

MEMORANDUM

TO: Dent Pierce, Director
Public Works Division

FROM: Roy Sanchez, Director
Fleet Management Department

DATE: December 12, 2011

RE: Agenda Submission / Information Memo

The attached BOCC agenda item is to enter into an amended Inter-Local Agreement with the Monroe County School Board for joint use of fuel facilities.

The 2007 amendment was due to School Board's request and County's approval to move School Board's Key Largo gas and diesel facilities to the County's Recycling property in Key Largo, however, that never materialized, thus requiring the new Agreement at this time.

The Fleet Management Department recommends approval to enter into the Inter-Local Agreement with the School Board for joint use of fuel facilities and to allow both parties to jointly bid and advertise for the purchase and acquisition of unleaded gasoline and diesel fuel.

Thank you.

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY			
Contract with: <u>School Board</u>	Contract # <u> </u>	Effective Date: <u>Oct 19</u>	Expiration Date: <u>January 18, 2012 2011</u>
Contract Purpose/Description:		<u>Oct 18</u>	<u>2021</u>
Inter-local Agreement for joint use of fueling facilities between Monroe County and Monroe County School Board.			
Contract Manager: <u>Roy Sanchez</u>	<u>3572</u>	<u>Fleet Management / #4</u>	
(Name)	(Ext.)	(Department/Stop #)	
for BOCC meeting on <u>1/18/12</u>	Agenda Deadline: <u>1/3/12</u>		

CONTRACT COSTS			
Total Dollar Value of Contract: \$ <u>0.00</u>	Current Year Portion: \$ <u>0.00</u>		
Budgeted? Yes <input type="checkbox"/> No <input type="checkbox"/>	Account Codes: <u>- - - -</u>		
Grant: \$ <u> </u>	<u>- - - -</u>		
County Match: \$ <u> </u>	<u>- - - -</u>		
	<u>- - - -</u>		
ADDITIONAL COSTS			
Estimated Ongoing Costs: \$ <u> </u> /yr	For: <u> </u>		
(Not included in dollar value above)	(eg. maintenance, utilities, janitorial, salaries, etc.)		

CONTRACT REVIEW				
	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>12/19/11</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>B. Felo</u>	<u>12/19/11</u>
Risk Management	<u>12-15-11</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Sherris</u>	<u>12-15-11</u>
O.M.B./Purchasing	<u>12-13-11</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Peggy King</u>	<u>12-15-11</u>
County Attorney	<u>12/13/11</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Roda M. ...</u>	<u>12/13/11</u>
Comments:	<u> </u>			
	<u> </u>			
	<u> </u>			

JOINT USE FUELING FACILITIES
MONROE COUNTY
SCHOOL BOARD OF MONROE COUNTY

THIS AGREEMENT made and entered into by and between the Monroe County, a political subdivision of the State of Florida, (hereafter "County"), whose address is 1100 Simonton Street, Key West, FL 33040, and the SCHOOL BOARD OF MONROE COUNTY, FLORIDA, an independent constitutional office, (hereafter "School Board"), as the contracting agent for the Monroe County School District, whose address is 241 Trumbo Road, Key West, FL 33040.

WITNESSETH:

The County and the School Board hereby agree as follows:

1. Recitations

A. Chapter 163, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" ("the Act"), specifically provides that its purpose is to "permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities." (Sec. 163.01(2), F.S.).

B. The Act further provides that "a public agency of this state may exercise jointly with any other public agency of the state . . . any power, privilege, or authority which such agencies share in common and which each might exercise separately." (Sec. 161.01(4)).

C. The Act's definition of "public agency" includes a county and a school district. (Sec. 163.01(3) (b)).

D. The County and the School Board, pursuant to this Act, desire to enter into this Inter-local Agreement ("the Agreement") for the purposes, and upon the terms and conditions, described below, believing that this Agreement will allow each agency to make more efficient use of facilities, personnel, and services necessary to, common to, or available to each agency, and having a goal of a more economical and efficient use and savings of public funds.

2. Entire Agreement

It is hereby understood and agreed that this contract states the entire agreement and that the parties are not bound by any stipulations, representations, agreements, or promises, oral or otherwise, not printed in this Agreement.

3. Purpose of Agreement

The purpose of this Agreement is to define the respective duties and obligations of the County and the School Board under this Agreement relative to the provision of joint-use fueling sites throughout Monroe County that would benefit both the school district and the County.

4. Method for Accomplishing Purpose

The basic method for accomplishing the purpose of this Agreement is for the County to provide its available sites at the Plantation Key, Marathon, and Key West Garages, and for the School Board to provide its available sites at the Key Largo Elementary School, Upper Keys Transportation Complex, Sugarloaf School, and the Key West Administration Complex (Trumbo Bus Garage), such sites to be used jointly by the County and the School Board for fueling of their vehicles.

5. Duration of Agreement

This Agreement shall be for a period of ten (10) years commencing October 19th, 2011 and expiring on October 18th, 2021.

6. Rescission or Termination of Agreement

This Agreement may be terminated by either the County or the School Board by written notice to the other party at least sixty (60) days in advance of the termination date.

7. Existing Fuel tanks, Facilities, and Related Computerized Equipment

A. The County and the School Board shall use the following existing fueling facilities.

1. Plantation Key County Garage
2. Marathon County Garage
3. Key West County Garage
4. Key Largo Elementary School
5. Upper Keys Transportation Complex
6. Sugarloaf School
7. Key West Administration Complex (Trumbo Bus Garage)

8. Maintenance of Fuel Tanks and Related Computerized Equipment

The County and School Board agree that they shall each be responsible for the maintenance of the fueling site under their immediate control. That is, specifically, the County shall be responsible for the maintenance of its fueling sites located at the Plantation Key, Marathon, and Key West County Garages, and the School Board shall be responsible for the maintenance of its fueling sites at the Key Largo Elementary School, the Upper Keys Transportation Complex, the Sugarloaf School, and the Key West Administration Complex (Trumbo Bus Garage).

9. Acquisition of Gasoline and Diesel Fuel; Contracting Agent for Agencies

In order to assure that the County and the School Board obtain the most favorable purchase price for the gasoline and diesel fuel, the County and School Board agree to jointly bid and advertise (using the County's format policies and procedures) for the purchase and acquisition of same. Such a joint venture shall be for advertisement and bid only.

However, County and School Board shall each act as their respective contracting agency during the purchasing phase of the above described materials, and as to receiving delivery of same from the designated contractor. By example, while the County and School Board agree to jointly bid and advertise for the total amount of required petroleum products and related materials necessary under this agreement – applying the rationale that as such a “bloc” they will be able to obtain the most competitive (ic. lowest) overall price – as to each agency's actual purchasing of the bidded items, the County and School Board shall pay the contractor separately and individually for the designated share of fuel and related materials to be used by them, as reflected by the respective purchase requests submitted to the contractor.

10. Agency License for Use of Real Property

The County and School Board agree that each agency shall grant the other a license for the use of the real property and its improvements for each joint use fueling site.

11. Access to Fuel Tanks

The County and School board agree that authorized users of the fueling sites designated in this Agreement shall have twenty-four (24) hour access to said sites, and that they shall either be maintained open or access otherwise provided to them by a uniform key system, on such a twenty-four (24) hour basis.

12. Billing and Billing Services

The County shall bill the School Board for fuel utilized by the School Board at those fueling sites within the County's immediate control and as previously set forth in this Agreement. Said billing by the County to the School Board shall include an annually adjusted and agreed upon administrative surcharge for processing, servicing, and handling set by the Board of County Commissioners of Monroe County, Florida.

Conversely, the School Board shall bill the County for fuel utilized by the County at those fueling sites within the School Board's immediate control and as previously set forth in this Agreement. Said billing shall include an annually adjusted and agreed upon administrative surcharge for processing, servicing and handling set by the Monroe County School Board. It is furthermore agreed, however, that the School Board shall bill the following entities for fueling and other related services and materials utilized by said entities, separately from its billings for same to Monroe County:

- A. All vehicles belonging to the Monroe County Sheriff's Department.

All official vehicles used by the designated constitutional officials of Monroe County as part of the scope and ordinary course of their business.

- B. All vehicles belonging to participating State of Florida agencies; Florida Highway Patrol, Florida Marine Patrol, Monroe County Health Dept., Guidance Clinic of the Middle Keys, etc.

For purposes of uniformity, the County and the School Board shall both utilize the Trak Engineering, Inc. Automated Fuel Management System (Fuel Sentry) in order to facilitate the cross-billing process and for the purpose of controlling, accounting, and securing fueling services

at all fueling sites falling under the terms and conditions of this Agreement, on a twenty-four (24) hours per day, seven (7) days per week basis.

Access to the above Fuel Sentry system, shall be provided by an electronic memory key, which shall be issued by the County and School Board to all authorized designated users of the fueling sites, and as contemplated by this Agreement.

The County and School Board shall bill each other for the site fueling services and materials previously set forth herein, on a regular monthly basis. All the parties to this Agreement agree to mutually cooperate with each other in exchanging the necessary data and information which shall insure such an efficient, accurate, and regular monthly billing schedule.

13. Claims for Federal or State Aid

Both the County and the School Board agree that either 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 the other party prior to submission.

14. Adjudication of Disputes or Disagreements

The County and the School Board agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of the County and of the School Board. If no resolution can be agreed upon within thirty (30) days after the first meet and confer session, the issue or issues shall be discussed at a joint public meeting of both the Board of County Commissioners and the School Board. If the issue or issues are still unresolved to the mutual satisfaction of the Board of County Commissioners and the School Board, then either party shall have the right to proceed as is contemplated in Paragraph 22 of this Agreement, below.

15. Failure of Agency to Pay share of Costs and Expenses; Rights of Other Agencies

In the event that either the County or the School Board shall fail to pay its respective share of costs and expenses associated with this Agreement and as provided for herein, the other party shall have the right to (1) seek payment through the avenues available pursuant to Paragraph 15 and 21 of this Agreement, or (2) declare this Agreement null and void and immediately terminate the Agreement by filing a Declaration of Termination in the Public Records of Monroe County, Florida.

16. Liability Coverage; Insurance; Hold Harmless, Indemnity

Both the County and the School Board agree that each will obtain general liability, property damage, and medical payment insurance coverage through either self insurance, commercial insurance, or a combination of both, in such limits as the County and the School Board shall determine appropriate. Additionally, the County and the School Board each represent to the other that it carries suitable public liability and property damage insurance, or is self-insured, in the amounts adequate to cover any claim arising out of its respective use of the fueling site facilities and will continue to carry such insurance or remain self-insured during the entire term of this Agreement.

The School Board, as a state agency or subdivision defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions, or intentional tortuous actions, which result in claims or suits against either the County or the School Board, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions, or intentional tortious acts.

The County, as a political sub-division of the State of Florida, as defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions, or intentional tortuous acts, which result in claims or suits against either the School Board or the County, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions, or intentional tortious acts.

Nothing contained in this Section shall be construed to be a waiver by either party of any protections under sovereign immunity, Section 768.28 Florida Statutes, or any other similar provision of law. Nothing contained herein shall be construed to be a consent by either party to be sued by third parties in any matter arising out of this or any other Agreement.

17. Nondiscrimination

The County and the School Board agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The County and the School Board agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101 - 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse

Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

18. Public Entity Crime

The County and the School Board agree that each is in compliance with Section 287.133, Florida Statutes, and have executed and filed with each other its sworn statement on the form provided by the School Board simultaneously or prior to its execution of this Agreement. County and School Board agree that they, through their agents, are aware of the provisions of Section 287.133, Florida Statutes. (This provision may not be applicable to the County and School Board, and if not, it is recited herein for informational purposes.)

19. Cooperation

The County and School Board agree to participate, to the extent required by the other party, in all proceedings, hearing, processes, meetings, and other activities related to the provision of the services and materials under this Agreement in the event any administrative or

legal proceeding is instituted against the other party relating to the formation, execution, performance, or breach of this Agreement.

20. Venue, Interpretation, Costs, and Fees

In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and School Board agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida. The County and the School Board further agree that, in the event of conflicting interpretations of the terms or a term of this Agreement between the County and the School Board, the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceedings. Additionally, the County and School Board agree that in the event any cause of action or administrative proceeding is initiated by or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and the usual and customary procedures required by the Circuit Court of Monroe County, Florida.

21. Books, Records, and Documents

The County and the School Board shall maintain books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representative(s) shall have reasonable and timely access to such records of each other party to this Agreement for audit purposes during the term of the Agreement and for three (3) years following the termination of this Agreement.

22. Covenant of No Interest

The County and the School Board covenant that neither party presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that each's only interest is to perform and receive benefits as recited in this Agreement.

23. Code of Ethics

The County and the School Board agree that each agency's respective 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.

24. No Solicitation / Payment

The County and the School Board warrant that neither has employed or retained any company or person, other than a bona fide employee working solely for County or School Board to solicit or secure this Agreement and that neither the County nor School Board have paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the County or School Board, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the County and School Board agree that the non-breaching agency shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

25. Public Access

The County and the School Board shall allow and permit reasonable access to, and inspection of, all documents, papers, letters, or other material subject to the provision of Chapter 119, Florida Statutes, and made or received by the County or the School board in conjunction with this Agreement; and the non-violating agency shall have the right to unilaterally cancel this Agreement upon violation of this provision by the violating agency.

26. Management / Notices

The County's Project Manager under this Agreement is Roy Sanchez, telephone number; 305-292-3572, address; 3583 S. Roosevelt Blvd., Key West, Fl 33040. The School Board's Project Manager is Joseph Burke, telephone number 305-293-1400, address 241 Trumbo Rd., Key West, Fl 33040. Any notice or other written communication, except invoices, between the agencies shall be considered delivered when posted by Certified Mail, Return Receipt Requested; delivered in person to the Project Manager; or upon confirmed electronic receipt. Respective mailings shall be addressed to the Project Manager at the address listed in the preamble above.

27. Severability

In the event one or more provisions of this Agreement are declared invalid by a court of competent jurisdiction, the balance of this Agreement shall remain in full force and effect.

28. Non-Waiver of Immunity

Notwithstanding the provisions of Section 768.28, Florida Statutes, the participation of the County and the School board in this Agreement and the acquisition of 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 contract entered into by the County and the School Board be required to contain any provision for waiver.

29. Privileges and Immunities

All of the privileges and immunities from liability; exemptions from laws, ordinances and rules, 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 and the School Board when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents or employees extraterritorially under this Agreement.

30. Legal Obligations and Responsibilities; Non-Delegation of Constitutional or Statutory Duties

This Agreement is not intended to, nor shall it be construed as, relieving any participating agency from any obligation or responsibility imposed upon the agency by law except to the extent of actual and timely performance thereof by any other participating agency, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the participating agencies, except to the extent permitted by the Florida Constitution, State Statutes, case law, and specially, the provisions of Chapter 163, Florida Statutes.

31. Effective Date

This Agreement, and any subsequent amendments, shall become effective upon filing with the Clerk of the Circuit Court of Monroe County, Florida.

32. Non-Reliance by Non-Parties

No person or entity shall be entitled to rely upon the terms, or any of them of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the School Board agree that neither the County nor the School Board or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Board of County Commissioners of Monroe County, Florida, pursuant to a motion duly made, seconded, and passed in regular and open session and by and through its Mayor and Clerk; and the School Board, pursuant to a motion duly made, seconded, and passed in regular and open session and by and through its Chairman and Superintendent, have affixed their respective and representative hands and seals on the dates indicated.

(SEAL)
ATTEST: DANNY KOLHAGE, Clerk

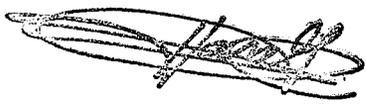
BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy
Date: _____

By _____
Mayor/Chairman

(SEAL)
ATTEST:

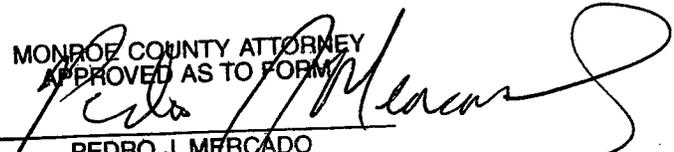
SCHOOL BOARD OF MONROE
COUNTY, FLORIDA



Jesus Jara, ~~Interim~~ Superintendent
Date: 9/27/11

By 

John Dick, Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM


PEDRO J. MERCADO
ASSISTANT COUNTY ATTORNEY
Date: 12/13/11