

**INTERLOCAL AGREEMENT
FOR CONSTRUCTION SERVICES
FOR WHITEHEAD AND FRONT STREET IMPROVEMENTS**

THIS INTERLOCAL AGREEMENT is made and entered into as of this 15th day of ~~March~~ ^{April} 2021, between the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter the CITY), and The Florida Keys Aqueduct Authority, a public agency under the laws of the State of Florida, (hereinafter FKAA).

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

WHEREAS, the CITY and FKAA are currently developing independent sets of construction documents for improvements to their respective facilities along Front Street and Whitehead Street in the City of Key West; and

WHEREAS, the CITY and FKAA would like to coordinate the construction of their facilities in order to provide an efficient delivery of improvements to the general public; and

WHEREAS, the CITY and FKAA are in general agreement that entering into one contract to construct their respective improvements will provide for efficient delivery improvements; and

WHEREAS, the CITY intends to procure a contractor to construct the improvements through a competitive bidding process; and

WHEREAS, through this agreement, FKAA will be responsible for reimbursing the CITY for the portion of the construction costs associated with the FKAA scope of work to be determined during the CITY's construction bid phase of the project;

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

1. Each party's scope of work shall be defined as the improvements shown in their respective construction documents including, but not limited to plans, details and specifications.
2. The Work will be performed in accordance with FKAA, City of Key West and Florida Department of Transportation (FDOT) standards.
3. The construction bid schedule of values will be separated into specific pay items for each party's respective scope of work. During the construction phase of the project, the FKAA will reimburse the CITY for 100% of the cost associated with the FKAA scope of work as detailed in the contractor's schedule of values and unit costs that are directly applicable to that work. The FKAA will also pay a percentage share of the mobilization and maintenance of traffic costs that is proportional to the FKAA's direct pay items of the total cost of construction, which will be itemized in the schedule of values. The FKAA will also pay any change order requested and approved by the CITY.

4. The CITY will make requests for reimbursements to the FKAA based upon the construction contractor's pay applications. The CITY will include copies of all contractor pay applications, evidence of payment to the construction contractor and all subcontractors (if applicable) by the CITY. The CITY will provide monthly billings from the contractor to the FKAA for comment and approval. FKAA will have 7 calendar days to provide written comment or approval. Upon payment to the contractor by the CITY, the CITY will invoice FKAA for reimbursement of the FKAA'S portion of the work. It is understood and agreed to by FKAA and CITY that reimbursement for the completed work outlined above will be payable to the CITY within thirty (30) calendar days of receipt by the FKAA of invoicing by the CITY. Reimbursement to the CITY will be made with reference to the specific project "Whitehead and Front Street Improvements" and project account number being reimbursed.
5. The contracts for construction will be between the CITY and its contractor. The CITY and FKAA will be responsible for inspecting, testing and accepting the contractor's work for the items related to their respective scope of work.
6. This Interlocal Agreement in no way relieves the CITY from its obligation to maintain any of the items for which it is responsible, nor does this alter the FKAA's liability and responsibility regarding maintenance of the waterlines. This Agreement shall not alter the CITY or FKAA'S maintenance responsibilities as proscribed by law.
7. This Interlocal Agreement shall become effective immediately upon execution. It is anticipated that the Project completion will be reached in 2021.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.

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

Requirements of the CITY: The CITY will provide roadway improvement construction drawings, front end documents, construction contract, roadway improvement technical specifications, and provide bid documents for project. CITY will prepare, advertise, and execute contract documents for construction. CITY will host design review, pre-construction and construction progress meetings between contractor and stakeholders. The CITY will provide boundary survey of project area in CAD format.

Requirements of the FKAA: The FKAA will provide plans and specifications for waterline repairs and/or replacement. The FKAA will provide testing, inspections, and acceptance for all items within the FKAA'S scope of work for construction of waterline repairs and/or replacement. The FKAA shall attend stakeholder meetings before and during construction.

The scope of work will consist of water line replacement of approximately 2,855 length in feet (LF) for the FKAA and full roadway milling and asphalt restoration to include thermoplastic striping for the CITY. The work includes but is not limited to 2-inch milling and installing new 2 inch Type S-I asphalt overlay, where indicated on the plans. Work to be performed on the entire width of Whitehead Street and Front Street. The work scope described in this ILA is to be bid as "Unit Cost/Lump Sum" with the "FKAA" for the water line replacement work.

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CITY and the FKAA 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 FKAA or CITY be required to contain any provision for waiver.

14. 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 FKAA: Kerry Shelby
Executive Director
Florida Keys Aqueduct Authority
1100 Kennedy Dr.
Key West, Florida 33040

With a copy to: Robert T. Feldman

General Counsel
1100 Kennedy Dr.
Key West, Florida 33040

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

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

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.

15. 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.

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.

16. Adjudication of disputes or Disagreements

FKAA and 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.

17. 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, FKAA and 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. FKAA and CITY specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

18. 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 The Florida Keys Aqueduct Authority, Florida, lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

19. 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.

20. No Assignability.

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

21. 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.

22. Independent Contractor.

The FKAA 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.

23. 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.

24. Funding.

Except as set forth in this Agreement, the parties agree that the FKAA's responsibility under this Agreement is to primarily to provide funding relating to the FKAA's scope of work.

25. 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.

26. 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.

(SEAL)

FLORIDA KEYS AQUEDUCT AUTHORITY

CITY OF KEY WEST, FLORIDA

By: _____

Executive Director / Chairman

By: 
Patti McLauchlin, Interim City Manager

ATTEST:


Clerk