



**Bob Vitas**  
City Manager

## THE CITY OF KEY WEST

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January 18, 2013

Mr. Bob McDowell  
Real Estate Contracting Officer  
Naval Facilities Engineering Command Southeast  
Box 30, Bldg 903  
Naval Air Station Jacksonville, Fl. 32212-0030

Dear Mr. McDowell,

Thank you for your consideration of the City of Key West's request for a lease agreement for the Outer Mole at the Truman Waterfront pursuant to the public interest clause of 10 USC § 2667 (h) (2). Below you will find a review of the history, use, financial impacts and the rationale as to why we believe a lease between the City and the Navy is a public benefit. The importance of the Outer Mole lease agreement to the City and its citizens in achieving the objectives for development of the BRAC 1995 properties it continues to support cannot be overstated. The revenue generated by the current joint use of the Outer Mole is one of two sources of funds from the Truman Waterfront that can be used to support the proposed city park adjacent to the Outer Mole. The funds derived have also been shared with the Navy for improvements at the Mole thereby offsetting capital costs to the Navy in supporting its mission. The City believes that a review of the circumstances will demonstrate that a definite public benefit is realized by a lease agreement between the Navy and City of Key West.

### HISTORY OF NAVY AND CITY INTERACTIONS REGARDING OUTER MOLE

While not detailing every interaction between the Navy and City concerning the Truman Waterfront, the City does believe it is important to provide context to the current situation. In 1995, the Federal Base Realignment and Closure Commission (BRAC) designated Naval Air Station Key West for realignment. The City of Key West was extremely fortunate to acquire excess Navy properties as part of BRAC 1995. As it specifically relates to the Truman Waterfront, the City applied for three distinct areas. The original intent was to convey the property containing the Mole Pier to the City as part of a Public Benefit Port Conveyance. The adjacent parkland space was intended to be conveyed as part of a Public Benefit Parkland Conveyance. Finally, a few smaller areas were slated for an Economic Development Conveyance to support the surrounding historic neighborhood. The request for approval of 20.08 acres of parklands and

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open space was sent May 6, 1999. The approval by U.S. Department of Interior, National Park Service was obtained July 16, 1999. The Port application was approved by the Key West City Commission on July 20, 1999, and submitted to the Maritime Administration, U.S. Department of Transportation on August 17, 1999. A letter dated July 19, 2000, from the Maritime Administration, U.S. Department of Transportation, was received approving the Navy Mole Pier application, and a portion of Truman Annex containing approximately 19.16 acres of land.

In July of 2001, the Navy and City agreed that the Navy would lease the properties to the City if there was any delay in the actual conveyance of the lands. However following the attacks of September 11, 2001 and the reassessment of operations in Vieques, the Navy understandably needed an opportunity to reevaluate its needs. On November 30, 2001, the city was informed by Deputy and Chief of Staff of Fleet Forces Command Vice Admiral A.H. Konetzni that the Navy was assessing the infrastructure of all bases to ensure operational readiness. This specifically included a reevaluation of the use of the Mole Pier and Truman Harbor. Accordingly, the Navy suspended consideration of the transfers to the City. During this time the Navy pledged its support for the City. VADM Konetzni noted in his letter that "If the harbor is considered necessary, we will examine all options for use, including joint use with the City of Key West." He explained "we are striving to reach an equitable agreement that addresses both our needs and your interest with lease/transfer of the land..." As a follow-up to the November 30, 2001 correspondence, Rear Admirals Gaudio and Nowakowski graciously met with Key West Mayor Jimmy Weekley on December 3, 2001. The Admirals recognized the financial impact of the transfer to the City and pledged their support for joint use dependent upon the outcome of the operational assessment. The following evening, the Key West City Commission convened and heard from Naval Air Station Key West Commanding Officer Captain Larry Cotton. Captain Cotton likewise indicated that it was the Navy's "intention to do as much as possible to accommodate the interests of both the City and the Navy with this property."

Upon the conclusion of the Navy's operational assessment, it was determined that the Mole Pier was necessary for continued Navy use. What resulted was the Navy deeding the adjacent Truman Waterfront Parkland property to the City and entering into a lease agreement with the City for the Outer Mole Pier. This was accomplished by a series of documents. The Parkland area was conveyed by deed to the city in 2002. This was done pursuant to an Economic Development Conveyance in conjunction with a Memorandum of Understanding and a Memorandum of Agreement between the City and the Navy. These agreements were approved by Key West City Commission pursuant to resolutions passed on October 16, 2002. It was agreed that the Outer Mole would be leased to the City to preserve the critical revenue stream from the cruise ship industry. Recognizing the need to mitigate the loss from the inability to convey the property, the Navy granted the City the first right of refusal to purchase the premises. This is further recognition of the intent of the Navy to ensure a constant funding stream from the Outer Mole was available to assist the City in the development of the adjacent proposed city park that was conveyed to the City. Then Key West Mayor and now City

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Commissioner Jimmy Weekley credits the understanding and assistance from Commander in Chief, U.S. Atlantic Fleet/Commander Fleet Forces Command, Admiral R. J. Natter, in developing what the Navy and City described as a win-win solution at the time.

The Navy and City memorialized the terms of a lease agreement for the Outer Mole effective June 26, 2003. The lease was executed pursuant to the "public interest" provisions of 10 USC § 2667, which is also the same Code section that is the subject of the City's current request. While the 2002 conveyance documents specified that the parties would enter into a long term lease, the lease that was executed was for five years with five successive one year options. This abbreviated term is much less than 14 of the 17 enhanced use lease agreements that the Government Accountability Office reported were in effect in September of 2010. It is obvious from the transfer documents that the Navy and City made every effort to collaborate together to maximize public benefit and to mitigate the withdrawal of the mole pier from the BRAC 1995 transfer to the city in order to fully support the City and the public benefit. Today we have the benefit of ten years of extremely successful operational history between the City and the Navy for the use of the Outer Mole. The Navy and City had the forethought to recognize the public interests that could be served. Today, we are fortunate to have ten years of history to evaluate in seeing the concrete benefits that have been delivered to the public by the positive interaction between the Navy and the City that would permit a lease under 10 USC § 2667.

#### **USE, FINANCIAL IMPACTS AND PUBLIC BENEFIT**

The primary use of the Outer Mole by the City is to support the berthing of cruise ships. The cruise industry in the City of Key West has a significant local and national economic impact. The City shares the revenue it receives from the cruise ships with the Navy pursuant to the terms of the current lease. Both the City and Navy utilize those funds to improve the Pier and address the city-wide impacts from cruise passengers. From 2007 to present, the City has provided \$9,714,106 to the Navy for infrastructure needs at the Mole Pier. These projects include significant upgrades to the Mole Pier Bulkhead and electrical system. This is nearly ten million dollars of locally derived funds that did not require a federal appropriation to address capital needs supporting the Navy's mission.

The City plans to utilize the funds it generates from a new lease agreement to develop the adjacent upland property known as the Truman Waterfront that the City acquired from the Navy as part of the BRAC 1995 process. This is not only the right and logical thing to do, it is legally required. As more fully explained below, the fees the City receives from cruise ship passengers must be used in the areas they impact. A lease between the City and Navy for the Outer Mole has the direct public benefit of enhancing this former Navy property and proposed City park. The Key West City Commission unanimously adopted a final master plan for the development of Truman Waterfront on October 16, 2012. It is absolutely vital to have the revenue derived from the Outer Mole to reinvest in the Truman Waterfront city park for the public's long term benefit.

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The City has a demonstrated record of experience given its performance over the last ten years under the current lease agreement. The City also has the staff and financial resources to ensure the lease objectives are fully achieved. The development plan for both the Outer Mole and the entire Truman Waterfront has been created through numerous public meetings to ensure the public interest is heard and realized. The continued use of the Outer Mole and the revenue stream it produces is essential if the goals and objectives of the BRAC 1995 Parkland conveyed to the City are going to be achieved. The City has illustrated its property maintenance and management capabilities by undertaking and overseeing millions of dollars in repairs and improvements at the Outer Mole. It has the crucial key personnel in a well-defined organizational government setting to ensure ongoing performance and success. The City can achieve the Navy's goals of continued operational availability of the Mole for the Navy's use while also providing a revenue stream to the Navy for capital improvement supporting the Navy's mission. Finally, as a local government, the City is an open, accountable and transparent partner who at its core must always act in the public's interest.

The current lease between the City and the Navy is unique given the extent of joint use between the parties. Unlike a private party, the City is able to accommodate additional berthing space along the East Quay wall inside the Mole Pier, as well as at its docking facility at Mallory Square. This provides tremendous flexibility in accommodating the needs of both the City and Navy, especially on short notice. It is unlikely a private entity could withstand the lost revenues in having to decline port calls because of the Navy's ability to preempt their use of the Outer Mole. More than ten years of working together has given the parties the experience and capabilities to address almost any situation. This relationship has also given the City a detailed understanding and respect for the Navy's evolving security and transportation requirements.

Leasing the property to a private developer does not serve the public interest. A lease to a private entity could actually be a detriment to the public and result in less revenue to the Navy. It is entirely possible that a lease to a private entity would actually decrease the financial return to the Navy and harm the local economy. It is critical to understand the limitations on the permissible use of cruise ship revenues that private industry may not fully realize or appreciate.

The revenues derived from the use of the Outer Mole come from cruise ship disembarkations. The amount and use of these funds is governed by a host of Federal Constitutional constraints including the dormant Commerce Clause and the Tonnage Clause, as well as the federal statutory restrictions of the Maritime Transportation Security Act. Essentially the combination of these laws require that any fee imposed be reasonable based on a number of factors. This includes making sure the fee is based upon a fair approximation of the use of the facilities to which funds are devoted, ensuring the fee is not excessive in relation to the benefits conferred, and not discriminating against interstate commerce. The City and Navy have been diligent making sure that the funds derived from cruise ship passengers are reinvested in the Port and services provided. If the Navy were to engage in a competitive process and select a private developer, the City will still charge cruise ship passengers the reasonable costs of the impact

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they have on the City. This includes additional public services and infrastructure demands directly attributable to cruise passengers. The result on a private developer would be that it could not charge a similar rate, but would be limited to a smaller fee because the cruise industry would not tolerate the private party fee in addition to the amount the City may legally charge based upon cruise impacts. If the fee were too great, a cruise ship could either dock at the privately owned Pier B, the City's Mallory Dock, or bypass Key West as a port of call entirely. The possibility or result of any of those three occurrences reduces the funds to the Navy. If a ship elects to bypass the City entirely it could have an enormous negative financial impact. The Florida Caribbean Cruise Association estimates cruise ship visitors contribute in excess of \$78,000,00 annually to the local economy. Additionally, a 2010 Key West Harbor Reconnaissance Report prepared by the U.S. Army Corp of Engineers cited a report that indicated the cruise industry expenditures supported 1,260 jobs in the city of Key West. While use of the Outer Mole is not the sole source of this economic impact, it plays a significant role and is vitally important. Alternatively, instead of an increase rate, a privately charged fee could remain low to encourage port calls. However, because the Navy would not be sharing in any of the revenue collected by the City and only receiving a reduced amount from a private operator, the Navy's revenues would also be reduced. Given that the Navy clearly intends to use the Outer Mole to support its operations, any decrease in the revenues it receives necessarily requires an additional federal appropriation to support its future missions. If a private entity truly evaluates the funding constraints, especially in light of the Sources Sought Notice statement that commercial development would be prohibited, competitive procedures may very well be unobtainable in addition to being incompatible with the public benefits derived from a lease between the City and Navy.

### CONCLUSION

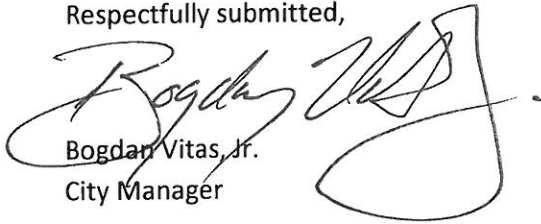
The City has proven to be a stable, flexible and cooperative partner during the term of its current lease with the Navy. In 2003 when the Navy and City entered into a lease under the public interest clause of section 10 USC § 2667 they trusted that public benefits could be achieved. The last ten years have conclusively demonstrated that a lease between the City and the Navy creates a local, state and national public benefit. The City and its citizens have worked diligently to formulate a plan for the development of the Truman Waterfront properties conveyed to it by the Navy pursuant to BRAC 1995. In order to realize the public's desire for recreational and park space at the Truman Waterfront it is crucial to utilize funds derived from the Outer Mole lease for this purpose. The proposed city park conveyed by the Navy to the City is the first property that millions of cruise passengers step upon when they visit the City of Key West. In order to make this former Navy property the national asset envisioned, it is essential to have the revenues to accomplish this goal. The lease of the Outer Mole to the City of Key West can help make this a reality. The revenues the City would derive from a new lease agreement would be reinvested to support those properties originally conveyed to the City as part of BRAC 1995, including the proposed city park adjacent to the Outer Mole. The City respectfully

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requests that the Navy award a non-competitive lease pursuant to 10 USC § 2667(h) (2) to the City and work cooperatively to execute an agreement that continues to serve the public's interest.

We look forward to the Navy's favorable response to our request to negotiate and enter into a long term lease of the Navy Outer Mole.

Respectfully submitted,

  
Bogdan Vitas, Jr.  
City Manager

Cc: Commanding Officer Naval Air Station Key West  
Mayor Craig Cates  
City Commissioners  
City Clerk  
City Attorney  
File



899688890930

Ship (P/U) date :  
**Fri 18/01/2013 17:25**  
 US



**Delivered**  
 Signed for by: M.SMITH

Actual delivery :  
**Tues 22/01/2013**  
 NAV, FL US

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**Travel History**

Date/Time	Activity	Location
<b>- 22/01/2013 - Tuesday</b>		
07:28	Delivered	NAV, FL
06:36	On FedEx vehicle for delivery	JACKSONVILLE, FL
06:18	At local FedEx facility	JACKSONVILLE, FL
<b>- 21/01/2013 - Monday</b>		
07:14	Delivery exception Business closed - No delivery attempt	JACKSONVILLE, FL
06:49	At local FedEx facility	JACKSONVILLE, FL
05:35	At local FedEx facility	JACKSONVILLE, FL
00:01	At local FedEx facility	JACKSONVILLE, FL
<b>- 19/01/2013 - Saturday</b>		
06:53	At local FedEx facility	JACKSONVILLE, FL
06:17	At destination sort facility	JACKSONVILLE, FL
04:03	Departed FedEx location	MEMPHIS, TN
<b>- 18/01/2013 - Friday</b>		
22:58	Arrived at FedEx location	MEMPHIS, TN
18:48	Left FedEx origin facility	KEY WEST, FL
17:25	Picked up	KEY WEST, FL

Local Scan Time

**Shipment Facts**

<b>Tracking number</b>	899688890930	<b>Service</b>	FedEx First Overnight
<b>Delivered To</b>	Receptionist/Front Desk	<b>Total pieces</b>	1
<b>Packaging</b>	FedEx Envelope	<b>Special handling section</b>	Deliver Weekday