

RESOLUTION NO. 10-154

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING AMENDMENT #2 TO THE AGREEMENT BETWEEN THE CITY OF KEY WEST AND THE DEPARTMENT OF ARMY FOR PLANNING DESIGN AND CONSTRUCTION OF FLORIDA KEYS WATER QUALITY IMPROVEMENT PROGRAM; AUTHORIZING THE MAYOR TO SIGN THE FINAL AMENDMENT AGREEMENT DOCUMENT(S) ON BEHALF OF THE CITY UPON THE ADVICE AND CONSENT OF THE CITY MANAGER AND CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, on February 5, 2008, the City Commission adopted Resolution No. 08-033, approving a Project Cooperation Agreement (PCA) between the City and the Army Corps of Engineers for the planning, design and construction of the Florida Keys Water Quality Improvement Program Stormwater Improvement Project, which allocated about ten million dollars in federal funding for a number of projects within the City; and

WHEREAS, Amendment No. 2 will maximize grant funding opportunities by adding the Sigsbee Force Main project, the WWTP Headworks/Capacity Expansion project and the Pump Station F project to the scope contained in the PCA;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached substantial conformity draft of "Amendment No. 2 to Agreement Between the Department of Army and the City of Key West for Planning, Design and Construction of Florida Keys Water Quality Improvement Program Stormwater Improvement Project" is hereby approved.


Section 2: That the Mayor is hereby authorized to sign the document(s) on behalf of the City.

Section 3: 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 Commission.

Passed and adopted by the City Commission at a meeting held this 4th day of May, 2010.

Authenticated by the presiding officer and Clerk of the Commission on May 5, 2010.

Filed with the Clerk May 5, 2010.

  
\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

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## EXECUTIVE SUMMARY

**TO:** Jim Scholl, City Manager

**Cc:** David Fernandez, Asst. City Manager - Operations  
Gary W. Bowman, General Services Director

**FROM:** Jay Gewin, Utilities Manager

**DATE:** April 5, 2010

**SUBJECT:** **Approving the Substantial Conformity of Amendment # 2 to the Agreement Between the US Army Corps of Engineers and the City of Key West for Project Cooperation Agreement for the Florida Keys Water Quality Improvement Program. Authorizing the Mayor to Execute the Amendment.**

**ACTION STATEMENT:** We are requesting City Commission approval of a resolution authorizing the Mayor to Sign Amendment No. 2 to the Project Cooperation Agreement (PCA) with the US Army Corps of Engineers (ACOE) to enable additional sewer projects to become eligible for federal grant funding reimbursement. We are requesting the Commission's approval of the substantial conformity of this draft, which would allow Staff and the Army Corps to make very minor changes if needed.

### BACKGROUND:

On February 5, 2008 the City Commission passed and adopted Resolution 08-033 approving the PCA between the City and the Army Corps for the planning, design and construction of the Florida Keys Water Quality Improvement Program Stormwater Improvement Project for an amount up to \$10.32 million. \$9,947,000 of this has been appropriated to date.

Funding for the Stormwater Improvement Project originates from the \$100 million in Federal funds designated to improve water quality in the Florida Keys National Marine Sanctuary. Six municipalities were allocated portions of the \$100 million beginning in 2004.

On April 28, 2009 the Army Corps released a listing of Civil Works projects to be funded by the American Recovery and Reinvestment Act of 2009 (Stimulus), with \$25.408 million going to the Florida Keys. Key West, along

*Key to the Caribbean - Average yearly temperature 77° F*

with Marathon, Islamorada and Key Largo received \$6.352 million each. The allocation is also included in the \$10.32 million originally allocated to the City and does not increase the \$10.32 million allocation.

Utilizing Army Corps funding places a significant time constraint on the City. By September 1, 2010 the City will have to have invoiced the Army Corps for the entire \$10.32 million. While only \$6.352 million is actual Stimulus funds, the Army Corps has stipulated that the City must first spend the funds allocated in years prior to the Stimulus funds. This means the City will essentially need to spend the entire \$10.32 million by September 1, 2010 since all the non-Stimulus funds were allocated prior to the Stimulus funds.

It is important to keep in mind that the \$10.32 million represents the Army Corps share of 65% of total project costs of \$15,876,923. The non-Federal share is the remaining 35% or \$5,556,923. This means the City will incur over \$15 million in project costs by September 1, 2010. The City will aggressively meet the September 1, 2010 deadline by completing several stormwater injection well projects, a diffused aeration upgrade project at the WWTP, and other wastewater improvements including the replacement of the headworks at the WWTP and improvements designed to increase capacity in the wastewater collection system.

#### **PURPOSE & JUSTIFICATION:**

The deadline for invoicing the Army Corps of Engineers for completed work has placed significant time constraints on the City to meet the September 1, 2010 deadline. In an effort to accelerate the spending of federal funds, the City has requested an amendment to the agreement with the Army Corps allowing for the addition of the Sigsbee Force Main project, the WWTP Headworks/Capacity Expansion project, and the Pump Station F project to the scope contained in the PCA. Due to the fact that the City received favorable bids for the Diffused Aeration project at the WWTP, the City now has the opportunity to utilize Army Corps funding for this additional work.

The Army Corps has reviewed all aspects of our request, including compliance with the National Environmental Protection Act (NEPA) and has determined the City's planned capacity expansion and WWTP headworks projects are acceptable. As a result, the Army Corps is granting the City an amendment to the agreement. The City Commission has already approved a task order for the design work for the WWTP Headworks (Resolution 10-056) and Sigsbee Force Main project along North Roosevelt (Resolution 09-102).

Staff is requesting that the Commission approve the substantial conformity of the PCA amendment. This will allow staff or the Army Corps of Engineers to make very minor changes to the document if needed. We are making this request of the Commission so that Staff can maximize grant funding opportunities ahead of grant deadlines.

#### **OPTIONS:**

1. Authorize the execution of Amendment No. 2 to the PCA and maximize the City's ability to utilize the full \$9.947 million in Federal funds. This will allow the City to have a portion of the WWTP Headworks/Capacity Expansion project to be funded through Army Corps grants.

2. Reject Amendment No. 2 to the PCA. As noted above, choosing this option will severely impede the City's ability to meet the September 1, 2010 deadline for spending the full allotment of Army Corps reimbursement that is available to the City.

**FINANCIAL IMPACT:**

Approval of the amendment to the PCA will transfer the grant funding within the City budget from the Diffused Aeration project, awarded at a lower amount than was budgeted, and will allow a portion of the Sigsbee Force Main, WWTP Headworks, and Pump Station F projects to be funded through these federal funds.

The grant funds are in place within wastewater revenue account # 401-331.35, and the project cost associated with this grant will be budgeted in expense account # 401-3503-535-65/SE0903 and SE 0901.

**RECOMMENDATION:**

Staff recommends option 1, the approval of Amendment # 2 to the PCA with the Army Corps of Engineers.

AMENDMENT NO. 2  
TO  
AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
CITY OF KEY WEST, FLORIDA  
FOR  
PLANNING, DESIGN AND CONSTRUCTION  
OF  
FLORIDA KEYS WATER QUALITY IMPROVEMENT PROGRAM  
STORMWATER IMPROVEMENT PROJECT  
CITY OF KEY WEST  
IN MONROE COUNTY, FLORIDA

THIS AMENDMENT NO. 2 is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Jacksonville District (hereinafter the "District Commander"), and the City of Key West, Florida (hereinafter the "Non-Federal Sponsor"), represented by the Mayor.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor entered into an agreement on January 11, 2008 (hereinafter the "Agreement") for design and construction of the Florida Keys Water Quality Improvement Program Stormwater Improvement Project City of Key West in Monroe County, Florida;

WHEREAS, the Government and the Non-Federal Sponsor entered into an Amendment to the Agreement on November 27, 2008 to add additional work to the Project;

WHEREAS, the Government and the Non-Federal Sponsor desire to further amend the January 11, 2008 Agreement to add work to the Project so that Federal cost sharing may occur when sufficient Federal appropriations occur;

WHEREAS, the work was evaluated in the Decision Document for the Project consistent with the statutory requirements for the Florida Keys Water Quality Improvement Program and consistent with the requirements of the National Environmental Policy Act and other applicable environmental statutes; and

WHEREAS, it is necessary to amend the January 11, 2008 Agreement to add the additional work;

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the Agreement as follows to add work and document the requirement of the Non-Federal Sponsor to report the information required by the Recovery Act:

1. Article I – Definitions of the January 11, 2008 Agreement is amended to read at paragraph A. as follows:

A. The term “Project” shall mean the City of Key West, Monroe County, Florida Stormwater and Wastewater Improvement Project consisting of the following features:

1. The construction of 108 gravity injection wells and two pump-assisted wells within the City boundaries. The specific location of the well sites will be determined as funds become available, but will be located at one of the 349 road intersections where wells can be installed. All gravity injection wells would include pre-treatment best management practices (BMPs) to reduce stormwater pollutants prior to injection. The proposed gravity wells use a triple-chamber baffle box to skim off debris, oils, and other pollutants prior to disposal into the ground. The wells consist of a drilled open shaft that is partially lined with casing. The 24-inch casing extends downward past a confining soil layer located 35-40 feet below the surface. As required by Florida Department of Environmental Protection, the gravity wells would be encased to a minimum depth of 60 feet. The two pump-assisted wells would be constructed using the same specifications as the gravity wells with the addition of two 60-horsepower, 8350-gallon per minute pumps to assist in moving stormwater into the Biscayne Aquifer. Those areas which offer the greatest opportunity for water quality improvement are being implemented first. Gravity wells will be located in the right-of-way at intersections of City-owned streets. Siting of each well will be done on an intersection-by-intersection basis. A secondary action under this project is to abandon existing stormwater outfalls. As stormwater wells come online, outfalls will be abandoned. This project is generally described in the Decision Document Florida Keys Water Quality Improvement Program (FKWQIP) Stormwater Improvement Project City of Key West, Florida, dated October 4, 2005 and approved by the District Commander, U.S. Army Corps of Engineers, Jacksonville District on September 26, 2007. The Government’s share of the cost for the stormwater wells is \$5,120,000.

2. Modifications to the Richard A. Heyman Environmental Protection Facility (RHEPF) located in Key West, Monroe County, Florida, to replace the existing mechanical surface aerators with a diffused aeration system, including all associated work necessary to complete such. This base work includes, but is not limited to, mechanical, structural and electrical demolition relative to the removal of the existing surface aerators in the Aeration Basins 1 and 2, including any instrumentation & control (I&C) work related to them. The base project also includes installation of (labor and material) new blowers, mixers, piping, and diffusers in Aeration Basins 1&2 along with associated mechanical, structural, electrical and instrumentation work. The structural work includes, but is not

limited to, installation of new auger cast piles, and blower platform etc. Electrical and I&C work includes, but is not limited to, modifications in the electrical room, and on the SCADA screens at the main operations console as well as local control panels, etc. The Government's share of the cost for the aerators is \$5,200,000. Any monies remaining from the \$5,200,000 after completion of the aerator system may be expended for the stormwater well work described in Paragraph A1 above.

3. Improvements which will provide additional system conveyance capacity to the Richard A. Heyman Environmental Protection Facility (WWTP) in order to decrease the potential for gravity sewer overflows and minimize potential health risks to the public.


2. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

CITY OF KEY WEST, FLORIDA

BY: \_\_\_\_\_  
Alfred A. Pantano  
Colonel, U.S. Army  
District Commander

BY:  \_\_\_\_\_  
Craig Cates  
Mayor

DATE: \_\_\_\_\_

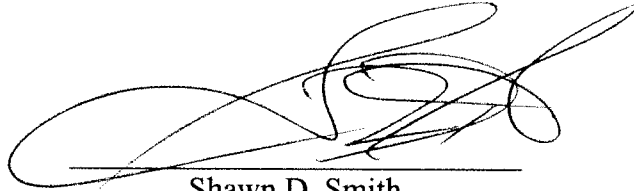
DATE: May 4, 2010



CERTIFICATE OF AUTHORITY

I, Shawn D. Smith, do hereby certify that I am the principal legal officer of the City of Key West, Florida, that the City of Key West, Florida is a legally constituted ~~A~~ public body with full authority and legal capability to perform the terms of Amendment No. ~~1~~, between the Department of the Army and the City of Key West, Florida in connection with the Florida Keys Water Quality Improvement Program, Stormwater Improvement Project, City of Key West, Florida in Monroe County, Florida, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed Amendment No. ~~1~~ on behalf of the City of Key West, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 5<sup>th</sup> day of July, 2010.



Shawn D. Smith  
City Attorney  
City of Key West, Florida

## CERTIFICATION REGARDING LOBBYING

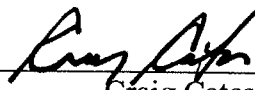
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Craig Cates

Mayor

City of Key West, Florida

DATE: May 4, 2010