documents would be prepared to support this requirement and to provide a process under which the City can seek an explanation for the Government's expense.

- c) If the Government retains the property but determines it is available for excess at a future date, the City may pursue any appropriate mechanism provided by law, including a no-cost Public Benefit Conveyance, if available, to seek ownership of the property. If Parties enter a 10 USC 2667 lease, they may include, a provision in the lease pursuant to section (b)(2) of the statute that states the lease "may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law...."

CITY USE, DEVELOPMENT, IMPROVEMENT AND ALTERATION
IN LEASE OR DEED-RESTRICTED PROPERTIES
AT TRUMAN ANNEX PROPERTIES, PIERS AND HARBOR

10. The Government acknowledges that the City intends to develop property, identified as the 32.98-acre conveyance property, upon terms and conditions to be mutually agreed between parties.

11. The City shall comply with the applicable environmental laws, regulations, and all other federal, state and local laws, regulations and standards that are or may become applicable to City's activities on the leased premises.

12. The City acknowledges that the Government and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida have entered into a Sovereignty Submerged Land Lease covering 44.85 acres of submerged land in the Truman Harbor and affecting all structures and improvements thereon. As it relates to this lease, the Navy will not object to the City's development of the Waterside, to the extent that the Navy has approved such development and or use.

13. If Parties enter a lease or other appropriate agreement to allow City use and access to the Outer Mole Berth (e.g., the 10 USC 2667 lease referred to in section 9.c.1), above), Parties will determine suitable transportation for City support, operations and passenger delivery to and from vessels that the City berths at the Outer Mole.

14. If the City requests the Government, pursuant to an appropriate agreement, use alternative berthing in lieu of the Government's use of the Outer Mole Berth, the Government will pay for utility services (commodity charges) based on metered usage to the extent they would have utilized such services at the Outer Mole Berth. City will be responsible for installing and maintaining any meters necessary for Government use of City owned property. Solid waste disposal will be provided at all City property in accordance with established practice or as may otherwise be agreed to between the Parties.

GOVERNMENT USE

15. Government use may be modified in tempo or function on occasion. The Government shall inform the City, as soon as possible, of changes in Government use of Truman Annex Piers or Harbor, which may affect the City significantly.

16. The City acknowledges and will support the Government's reserved right to implement appropriate Truman Harbor Security procedures to satisfy required Anti-Terrorism Force Protection conditions as dictated by national security demands. The Government will work with the City to determine appropriate stand off distances that ensure appropriate vessel, equipment and personnel security, simultaneous with City activities. In addition to heightened security conditions, these procedures could result in curtailed Truman Harbor non-Navy operations for periods of time to satisfy security measures.

17. Parties intend to identify in subsequent conveyance, license, lease or other necessary documents that if the City enters a lease or other appropriate agreement to use the Outer Mole Berth (e.g., lease referred to in section 9.c.1), above), that smaller vessels will not normally use the Outer Mole berth. These vessels will be accommodated within the Truman Harbor. Parties agree that berthing of larger Government vessels (those preferring Outer Mole berthing) will be handled in the following order of precedence if the City desires to utilize the Outer Mole Berth and provide alternative berthing that can accommodate the Government's need to the Government vessel.

- a. The Government will coordinate with the City and attempt to schedule Naval vessels that must use the Outer Mole Berth at least 24 hours in advance. The Government will attempt to coordinate potential use of the designated northern portion of the East Quay at least 72 hours in advance. The Government will coordinate visits at non-Navy locations with the City or its subordinate authority governing the Port. Such Port visits will be coordinated and scheduled as far in advance as possible. Unforeseen Anti-Terrorism/ Force Protection issues may

impact the Governments ability to provide advance notice of port visits.

- b. If the Outer Mole berth is available on the dates and times requested by the Government, Naval vessels shall be berthed there.
- c. If the Outer Mole berth was previously scheduled for use by another vessel covered by the City's lease on the date requested, and the Captain of the Naval vessel determines that his ship can safely be berthed at an Inner Mole berth, then the ship will be berthed at an Inner Mole berth.
- d. If the Outer Mole berth is so scheduled and the Naval vessel cannot be berthed at the Inner Mole due to safety or unavailability, then the City will make Mallory Dock available for berthing. If Mallory Dock is used, the vessel will not be required to relocate for the nightly sunset celebration. If sewage, other utility service normally provided for at the Mole, and/or special Anti-Terrorism/Force Protection measures are required, Mallory Dock shall not be used unless provisions are made to accommodate the requirements.
- e. If berths at the Mole Pier and Mallory Dock are all unavailable, then the Naval vessels may be berthed on the East Quay. The City will determine the availability of Mallory Dock and East Quay berthing.
- f. If no other suitable berths are available for Naval vessels, the City will shift a vessel berthed (or scheduled to be berthed) at the Outer Mole to an alternate site in order to permit use of the Outer Mole by the Government. The Government's use will take priority over any other Mole berthing thereby displacing other vessels if required to provide Government use. In such event, the City shall have no claims against the Government.

CITY SERVICES

18. If Parties enter a lease or other appropriate document allowing City use and access to the Outer Mole Berth, Parties intend to enter appropriate legal agreements wherein City will ensure that services are available and provided to the Government at no cost greater than the cost, which the Government would have incurred to berth at the Outer Mole Berth. Such agreements shall provide a process for the City to seek justification for such costs upon City request. The Government may consider applying these services, where relevant, as in-kind consideration to "fair market value" rent of Government property leased to the

City. These services include: potable water, telephone (communications), electrical power and solid waste disposal (except at Mallory Dock if not available).

AGREEMENT UNDERSTANDING

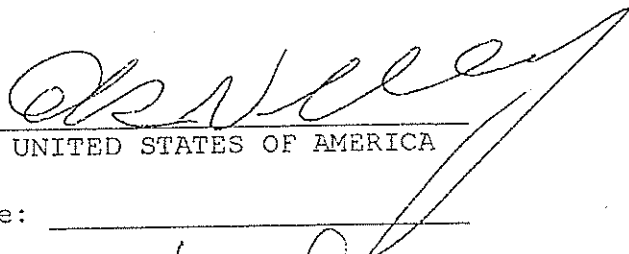
19. This MOU contains the understanding of the Parties with regard to ownership, access and use of the Truman Annex Mole Pier and Harbor and Parties do not intend to amend, modify discharge, or consider waived any terms herein except by written agreement signed by both Parties. Parties intend that all additional documents prepared in support of the land transfer, access and use of such Truman Annex and Harbor property shall be consistent with the requirements herein.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum the day and date first above written.

CONCURRENCE

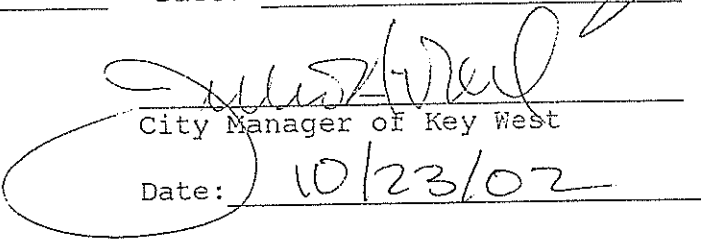
Commander, Navy Region Southeast

Date: _____



THE UNITED STATES OF AMERICA

Date: _____



City Manager of Key West

Date: 10/23/02