

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF KEY
WEST AND THE COLLEGE OF
THE FLORIDA KEYS FOR WATER
QUALITY PARTNERSHIPS**

THIS AGREEMENT is made this ____ day of _____ 2023, by and between The College of the Florida Keys, a political subdivision of the State of Florida (hereinafter, CFK) and the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter, the CITY).

WHEREAS, the economy of the Florida Keys depends on healthy marine ecosystems; and

WHEREAS, the CITY Strategic Plan, created from the desires of over 4,000 community survey respondents, sets a goal to improve water quality and cleanliness of nearshore waters; and

WHEREAS, CFK is uniquely positioned to help the CITY answer questions about water quality; and

WHEREAS, the CITY has budgeted funds in FY23 to assist in water quality sampling; and

WHEREAS, the CITY and CFK wish to enter into and grow a partnership to benefit the health of the nearshore waters of the island of Key West; and

WHEREAS, the CITY and CFK wish to partner on CFK's EPA grant (Award# 02D20622) to monitor water quality in the Key West Harbor and Ship Channel, and also on a Key West Water Quality Improvement Plan; and

WHEREAS, the CITY and CFK have partnered on an EPA grant application to extend that monitoring, as well as three new sites as proposed to EPA.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. **Term:** The term of this agreement shall run from the date on which the Agreement is executed by all of the Parties ("Effective Date") and extend to February 28, 2024, where this agreement shall be reviewed, revised as needed, and extended annually thereafter, if both parties (CFK and CITY) agree.
2. **Materials:** CFK shall procure water sampling monitoring equipment (i.e., EcoMapper Autonomous Underwater Vehicle, hereinafter referred to as AUV) that will assist in monitoring Key West Harbor and Ship Channel, as well as other to be determined sampling areas in the near shore waters off Key West and Stock Island.
3. **Payment:** The CITY shall purchase approximately 50% of said water quality equipment for CFK. The maximum CITY share of the equipment cost shall not exceed \$160,000.00. CFK's procured vendor, YSI Incorporated will invoice the CITY for 50% of the equipment and the CITY shall pay the invoice within 30 days of receipt.
4. **Billing:** CFK may periodically bill the CITY for necessary consumables, materials, supplies, and operational costs associated with water quality monitoring, not to exceed \$20,000.00 The CFK

invoice will itemize all amenities and items purchased and not include sales tax. The CITY shall pay the invoice within 30 days of receipt.

5. **Water Quality Services:** Per the conditions of the CFK current grant agreement with the EPA South Florida Program (Award #02D20622), CFK shall deploy continuous water quality monitoring equipment to determine connectivity between Key West Harbor and the Key West shipping channel; For one year, perform bi-weekly field measurements and monthly collection of water samples at sites both within and surrounding the waters of Key West Harbor; For one year, periodically measure water quality immediately before and after large industrial ships enter and exit Key West Harbor. Monitoring dates are expected to run from January to December 2023.
6. **Sampling Locations:** CFK will provide guidance to the CITY to determine a suitable location for the CFK YSI Turnkey continuous water quality monitoring system near Mallory Square. CFK will install the system and will work with the City to determine installation schedule and requirements.
7. **Deliverables:** Upon completion of the first EPA grant, CFK will provide the CITY with the final EPA report, upload qualifying data to the State of Florida Water Quality database, and deliver one presentation on the findings to the City Commission.
8. **Exceptions:**
 - a. All the aforementioned water quality monitoring activities are contingent upon the proper functioning of the equipment and both CFK and the CITY understand that the water quality monitoring may be delayed or discontinued if the necessary equipment is lost, damaged, or stolen, or for any other reason becomes non-functional. To best safeguard success, CFK will insure all required water quality monitoring equipment and associated accessories owned by CFK.
 - b. If CFK is awarded the 2nd EPA grant, from the proposal entitled "Monitoring anthropogenic sources of pollution and contaminants of emerging concern (CECs) around Key West, Florida: A partnership between the City of Key West and the College of the Florida Keys, CFK will also: (1) extend the duration of monitoring at Key West Harbor; (2) monitor for oxybenzone near Key West at areas of concern as outline in the EPA proposal; (3) monitor the mooring fields around Key West at areas of concern as outline in the EPA proposal for ammonia and sucralose; (4) monitor the near shore waters of the Stock Island Landfill for hydrogen sulfide at areas of concern as outline in the EPA proposal; and (5) assist the CITY by providing data based expertise and guidance during the creation of a Water Quality Improvement Plan at no cost to the CITY.
9. **Insurance Requirements:**
 - a. **General Insurance Requirements**
 - (1) During the Term of the Agreement, CFK shall provide, pay for, and maintain with insurance companies satisfactory to the CITY, the types of insurance described herein.

- (2) All insurance shall be from responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Monroe County, Florida, and shall be construed in accordance with the laws of the State of Florida.
- (3) The City shall be specifically included as an additional insured on CFK's Liability policies with the exception of CFK's Professional Liability policies (if required) and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision). The City's additional insured status should be extended to all Completed Operations coverages.
- (4) CFK shall deliver to the City, prior to commencing work/activities under the Agreement, properly executed "Certificate(s) of Insurance" setting forth the insurance coverage and limits required herein. The Certificates must be signed by the authorized representative of the insurance company(s) shown on the Certificate of Insurance. In addition, certified, true, and exact copies of the insurance policies required herein shall be provided to the City, on a timely basis, if requested by the City.
- (5) If CFK fails to provide or maintain the insurance coverages required in this Agreement at any time during the Term of the Agreement and if CFK refuses or otherwise neglects to deliver the required Certificate(s) of Insurance signed by the authorized representative of the insurance company(s) to the City, the City may, at the City's sole discretion, terminate or suspend this Agreement.
- (6) CFK shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the City requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit, CFK shall promptly authorize and have delivered such statement to the City.
- (7) CFK authorizes the City and/or its insurance consultant to confirm all information furnished to the City, as to its compliance with Section 9 of this Agreement, with CFK's insurance agents, brokers, surety, and insurance carriers.
- (8) All insurance coverage of CFK shall be primary to any insurance or self-insurance program carried by the City. The City's insurance or self-insurance programs or coverage shall not be contributory with any insurance required of CFK in this Agreement.
- (9) The acceptance of delivery to the City of any Certificate of Insurance evidencing the insurance coverage and limits required in the Agreement does not constitute approval or agreement by the City that the insurance requirements in the Agreement have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Agreement requirements.
- (10) No work/activity under this Agreement shall commence or continue unless and until the required Certificate(s) of Insurance are in effect.
- (11) The insurance coverage and limits required of CFK under this Agreement are designed to meet the minimum requirements of the City. They are not designed as a recommended insurance program for CFK. CFK alone shall be responsible for the sufficiency of its own

insurance program. Should CFK have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.

- (12) During the Term of this Agreement, the City and its agents and contractors may continue to engage in necessary business activities during the operations of CFK. No personal property owned by City used in connection with these business activities shall be considered by CFK's insurance company as being in the care, custody, or control of CFK.
- (13) Should any of the required insurances specified in this Agreement provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, CFK shall be responsible for all deductibles and self-insured retentions.
- (14) All of the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.
- (15) All policies of insurance required herein shall require that the insurer give the City thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Agreement, except for the application of the Aggregate Limits Provisions.
- (16) Renewal Certificate(s) of Insurance shall be provided to the City at least twenty (20) days prior to expiration of current coverage so that there shall be no termination of the Agreement due to lack of proof of the insurance coverage required of CFK.
- (17) If CFK utilizes contractors or sub-contractors to perform any operations or activities governed by this Agreement, CFK will ensure all contractors and sub-contractors to maintain the same types and amounts of insurance required of CFK. In addition, CFK will ensure that the contractor and sub-contractor insurances comply with all of the Insurance Requirements specified for CFK contained within this Agreement. CFK shall obtain Certificates of Insurance comparable to those required of CFK from all contractors and sub-contractors. Such Certificates of Insurances shall be presented to the City upon request. Contractor's obligation to ensure that all contractor's and sub-contractor's insurance as provided herein shall not exculpate Contractor from the direct primary responsibility Contractor has to the City hereunder. The City will look directly to Contractor for any such liability hereunder and shall not be obligated to seek recovery from any contractor or subcontract or under such contractor's or sub-contractor's insurance coverages.

b. Specific Insurance Coverages and Limits:

- (1) All requirements in this Section 9 shall be complied with in full by CFK unless excused from compliance in writing by the City.
- (2) The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be reasonably acceptable to the City.

- (3) **Workers' Compensation and Employers' Liability Insurance** shall be maintained in force during the Term of this Agreement for all employees engaged in this work under this Agreement, in accordance with the laws of the State of Florida. The minimum acceptable limits shall be:

Workers' Compensation	Florida Statutory Requirements and maritime coverage endorsement.
Employer's Liability	\$1,000,000.00 Limit Each Accident
	\$1,000,000.00 Limit Disease Aggregate
	\$1,000,000.00 Limit Disease Each Employee

If CFK has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*, CFK will be required to issue a formal letter (on CFK's letterhead) stating that it has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*.

- (4) **Commercial General Liability Insurance** shall be maintained by CFK on a Full Occurrence Form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, and Products & Completed Operations Coverage. The limits of such coverage shall not be less than:

Bodily Injury & Property Damage Liability	\$200,000.00 Combined Single Limit each Occurrence and \$300,000.00 Aggregate
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Completed Operations Liability Coverage shall be maintained by CFK for a period of not less than four (4) years following expiration or termination of this Agreement.

The limits of such coverage shall be modified in accordance with any statutory changes to Section 768.28, Florida Statutes.

- (5) The use of an Excess, Umbrella and/or Bumbershoot policy shall be acceptable if the level of protection provided by the Excess, Umbrella and/or Bumbershoot policy is equal to or more comprehensive than the Primary Commercial General Liability policy.
- (6) Watercraft liability coverage through United Educators liability program shall be maintained by CFK.
- (7) **Business Automobile Liability Insurance** shall be maintained by CFK as to ownership, maintenance, use, loading and unloading of all owned, non-owned, leased, or hired vehicles with limits of such coverage of not less than:

Bodily Injury	\$1,000,000.00 Limit Each Accident
Property Damage Liability	\$1,000,000.00 Limit Each Accident

or

Bodily Injury & Property Damage Liability Accident	\$1,000,000.00 Combined Single Limit Each
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If CFK does not own any vehicles, this requirement can be satisfied by having CFK's Commercial General Liability policy endorsed with "Non-Owned and Hired Automobile" Liability coverage.

(8) Fire and Allied Property Insurance shall be maintained by CFK insuring all water quality monitoring equipment. Coverage shall be provided on an "All Risk" basis to include the perils of Wind and Flood. The minimum acceptable limits shall be the full Replacement Value of the water quality equipment.

10. Notices: All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to CFK: Dr. Jonathan Gueverra
President & CEO
5901 College Road
Key West, FL 33040

With a copy to: Dr. Brittany Snyder
Executive Vice President & CFO
5901 College Road
Key West, FL 33040

If to CITY: City Manager
P.O. Box 1409
Key West, Florida
33041

With a copy to: City Attorney
P.O. Box 1409
Key West, Florida 33041

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

11. Attorney Fees and Waiver of Jury Trial. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. Adjudication of disputes or Disagreements. CFK and CITY agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

13. Cooperation. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, CFK and

CITY agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. CFK and CITY specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

14. Indemnification

To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, CFK and the CITY do hereby agree to defend, indemnify and hold the other, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the intentional acts or omissions of the CITY or any third party vendor contracted by the CITY in connection with this Agreement.

15. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

16. Entire Agreement/Modification/Amendment. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

17. Nonassignability. This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

18. Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19. Independent Contractor. The CITY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the CFK with respect to all of the acts and services performed by and under the terms of this Agreement. 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.


20. Waiver. The failure of either party to this 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.

21. Survival of Provisions. Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. **Counterparts.** This 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.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first written above:

THE COLLEGE OF THE FLORIDA KEYS

BY: 

Brittany Snyder, Executive Vice President & CFO

(SEAL)

ATTEST:

BY: _____

Approved as to form:

BY: _____

ATTORNEY'S OFFICE

THE CITY OF KEY WEST, FLORIDA

(City Seal)

Teri Johnston, Mayor

ATTEST:

BY: _____

Approved as to form:

BY: _____

CITY ATTORNEY'S OFFICE