

## **REIMBURSEMENT AGREEMENT**

This Reimbursement Agreement (this "Agreement") is made as of the 16<sup>th</sup> day of January, 2020, by and between HENRY L. HOLLIDAY III, a private property owner in the City of Key West, having a mailing address at P.O. Box 6, Key West, Florida 33041 ("Owner"), and the CITY OF KEY WEST, a political subdivision of the State of Florida, having a mailing address at 1300 White Street, Key West, Florida 33040 ("City").

### **R E C I T A L S:**

- A. Owner owns a single-family residence located on Waddell Avenue between Reynolds Street and William Street ("block")
- B. City is the owner of the sixty (60) foot right-of-way known as Waddell Avenue.
- C. Owner petitioned City staff to address safety, parking and general blighting concerns along the south side of the block by adding a new sidewalk.
- D. City staff agrees that a new sidewalk along the block would provide a significant value to the neighborhood and general public.
- E. City desires to construct certain improvements to the Waddell Avenue Sidewalk to be described in the Drawings and Specifications (collectively, the "Improvements").
- D. Owner has agreed to reimburse the City fifty (50) percent of the cost of constructing the Improvements, all as set forth below.

NOW, THEREFORE, for good and valuable consideration, including the recitals and mutual promises, covenants and agreements herein contained, Owner and City hereby agree as follows:

#### **1. DEFINITIONS.**

(a) Definitions. In addition to the terms defined above, the following terms shall have the meanings set forth below:

"Applicable Laws" shall mean all federal, state and local statutes, codes, ordinances, rules and regulations and judicial and administrative orders, decrees and directives applicable to, and all permits issued in connection with, the Work (as defined below) or the Improvements.

"City Commission" shall mean the City of Key West City Commission.

"Construction Task Order" shall mean the written contract or agreement by and between City and the Contractor (as defined below) for the performance of the Work.

"Contract Administration Services" shall mean all services rendered by the Contract Administrator (as defined below) in connection with administering the Construction

Contract, including, without limitation, inspections of the Work (at not less than weekly intervals) to confirm conformance with the Drawings and Specifications, review and approval of shop drawings and other submittals as may be required by the Drawings and Specifications, certification of the pay applications of the Contractor and certification of substantial completion of the Work.

"Contract Administrator" shall mean an architect or engineer engaged by City to perform the Contract Administration Services pursuant to Section 3 of this Agreement. The Contract Administrator may or may not be an employee of the City, in the City's sole discretion.

"Contract Price" shall mean the fixed lump sum price of the Contractor for the Work, as set forth in the Construction Task Order, as referenced in Exhibit 'A' attached hereto and made a part hereof.

"Contractor" shall mean the firm selected to perform the Work pursuant to the competitive bidding process referenced in Section 2 hereof.

"Drawings and Specifications" shall mean those final drawings and specifications to be prepared by the Architect, as referenced in Exhibit B attached hereto and made a part hereof.

"Maximum Reimbursement" shall mean fifty (50) percent of the Contract Price.

"Work" shall mean the construction and other services required by the Drawings and Specifications for construction of the Improvements and includes all labor, materials, equipment and services specifically included in the Drawings and Specifications as well as all items of the work or service that are reasonably inferable from the Drawings and Specifications.

(b) Interpretation of Defined Terms. Words of any gender shall include the other gender and the neuter. Whenever the singular is used, the same shall include the plural wherever appropriate, and whenever the plural is used, the same shall also include the singular wherever appropriate.

## **2. CONSTRUCTION OF THE IMPROVEMENTS.**

(a) Award of Construction Task Order. City shall cause the Work to be performed in a good and workmanlike manner in accordance with Applicable Laws and the Drawings and Specifications. The Construction Task Order for the work will be subject to the terms and specifications as specified in the 2017 Right of Way Contract, ITB 17-017. The task order will be awarded and become effective upon passage of a resolution by the City Commission.

(b) Change Orders. There shall be no changes, amendments or modifications to the Drawings and Specifications or the Construction Contract except those as are approved in advance and in writing by both City and Owner. Other than Owner's obligation under this Agreement to pay the Contract Price up to the Maximum Reimbursement, Owner shall not be liable to pay, or to reimburse City for, any additional cost or expense unless, in each instance, such additional cost or expense is approved in advance and in writing by Owner.

(c) Timing of the Improvements. Upon approval of the resolution by the City Commission, a purchase order will be issued to the contractor and shall serve as a notice to proceed. The contractor will have ten (10) business days from the date of the notice to proceed to mobilize and begin construction activity. The contractor shall have thirty (30) calendar days, notwithstanding delays beyond their control, from the date of mobilization to complete the improvements as shown on the Drawings and Specifications.

### **3. REIMBURSEMENT OF CONTRACT PRICE.**

(a) Procedures. The City shall engage the Contract Administrator to perform the Contract Administration Services. As the Work progresses, Owner shall reimburse City for the Contract Price up to the Maximum Reimbursement by making payment directly to City within thirty (30) days after Owner's receipt of a copy of the application for payment submitted by the Contractor pursuant to, and in accordance with, the Construction Contract and approved by the Contract Administrator. At a minimum, City shall require that each application for payment submitted by the Contractor be accompanied by (i) a schedule of values setting forth the percentage of completion of the Work, (ii) a certificate signed by the Contract Administrator stating that all Work for which payment is being requested has been installed and completed to the level of completion set forth in the application for payment and that such Work complies with the Drawings and Specifications and (iii) a lien waiver (conditioned on receipt of payment) with respect to that portion of the Work to which such application pertains.

(b) Payments. City shall be solely responsible for assuring that all payments for the Work and the Contract Administration Services are made to the parties entitled to receive the same.

### **4. REPRESENTATIONS AND WARRANTIES.**

(a) By City. City represents and warrants that the execution, delivery and performance of this Agreement by City has been authorized by all actions required by Applicable Laws.

(b) By Owner. Owner represents and warrants that the execution, delivery and performance of this Agreement by Owner have been authorized by all actions required by Owner.

### **5. DEFAULTS.**

(a) Default. If either party hereto shall default in the full, faithful and punctual performance of any obligation hereunder to be performed by such party (the "Defaulting Party"), then the other party shall give the Defaulting Party fourteen (14) days' written notice of default (except in an emergency, in which event the non-defaulting party shall give such notice as is reasonable under the circumstances). If such alleged default is not cured within such fourteen (14)-day period (or immediately, if an emergency), then any non-defaulting party may perform such obligation on behalf of such Defaulting Party and the non-defaulting party shall be reimbursed by the Defaulting Party for the cost of curing such default, together with interest thereon as may be permitted under law.

(b) No Waiver. No delay or omission of either party hereto in the exercise of any right accruing under any default of any other party shall impair any such right or be construed to be a waiver thereof. A waiver by either party of a breach or a default of any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach or default of the same or any other provisions hereof. No remedy provided in this Agreement shall be exclusive, but each shall be cumulative with all other remedies herein and at law or in equity and may be exercised at one time or at different times.

## 6. MISCELLANEOUS.

(a) No Partnership. Nothing herein contained shall be construed as a partnership agreement or as to constitute the parties hereto as partners or to establish a principal and agent relationship between the parties or to constitute or be a joint venture.

(b) No Third Party Beneficiary. There are no third party beneficiaries of this Agreement and nothing in this Agreement shall be construed as creating a contractual relationship of any kind (a) between Owner and Contractor, (b) between Owner or City, on the one hand, and Architect, on the other hand, (c) between Owner and the Contract Administrator, (d) between Owner and a subcontractor or sub-subcontractor, or (e) between any persons or entities other than Owner and City.

(c) Notices. All notices and demands herein required shall be in writing and shall be (i) personally delivered, (ii) sent by a nationally recognized overnight delivery service (with evidence of delivery), or (iii) sent by certified mail, return receipt requested, in each case postage or delivery fee prepaid, addressed to the parties at the addresses provided above. Each party may change the address to which notices to it are to be sent by delivering written notice of such change to the other party hereto. Every notice and demand shall be deemed to have been sufficiently given and received for all purposes hereof (i) on the date of delivery, if sent by personal delivery, (ii) on the next business day following delivery to a nationally recognized overnight delivery service, or (iii) four (4) calendar days following deposit with the U.S. Postal Service, if delivered by certified mail.

(d) Amendments. This Agreement may be amended, modified, terminated or waived (in whole or in part) only by an agreement in writing signed by each of the parties hereto.

(e) Captions. The title, headings and captions which have been used throughout this Agreement for convenience only and are not to be used in construing this Agreement or any part thereof.

(f) Governing Law. This Agreement shall be construed and applied in accordance with the laws of the State of Florida.

(g) Incorporation by Reference. Each exhibit referenced herein and attached hereto is incorporated herein by such reference as if fully rewritten herein.

(h) Entire Agreement. This Agreement and the exhibits hereto contain the entire agreement between the parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in their entirety by this Agreement.


The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against either party.

(i) Counterparts. This Agreement may be executed in any one or more counterparts, each of which, when so executed, shall be deemed an original, and all such counterparts together shall constitute the same instrument. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

**HENRY L. HOLLIDAY III**

By:   
Henry L. Holliday III, 817 Waddell Avenue

**CITY OF KEY WEST**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 'A'**

**CONSTRUCTION TASK ORDER**



**Work Order Proposal**  
**Right-of-Way Contract**  
 ITB 17-017  
 P.O. #

DATE: 1/8/20

**Location:** Waddell Avenue, Key West FL 33040  
**Work:** Scope as described below (as per quantities provided 1/7/20)

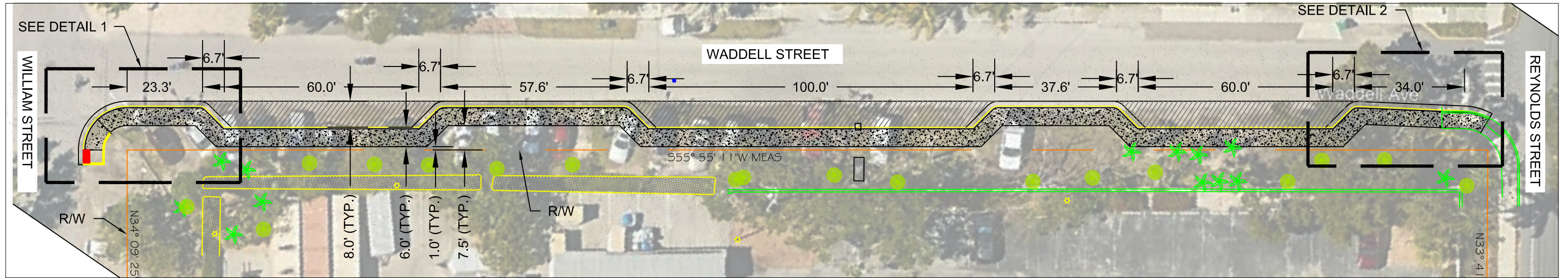
**ITEMIZED QUANTITIES**  
**Work Order**

Item	Description	Quantity	Units	Cost per Unit	Line Item Cost	Notes
	Mobilization	1	LS	\$ 5,000.00	\$ 5,000.00	
	Rework Limerock Base	304	SY	\$ 21.00	\$ 6,384.00	
	Concrete Curb & Gutter, Type "F"	237	LF	\$ 40.00	\$ 9,480.00	
	Concrete Curb and Gutter, Type "D"	236	LF	\$ 32.00	\$ 7,552.00	
	Concrete Sidewalk, 4" Thick	276	SY	\$ 79.00	\$ 21,804.00	
	Adjust Utility Fixtures	1	EA	\$ 200.00	\$ 200.00	
	Detectable Warning Surface	8	SF	\$ 15.00	\$ 120.00	
	Concrete Curb - Thickened Edge	450	LF	\$ 2.00	\$ 900.00	
	Shoulder Restoration	205	SY	\$ 14.25	\$ 2,921.25	
<b>Subtotal</b>					\$ 54,361.25	
	Bond (1.4% of Total)	1.0	LS	\$ 761.06	\$ 761.06	
<b>Total</b>					\$ 55,122.31	
<b>Notes:</b>						
<b>Prepared by:</b>						
	<i>Andrew Toppino</i>					
	<b>Estimator</b>					
	Charley Toppino & Sons, Inc.					
					<b>WO</b>	
					<b>Sheet</b>	<b>1 of 1</b>
<b>Date:</b>	1/8/20					



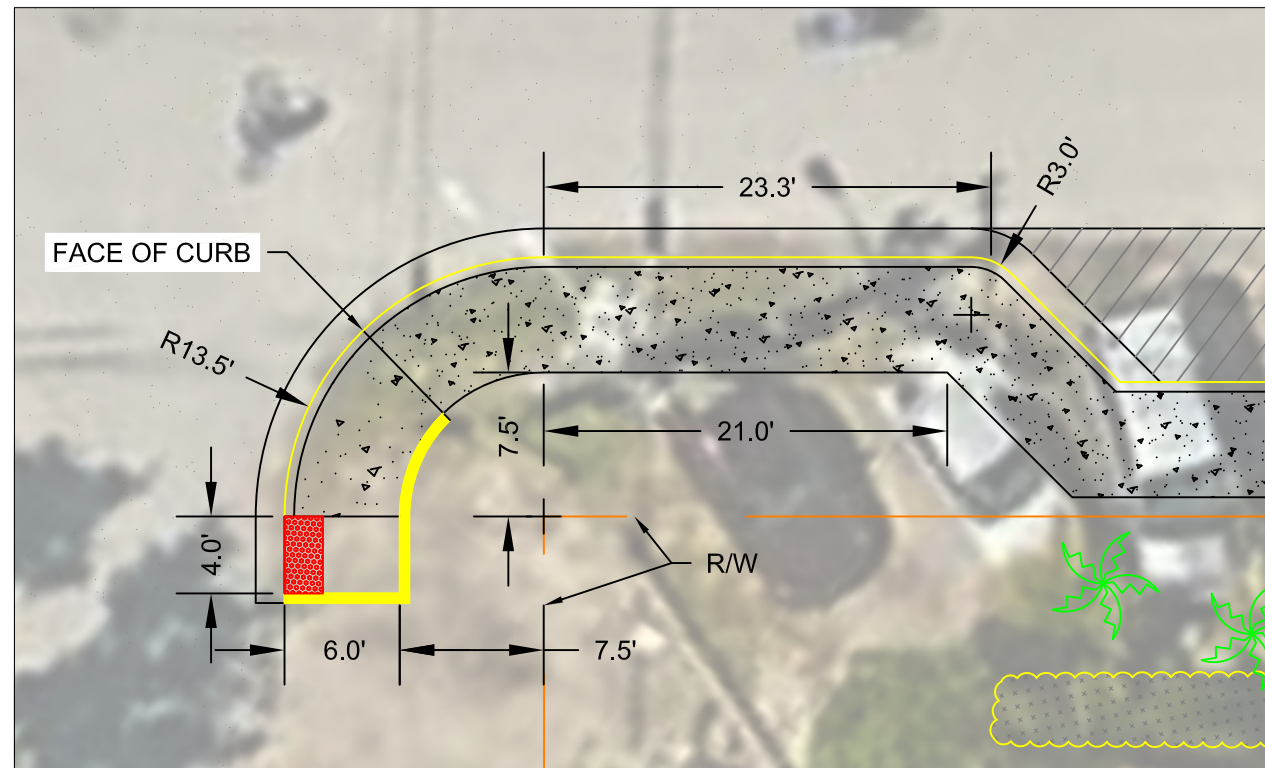
**EXHIBIT B**

**CONSTRUCTION DRAWINGS**



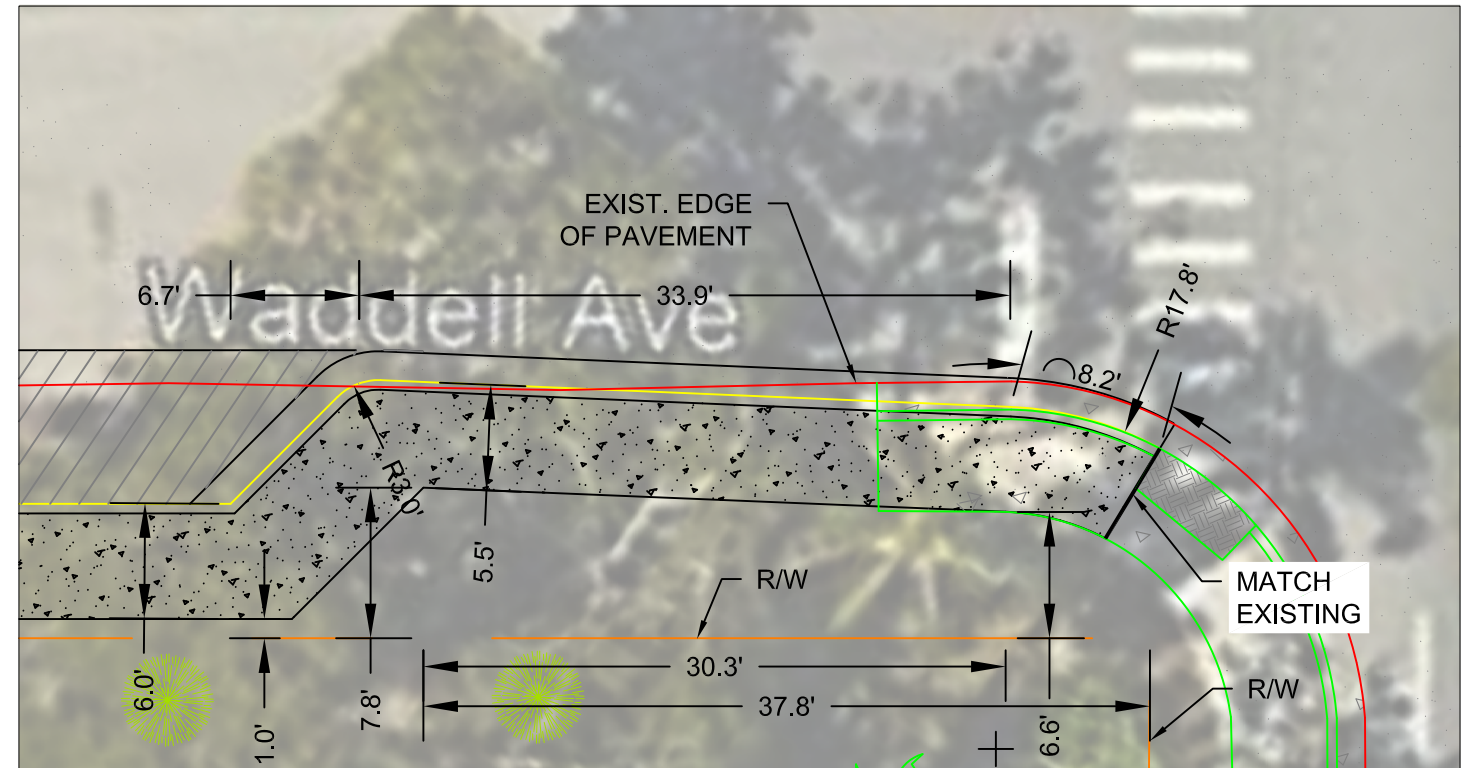
**HORIZONTAL CONTROL PLAN**

SCALE: 1" = 30'



**DETAIL 1**

SCALE: 1" = 10'



**DETAIL 2**

SCALE: 1" = 10'



City of Key West

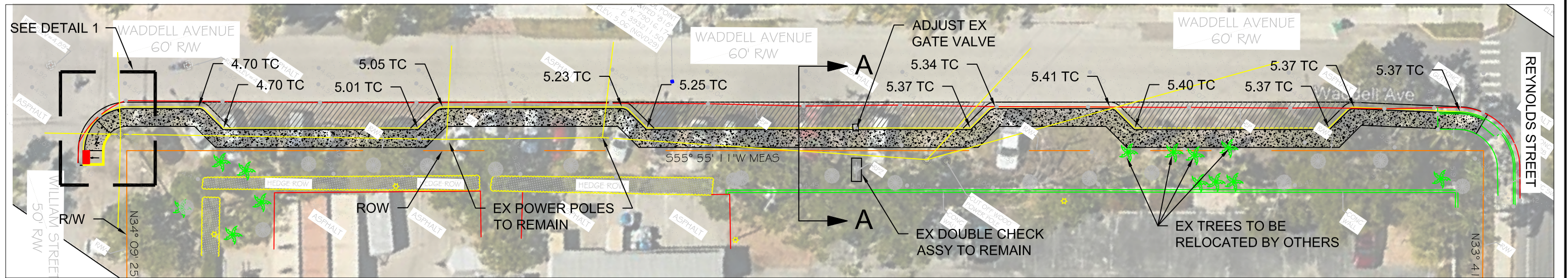
Engineering Services  
1300 White Street, Key West, FL 33040

WADDELL STREET SIDEWALK IMPROVEMENTS

HORIZONTAL CONTROL PLAN

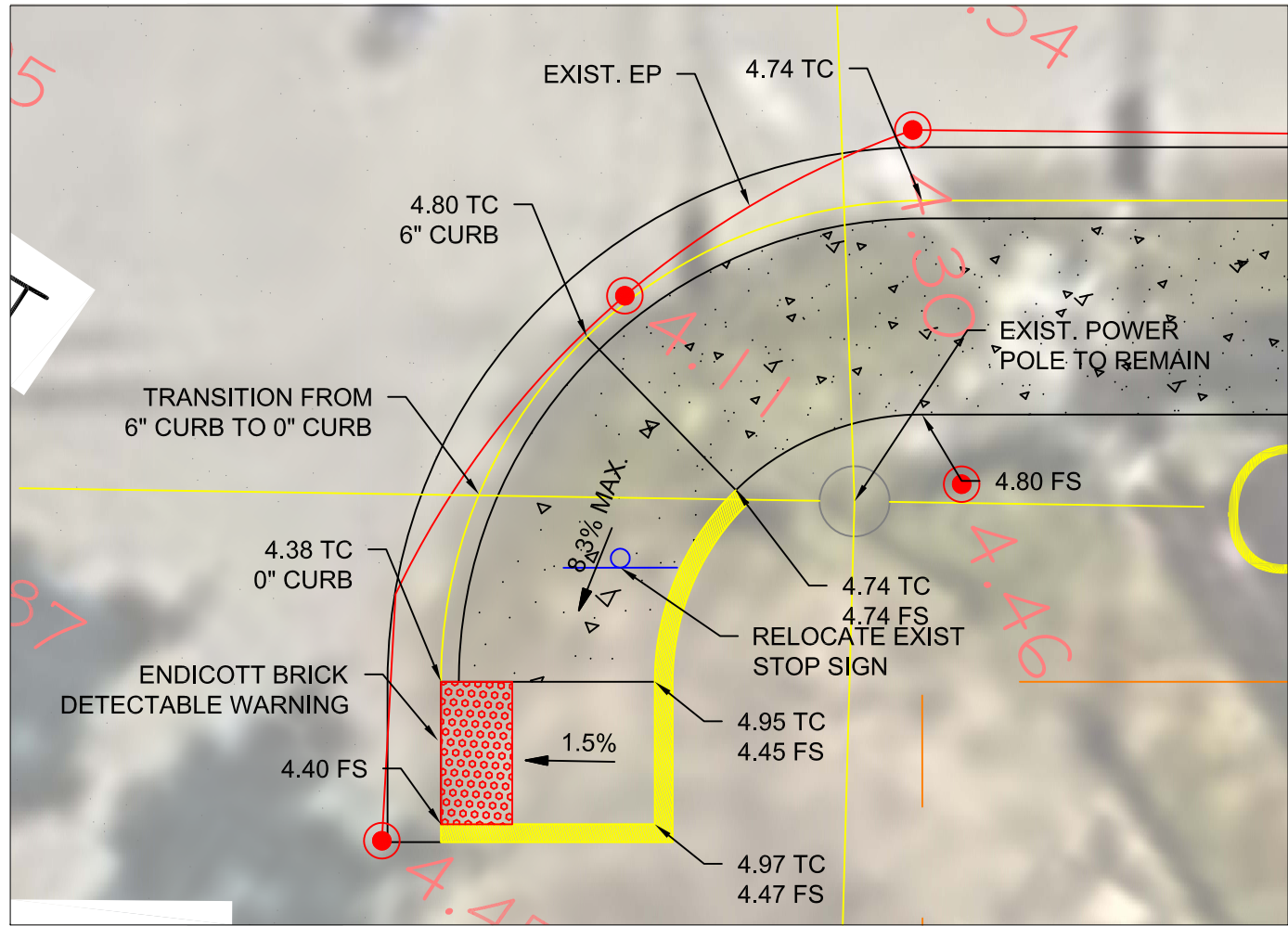
DRAWN	KC
SCALE	AS SHOWN
DATE	
SHEET	1 OF 2





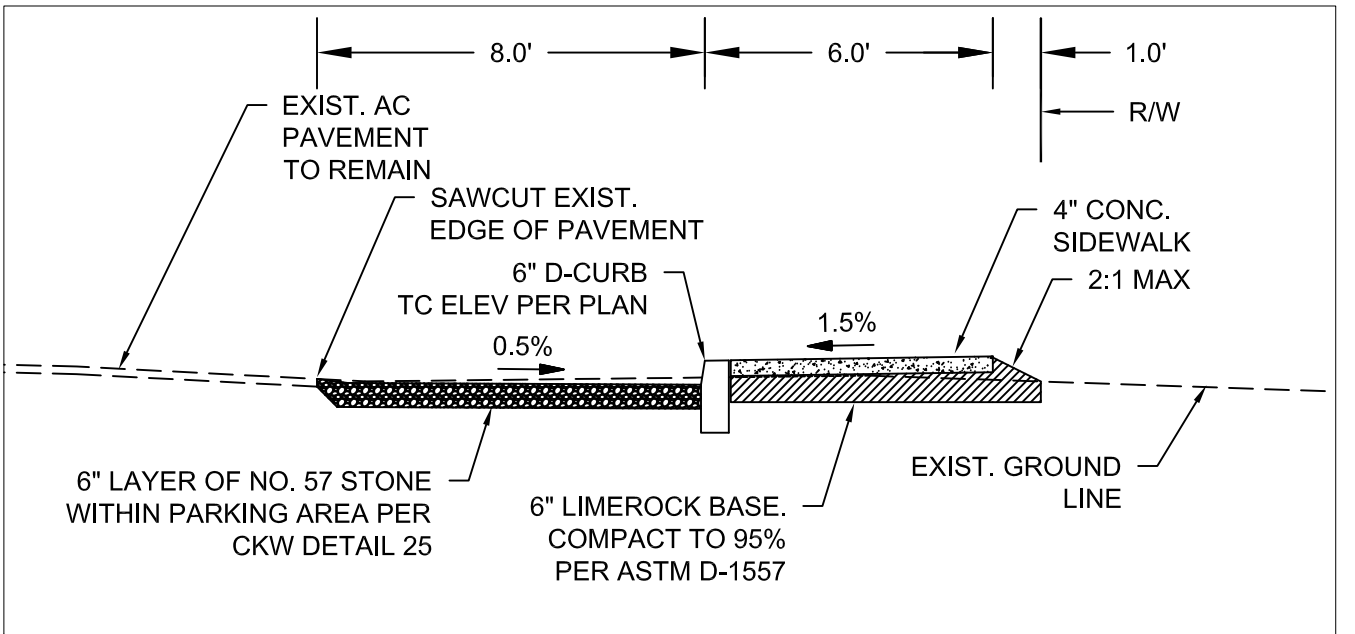
# **GRADING AND DRAINAGE PLAN**

SCALE: 1" = 30'



## **DETAIL 1**

SCALE: 1" = 10'



## **SECTION A-A**

SCALE: 1" = 4'



City of Key West

Engineering Services  
1300 White Street, Key West, FL 33040

WADDELL STREET SIDEWALK IMPROVEMENTS

GRADING AND DRAINAGE PLAN

DRAWN	KC
SCALE	AS SHOWN
DATE	
SHEET	2 OF 2