

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into as of this ____ day of _____, _____, 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).

WITNESSETH:

WHEREAS, Eaton Street is a County road within the municipal limits of the City of Key West; and

WHEREAS, Monroe County is responsible for the maintenance of the roadway from curb to curb; and

WHEREAS, City of Key West and other utility trenches have subsided as a result of Hurricane Wilma flooding; and

WHEREAS, both the County and the City of Key West recognize that Eaton Street will be heavily traveled during the anticipated Florida Department of Transportation construction project on North Roosevelt Boulevard;

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

1. The City of Key West will enter into a contract with a construction contractor to mill, resurface and stripe the full width of Eaton Street from the west side of White Street to the east side of Simonton Street. The work will include paving 2 foot turnouts at each cross street. The City's Contractor will mill 2 inches and construct a leveling course and surface course for a total 2 inches of asphalt.
2. The Work will be performed in accordance with Monroe County road paving standards.
3. Monroe County will reimburse the City of Key West for 50% of the cost to mill, pave and stripe the road up to a not to exceed maximum amount of \$176,903.23.
4. The City will submit a copy of the construction contract including a schedule of values upon execution of the contract. Requests for reimbursements will include copies of all contractor pay applications, evidence of payment by the City, and releases of liens from the contractor(s).
5. The contract for construction will be between the City of Key West and its Contractor; Monroe County may monitor the work but is not a party to the contract.

6. This agreement in no way relieves or alters the City's liability or responsibility regarding its utility trenches and future subsidence related thereto nor does this alter the County's liability or responsibility regarding maintenance of the road.

7. This Agreement shall become effective immediately upon execution.

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 for 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 CITY does hereby agree to defend, indemnify and hold the COUNTY, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the CITY or any third party vendor contracted by the CITY in connection with this Agreement.

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 Building
1100 Simonton Street
Key West, Florida 33040

With a copy to: Suzanne Hutton, Esq.
Monroe County Attorney's Office
P.O. Box 1026
Key West, Florida 33041-1026

If to City: James Scholl
City Manager
P.O. Box 1409
Key West, Florida 33041

With a copy to: Shawn Smith, Esq.
City Attorney
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.

15. Attorneys 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 the 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. 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.

17. 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.

18. Nonassignability.

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

19. Severability.

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

20. Independent Contractor.

The CITY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractor and not agents or employees of the COUNTY 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.

21. 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.

22. Funding.

The parties agree that the COUNTY's responsibility under this Agreement is to provide funding only.

23. Survival of Provisions.

Any terms or conditions of either 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.

24. 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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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

BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA

BY: _____
Mayor/Chairperson

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

BY: _____
Deputy Clerk

BY: _____
ATTORNEY'S OFFICE

THE CITY OF KEY WEST, FLORIDA

Craig Cates, Mayor

ATTEST:

Cheri Smith
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALALITY FOR THE USE
AND RELIANCE OF THE CITY OF KEY WEST, FLORIDA ONLY:

BY: _____
City Attorney