

**INTERLOCAL AGREEMENT  
FOR ENGINEERING DESIGN, PERMITTING AND CONSTRUCTION SERVICES  
FOR DENNIS STREET PUMP STATION (KEY WEST)PROJECT**

THIS INTERLOCAL AGREEMENT is made and entered into as of this \_\_\_\_day of \_\_\_\_\_ 2020, between Monroe County, a political subdivision of the State of Florida, (hereinafter the COUNTY), and the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter the CITY).

**WHEREAS**, 1<sup>st</sup> Street and Bertha Street are COUNTY maintained roads within the municipal limits of the CITY and,

**WHEREAS**, the County needs to utilize the City of Key West’s Dennis Street Pump Station to manage stormwater flows from Bertha Street for the 1<sup>st</sup> Street and Bertha Street Road Improvement project, and

**WHEREAS**, the CITY has completed the engineering design and permitting phase of the Dennis Street Pump Station Project (Project) with Black & Veatch, Inc. (Consultant) ; and

**WHEREAS**, the CITY has received bids and awarded a construction contract for the pump station, and

**WHEREAS**, the CITY and the COUNTY have agreed that the CITY’s Dennis Street pump station can be utilized by both entities and it is in the best interest of both entities to cost share the design, construction and maintenance of the pump station as defined in “Attachment A”; and

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

1. The COUNTY, will enter into an Interlocal Agreement with the CITY for the cost sharing of the Dennis Street Pump Station Project (managed by the CITY) , specifically per the terms and conditions in Attachment A.
2. The Work will be performed in accordance with COUNTY and Florida Department of Transportation (FDOT) standards.
3. The CITY will provide to the COUNTY with the request for reimbursement, copies of all consultant pay applications and evidence of payment to the consultant by the CITY.
4. Additionally, in the construction phase of the project, the COUNTY will reimburse the CITY for a total of 35.9% of the itemized construction cost of the Dennis Street Pump Station (to be determined at substantial completion). The COUNTY will only pay for construction pay items and unit costs that are directly applicable to that work.

The CITY will make requests for reimbursements to the COUNTY based upon the Consultant's invoices, Construction Contractor's pay applications, and Maintenance Work Orders. The CITY will include copies of all contractor pay applications, evidence of payment to the construction contractor by the CITY, and releases of liens from the contractor and all subcontractors (if applicable), and proof of maintenance procedures such as photographic documentation.

5. The separate contracts for engineering design and construction and maintenance will be between the CITY and its contractors; the COUNTY may monitor the work but is not a party to the contract.

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 COUNTY's liability and responsibility regarding maintenance of the roadway from curb face to curb face and associated drainage of the road. This Agreement shall not alter the CITY or COUNTY'S maintenance responsibilities as proscribed by law.

7. This Interlocal Agreement shall become effective immediately upon execution by both parties and will remain in effect unless terminated, as outlined in paragraph 11 below or if use of the pump station is discontinued

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 the 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 the cure within the applicable cure period and thereafter diligently pursues the 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 COUNTY 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.

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CITY and the COUNTY 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 COUNTY 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 COUNTY: Roman Gastesi, Jr.  
County Administrator  
Monroe County Historic Gato Bldg.  
1100 Simonton Street  
Key West, Florida 33040

With a copy to: Christine Limbert- Barrows  
Assistant County Attorney  
P.O. Box 1026  
Key West, Florida 33041-1026

If to CITY: Greg 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.**

Subject to the sovereign immunity limits of F.S. 768.28, 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**

COUNTY 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, COUNTY 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. COUNTY 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 Monroe County, 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 COUNTY 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 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.

**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 COUNTY's responsibility under this Agreement is to primarily to provide a 35.9% portion of funding relating to the Dennis Street Pump Station 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.

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: \_\_\_\_\_  
Mayor/Chairperson

(SEAL)

KEVIN MADOK, Clerk

By: \_\_\_\_\_  
Deputy Clerk

CITY OF KEY WEST, FLORIDA

(SEAL)

By: \_\_\_\_\_  
Mayor

ATTEST:  
\_\_\_\_\_  
Clerk