

**INTERLOCAL AGREEMENT  
BETWEEN THE  
FLORIDA KEYS AQUEDUCT AUTHORITY  
AND  
THE CITY OF KEY WEST**

**THIS INTERLOCAL AGREEMENT** is entered into by and between the Florida Keys Aqueduct Authority (“Authority”) and the City of Key West, Florida, each of which is an independent, existing entity serving as a public agency under the laws of the State of Florida.

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

**WHEREAS**, the City of Key West, is a Florida municipality (“City”).

**WHEREAS**, the “Authority” and the “City” desire to enter into an Interlocal Agreement whereby the Authority will provide roadway asphalt restoration within the roadway of the City of Key West.

**NOW, THEREFORE**, in consideration of the mutual covenants, representations and promises set forth in this Agreement and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the “Authority” and the “City” hereby agree, stipulate, and covenant as follows:

**ARTICLE I  
DEFINITIONS**

**WORDS AND TERMS.** Words and terms used herein shall have the meanings set forth below:

“**Agreement**” means this Interlocal Agreement.

“**Authority**” means the Florida Keys Aqueduct Authority.

“**Authorized Representative**” means the official of the “Authority” or the “City” authorized by ordinance or resolution to sign documents of the nature identified in this Agreement.

“City” means the City of Key West.

“Contractor” means Lanzo Construction Co.

## ARTICLE II INTERLOCAL AGREEMENT

**SECTION 2.01** PURPOSE OF INTERLOCAL AGREEMENT. The purpose of this Agreement is to establish a funding mechanism for the following described project:

The “Authority” shall provide the contract (see attached) for roadway asphalt restoration (approx. 10,000 lf) within the of City of Key West which is receiving water pipeline upgrades and roadway restoration on College Road. Lanzo Construction was awarded the contract with a total cost of \$689,280. Funding shall be provided by the “Authority” and reimbursed by the “City” to the “Authority” for equal shares (50/50) of actual cost.

It is understood and agreed that both “Authority” and “City” representatives will participate in a visual inspection prior to the commencement of asphalt restoration operations to determine that all portions of the roadway(s) listed above remain in acceptable condition for paving. Any noted deficiencies will be corrected by Contractor forces within 15 calendar days of the inspection date at no cost to Authority or City. The “Authority” will specify in its contract with its Contractor that the asphalt overlay will meet all applicable requirements imposed by law. Without limiting the generality of the foregoing, the contract will specify that the restoration will meet the requirements identified in Scope of Work below. The “Authority” will direct the Contractor to perform the work and will be responsible for monitoring the progress of the work, review contractors traffic control and final inspection of the work upon completion. The “Authority” will notify the “City” at least seven calendar days before commencement of the work, and at least seven days prior to final inspection. The “City” may have a representative present at the final inspection and approval of the work.

**Scope of work** will consist of approximately 10,000 lf of full roadway milling and asphalt restoration to include thermoplastic striping. The work includes but is not limited to 2-inch milling and installing new 2” Type S-I asphalt overlay, where indicated on the plans. This includes multiple mobilization (if required), labor, materials, equipment required to mill existing pavement

and to construct new Type S-I asphaltic surface overlay with tack coat, including: adjust the valve boxes (where needed), rims, inlets, or other fixtures to final grade, transition to existing pavement, tack coating, compaction, rolling, brooming and any other work required to complete the work. Detail (3b), of the FCAA Minimum Design and Construction Standards and Specifications, shall be used. Asphalt Milling: milling shall be 1 1/2" to 2" in depth (to include disposal) and asphalt restoration shall be of Asphaltic Concrete Type S-I/ Type SP-12.5 (2" Thick overlay) (Traffic Level C). Work to be performed on the entire width of College Road from north to south intersections with US-1.

The work includes but is not limited to furnishing and installing all permanent pavement markings, bike lane markings and stop conditions and reflective pavement markers that are to replace the pavement markings based on the pavement replacement work. This includes all stop conditions and all pavement markings shall be thermoplastic.

The work scope described in this ILA is to be bid as "Lump Sum" with the "Authority" and the "City" to assume equal shared cost of said lump sum.

It is understood and agreed to by "Authority" and "City" that reimbursement for the completed work outlined above will be payable to the Authority within thirty (30) calendar days of receipt by the "City" of final invoicing by the "Authority".

### **ARTICLE III**

#### **GENERAL PROVISIONS**

**SECTION 3.01** ASSIGNMENT OF RIGHTS UNDER AGREEMENT. Neither the "Authority" nor the "City" shall have the power to assign rights or obligations created by this Agreement to any third party without the prior written consent of the other party.

**SECTION 3.02** AMENDMENT OF AGREEMENT. This Agreement may be amended only in a writing signed by an Authorized Representative of each of the parties hereto.

**SECTION 3.03** SEVERABILITY. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be

enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The “Authority” and “City” agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

**SECTION 3.04** ATTORNEY'S FEES AND COSTS. The “Authority” and “City” agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall to the extent allowed by law be entitled to reasonable attorneys' fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney’s fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe County. The recovery of attorney fees provided herein shall be subject to the limitations provided by Section 768.28 Florida Statutes.

**SECTION 3.05** ADJUDICATION OF DISPUTES OR DISAGREEMENTS. The parties 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 no resolution can be agreed upon within thirty (30) days after the first meet and confer session, the issue or issues shall be discussed at a joint public meeting of the governing bodies of the parties. If the issue or issues are still not resolved to the satisfaction of both parties, then either shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law; provided, however, the unresolved issue or issues shall be submitted to mediation prior to the institution of any administrative or legal proceeding.

**SECTION 3.06** 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 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 794), which prohibits discrimination on the basis of handicap; (3) The Age Discrimination Act of 1975, as amended (42 U.S.C. ss. 6101-6107), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office And Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse And Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527, (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Florida Civil Rights Act of 1992, (Chapter 760, Florida Statutes, and Section 509.092, Florida Statutes), as may be amended from time to time, relating to nondiscrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

**SECTION 3.07** 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, the parties agree to participate, to the extent reasonably 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. The parties specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement or any Attachment or Addendum to this Agreement.

**SECTION 3.08** COVENANT OF NO INTEREST. The Parties covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

**SECTION 3.09** CODE OF ETHICS. The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, 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.

**SECTION 3.10** NO SOLICITATION/PAYMENT. The Parties 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. For the breach or violation of this provision, the each party agrees that the other 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 3.11** PUBLIC ACCESS TO RECORDS. The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

**SECTION 3.12** NON-WAIVER OF IMMUNITY. Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the parties 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 a party be required to contain any provision for waiver.

**SECTION 3.13** LEGAL OBLIGATIONS; NON-DELEGATION OF DUTIES. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any other participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of either party, except to the extent permitted by law.

**SECTION 3.14** NON-RELIANCE BY NON-PARTIES. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the “Authority” nor the “City” or any agent, officer, or employee of each shall have the Authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

**SECTION 3.15** NO PERSONAL LIABILITY. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

**SECTION 3.16** SECTION HEADINGS. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

**SECTION 3.17** GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the parties agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

## **ARTICLE IV**

### **EXECUTION OF AGREEMENT**

**SECTION 4.01** COUNTERPARTS. This Agreement shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

**SECTION 4.02** SUPERSEDES OTHER AGREEMENTS. The parties agree that this Agreement represents their mutual agreement and replaces and supersedes any prior agreements, understandings, or communications on the subject of the Agreement, whether written or oral.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on their behalf by the Executive Director of the “Authority” and the City Manager of the “City”.

**Authority Board Approved:**

**FLORIDA KEYS AQUEDUCT AUTHORITY**

By: \_\_\_\_\_  
Kirk Zuelch, Executive Director

ATTEST:

\_\_\_\_\_  
Clerk

**City of Key West, Florida**

By: \_\_\_\_\_  
City Manager, City of Key West, Florida

ATTEST:

\_\_\_\_\_  
Clerk