

County of Monroe

The Florida Keys



BOARD OF COUNTY COMMISSIONERS

Mayor Craig Cates, District 1
 Mayor Pro Tem Holly Merrill Raschein, District 5
 Michelle Lincoln, District 2
 James K. Scholl, District 3
 David Rice, District 4

County Commission Meeting

February 15, 2023

Agenda Item Number: O.9

Agenda Item Summary #11729

BULK ITEM: Yes

DEPARTMENT: County Attorney's Office

TIME APPROXIMATE:
No

STAFF CONTACT: Pedro Mercado (305) 292-3470

AGENDA ITEM WORDING: Approval of an Interlocal Agreement between the City of Key West and Monroe County setting forth the terms for the swap of Higgs Beach for the Hawk Missile Site

ITEM BACKGROUND: The Key West International Airport (airport) is preparing to undertake the taxiway "A" extension and improvement project. The project is designed to improve the safety at the airport by extending taxiway "A" to the end of the runway. This will eliminate a safety hazard created by the current configuration where certain aircraft entering on to the western end of the runway have to back taxi to the end of the runway prior to taking off. **THIS PROJECT DOES NOT EXTEND THE RUNWAY WHATSOEVER.**

Due to environmental impacts of the project, the County has to engage in mitigation including obtaining a permit from the South Florida Water Management District (SFWMD). In order to satisfy permit requirements, the County has to own property proposed for environmental mitigation. The airport director identified for mitigation two adjoining parcels known collectively as Hawk Missile Site, which are owned by the City of Key West and adjacent to the airport. The SFWMD district has approved use of those parcels for the required mitigation.

In exchange for the City conveying the Hawk Missile Site to the County, the proposed agreement contemplates the County entering into a long term lease of Higgs Beach County park to the City. At some point in the future, the City will have the option of submitting a referendum to the voters to accept title to Higgs Beach Park consistent with the City's charter. The County would pay for any additional costs of the referendum if it is held during a special election.

The agreement contemplates the County fixing damage to Higgs Beach that was incurred during Hurricane Ian. The agreement also contemplates the County resolving a long standing grant issue attached to the park as a result of the restaurant operation as well as completing the competitive solicitation process for a long term tenant at the restaurant. The current restaurant lease expires in August of 2023.

PREVIOUS RELEVANT BOCC ACTION: None

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATION: Approval

DOCUMENTATION:

HAWK Missile Site Higgs Beach land swap ILA proposed Feb 2023

FINANCIAL IMPACT:

Effective Date: Feb. 15, 2023

Expiration Date: Feb. 14, 2122

Total Dollar Value of Contract: N/A

Total Cost to County: TBD

Current Year Portion: TBD

Budgeted: No

Source of Funds: TBD

CPI:

Indirect Costs:

Estimated Ongoing Costs Not Included in above dollar amounts: TBD

Revenue Producing: N/A If yes, amount:

Grant: N/A

County Match: N/A

Insurance Required:

Additional Details:

TBD

REVIEWED BY:

Bob Shillinger	Completed	01/31/2023 4:29 PM
Purchasing	Completed	01/31/2023 4:32 PM
Budget and Finance	Completed	01/31/2023 4:33 PM
Brian Bradley	Completed	01/31/2023 4:36 PM
Lindsey Ballard	Completed	01/31/2023 4:38 PM
Board of County Commissioners	Pending	02/15/2023 9:00 AM

HAWK MISSILE SITE HIGGS BEACH LAND SWAP
INTERLOCAL AGREEMENT

This Agreement is made and entered into by MONROE COUNTY, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL, 33040, ("COUNTY"), and the CITY of Key West, a municipal corporation of the State of Florida, whose address is 1300 White Street, Key West, Florida 33040 (the "CITY").

WHEREAS, the COUNTY, owns two parcels known as Higgs Beach and more specifically identified by Monroe County Property Appraiser parcel i.d. numbers 00058800-000000 and 00058790-000100; and

WHEREAS, The COUNTY currently operates Higgs Beach as public park located within the city limits of Key West that is funded by Countywide ad valorem taxes; and

WHEREAS, the CITY of Key West, owns two parcels known as the HAWK Missile Site, which is adjacent to the COUNTY owned and operated Key West International Airport "KWIA"; and more specifically identified by Monroe County Property Appraiser parcel i.d. numbers 00066230-000000 and 00065940-000000; and

WHEREAS, the COUNTY desires to acquire the HAWK Missile site property to serve as mitigation for a taxiway extension project at KWIA; and

WHEREAS, the CITY desires to acquire Higgs Beach so that it may be operated in conjunction with other surrounding CITY owned parks including Sonny McCoy Indigenous Park, Edward Knight Pier; and Rest Beach; and

WHEREAS, the parties agree that a land swap is the best mechanism to ensure each governmental entity of its ability to achieve its mutual goals; and

WHEREAS, Section 7.03(a) of the City Charter authorizes the City to convey City owned property to the County without a referendum; and

WHEREAS, Section 1.08 of the City Charter currently requires approval of the voters by referendum for acquisition of real property by any means; and

WHEREAS, the parties desire to enter into an interlocal agreement that would permit the CITY to use and operate all of the Higgs Beach parcels under a lease until such time as the City can formally accept conveyance of that portion of property from the County in exchange for a conveyance of the HAWK Missile site parcels to the COUNTY for the sole use as mitigation for the KWIA improvement project involving the extension of the existing taxi way to match the runway length of Runway 9-27 at 5,076 feet and for no other purpose.

NOW, THEREFORE IT IS AGREED:

1. **PROPERTY**. The properties covered by this agreement include the following parcels:

Attachment: HAWK Missile Site Higgs Beach land swap ILA proposed Feb 2023 (Higgs - Hawk land swap ILA)

- A. “Higgs Beach” – approximately 16.3 acres of waterfront property bounded by the Atlantic Ocean, White Street, Casa Marina Court, and Reynolds Street and having been assigned parcel ID numbers by the Monroe County Property Appraiser as 00058790-000100 and 00058800-000000, but excluding a .60-acre parcel owned by the U.S. government having a parcel ID number of 00058790-000000 that is surrounded by parcel 00058790-000100 as shown in Exhibit “A”.
- B. HAWK Missile Site” – approximately 51.56 acres bordered by the Riviera Canal on the north, Key West International Airport on the South, Little Hamaca Park on the West, and a mangrove covered parcel on the east having parcel ID number 65930-000000. HAWK is comprised of parcel ID numbers 00066230-000000 and 00065940-000000, excluding a .82 acre parcel owned by the U.S. government having a parcel ID number of 00066230-000100 that is surrounded by both parcels, as shown in Exhibit “B”

The COUNTY agrees to lease to the CITY for its exclusive use the land designated as “Higgs Beach”, as shown on Exhibit “A,” which shall be made available to CITY subject to the covenants and obligations referenced herein, in exchange for the CITY conveying the HAWK Missile Site properties to the County, with all currently disclosed encumbrances, deed restrictions, and covenants referenced herein.

2. SEQUENCE OF ACTIONS.

- A. Within 30 days of the effective date of this agreement, the CITY shall deed the HAWK Missile Site to the County, in a form approved by the National Park Service (NPS) and acceptable to the County Attorney, subject to the covenants and restrictions contained herein.
- B. Within 30 days of the effective date of this agreement,
 - a. The CITY shall relocate the existing City-owned equipment and materials from the HAWK Missile Site offsite to any non-County owned property at the choice of the City;
 - b. Contemporaneously with or prior to the CITY’s efforts to clear the HAWK Missile Site, the COUNTY may commence or complete the design and permitting process for using the HAWK Missile Site for the sole use as mitigation for the KWIA project involving the extension of the existing taxiway to match Runway 9-27 as they currently exist at 5,076 feet and for no other purpose.
 - c. The COUNTY shall turn over to the City copies of any and all documentation related to the operation of Higgs Beach, including but not limited to leases, permits, restrictive covenants, etc.

d. Subject to the repairs and other COUNTY terms agreed to herein, The CITY shall assume operating responsibilities for Higgs Beach.

C. To the extent allowed by law, the COUNTY agrees to convey the Higgs Beach property to the CITY upon demand when the CITY is legally permitted to take title with or without a referendum, in a form acceptable to the City Attorney and subject to the terms and conditions of the Land and Water Conservation Fund (LWCF) grant dated December 19, 1983 (DNR Contract Number C1633).

3. **TERM.** Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force for a term of 99 years commencing as of the ____ day of _____ 2023 and ending on the ____ day of _____, 2122. Should the City acquire ownership of the Higgs Beach property subsequent to the County obtaining ownership of the Hawk Missile Site property, the parties will re-evaluate the continuing need for any portions of this agreement at the request of either party. Should the City not acquire ownership of the Higgs Beach property by the end of the term, nothing herein prohibits the parties from negotiating a lease extension containing terms and in a form that are mutually agreeable to both parties.

4 **USE AND CONDITIONS DURING THE LEASEHOLD PERIOD.**

- A. Upon conveyance of the Hawk Missile Site Properties, Monroe County shall be responsible for compliance with the terms of the March 18, 2002 Quit-Claim Deed (recorded in the Official Records of Monroe County Book #1772, Page #1214) which transferred ownership of the Hawk Missile Site from the United States of America to the City of Key West and a restrictive covenant limiting the use of the HAWK conveyance as mitigation for a taxiway extension to match Runway 9-27 at 5,076 feet in a form acceptable to the parties.
- B. Subject to the improvements and agreement contained in this interlocal agreement, the CITY shall be solely responsible for operating the park at Higgs Beach, including all maintenance, security, enforcement of rules and regulations, programs, transportation and any and all other aspects of operations.
- C. The responsibilities of the parties in this conveyance and lease are attached to this ILA as Exhibit "C".

5. **RENT.** Until such time as the City lawfully takes title to Higgs Beach, the CITY must pay the COUNTY the sum of ten dollars (\$10.00) per year, due on the first day of the contract year, payable in advance and remitted to the Monroe County Clerk's Office, 500 Whitehead Street, Key West, FL 33040.

6. **UTILITIES.** The CITY shall be responsible for providing all utilities for Higgs Beach during the period of the leasehold and after such time as title is conveyed to the City

7. **ALTERATIONS AND IMPROVEMENTS.**

- A. Until such time as the CITY takes title to the Premises, no structure or improvements of any kind, whether temporary or permanent, shall be placed upon the land without prior approval in writing by the County Administrator (which shall not be unreasonably withheld), a building permit issued by CITY and any permits required by law by any other agency, federal or state. Any such structure or improvements shall be constructed in a good and workmanlike manner. The CITY shall be solely responsible for obtaining all necessary permits and paying impact fees required by any agency and any connection fees required by any utility.
- B. The City is entitled to retain all proceeds of any leases and/or contracts related to Higgs Beach, provided that such agreements comply with the Land and Water Conservation Fund grant restrictions on the property.

8. **MECHANIC'S LIENS.** The CITY shall not permit any mechanic's lien or liens to be placed on Higgs Beach or on improvements on it. If a mechanic's lien is filed, it shall be the sole responsibility of the CITY or its officer, employee, agent, contractor or other representative causing the lien to be filed to discharge the lien and to hold harmless and defend the County against enforcement of such lien. Pursuant to Section 713.01, Florida Statutes, the liens authorized in Chapter 713, Florida Statutes, do not apply to the COUNTY.

9. **RECORDS – ACCESS AND AUDITS.** The CITY shall maintain adequate and complete records for a period of four years after termination of this Agreement or as otherwise provided by law. The COUNTY, its officers, employees, agents and contractors shall have access to the CITY's books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the COUNTY shall occur at any reasonable time.

10. **RELATIONSHIP OF PARTIES.** The CITY is and shall be an independent contractor and not an agent or servant of the COUNTY. The CITY shall exercise control, direction, and supervision over the means and manner that its personnel, contractors and volunteers perform the work for which purpose this Agreement is entered. The CITY shall have no authority whatsoever to act on behalf and/or as agent for the COUNTY in any promise, agreement or representation other than specifically provided for in this Agreement. The COUNTY shall at no time be legally responsible for any negligence on the part of the CITY, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

11. **TAXES.** The CITY must pay all taxes and assessments, if any, including any sales or use tax, levied by any government agency with respect to the CITY's operations on the Premises.

12. **INSURANCE.** The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has

purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, arising out of the activities governed by this agreement.

To the extent allowed by law, each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions. Nothing contained herein shall be deemed to waive the CITY's or COUNTY's sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

The CITY agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this lease are canceled, terminated or reduced in coverage, then the LESSEE must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the COUNTY whenever acquired or amended.

13. **CONDITION OF PREMISES.** The CITY must keep the Premises in good order and condition. Notwithstanding the agreement to repair existing damage to HIGGS, the CITY must promptly repair damage to the Premises that occurs subsequent to the execution of this Agreement. At the end of the term of this Agreement, the CITY must surrender the Premises to the COUNTY in the same good order and condition as the Premises were on the commencement of the term of this agreement, normal wear and tear excepted. The CITY is solely responsible for any improvements to land and appurtenances placed on the Premises. The CITY shall not commit waste on the Premises, nor maintain or permit a nuisance on the Premises. After termination or expiration of this Agreement, the CITY shall pay the COUNTY the cost of any repairs and clean-up necessary to restore the Premises to its condition at the commencement of this Agreement.

14. **HOLD HARMLESS.** To the extent allowed by law, the CITY is liable for and must fully defend, release, discharge, indemnify and hold harmless the COUNTY, the members of the County Commission, COUNTY officers and employees, and the Sheriff, and Sheriff's Office, and its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type – including investigation and witness costs and expenses and attorney's fees and costs – that arise out of or are attributable to the CITY's operations on the Premises except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of the COUNTY. The CITY's purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph. Neither the County nor the CITY waives any of its respective sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

15. **NON-DISCRIMINATION.** The CITY for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant

and agree that no person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Premises or in the contracting for improvements to the Premises on the basis of race, color gender, or national origin.

16. **TERMINATION.** The COUNTY may treat the CITY in default and terminate this Agreement upon 90 days written notice, upon failure of the CITY to comply with any provision related to compliance with all laws, rules and regulations, provided CITY is first offered the opportunity to cure any said defaults within a reasonable time after notice of said violation. Any waiver of any breach of covenants herein contained shall not be deemed to be a continuing waiver and shall not operate to bar either party from declaring a forfeiture for any succeeding breach either of the same conditions or covenants or otherwise.

17. **ASSIGNMENT.** During the pendency of the lease from COUNTY to CITY, The CITY may not assign this Agreement or assign or subcontract any of its obligations under this Agreement without the approval of the COUNTY's Board of County Commissioners. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the CITY and the COUNTY.

18. **SUBORDINATION.** This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, the COUNTY and the CITY, whether in effect on commencement of this Agreement or adopted after that date.

19. **INCONSISTENCY.** If any item, condition or obligation of this Agreement is in conflict with other items in this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limit the COUNTY's responsibility and liability.

20. **GOVERNING LAWS/VENUE.** This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

21. **CONSTRUCTION.** This Agreement has been carefully reviewed by the CITY and the COUNTY. Therefore, this Agreement is not to be construed against any party of the basis of authorship.

22. **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:
Monroe County Administrator
1100 Simonton Street
Key West, FL 33040

CITY:
Key West City Manager
1300 White Street
Key West, FL 33040

With copies to:

Monroe County Attorney

Key West City Attorney

P.O. Box 1026
Key West, FL 33041-1026

1300 White Street
Key West, FL 33040

23. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

24. **EFFECTIVE DATE.** This Agreement will take effect upon the second signature of the parties to the agreement.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

Attachment: HAWK Missile Site Higgs Beach land swap ILA proposed Feb 2023 (Higgs - Hawk land swap ILA)

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representatives.

(SEAL)

**ATTEST: KEVIN MADOK,
CLERK OF MONROE COUNTY, FLORIDA**

**MONROE COUNTY BOARD
OF COUNTY COMMISSIONERS**

By: _____
Clerk

By: _____
Mayor

Approved for form and legal sufficiency for
the sole reliance of the Board of County
Commissioners of Monroe County, Florida:

Robert B. Shillinger
Monroe County Attorney

(SEAL)

**ATTEST: CHERYL SMITH,
CITY CLERK**

**CITY COMMISSION
CITY OF KEY WEST**

By: _____
Clerk

By: _____
Mayor Teri Johnston

Approved for form and legal sufficiency for
the sole reliance of the City Commission of
the City of Key West, Florida:

Ronald J. Ramsingh
Interim City Attorney

Attachment: HAWK Missile Site Higgs Beach land swap ILA proposed Feb 2023 (Higgs - Hawk land swap ILA)

Exhibit "C"

Regarding HIGGS, COUNTY shall:

1. Support the CITY's efforts to acquire HIGGS by referendum including paying the costs of a special election if desired by CITY.
2. Grant CITY a 99-year lease with consent to extend if acquisition has not been achieved.
3. Achieve compliance with the Land and Water Conservation Grant conversion issue regarding Salute Restaurant within five years of the ILA.
4. Secure a new lease for the leasehold currently occupied by the Salute Restaurant ~~upon expiration~~ via RFP for a market rate lease with a demised premise that does not include the 2 main beach pavilions.
5. Successfully complete all Hurricane Ian repairs as per the attached Schedule 1 within 5 years of the date of the ILA
6. Successfully relocate the Navigational Directional Beacon (NDB) from Higgs Beach Parcel ID 00058790-000000 to the Hawk Missile Site within 5 years of the ILA and join the city's effort to obtain ownership of Higgs Beach Parcel ID 00058790-000000 from the Federal Government. Title to the NDB Parcel (RE# 0005790-000000) shall vest in the government entity which holds title to the surrounding Higgs Beach Parcel ID 00058790-000100 at the time of the transfer. If the County holds title to Higgs Beach Parcel ID 00058790-000100 at the time of the transfer, the NDB parcel (RE# 00058790-000000) shall become subject to this ILA and the lease to the City. If the City holds title to Higgs Beach Parcel ID 00058790-000100 at the time of the transfer, title to the NDB parcel (RE# 00058790-000000) shall vest in the City.
7. Complete restoration work required at the NDB site once the NDB is relocated in order to improve or convert the NDB area into an open athletic/soccer field within 5 years of relocating the NDB. Restoration work shall be limited to the NDB footprint.
8. Build or reimburse CITY for the construction of an open athletic/soccer field at the NDB site as open recreational area for the conversion issue (subject to all state and federal approvals).
9. Forward all income from leases and events to CITY for the duration of the lease.

Regarding HAWK, COUNTY shall:

10. In addition to the existing restrictive covenants regarding recreational use, enter into a restrictive covenant that the 2 transferred parcels shall only be used to mitigate the construction of taxiway extension(s) to match the length of runway 9-27 at their current length of 5,076 feet. The 2 parcels shall not be used as mitigation of any other airport projects including by not limited to: terminal extension, new terminal construction, outparcel development ancillary to airport use, runway extension, new runway construction, aircraft parking/storage, or any other construction project requiring environmental mitigation whatsoever without the expressed consent of CITY in an amendment to the ILA and restrictive covenant(s).
11. To the extent allowed by City, County and Federal laws and regulations governing the airport and the salt ponds, support the CITY's effort to construct an elevated bicycle path connecting the western portion of Government Road to South Roosevelt Blvd. over COUNTY parcel ID# 64850-000100 and CITY parcel ID# 66240-000000 within

3 years of the transfer. If approved, and subject to future negotiations, COUNTY and CITY agree to participate in the construction costs. If approved, and subject to future negotiations, COUNTY and CITY agree to jointly participate in the construction costs.

12. Advocate for continued funding of the Noise Insulation Program (NIP) in order to continue to provide noise mitigation improvements to affected homeowners as dictated by the Noise Contour maps and as approved by the Federal Government.

Regarding HIGGS, CITY shall:

13. Not unreasonably withhold cooperation with COUNTY's efforts to relocate the NDB, mitigate the area underneath and surrounding the NDB for the purpose of establishing an open recreational/soccer field.
14. Assume responsibility for scheduling events in the 2 large beach pavilions once the Salute lease expires.
15. Assume all maintenance and improvements once the Hurricane Ian repairs are completed as referenced herein.

Regarding HAWK, CITY shall:

16. Convey title to the 2 HAWK parcels subject to the existing restrictive covenants and new covenants regarding use for mitigation consistent with this ILA and in a form acceptable to COUNTY and CITY within 30 days of approval of the ILA.
17. Not unreasonably withhold consent or approval in form to the elevated bicycle path.

Other Stipulations:

18. If COUNTY cannot fulfill any of their obligations as contained herein within five years of the effective date of the ILA, COUNTY shall pay CITY a sum of \$625,000.00 as liquidated damages to CITY unless an extension is agreed upon by COUNTY and CITY. If an extension is granted, the liquidated damages shall survive the extension and be applicable at the expiration of such an extension. COUNTY's non-performance shall not affect CITY's ability to acquire HIGGS by referendum and the obligations of COUNTY and CITY regarding same.