

**INTERLOCAL AGREEMENT
BETWEEN THE
FLORIDA KEYS AQUEDUCT AUTHORITY
AND
THE CITY OF KEY WEST**

THIS INTERLOCAL AGREEMENT is entered into by and between the City of Key West (hereinafter the “City”), Florida and the Florida Keys Aqueduct Authority (hereinafter the “Authority”), each of which is an independent, existing entity serving as a public agency under the laws of the State of Florida.

WHEREAS, the Authority was created by Special Legislation, Chapter 76-441, Laws of Florida, as amended; and

WHEREAS, the City is a Florida Municipality; and

WHEREAS, the Authority has received a grant and Water Infrastructure Finance and Innovation Act (WIFIA) loan to fund the replacement of the existing Key West Terminus potable water transmission main currently located beneath Palm Avenue and Eaton Street.

The Authority’s goal for the project is to replace the existing 18-inch main with a new transmission main to replace their aging infrastructure and to increase the resiliency of their Key West distribution system, and

WHEREAS, to limit the impact to the City roadways, as well as to reduce the overall construction costs, the Authority proposes to utilize the City’s existing abandoned 30-inch diameter outfall pipe located beneath Fleming Street as a carrier for the new watermain as shown on the attached Exhibit A, and

WHEREAS, the Authority, through this interlocal agreement with the City, shall convey, approximately 5,565 linear feet (LF) of 18-inch potable water main once the new transmission main is operational. The City shall convey 4,130 LF of 30-inch abandoned outfall main at the time the Interlocal Agreement becomes effective. This would effectively allow the City to utilize the 18-inch main as a casing pipe for new infrastructure such as reclaimed water or other uses beneficial to the City. The exchange pipes are reflected on Exhibit A, and

WHEREAS, the City and the Authority are in general agreement that entering into this agreement is in the best interest of the public;

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

1. This Interlocal Agreement shall become effective on _____, 2023, the date of execution.

2. Exchange Documents. Upon approval of this Interlocal Agreement by both parties the City and the Authority shall execute and exchange Bill of Sale documents conveying to each other the exchange pipes which are the subject of this Interlocal Agreement located beneath the ground as reflected on the attached Exhibit A as described above. The Authority shall retain possession of its current water main until it has completed the construction of its replacement water main described herein. Each party shall bear the cost of recording the document received in the exchange. Upon completion of the exchange, the respective pipes become the maintenance responsibility of the respective agency.

3. Insurance. The parties to this agreement stipulate that each is a state of Florida governmental entity as defined by the Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Sections 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this agreement.

4. 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 AUTHORITY: Executive Director
Florida Keys Aqueduct Authority
1100 Kennedy Dr.
Key West, Florida 33040

With a copy to: General Counsel
Florida Keys Aqueduct Authority
1100 Kennedy Dr.
Key West, Florida 33040

If to CITY: City Manager
City of Key West
P.O. Box 1409
Key West, Florida 33041-1409

With a copy to: City Attorney
City of Key West
P.O. Box 1409
Key West, Florida 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.

5. Records – Access and Audits. All parties shall maintain adequate and complete records for a period of four years after termination of this Agreement. Each party, its officers, employees, agents and auditors shall have access to the other parties' books, records, and documents, related to this Agreement upon request. The access to and inspection of such books, records, and documents by the parties shall occur during the regular office hours or as agreed.

6. Public Access. Pursuant to Florida Statute §119.0701, the parties shall comply with all public records laws of the State of Florida, including but not limited to:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City of Key West in the performance of this Agreement.

(b) Provide the public with access to public records on the same terms and conditions that the City of Key West would provide the records and at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119 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.

(d) Meet all requirements for retaining public records and transfer, upon request by the City, at no cost, to the City all public records in possession of the contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

7. Attorney's 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 trial and appellate levels subject to the limitations imposed by Section 768.28 Florida Statute.

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.

8. Adjudication of disputes or Disagreements. The Authority and the 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 or by Florida law.

9. 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 Authority and the 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 Agreement or provision of the services under this Agreement. The Authority and the City specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

10. 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, Lower Keys Division of the Circuit Court, or the Southern District of Florida, as applicable. This Agreement is not subject to arbitration.

11. 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.

12. No Assignability. No Party may assign this Agreement or assign or subcontract any of its obligations under this Agreement other than as specified without the approval of the governing boards of the other Parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the Parties. Upon the aforementioned approval(s), modification under this section shall be executed with the same formality as this document.

13. Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of the 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.

14. Independent Contractor. The Authority and its employees, volunteers, agents, vendors, and subcontractors shall be and remain independent contractors and not agents or employees of the City with respect to all 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.

15. 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.

16. Survival of Provisions. Any terms or conditions of 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.

17. Construction. This Agreement has been carefully reviewed by each of the parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

18. 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.

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

FLORIDA KEYS AQUEDUCT AUTHORITY

ATTEST:

_____	By: _____
Antoinette M. Appell, Secretary/Treasurer	Gregory W. Veliz, Executive Director

CITY OF KEY WEST

ATTEST:

_____	By: _____
Clerk	Patti McLaughlin, City Manager

EXHIBIT A