

**INTERLOCAL AGREEMENT
BETWEEN
MONROE COUNTY, FLORIDA
AND THE CITY OF KEY WEST, FLORIDA
FOR
MOBILE LiDAR SERVICES**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into this ___ day of _____, 2022, pursuant to Section 163.01, Florida Statutes, between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 ("County"), and the City of Key West, a municipal corporation of the State of Florida, ("City"). The County and City are hereinafter collectively referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the County and the City are authorized to enter into this Agreement and implement its provisions pursuant to Section 163.01, Florida Statutes, as amended, which permits local government units to make the most efficient use of their powers by enabling them to cooperate with each other for mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that accords best with geographic, economic, and other factors influencing the needs and development of local communities; and

WHEREAS, in August 2021, Monroe County, on behalf of the five municipalities within Monroe County, issued a Request for Proposals (RFP) seeking proposals from experienced firms interested in providing engineering survey data collection using mobile scanning technologies and data preparation services using multiple kinematic terrestrial *light imaging distance and ranging* (LiDAR) scanners for data capture from a vehicle driving along the roadway while simultaneously recording positional data using a Global Positioning System (GPS) and inertia measurement units (IMU), and cameras, and other ground-based, land-based or aerial LiDAR methods ("Project"); and

WHEREAS, the data cloud collected will contain highly accurate 3-dimensional (3D) locations of topographic features of the roadway and associated features, and will be used to determine road elevation needs and to support grant applications; and

WHEREAS, Monroe County has agreed to manage the work ("Work") conducted during this Project, and the LiDAR will only be conducted on roads within the five municipalities. The road elevation data collected during this project will be added to LiDAR data collected in Monroe County previously. The expenditure of public funds therefore serves a public purpose because the work conducted will provide necessary survey data for road elevation planning in the five municipalities to address sea level rise issues; and

WHEREAS, the mobile LiDAR survey collection and gathering and LiDAR quality control review Work for the CITY is projected to cost \$284,584.00 and will be fully funded by the CITY; and

WHEREAS, it is necessary for the Parties to enter into this Agreement in order to spell out the rights and responsibilities of the Parties under this Agreement including the financial responsibilities to pay for Work associated with this Project.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which is acknowledged by both of the Parties, and pursuant to Section 163.01, et. seq., Florida Statutes, the Florida Interlocal Cooperation Act of 1969, the Parties hereto agree as follows:

SECTION 1. RECITALS.

The foregoing recitals are true and correct and are hereby incorporated in this Agreement by reference.

SECTION 2. TERM AND TERMINATION.

The term of this Agreement shall run from the date on which the Agreement is executed by all of the Parties (“Effective Date”) and shall continue in full force and effect until the Parties have satisfied all of their obligations under this Agreement, unless terminated sooner as provided herein (“Term”). This Agreement is subject to annual appropriation by the governing boards of each of the Parties.

In the event that funding from any source used to pay for the Work is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement but prior to completion of the Agreement, either party may terminate the Agreement, subject to renegotiation under new funding limitations and conditions.

SECTION 3. RESPONSIBILITIES OF THE PARTIES.

A. Each Party to this Agreement shall designate an individual who may be designated by title or position to oversee and administer the Party’s participation in this Agreement. The Parties’ initial Administrators shall be the following individuals:

For Monroe County:
Rhonda Haag
Director Sustainability and Projects
102050 Overseas Highway, Ste. 246
Key Largo, FL 33037
Bus: (305) 453-8774
Haag-rhonda@monroecounty-fl.gov

For the City:
Alison Higgins
Sustainability Coordinator
1300 White Street
Key West, FL 33040
Bus: (305) 809-3726
ahiggins@cityofkeywest-fl.gov

Either Party may change its Administrator at any time by delivering written notice of such Party's new Administrator to the other Party.

B. The Scope of Services for Work to be performed for this Project is as shown in the Wood mobile LiDAR survey contract attached hereto as Exhibit A to this Agreement, and the WSP USA, Inc. LiDAR survey review contract attached as Exhibit B to this Agreement. By entering into this Agreement, each Party agrees that it will comply with all terms and conditions.

C. Monroe County shall have overall responsibility for direction of any Work for the Project. If at any time any City member directs work to be performed by any contractor chosen to perform Work on the Project, the City shall be responsible for full payment of that Work, including if necessary, reimbursement to the County for such Work. The County shall provide the deliverables to the City indicating the Work that has been performed. The County shall have sole responsibility for direction of Work performed under this Project.

D. The project period under this Agreement is one year. The total budget for the Project is Five Hundred Seventy Two Thousand Dollars and No Cents (\$572,000.00). The City’s share of the Project is Two Hundred Eighty-Four Thousand Five Hundred Eighty-Four Dollars (\$284,584.00). The total budget is split amongst the municipalities as shown below:

MUNICIPALITY	MOBILE LIDAR	LIDAR REVIEW	TOTAL
Islamorada	\$115,981	\$ 6,105	\$122,086
Layton	\$4,586	\$ 185	\$ 4,771
Marathon	\$145,101	\$ 5,180	\$150,281

Key Colony Beach	\$10,223	\$ 555	\$ 10,778
Key West	\$278,109	\$ 6,475	\$284,584
TOTAL	\$554,00	\$18,500	\$572,500

E. After issuance of the RFP for the mobile LiDAR survey services and receipt of proposals submitted by vendors in response to the RFP, and after considering the recommendation of a selection committee convened to consider proposals with representatives from the Cities, the County hired Wood Environment & Infrastructure Solutions, Inc. as the contractor ("Contractor") to perform the Work required for the Project. The County also hired WSP USA Inc. to perform mobile LiDAR quality assurance and quality control ("QAQC") work. Throughout the Term of this Agreement, the Contractor will submit invoices to the County, with copies to the Cities, for the Work performed, up to the amounts shown above. The invoice shall show a breakdown of Work performed in each City.

F. Following receipt of the invoice from the Contractor, the County shall make payment to the Contractor in accordance with the Florida Local Government Prompt Payment Act.

G. Within ten (10) calendar days following receipt of the invoice from the Contractor, the City shall provide an electronic funds transfer (EFT) to deposit funds with the County in an amount necessary to pay 100% of amount of the invoice for Work performed in the City.

J. The County understands that the only work allowed for this Project is work approved for coverage by the City's Grant Agreement with FDEP. All amendments to the City's portion of the LiDAR work requires the prior written approval of the City.

K. By entering into this Agreement, each Party certifies that it registers with and uses the EVerify system for applicable employees, contractors and subcontractors, as required by F.S. 448.095 and federal Executive Order 13465.

SECTION 4. RECORDS – ACCESS AND AUDITS.

A. Both Parties shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of seven (7) years from the termination of this agreement or for a period of three (3) years from the date of submission of the final expenditure report in accordance with 2 CFR § 200.333, whichever is greater. Each Party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other Party to this Agreement for public records purposes during the term of the Agreement and for four (4) years following the termination of this Agreement. If an auditor employed by the County determines that monies paid to the City pursuant to this Agreement were spent for purposes not authorized by this Agreement, the City shall repay the monies together with interest calculated pursuant to Sec. 55.03, of the Florida Statutes, running from the date the monies were paid by the County.

B. The Parties shall allow public access to all records subject to the provisions of Chapter 119, Florida Statutes, and the Constitution of the State of Florida and which have been made or received by either Party in conjunction with this Interlocal Agreement.

SECTION 5. NONDISCRIMINATION.

The Parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any Party, effective the date of the court order. The Parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating

to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

SECTION 6. GOVERNING LAW, VENUE.

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.

SECTION 7. SEVERABILITY.

If any provision or part of a provision of this Agreement is found by a court or other authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Agreement and the remaining provisions to continue in full force and effect. The Parties shall, in this event, seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable.

SECTION 8. CODE OF ETHICS.

The Parties agree that officers and employees of the City and County required to comply with the standards of conduct for public officers and employees as delineated in Section 112.311, et seq., Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

The County and City each warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. Each Party further warrants that it has not employed, retained or otherwise had act on its behalf any former county officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 as amended by Ordinance 020-1990 or any county officer or employee in violation of Section 3 of Ordinance No. 010-1990. For the breach or violation of the provision, each Party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration

SECTION 9. AUTHORITY TO EXECUTE, EXECUTION IN COUNTERPARTS, EXECUTION BY ELECTRONIC SIGNATURES.

The persons signing below represent and warrant that each possesses the requisite authority to execute this Agreement and to bind his respective entity through his signature. This Agreement may be signed in counterparts.

In accordance with Monroe County Ordinance No. 005-2018, an electronic signature is equally valid as a hard copy or wet signature.

SECTION 10. NOTICE.

Whenever any Party desires to give notice to the other, it must be given by written notice, either by registered first class U.S. mail, return receipt requested, or by certified mail, and sent to:

For the County:
Roman Gastesi
Monroe County Administrator
1100 Simonton St.
Key West, FL 33040

For the City:
Patti McLauchlin, City Manager
City of Key West
1300 White Street
Key West, FL 33040

SECTION 12. ENTIRETY OF AGREEMENT.

This Agreement constitutes the entire agreement between the County and the City, and supersedes all proposals, prior agreements, and all other communication between the Parties in relation to the subject matter covered by this Agreement.

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.

SECTION 13. 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.

SECTION 14. NONASSIGNABILITY

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

SECTION 15. 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 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.

SECTION 16. 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.

SECTION 17. 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.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their Authorized Officers and have affixed their corporate seals hereon.

(SEAL)

Attest: KEVIN MADOK, CLERK

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**

By:

As Deputy Clerk

By: _____
David Rice, Mayor

Date:

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND
RELIANCE OF MONROE COUNTY BOARD OF COUNTY
COMMISSIONERS ONLY:**

CYNTHIA L. HALL, ASSISTANT COUNTY ATTORNEY

(SEAL)

Attest: CHERI SMITH, CITY CLERK

CITY OF KEY WEST

By: _____ By: _____
Patti McLauchlin, City Manager

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND
RELIANCE OF THE CITY OF Key West, FLORIDA ONLY:**

SHAWN D. SMITH, CITY ATTORNEY