

RESOLUTION NO. 21-118

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "AMENDMENT NO. 2 TO INTERLOCAL AGREEMENT BETWEEN THE CITY OF KEY WEST FLORIDA AND MONROE COUNTY FLORIDA" (ILA) TO EXTEND MOBILE MARINE VESSEL PUMP OUT THROUGH SEPTEMBER 30, 2021; AUTHORIZING ANY NECESSARY BUDGET ADJUSTMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE ILA UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the waters surrounding Key West and the Florida Keys of Monroe County are within the boundaries of the Florida Keys National Marine Sanctuary, and are designated a federal No Discharge Zone by the United States Environmental Protection Agency; and

WHEREAS, in Resolution 20-137, the City Commission approved a six-month Interlocal Agreement, and in Resolution 21-038 the Agreement was renewed for six months, whereby the City would temporarily provide vessel pumpout services while the County seeks a more permanent pumpout provider in certain areas of the Lower Keys; and

WHEREAS, the County has requested an additional three-month extension through September 30, 2021 for the Interlocal agreement upon the same terms and conditions; and

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

Section 1: That the attached "Amendment No. 2 to Interlocal Agreement" between City of Key West Florida and Monroe County Florida" for mobile marine vessel pumpout services is hereby approved.

Section 2: That the City Manager is authorized to execute the Amendment to ILA, and related documents upon consent of the City Attorney.

Section 3: That any necessary budget transfers and adjustments are hereby authorized to reflect costs and reimbursements from the county for pump out services, as set forth in the ILA and Amendment No. 2.

Section 4: 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 2nd day of June, 2021.

Authenticated by the Presiding Officer and Clerk of the Commission on 3rd day of June, 2021.

Filed with the Clerk on June 3, 2021.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Absent</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


TERI JOHNSTON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

**AMENDMENT NO. 2 TO INTERLOCAL AGREEMENT
BETWEEN THE CITY OF KEY WEST, FLORIDA
AND MONROE COUNTY, FLORIDA**

THIS AMENDMENT NO. 2 TO THE INTERLOCAL AGREEMENT (“Agreement”) is made and entered into this 16th day of June 2021, between Monroe County Board of County Commissioners (hereinafter “MONROE COUNTY” or the “COUNTY”) and the City of Key West, Florida (hereinafter “CITY”).

WHEREAS, the parties entered into an Agreement on August 5, 2020, for temporary mobile vessel pumpout service for the Key West and Stock Island service area (herein “service” or “services”); and

WHEREAS, services commenced on August 27, 2020 which established a service period through February 26, 2021; and

WHEREAS, Amendment No. 1 to the Agreement was approved on February 17, 2021, to extend the Agreement through June 30, 2021 while MONROE COUNTY continued to seek a long-term vendor for mobile pumpout services in the waters of the Florida Keys; and

WHEREAS, it is deemed in the interest of the health, safety, and welfare of the general public to extend this Agreement through September 30, 2021 in order to have continued services while MONROE COUNTY continues to seek a long-term vendor for mobile pumpout services throughout waters of the Florida Keys; and

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned parties agree as follows:

1. The recitals contained herein are true and correct and are hereby incorporated as if fully set forth herein.
2. The Agreement between the parties is made a legally effective part of this Second Amendment, except as expressly amended under this Amendment No. 2.
3. Section 3 is hereby amended by adding the following sentence:

“This Agreement shall be extended through September 30, 2021.”
4. All of the other terms, covenants, conditions, and provision of the Agreement dated July 15, 2020, except those expressly modified and rendered inconsistent by this Agreement, remain in full force and effect and binding upon the parties.

THIS SPACE INTENTIONALLY LEFT BLANK

In Witness Whereof, the parties have executed this Amendment No. 2 to the above-referenced Agreement as indicated below.



KEVIN MADOK, CLERK

Jolly M. Adams 6/16/21
As Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

Michelle Coldron
Mayor Michelle Coldron

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

Peter Morris
PETER MORRIS
ASSISTANT COUNTY ATTORNEY
Date: 6/1/21

CITY OF KEY WEST, FLORIDA

Patti McLaughlin
Patti McLaughlin, Interim City Manager

Date: 6/3/2021

(SEAL)

ATTEST: Kevin Madok City Clerk

BY: George Wallace



APPROVED AS TO FORM AND
LEGALITY FOR THE USE AND
RELIANCE OF CITY OF KEY WEST,
FLORIDA ONLY:

BY: George Wallace
George Wallace, Assistant City Attorney

2021 JUN 21 AM 11:19
CLERK OF CIR. CT.
MONROE COUNTY, FL



THE CITY OF KEY WEST
201 William St., Key West, FL 33041-1409 (305) 809-3700

EXECUTIVE SUMMARY

TO: Patti McLaughlin, City Manager

CC: Todd Stoughton, Assistant City Manger
George Wallace, Assistant City Attorney

FROM: Doug Bradshaw, Director Port & Marine Services

DATE: May 18, 2021

SUBJECT: Three (3) month extension of Interlocal Agreement between Monroe County and the City of Key West for mobile vessel sewage pumpout services

ACTION STATEMENT

Approval of a three (3) month extension to an Interlocal Agreement (ILA) with Monroe County for sewage pump out services to vessels at anchorages in/near Wisteria Island, Fleming Key, Cow Key Channel, and Boca Chica Basin.

BACKGROUND

Since 2013, the County has provided Keys-wide mobile vessel pumpout service. The previous pump out vendor, PumpOut USA, whose contract expired on July 1, 2020, was not willing to agree to continue to provide pump outs to vessels under new terms offered by the County.

The City of Key West agreed to assist the County, temporarily with vessel pumpout services. A Interlocal Agreement was approved by Resolution # 20-137. That agreement ran through February 26, 2021. The County requested an extension of the ILA for an additional six (6) months through June 30, 2021 which was approved by Resolution # 21-038.

The County has requested an additional extension of the ILA for three (3) months through September 30, 2021 as allowed by the contract to allow the County to complete their Request for Proposal process seeking a long-term vendor for pumpout services.

Financial Issues

County is providing \$25.58 per pumpout up to 1,000 pump outs per month on a reimbursement basis quarterly. The City is currently averaging approximately 425 pumpouts per month.

Recommendation

Staff recommends approval of a three (3) month extension to an Interlocal Agreement (ILA) with Monroe County for sewage pump out services.

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

WATERWAYS SOLUTIONS

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (hereinafter "Agreement") is entered into as of this 15th day of July 2020, between Monroe County, a political subdivision of the State of Florida (hereinafter "Monroe County" or "County") and the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter "City of Key West" or "City").

WITNESSETH:

WHEREAS, the Board of County Commissioners is the legislative body of Monroe County, Florida; and

WHEREAS, the waters surrounding the Florida Keys of Monroe County, Florida, are situated within the boundaries of the Florida Keys National Marine Sanctuary and have, since 2001, been designated a federal No Discharge Zone by the United States Environmental Protection Agency; and

WHEREAS, Monroe County Comprehensive Plan Objective 203.3.1, Monroe County Comprehensive Plan Policies 202.3.1–202.3.2, and Monroe County Land Development Code Section 118-16, require that all marinas and marine facilities must have on-site pumpout systems, and that all marinas and marine facilities must have on-site pumpout systems ("systems" or "facilities"), and that all such pumpout facilities stay in working order; and

WHEREAS, it has been determined that it is in the interest of the residents of and visitors to the County that an interlocal agreement for vessel pumpout services be entered into with the City for the provision of such service(s); and

WHEREAS, the City desires to provide such service(s); and

WHEREAS, the Board finds that this interlocal agreement (hereinafter "ILA" or "Agreement") is necessary to advance the County's valid health, safety, and welfare police power interests;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed between the COUNTY and the CITY as follows:

Section 1. Recitals and Legislative Intent. The foregoing recitals and statements of legislative intent are true and correct and are hereby incorporated as if fully stated herein.

Section 2. Representations and Warranties. By executing this Agreement, the City represents and warrants to the County:

- 2.1 The City shall maintain all necessary licenses, permits, or other authorizations necessary for the provision of this service until its duties hereunder have been fully satisfied.

The City shall prepare all documentation required by this Agreement in such a manner that they will be accurate, coordinated, and adequate for use in verifying work completed and associated costs and shall be in conformity and comply with all applicable law, codes, and regulations

- 2.2 In providing all services pursuant to this Agreement, the City shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provisions of such services, including those now in effect and hereafter adopted. At the discretion of each party, any violation by the other party of applicable statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement and shall entitle the first party to terminate this Agreement immediately upon delivery of written notice of termination to the other.
- 2.3 The City shall not be considered an "employee" of the County, nor shall the County be considered an "employee" of the City. No statement contained in this Agreement shall be construed so as to find the City or any of its employees, subcontractors, servants, or agents to be employees of the County, or vice versa. Each party shall provide its independent, professional judgment and comply with all federal, state, and local statutes, ordinances, rules and regulations applicable to the service to be provided.
- 2.4 The City and County shall not discriminate against any person on the basis of race, creed, national origin, sex, age, or any other characteristic or aspect which is not job related, in its recruiting, hiring, promoting, terminating, or any other area affecting employment under this Agreement or with the provision of services or goods under this Agreement.

Section 3. Effective Date and Term.

- 3.1 This Agreement shall become effective upon execution by both parties. However, this Agreement is contingent upon sufficient, continuous funding to the County by the Florida Department of Environmental Protection (hereinafter "FDEP") and/or other sources. If the applicable FDEP (and/or other) funding agreement(s) is/are cancelled or becomes insufficiently funded, this ILA is also void, unless the parties amend it in the same manner as it was originally approved.
- 3.2 The parties shall be bound by this ILA upon the Agreement's mutual execution by both parties. The end-date ("completion date") of this ILA shall be the day immediately following completion of six (6) calendar months from the date (day) on which the City commences the mobile pumpout service at the direction of the County Administrator in consultation with the City Manager. The mobile pumpout service shall continue for six (6) full months from that date (the "date of commencement").
- 3.3 **Renewal.** The parties have the option to renew this Agreement for an additional six (6) month term.

Section 4. Default. In the event of failure of compliance by either party hereto with any of its material obligations to the other party as provided herein, such action shall constitute a

default under this Agreement. Upon such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a "Default Notice") shall state in reasonable detail the actions the defaulting party must take to cure the same. The defaulting party shall cure any such default within thirty (30) days following the date of the Default Notice. Notwithstanding the provisions of this Section. If any such default by the defaulting party remains uncured at the conclusion of any specified thirty (30) day cure period, and if the nature of the defaulting party's obligations are such that more than thirty (30) days is required to effect the cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences the cure within the applicable cure period and thereafter diligently pursues the cure to completion of performance. In the even the defaulting party fails to affect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon written Notice to the defaulting party, to terminate this Agreement. If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.

Section 5. To the extent permitted by law and subject to the provisions and monetary limitations of Florida Statutes § 768.28, the County and 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 attorney's fees, costs, and expenses at the administrative, trial and appellate levels) arising from, related to, or in connection with the acts or omissions of the respective party or any third-party vendor contracted by the respective party in connection with this Agreement.

Section 6. Scope of Services.

- 6.1 The City and County employees shall do, perform, and carry out in a professional and proper manner, the Scope of Services described below.
- 6.2 The City and County employees shall utilize a pumpout sticker system to assist Florida Fish and Wildlife Conservation Commission (hereinafter "FWC") in assuring anchored vessels are not discharging sewage into marine sanctuary (NDZ) waters. Upon the first service by the Pumpout Vessel to the Serviced Vessel, the Pumpout Vessel Captain shall affix the identification decal (indicating the month and year of the pumpout) to the bow of the serviced vessel, adjacent to the location of its state vessel registration decal. An identification decal may not be provided to a vessel owner or affixed to a vessel unless it has been serviced by the City's Pumpout Vessel, and service shall not be provided to any vessel (which does not have sewage to be pumped) simply for the purpose of acquiring an identification decal. Service may also be denied if the vessel to be pumped out is not properly equipped, as determined by the City, to provide for a safe, secure pumpout (for example, improper deck fittings or improper sewage lines, etc.) which may reasonably result in a sewage leak or other breakdown, danger, or malfunction. Each time a pumpout is conducted upon a new calendar month, a new month and year identification deal shall be affixed to the vessel.

- 6.3 Upon the first service by the Pumpout Vessel to the Serviced Vessel, the Pumpout Vessel Captain shall also provide an orange pumpout flag to the vessel owner/operator. After the first service, a vessel owner/operator wishing to receive subsequent pumpout service shall display the orange pumpout flag when service is requested in order to receive pumpout service. The City shall not pump out a vessel that does not display the orange pumpout flag even if the vessel is registered for routine service. A weekly service schedule shall be made available on the City's website so vessel owners know when to expect service in their area. Pumpouts may be performed based on a weekly service schedule providing a maximum of one pumpout per week per individual vessel.
- 6.4 The parties agree that the marine pumpout service areas contemplated and encompassed by the scope of services herein.
- 6.5 The County shall hire two temporary full-time (40 hours/5 days per week) marine pumpout workers to assist the City's Pumpout Vessel Captains in conducting pumpouts. These staff will be supervised by City staff and must adhere to the County's performance standards. The County staff members shall also assist the City's pumpout operations in the City's mooring fields in order for City to be able to provide its assistance with the County pumpouts. City will not be compensated by County for the pumpouts in the City mooring fields.
- 6.6 If either of the County hired temporary full time marine pumpout workers behavior violate City performance standards, the City Pump Out Vessel Captains shall notify the City Port Authority Director and the County Senior Marine Resources Administrator. The County shall investigate the report according to County Employee policy for discipline, up to and including termination.
- 6.7 The City shall commence the mobile pumpout service contemplated herein at the direction of the County Administrator or his designee, in consultation with the City Manager or his designee.
- 6.8 **Daily Logs.** The City shall submit daily pumpout logs to the Monroe County Planning and Environmental Resources Department's Marine Resources Office Senior Administrator on a monthly basis, which shall be specific to each pumpout vessel, pumpout vessel captain, and service area. The daily log shall include:
- (1) The date of service;
 - (2) The name and registration number of each vessel pumped; and
 - (3) The number of gallons of sewage pumped out for each vessel.

The City shall ensure that the volume of sewage pumped out shall be totaled at the bottom of each pumpout log. It may also be necessary to provide additional documentation for State requirements, such as method of disposal.

6.9 Authorized Work Eligible for Compensation.

- 6.9.1 The City shall only pump-out anchored out vessels (i.e., “anchor-outs”) in the areas specified in Exhibit “A.” delineating certain areas around Wisteria Island, Fleming Key, Cow Key Channel, and Boca Chica Basin.
- 6.9.2 The County shall pay the City \$25.58 per pumpout, for a maximum of 1,000 pumpouts per month, billed quarterly.
- 6.9.3 **Not-to-Exceed Amount.** This Agreement’s total not-to-exceed amount per month shall be \$25,580; this Agreement’s total not-to-exceed amount per quarter shall be \$76,740; this Agreement’s total not-to-exceed six-month amount shall be \$153,480.

Section 7. Notwithstanding the provisions of Florida Statutes § 768.28, the participation of the City and the County in this Agreement and the acquisition of any insurance, including but not limited to any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any agreement or contract entered into by the County or City be required to contain any provision for waiver.

Section 8. Amount of Compensation and Availability of Funds.

- 8.1 The City shall not charge customers of the pumpout service for the service(s) rendered under this Agreement.
- 8.2 **Payment.**
 - 8.2.1 The County shall pay the City in for the City’s performance of authorized work.
 - 8.2.2 Consulting, lobbying, travel and lodging are specifically excluded from payment. Payment shall be made only for services provided and there are no reimbursable items.
 - 8.2.3 County payment to the City will be made after services are rendered and the City sends Monroe County an invoice. The invoice shall describe in detail the services performed, the payment amount requested, and supporting documentation, and must include: **(A.)** The invoice date; **(B.)** The agreement number, if applicable; **(C.)** Date(s) of Service; **(D.)** Documentation of number of pumpouts performed. And **(E.)** Daily Logs.
 - 8.2.4 **Budget.** The City may not be entitled to receive, and the County is not obligated to pay, any fees or expenses in excess of the amount budgeted for this Agreement in the County’s fiscal year (October 1 - September 30) by the County’s Board of County Commissioners. The budgeted amount may only be modified by an affirmative act of the County’s Board of County Commissioners. The County’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners and the approval of

the Board members at the time of Agreement initiation, and is furthermore contingent upon sufficient, continuous funding to the County by FDEP and/or other sources.

Section 9. Contractor's License.

- 9.1 The City shall secure, maintain and pay for any permits and licenses necessary to operate pumpout vessels and associated equipment and infrastructure. It is the City's responsibility to maintain all permits and licenses that may be required. By signature hereon, the City warrants that it is authorized by law to engage in the performance of the activities herein described, subject to the terms and conditions set forth in these Agreement documents. Proof of such licenses and approvals shall be submitted to the County upon request. The City has, and shall maintain throughout the term of this Agreement, appropriate licenses and approvals required to conduct its business, and hereby represents that it will at all times conduct its activities in a reputable manner.
- 9.2 To the extent required by law in connection with the County's two temporary full-time (40 hours/5 days per week) marine pumpout workers, the County shall secure, maintain, and pay for any necessary permits and licenses, and it shall be the County's responsibility, regarding its two temporary full-time marine pumpout workers, to maintain all permits and licenses that may be required. By signature hereon, the County warrants that it is authorized by law to engage in the performance of the activities herein described, subject to the terms and conditions set forth in these Agreement documents. Proof of such licenses and approvals shall be submitted to the City upon request. The County has, and shall maintain throughout the term of this Agreement, appropriate licenses and approvals required to conduct its business, and hereby represents that it will at all times conduct its activities in a reputable manner.

Section 10. Staffing. Staffing is of paramount importance. Each party shall provide at its own expense all necessary personnel to provide the services under this Agreement. One party's personnel shall not be employees of or have any contractual relationship with the other.

Section 11. Utilities. The City shall be responsible for payment of any utility charges associated with the mobile pumpout service.

Section 12. Indemnification and Hold Harmless.

- 12.1 To the extent allowed by law and subject to the Sovereign immunity limits of Section 768.28 Florida Statutes the City covenants and agrees to hold harmless the County, and its officers and employees, from liabilities, damages, losses, and costs, including but not limited to, all fines, suits, claims, demands, actions, costs, obligations, and attorney's fees, or liability of any kind (1) arising out of, related to, or in connection with the

negligence, recklessness, or intentional wrongful conduct of the City, subcontractor(s), and other persons employed or utilized by the City in the performance of the Agreement, or (2) arising out of, related to, or in connection with the willful non-performance of the City.

- 12.2 To the extent allowed by laws and subject to the Sovereign immunity limits of Section 768.25 Florida Statutes the County covenants and agrees to hold harmless the City, and its officers and employees, from liabilities, damages, losses, and costs, including but not limited to, all fines, suits, claims, demands, actions, costs, obligations, and attorney's fees, or liability of any kind (1) arising out of, related to, or in connection with the negligence, recklessness, or intentional wrongful conduct of the County, subcontractor(s), and other persons employed or utilized by the County in the performance of the Agreement, or (2) arising out of, related to, or in connection with the willful non-performance of the County.

Section 13. Breach of Terms. The passing, approval, and/or acceptance by one party of any defect in the services furnished by the other, shall not operate as a waiver by the first party of strict compliance with the terms of this Agreement, and specifications covering the services. The breach by either party of this Agreement shall be governed by the section(s) below on termination for cause.

Section 14. Termination Without Cause. Each party may terminate this Agreement without cause by providing the other with written notice of termination at least thirty (30) days prior to the date of termination. Authorized compensation shall be paid to the other through the end of provision or services or for the thirty (30) days, whichever is shorter.

Section 15. Termination with Cause. In addition to all the terms set forth herein, each party may terminate this Agreement for cause if the other shall default in the performance of any of its obligations under this Agreement.

Section 16. Maintenance of Records. Each party shall comply with all public records and records retention requirements mandated by Section 24, Article I, of the Florida Constitution, and Chapter 119, Florida Statutes, and shall maintain and keep all books, documents, and records directly pertinent to performance under this Agreement as are necessary to document the performance of this Agreement and expenses as incurred and in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of 7 years from the termination of this Agreement or for a period of 3 years from the date of submission of the final expenditure report in accordance with 2 CFR § 200.333, whichever is greater. Each party shall have the right to unilaterally cancel this Agreement upon violation of this provision by the other. Failure of one party to abide by the terms of this provision shall be deemed a material breach of this Agreement. This provisions shall survive any termination or expiration of the Agreement. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Monroe County Clerk of Court determines that monies paid

to the City pursuant to this Agreement were spent for purposes not authorized by this Agreement, or were wrongfully retained by the City, the City shall repay the monies together with interest calculated pursuant to Florida Statutes § 55.03, running from the date the monies were paid by the County.

Section 17. Public Access and Public Records Compliance. The parties must comply with all Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24, Article I, of the Florida Constitution. The parties shall each allow and permit reasonable access to, and inspection of, all documents, records, papers, letters, or other "public record" materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and City in connection with this Agreement and related to Agreement performance. Either party has the right to unilaterally cancel this Agreement upon violation of this provision by the other. This provision shall survive any termination or expiration of the Agreement.

Each party is encouraged to consult with its advisors about Florida's public records laws in order to comply with this provision. Pursuant to Section 119.0701, Florida Statutes, and the terms and conditions of this Agreement, each party is required to:

- (1) Keep and maintain public records that would be required by the other to perform the service contemplated hereunder.
- (2) Upon receipt from one party's custodian of records, confirm receipt of public records requests and provide a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term(s) and following expiration, termination, and/or completion of the Agreement if one party with sole possession of records related to this Agreement does not transfer such records to the other party.
- (4) Upon completion of the Agreement, transfer, at no cost, to the other party all public records in possession of the first party or keep and maintain public records that would be required by the other party to perform the service. If one party transfers all public records to the other upon completion of the Agreement, that party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If one party keeps and maintains public records upon completion of the Agreement, that party shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the other party, upon request from the other party's custodian of records, in a format that is compatible with the information technology systems of the other party.
- (5) A request to inspect or copy or obtain public records relating to a County Agreement must be made directly to the County, but if the County does not possess the requested records, the County shall immediately notify the City of the request, and the City must provide the records to the City or allow the records to be inspected or copied within a

reasonable time.

- (6) A request to inspect or copy or obtain public records relating to a City Agreement must be made directly to the City, but if the City does not possess the requested records, the City shall immediately notify the County of the request, and the County must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

If one party does not comply with the other's request for records, that first party shall enforce the Agreement's maintenance of records and/or public access and public compliance provisions, notwithstanding the its option and right to unilaterally cancel this Agreement upon violation of said provision(s) by the other. A party who fails to provide the public records to the other, or on behalf of the other as set forth herein, pursuant to a valid public records request within a reasonable time, may be subject to penalties under Florida Statutes § 119.10.

The neither party shall transfer custody, release, alter, destroy or otherwise dispose of any public records unless or otherwise provided in this provision or as otherwise provided by law.

Section 18. Compliance with Law. In providing all service pursuant to this Agreement, each party shall abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such service, including those now in effect and hereinafter adopted. Any violation by one party of said statutes, ordinances, rules, and regulations shall constitute a material breach of this Agreement and shall entitle the other party to terminate this contract immediately upon delivery of written notice of termination to the first.

Section 19. Disclosure, Conflict of Interest, and Code of Ethics.

(A) Each party represents that it, its officers and employees, presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required by this Agreement, as provided in Section 112.311, et. seq., Florida Statutes.

(B) Each party agrees that its officers and employees recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

Section 20. Notice Requirements. Any notice required or permitted under this Agreement shall be in writing and hand delivered or mailed, postage prepaid, to the other party by certified mail, returned receipt requested, to the following:

FOR MONROE COUNTY, FLORIDA:

Roman Gastesi, Jr.
County Administrator
Monroe County Historic Gato Bldg.

1100 Simonton Street
Key West, Florida 33040

With copies to:

Robert B. Shillinger, Esq.
Monroe County Attorney
1111 12th St., Suite 408
Key West, FL 33041

and

Emily Schemper
Senior Director - Monroe County Planning & Env'tl. Resources Department
2798 Overseas Hwy.
Marathon, FL 33050

If to CITY:

Gregory W. Veliz
City Manager
City of Key West
P.O. Box 1409
Key West, Florida 33041

With a copy to:

Shawn Smith, Esq.
City Attorney
City of Key West
P.O. Box 1409
Key West, FL 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.

Section 21. No Third-Party Beneficiaries. Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party.

Section 22. Claims for State or Federal Aid. Each party agrees that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

Section 23. Privileges and Immunities.

- 23.1 All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.
- 23.2 All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the City, when performing their respective functions under this Agreement within the territorial limits of the City shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the City.

Section 24. Regulatory Powers.

- 24.1 Nothing contained herein shall be construed as waiving either party's regulatory approval or enforcement rights or obligations as it may relate to regulations of general applicability, which may govern the Agreement.
- 24.2 Nothing herein shall be deemed to create an affirmative duty of either party to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

Section 25. No Personal Liability. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of the County or City in his or her individual capacity, and no member, officer, agent or employee of the County or City shall be liable personally in connection with this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

Section 26. Governing Law, Venue, Interpretation, Costs and Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to ILAs made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this ILA, the parties agree that venue shall lie in the 16th Judicial Circuit, Monroe County, Florida, in the appropriate court or before the appropriate administrative body. This ILA shall not be subject to arbitration. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

Section 27. Attorney's Fees and Costs. To the extent allowed by law and subject to the Sovereign Immunity limits of Chapter 768.28 the County and City agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this ILA, the prevailing party shall be entitled to reasonable attorneys' fees and costs, and out-of-pocket expenses, including the fees and expenses of any paralegals, legal assistants and law clerks, and including fees and expenses charged for representation at administrative, trial and appellate levels.

Section 28. Adjudication of Disputes or Disagreements. The County 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 and, to the extent not covered by this Agreement, by general law. This provision does not negate or waive the preceding provisions of this ILA concerning termination or cancellation.

Section 29. Cooperation. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this ILA, the County 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 ILA or provision of the service under this Agreement.

Section 30. Non-Assignability. This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

Section 31. Independent Contractor.

31.1 The City and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the County 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.

31.2 The County and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the City 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.

Section 32. Severability. If any term, covenant, condition or provision of this ILA (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this ILA shall be valid and shall be enforceable to the

fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this ILA. The County and City agree to reform the ILA to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

Section 33. 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.

Section 34. Authority. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

Section 35. Entire Agreement. This ILA constitutes the entire Agreement between the County and the City for the services contemplated herein. Any amendments or revisions to this ILA must be in writing and be executed in the same manner as this Agreement.

Section 36. Section Headings. Section headings have been inserted in this ILA as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this ILA and will not be used in the interpretation of any provision of this Agreement.

Section 37. Execution in Counterparts. This ILA may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this ILA by signing any such counterpart.

In Witness Whereof, the parties have executed this Agreement as indicated below.



MADOK, CLERK

As Deputy Clerk

BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, FLORIDA



Mayor Heather C. Smithers

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

Date: 7/14/20

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CITY OF KEY WEST, FLORIDA



Gregory W. Veliz, City Manager

Date: 8/15/20

(SEAL)

ATTEST:  Cheri Smith, City Clerk

BY: 

Clerk

APPROVED AS TO FORM AND
LEGALITY FOR THE USE AND
RELIANCE OF CITY OF KEY WEST,
FLORIDA ONLY.

BY: 

Shawn Smith,

Exhibit A.

Lower Keys Region

Wisteria and Fleming Key Anchorages



Cow Key Channel and Boca Chica Basin Anchorages

