

Key Largo Wastewater Treatment District Board of Commissioners Meeting Agenda Item Summary

Meeting Date:
August 20, 2024

Agenda Item Number: O-2

Action Required:
Yes

Department: Legal
Sponsor: Nick Mulick

Subject:
ILA with Monroe County for Antenna at Rowell's Marina

Summary:
In connection with it's installation of the remote telemetry system, FloVac has located an antenna at Rowell's Marina to facilitate communication between remote sites and the plant. Monroe County proposed that the District enter into an ILA to allow the antenna to remain in place.

<u>Reviewed / Approved</u>	<u>Financial Impact</u>	<u>Attachments</u>
Operations: _____	\$	1. ILA 2. Exhibits to ILA
Administration: _____		
Finance: _____	Funding Source:	
District Counsel: _____	N/A	
District Clerk: _____	Budgeted:	
Engineering: _____	N/A	

Approved By:  Date: _____
General Manager

**INTERLOCAL AGREEMENT
BETWEEN THE
KEY LARGO WASTEWATER TREATMENT DISTRICT
AND
MONROE COUNTY, FLORIDA**

THIS INTERLOCAL AGREEMENT is entered into this ____ day of _____, 2024 by and between the Key Largo Wastewater Treatment District (hereinafter the “District”) and Monroe County (hereinafter the “County”), each of which is an independent, existing entity serving as a public agency under the laws of the State of Florida.

WHEREAS, Monroe County (County), is a political subdivision of the State of Florida; and

WHEREAS, the District was created by Special Legislation, Chapter 2002-337, Laws of Florida, as amended; and

WHEREAS, the County owns and operates Rowell’s Waterfront Park (Rowell’s), described as Tracts 1 and 2, Highland Shores, according to the Plat thereof as recorded in Plat Book 3, Page 39, of the Public Records of Monroe County, Florida; Alternate Key #1626015, Parcel ID #00508200-000000 and Alternate Key #1626023, Parcel ID #00508210-000000; and

WHEREAS, the District owns and controls a wastewater collection system and wastewater collection system monitoring program and equipment in the Upper Keys; and

WHEREAS, the District has placed a Remote Telemetry Units (RTUs) at Rowell’s, specifically the parcel identified as Alternate Key #1626023, Parcel ID #00508210-000000; and

WHEREAS, pursuant to section 163.01, Florida Statutes, County and District desire to enter into a written agreement whereby County allows the placement of the RTU at Rowell’s;

NOW, THEREFORE, in consideration of the mutual covenants, representations and promises set forth in this Agreement and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the "District" and the "County" hereby agree, stipulate, and covenant as follows:

**ARTICLE I.
RECITALS**

The above Recitals are true and correct, and by this reference are incorporated as if fully set forth herein.

**ARTICLE II.
DEFINITIONS**

WORDS AND TERMS. Words and terms used herein shall have the meanings set forth below:

"**Agreement**" means this Interlocal Agreement.

"**District**" means the Key Largo Wastewater Treatment District.

"**Authorized Representative**" means the official of the "District" or the "County" authorized by ordinance or resolution to sign documents of the nature identified in this Agreement.

"**County**" means Monroe County.

"**Location**" or "**Premises**" shall mean the current location as depicted on attached Exhibit A.

"**Rowell's**" shall mean Rowell's Waterfront Park, specifically described as Tract 2, Highland Shores, according to the Plat thereof as recorded in Plat Book 3, Page 39, of the Public Records of Monroe County, Florida; Alternate Key #1626023, Parcel ID #00508210-000000.

"**RTU**" shall mean the Remote Telemetry Unit utilized by the District and placed at Rowell's as depicted on Exhibit B.

ARTICLE III. INTERLOCAL AGREEMENT

PURPOSE OF INTERLOCAL AGREEMENT. The purpose of this Agreement is for the County to allow continued placement of the District's RTU at its current **location** at Rowell's.

ARTICLE IV. OBLIGATIONS

SECTION 1.01 EFFECTIVE DATE. This Agreement shall take effect on the date it is fully executed by an authorized officer of both of the Parties and shall continue until terminated under the terms of this Agreement.

SECTION 1.02 COUNTY OBLIGATIONS. County agrees to allow the continued placement of the RTU at Rowell's subject to Article IV and Article V.

SECTION 1.03 DISTRICT OBLIGATIONS. The District agrees that it will acquire all necessary permits for placing of the RTU at Rowell's. The RTU and its placement shall meet all applicable requirements imposed by law. Any modification to the RTU shall require written approval of the County.

Upon termination of this Agreement, the District shall, at its sole expense, permanently remove the RTU and all related improvements and obtain any necessary permits for the removal. The District shall have thirty (30) days, unless agreed to in writing by the County for additional time, to remove the RTU and all related improvements, fixtures and personal property constructed or installed on the premises and restore the premises at grade to substantially the same condition as before the RTU was constructed or installed.

SECTION 1.04 TERMINATION. This Agreement may be terminated at any time for any reason by either party, subject to Section 1.03.

SECTION 1.05

**ARTICLE V.
GENERAL PROVISIONS**

SECTION 2.01 DEFAULT. In the event of any 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 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.

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.

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.

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 2.02 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:

County Administrator
Monroe County Historic Gato Bldg.
1100 Simonton Street
Key West, Florida 33040

If to DISTRICT:

General Manager
Key Largo Wastewater
Treatment District
103355 Overseas Highway
Key Largo, Florida 33037

With a copy to:

County Attorney
P.O. Box 1026

With a copy to:

General Counsel
Nicholas W. Mulick P.A.

Key West, Florida 33041-1026

91645 Overseas Highway
Tavernier, Florida 33070

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 "registered mail" as defined in section 1.01, Florida Statutes.

SECTION 2.03 ASSIGNMENT OF RIGHTS UNDER AGREEMENT. Neither the "District" nor the "County" shall have the power to assign rights or obligations created by this Agreement to any third party without the prior written consent of the other party.

SECTION 2.04 AMENDMENT OF AGREEMENT. This Agreement may be amended only in a writing signed by an Authorized Representative of each of the parties hereto.

SECTION 2.05 SEVERABILITY. If any term, covenant, condition or provision of this Agreement (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 Agreement 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 Agreement. The "District" and "County" agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

SECTION 2.06 ATTORNEY'S FEES AND COSTS. The "District" and "County" agree that in the event any cause of action or legal proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. 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 2.07 ADJUDICATION OF DISPUTES OR DISAGREEMENTS. The parties 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 or by Florida law. This Agreement is not subject to arbitration.

SECTION 2.08 COOPERATION. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, the parties agree to participate, to the extent reasonably required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. The parties specifically agree that

no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement or any Attachment or Addendum to this Agreement.

SECTION 2.09 NONDISCRIMINATION. The parties 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 parties 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 VII of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination in employment on the basis of race, color, religion, sex, and 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 disability; 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.3601 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. 12101 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code, Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties hereto, or the subject matter of, this Agreement.

SECTION 2.10 COVENANT OF NO INTEREST. The Parties covenant that neither 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 only interest of each is to perform and receive benefits as recited in this Agreement.

SECTION 2.11 CODE OF ETHICS. The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to 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 2.12 NO SOLICITATION/PAYMENT. The Parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, 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, each party agrees that the other party 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.

SECTION 2.13 PUBLIC ACCESS TO RECORDS. The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement. The District shall maintain adequate and complete records for a period of seven years after termination of this Agreement. The County, the Clerk, their officers, employees, agents and contractors shall have access to the District's books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the aforementioned government representatives shall occur at any reasonable time.

The District is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision. Pursuant to Section 119.0701, Florida Statutes and the terms and conditions of this contract, the District is required to:

- (a) Keep and maintain public records that would be required by the County to perform the service.
- (b) Upon request from the County's custodian of records, provide the County with 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.
- (c) 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 contract term and following completion of the contract if the contractor does not transfer the records to the County.
- (d) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records that would be required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of records, in a format that is compatible with the information technology systems of the County.
- (e) A request to inspect or copy public records relating to a County contract must be made directly to the County, but if the County does not possess the requested records, the County shall immediately notify the Contractor of the request, and the Contractor must provide the records to the County or allow the records to be inspected or copied within a reasonable time.

An entity who fails to provide the public records to the County or pursuant to a valid public records request within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

The District shall not transfer custody, release, alter, destroy or otherwise dispose of any public records unless otherwise provided in this provision or as otherwise provided by law.

IF THE DISTRICT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO DISTRICT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, BRIAN BRADLEY AT PHONE# 305-292-3470 BRADLEY-BRIAN@MONROECOUNTY-FL.GOV, MONROE COUNTY ATTORNEY'S OFFICE, 1111 12TH STREET, SUITE 408, KEY WEST, FL 33040.

The provisions of this section survive the termination of or expiration of this Agreement.

SECTION 2.14 RELATIONSHIP OF THE PARTIES. The District is, and shall be an independent contractor and not an agent or servant of the County. The District shall exercise control, direction, and supervision over the means and manner that its personnel, contractors and volunteers perform the work for the purpose of this Agreement. The District shall have no authority whatsoever to act on behalf of or as agent of 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 District, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

SECTION 2.15 TAXES. The District must pay all taxes and assessments, if any, including any sales or use tax, levied by any government agency with respect to the District's operations related to this Agreement.

SECTION 2.16 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 and/or for civil rights violations 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, or any other claims, 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 own employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

The District 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 Agreement are canceled, terminated or reduced in coverage, then the District 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.

SECTION 2.17 HOLD HARMLESS. To the extent allowed by law, the District 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, County agents and contractors, 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 attorneys' fees and costs - that arise out of or are attributable to the District ' s operations in connection with this Agreement 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. District's purchase of any insurance which may be required under this Agreement does not release or vitiate its obligations under this paragraph. Neither the County or the District waive any of its respective sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

SECTION 2.18 NON-WAIVER OF IMMUNITY. Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the parties 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 a party be required to contain any provision for waiver.

SECTION 2.19 LEGAL OBLIGATIONS; NON-DELEGATION OF DUTIES. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any other participating entity, 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 either party, except to the extent permitted by law.

SECTION 2.20 NON-RELIANCE BY NON-PARTIES. No person or entity shall be entitled to rely upon any terms 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.

SECTION 2.21 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 a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

SECTION 2.22 SECTION HEADINGS. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

SECTION 2.23 GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts 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 Agreement, the parties agree

that venue will lie in the appropriate court or before the appropriate administrative body in the 16th Judicial Circuit in and for Monroe County, Florida.

SECTION 2.24 BINDING EFFECT. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and the District and their respective legal representatives, successors, and assigns.

SECTION 2.25 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 2.26 COUNTERPARTS. This Agreement shall be executed in two or more counterparts, any of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

SECTION 2.27 SUPERSEDES OTHER AGREEMENTS. The parties agree that this Agreement represents their mutual agreement and replaces and supersedes any prior agreements, understandings, or communications on the subject of the Agreement, whether written or oral.

[SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by the Executive Director of the "District" and the "County's Mayor".

MONROE COUNTY

**ATTEST:
KEVIN MADOK, CLERK**

As Deputy Clerk

By: _____
Holly Merrill Raschein, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

By: _____
**Nathalia M. Archer
Assistant County Attorney**

KEY LARGO WASTEWATER TREATMENT DISTRICT

ATTEST:

Clerk

By: _____
Peter Rosasco, General Manager

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

By: _____
Nicholas W. Mulick, General Counsel

EXHIBIT A
(Not to Scale)
508200



EXHIBIT B

