



## THE CITY OF KEY WEST

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# EXECUTIVE SUMMARY

To: the City Commission for the City of Key West  
From: Ron Ramsingh, Assistant City Attorney  
Date: July 22, 2011  
RE: Settlement of the Botanical Gardens remediation.

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### **Action statement:**

For the City Commission to consider a pre-suit settlement proposal regarding the payment of bills pertaining to remediation of contaminated soil at the Botanical Gardens.

### **Background:**

The Property that now houses the Botanical Gardens was purchased by the City from Monroe County on May 2, 2005. Since the parcel was previously used by the County as their Public Services Building, an environmental assessment had to be performed since the previous use also involved the storage of fuel tanks. The Phase One discovered contamination from an underground fuel/oil tank. A Phase Two study was subsequently done during this same time period; May-June 2005. An extensive remediation effort was done by the City's tenant; the Botanical Gardens. The city provided some of the services in that effort by way of hauling the fill for remediation. There were other bills that were left outstanding from Nutting Environmental, Charlie Toppino & Sons, IBI Group and Waste Management. These were vendors that were involved in testing, consulting hauling and excavating. The bills totaled \$55,414.92. Initially, the Gardens turned to the

City of Key West for payment of those bills as the land owner. The city attorney's office researched the issue and discovered what we interpret as favorable language in the purchase and sale agreements as well as certain written warranties by the then county mayor. These representations, in our opinion, reduce the city's liability for these bills significantly. City staff has had numerous meetings with the Gardens and the County over the resolution of these outstanding bills. The result was the attached agreement for your approval. In sum, the County will pay \$24,206.66, and the parties will recognize that the City of Key West has already expended approximately \$24,000.00 to Waste Management. The remainder of the expenses has been paid by the Gardens. In addition, the parties agree to hold all parties harmless from further claims regarding this issue. The site has been cleared environmentally. Additionally, the City Attorney required a further release in exchange from the Gardens regarding fill that was removed from the site for which the Gardens initially was going to lay claim to as well. That release is also attached.

**Options:**

1. To sign the settlement agreement and resolve this issue short of suit or collections actions. The City has already tendered its contribution by providing services through Waste Management. There will be no further expense to the City.
2. Not to sign the settlement agreement. The case will proceed to a collections phase and if payment is not made, most likely litigation.

**Reccomendation:**

I recommend that you sign the attached settlement agreement.

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