

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: February 15, 2012

Division: Public Works/Engineering

Bulk Item: Yes X No

Department: Engineering Services Department

Staff Contact Person/Phone #: Judy Clarke X4329

AGENDA ITEM WORDING: Approval to execute an Interlocal Agreement (ILA) with the City of Key Colony Beach (KCB) to extend Monroe County's contracted Hurricane Debris Clean up services to KCB, as needed. Costs not reimbursed by Federal Emergency Management Agency (FEMA) or State of Florida Department of Emergency Management (DEM) will be paid by KCB.

ITEM BACKGROUND: During the 2005 hurricane season Key Colony Beach requested assistance with debris clean up; the County Administrator directed staff to have Monroe County's hurricane debris contractor collect debris from public roads in Key Colony Beach. Costs associated with debris collection in KCB were separated from County costs and KCB reimbursed the County for amounts that were not reimbursed by FEMA or the State. Due to increasing restrictions on reimbursable costs County Attorney determined that an ILA documenting this assistance was needed to facilitate reimbursement in future years.

PREVIOUS RELEVANT BOCC ACTION: None.

CONTRACT/AGREEMENT CHANGES: Not applicable

STAFF RECOMMENDATIONS: Approval as requested above.

TOTAL COST: \$0 **INDIRECT COST:** staff time to invoice KCB **BUDGETED:** Yes No

DIFFERENTIAL OF LOCAL PREFERENCE: _____

COST TO COUNTY: 0 **SOURCE OF FUNDS:** _____

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management

DOCUMENTATION: Included X Not Required

DISPOSITION: _____

AGENDA ITEM # _____

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY			
Contract with:	<u>Key Colony Beach</u>	Contract #	
		Effective Date:	<u>February 15, 2012</u>
		Expiration Date:	<u>until cancelled</u>
Contract Purpose/Description:			
<u>Contract extends Monroe County's contracted hurricane debris clean up services to the City of Key Colony Beach; City of Key Colony Beach will reimburse Monroe County for debris costs that are not reimbursed by FEMA or the State.</u>			
Contract Manager:	<u>Judy Clarke</u>	<u>4329</u>	<u>Engineering</u>
	(Name)	(Ext.)	(Department/Stop #)
for BOCC meeting on <u>2/15/2012</u> Agenda Deadline: <u>1/31/2012</u>			

CONTRACT COSTS	
Total Dollar Value of Contract: \$	<u>0</u> Current Year Portion: \$ _____
Budgeted? Yes <input type="checkbox"/> No <input type="checkbox"/>	Account Codes: _____
Grant: \$ _____	_____
County Match: \$ _____	_____

ADDITIONAL COSTS	
Estimated Ongoing Costs: \$ _____/yr	For: _____
(Not included in dollar value above)	(eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW				
	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>1-30-12</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Judith Clarke for KW</u>	<u>1-30-12</u>
Risk Management	<u>1-30-12</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Slued</u>	<u>1-30-12</u>
O.M.B./Purchasing	<u>1-30-12</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Penny Lopez</u>	<u>1-30-12</u>
County Attorney	<u>1/30/12</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Christine Gilbert-Barron</u>	<u>1/30/12</u>
Comments: _____				

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into as of this ____ day of _____, _____, between Monroe County, a political subdivision of the State of Florida (hereinafter, the COUNTY) and the City of Key Colony Beach, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter, the CITY).

WITNESSETH:

WHEREAS, Key Colony Beach is a municipality within the limits of the Monroe County; and

WHEREAS, Monroe County has executed contracts for hurricane debris collection with disaster services contractors; and

WHEREAS, Monroe County has provided debris collection services to Key Colony Beach in prior years when it has been necessary to mobilize its contractor; and

WHEREAS, both the County and the City of Key Colony Beach want to formalize this arrangement in the event that assistance is required in future years;

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. In the event of a Federal Emergency Management Agency (FEMA) declared storm for which Monroe County activates its disaster services contractor and monitoring contractor, Key Colony Beach may request to have the County's contractor collect debris from public rights of way within the City of Key Colony Beach;
2. Monroe County's contractors will document the volume of debris that is collected from Key Colony Beach; Monroe County will provide an invoice that documents quantities of debris collected in Key Colony Beach and labor hours for monitoring services;
3. Key Colony Beach agrees to pay Monroe County the percentage of debris and monitoring costs that are not reimbursed by FEMA and/or the State of Florida based on the rates in Monroe County's contracts;
4. Key Colony Beach agrees to adhere to all federal and state requirements with regards to debris collection, as well as Monroe County instructions including but not limited to the types of debris that will be collected, dates of collection and number of passes.
5. This Agreement shall become effective immediately upon execution.
6. In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided for herein such action shall constitute a default under this Agreement.

7. Upon any 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 30 days following the date of the Default Notice.

8. Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect 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 cure within the applicable cure period and thereafter diligently pursues cure to completion of performance.

9. In the event 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.

10. 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.

11. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the COUNTY does hereby agree to defend, indemnify and hold the CITY, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the COUNTY or any third party vendor contracted by the COUNTY in connection with this Agreement.

12. Notices.

All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to County: Roman Gastesi, Jr.
County Administrator
Monroe County
Historic Gato Building
1100 Simonton Street
Key West, Florida 33040

With a copy to: Suzanne Hutton, Esq.
Monroe County Attorney's Office
P.O. Box 1026
Key West, Florida 33041-1026

If to City: Ronald A. Sutton, Mayor
City of Key Colony Beach
P.O. Box 510141
Key Colony Beach, Florida 33051

With a copy to: Thomas D. Wright
City Attorney
9711 Overseas Highway
Marathon, Florida 33050

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.

13. Attorneys Fees and Waiver of Jury Trial.

In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

14. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

15. Entire Agreement/Modification/Amendment.

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. Nonassignability.

This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

17. Severability.

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. Independent Contractor.

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.

19. Waiver.

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

29. 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.

21. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first written above.

BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA

BY: _____
Mayor/Chairperson

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

BY: _____
Deputy Clerk

BY: _____
ATTORNEY'S OFFICE

THE CITY OF KEY COLONY BEACH,
FLORIDA



, Mayor

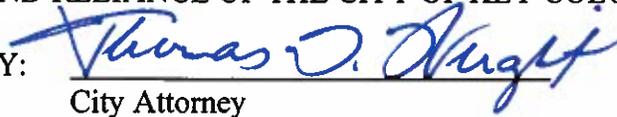
ATTEST:



City Clerk

(City Seal)

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

BY: 

City Attorney