

**CITY OF KEY WEST**

**MASTER AGREEMENT TO FURNISH  
CONSTRUCTION ENGINEERING AND  
INSPECTION SERVICES  
LAP SIDEWALK PROJECT**

**Safe Routes to School Poinciana Elementary School Sidewalk Installation**

**Project. No. EN 1101**

**FDOT LAP Agreement FM No. 425854-1**

**CITY OF KEY WEST**

**JUNE 2012**

**Consultant Engineer:**

**AMEC Environment & Infrastructure, Inc.**

**1105 Lakewood Parkway, Suite 300**

**Alpharetta, Georgia 30009**

# **Master Agreement to Furnish Transportation Design, Engineering and Construction Engineering Services Consulting to the City of Key West**

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This AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, between the City of Key West, a municipal corporation of the State of Florida, whose address is 3126 Flagler Avenue, Key West, Florida 33040, hereafter referred to as the "CITY" and AMEC Environment & Infrastructure, Inc., a Nevada corporation, whose address is 1105 Lakewood Parkway, Suite 300, Alpharetta, Georgia 30009, hereafter referred to as the "ENGINEER". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

## **Article 1. Scope of Services**

ENGINEER's primary responsibilities include, but are not limited to, providing the necessary equipment, labor and materials for the performance of construction Engineering and Inspection Services to conform with FDOT construction, engineering and inspection procedures for Local Agency Programs (LAP) which the ENGINEER is qualified to provide and which the CITY authorizes ENGINEER to undertake. These services include: project administration, daily inspection, project documentation, submittal review, field engineering, materials testing and specialty services for construction improvements on specified federally funded roadway transportation projects.

- 1.1 The ENGINEER shall provide the above-mentioned Scope of Services to the CITY for the project specifically identified as Construction Engineering and Inspection Services LAP Sidewalk Project Safe Routes to School Poinciana Elementary School Sidewalk Installation, Project. No. EN 1101, FDOT LAP Agreement FM No. 425854-1 and any other tasks as assigned under this scope.

ENGINEER shall provide the above-mentioned Scope of Services as tasked by the CITY for the project specifically identified in RFQ No. 12-001 and any other tasks as assigned under this scope and ENGINEER's response dated April 11, 2012. The terms that the ENGINEER agrees to follow are set forth as follows:

- 1.2 The specific services to be provided by the ENGINEER for such services will be as mutually agreed to in separate Task Orders to this AGREEMENT. Each Task Order when fully executed shall become a supplement to and a part of this AGREEMENT.

No work shall be performed without issuance of a task order.

- 1.3 Unless otherwise indicated in a Task Order, execution of a Task Order by the CITY shall constitute authorization for the ENGINEER to proceed with the services enumerated in the Task Order. Each Task Order will be supported by appropriate cost and pricing data and such other documentation as required by the CITY.
- 1.4 Task Orders shall be numbered consecutively. Each Task Order shall include a description of the scope of services, time of completion, total estimated costs of services, and method of compensation. Additional information shall be provided to the CITY if required by the CITY or pursuant to any applicable law, rule, or regulation. Amended Task Orders shall include substantially the same information and be submitted to the CITY for approval.

1.5 The CITY may make or approve changes within the general Scope of Services in any Task Order. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to the Task Order.

1.6 A task order may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to ENGINEER. No further work will be performed by ENGINEER upon receipt of this notice unless specifically authorized by the City of Key West Engineering Services Senior Project Manager.

On termination, the ENGINEER will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the Task Order. The CITY will not pay for anticipatory profits.

1.7 The ENGINEER will provide ADDITIONAL SERVICES within the scope of services contained in Article 1 above mutually agreed to and authorized by the CITY in writing but not specifically described and authorized by a Task Order.

## Article 2. Compensation

The type of compensation method which shall be used to pay for the ENGINEER's services is limited to the following:

- A. Hourly Per Diem Rates are provided in Attachment A to this Agreement. Per Diem Rates are those hourly rates charged for work performed on the PROJECT by ENGINEER's employees of the indicated classifications and include all salaries, overheads, and profit, but do not include allowances for Direct Expenses. These rates are not subject to fiscal year adjustments.
- B. A total budgetary amount to include reimbursable expenses and direct expenses for all services referred to in paragraph 1.1 above will be established as twenty-five thousand, six hundred, fifty-nine dollars (\$25,659.00). This budgetary amount shall not be exceeded unless prior written approval is provided by the CITY. ENGINEER shall complete the work within the budget and will keep CITY informed of progress toward that end, so that the budget or work effort may be adjusted, if found necessary.

FM #	Project #	Project	CEI Budget
425854-1	EN 1101	Safe Routes to School Poinciana Elementary School Sidewalk Installation	\$25,659.00
<b>Total</b>			<b>\$25,659.00</b>

- C. The ENGINEER is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is CITY obligated to pay the ENGINEER beyond these limits.
- D. When any budget has been increased, the ENGINEER's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.

- E. Subject to the budgetary limitation contained in paragraph 2.B above, the CITY shall pay for reimbursable expenses invoiced at the actual cost of expenditures incurred by the ENGINEER. Direct expenses are those necessary costs and charges incurred for the PROJECT including, but not limited to: 1) the costs of express courier charges, mail, supplies and field equipment incurred directly for the PROJECT, printing and reproduction of drawings, documents, and other material, laboratory tests and analyses, and subcontracts and other outside services; and 2) special health and safety requirements of OSHA and telecommunication services. ENGINEER is obligated to minimize all expenses incurred in the execution of this AGREEMENT. Expenditures for lodging, travel, and meals shall not constitute reimbursable expenses or Direct Expenses.
- F. All reimbursement requested must be supported by a receipt and shall be subject to Florida Statute rates applicable the allowable reimbursement.

### **Article 3. Invoicing and Payment**

Monthly invoices will be issued by the ENGINEER for all work performed during the preceding month under this AGREEMENT, as prescribed in Article 2. Invoices are to be submitted and paid in accordance with the Florida Prompt Payment Act.

### **Article 4. Obligations of the ENGINEER**

#### **4.1. General**

The ENGINEER will serve as CITY'S professional representative under this AGREEMENT, providing professional engineering and inspection and related consultation and advice and furnishing customary services incidental thereto.

#### **4.2. Standard of Care**

The standard of care applicable to the ENGINEER's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time said services are performed.

#### **4.3. Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics and the location of underground features may vary significantly between successive test points and sample intervals and at locations other than where observations, explorations, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

#### **4.4. ENGINEER's Personnel at Construction Site**

- A. The presence or duties of the ENGINEER's personnel at a construction site do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and

completing all portions of the construction work in accordance with the Contract Documents and any health or safety precautions required by such construction work, except as may be specified pursuant to written agreement. ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity(s) or any other persons at the site except the ENGINEER's own personnel.

- B. The presence of the ENGINEER's personnel at the construction site is for the purpose of providing the CITY a greater degree of confidence that the completed work will conform generally to the Contract Documents and that the integrity of the design concept, as reflected in the Contract Documents, has been implemented and preserved by the construction contractor(s). ENGINEER neither guarantees the performance of the construction contractor(s) nor assumes responsibilities for Contractor'(s) failure to perform their work in accordance with the Contract Documents.
- C. Construction sites include places of manufacture for materials incorporated into the construction work. Construction contractors include manufacturers of materials incorporated into the construction work.

#### 4.5. Opinions of Cost, Financial Considerations, and Schedules

In providing opinions of construction cost, financial analyses, economic feasibility projections, and schedules for design projects, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility or schedules will not vary from ENGINEER's opinions, analyses, projections, or estimates.

#### 4.6. Construction Progress Payments

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, selective sampling and field measurement that the work has progressed to the point indicated. Such recommendations represent that detailed examinations and reviews have been made by the ENGINEER to ascertain that the construction contractor has completed the work in accordance with the Contract Documents.

#### 4.7. Access to ENGINEER's Accounting Records

The ENGINEER will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. These records will be available to CITY during the ENGINEER's normal business hours for a period of 1 year after the ENGINEER's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The CITY may only audit accounting records applicable to cost-reimbursable and cost plus fixed fee type compensation.

#### 4.8 ENGINEER's Insurance

Before commencing work as specified in the contract, ENGINEER shall obtain at its own cost and expense the following insurance from insurance companies authorized in the State of Florida, with an A.M. Best rating of A-:VI or higher, and shall provide evidence of such insurance to the City. The policies or certificates shall provide thirty (30) days prior to cancellation notices of same, and be shall be given to the City by registered mail, return receipt requested, for all of the required insurance policies stated below. All notices shall name the ENGINEER and identify the agreement or contract number. The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees are to be added as "additional insureds" as respects liability arising out of activities performed by or on behalf of the Engineer/Consultant.

ENGINEER shall maintain limits no less than those stated below throughout this AGREEMENT of the following insurance:

1. **Worker's Compensation** Statutory, in compliance with the Compensation Law of the State of Florida.
2. **Commercial General Liability** Insurance with a minimum limit of liability per occurrence of One Million (\$1,000,000.00) Dollars with an annual aggregate of no less than Two Million (\$2,000,000.00) Dollars for bodily injury and property damage. This insurance shall include Commercial Form; Premises and/or Operations; Underground, Explosions, and Collapse Hazard (if excavation, blasting, tunneling, demolition or rebuilding of any structural support of a building is involved or explosion hazard exists.); Products/Completed Operations, Independent Contractors and Consultants (if any part of the Work is to be subcontracted); Broad Form Property Damage; Personal Injury, and Contractual Liability endorsement; and Products and/or Completed Operations.

Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the ENGINEER or of any of its employees, agents, or subcontractors, with \$2,500,000 per occurrence and in the aggregate.

3. **Business Automobile Liability** Insurance with a minimum limit of liability per occurrence of One Million (\$1,000,000) Dollars for bodily injury and property damage. This insurance shall include for bodily injury and property damage coverage for owned automobiles, hired automobiles, non-owned automobiles, and location of operation shall be "All Locations."
4. **Excess/Umbrella Liability** shall have a minimum limit of Two Million (\$2,000,000) Dollars per occurrence with an annual aggregate of Two Million (\$2,000,000) Dollars. This coverage is to be following form and include the Comprehensive General Liability and Automobile Liability Policies.
5. **Professional Liability/Errors and Omissions** Insurance with a minimum limit of One Million (\$1,000,000) Dollars.

A full copy of this policy is to be included with the signed agreement. Coverage forms for this type of policy vary greatly from carrier to carrier, thus making it

important to review coverage and exclusions to insure proper coverage is being provided specific to the project.

In addition, it is understood if at any time any of the policies required by City shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the City, the ENGINEER shall obtain a new policy, submit the same to the City for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of the ENGINEER to furnish, deliver and maintain such insurance as above provided, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of the ENGINEER to take out and/or maintain any required insurance shall not relieve the ENGINEER from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the ENGINEER concerning indemnification.

#### 4.9 Subconsultants

The ENGINEER may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY, which consent may be withheld for any reason whatsoever.

### **Article 5. Obligations of the City**

#### 5.1 City-Furnished Data

The CITY will provide to the ENGINEER all data in the CITY'S possession relating to the ENGINEER's services on the PROJECT including, but not limited to, information on pre-existing conditions. The ENGINEER will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

#### 5.2 Access to Facilities and Property

The CITY will make its facilities accessible to ENGINEER, as required for ENGINEER'S performance of its services and will provide labor and safety equipment as required by ENGINEER for such access. CITY will perform, at no cost to ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY'S facilities as may be required in connection with ENGINEER'S services, unless otherwise agreed to. CITY will be responsible for all acts of CITY'S personnel.

#### 5.3 Advertisements, Permits, and Access

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses, except those required by the bid documents, required by local, state, province, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER'S services or PROJECT construction.

#### 5.4 Timely Review

The CITY will examine ENGINEER'S studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner.

#### 5.5 Prompt Notice

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect in the work of the ENGINEER or construction contractor(s).

#### 5.6 Contractor Claims

A. CITY agrees to use its best efforts to include the following in all construction contracts with contractors not affiliated with ENGINEER:

1. Provisions of Article 4.4, Engineer's Personnel at Construction Site.
2. Provisions providing contractor indemnification of CITY and ENGINEER as additional insureds on the contractor's general liability insurance policy.

B. CITY will use its best efforts to require construction contractor(s) to name CITY and ENGINEER as additional insureds on the contractor's general liability policy.

#### 5.7. Exclusion of Contractor Claims

CITY agrees to use its best efforts to include the following clauses in all contracts with other construction contractors and equipment or material suppliers:

Contractors, subcontractors, and equipment and material suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, affiliated corporations, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed or required to be performed, unless construction contractors, subcontractors and equipment or material suppliers first gain the CITY's consent.

#### 5.8. City's Insurance

CITY will maintain property insurance on all pre-existing physical facilities associated in any way with the PROJECT.

#### 5.9 Services of ENGINEER

Unless this AGREEMENT is modified or terminated, the CITY will have the services specified in this AGREEMENT performed by the ENGINEER, employing ENGINEER's standard form and content of drawings, specifications, and Contract Documents, generally conforming to the standards, recommendations, and content of the Construction Specifications Institute (CSI) and Engineers Joint Contract Documents Committee (EJCDC), and subject to the CITY's review and approval.

#### 5.10 Litigation Assistance

The Scope of Services does not include costs of ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CITY. All such services required or requested of ENGINEER by CITY, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed under this AGREEMENT, and payment for such services shall be in accordance with Article 3, unless and until there is a finding by a court or arbitrator that ENGINEER's sole negligence caused CITY's damage.

## **Article 6. General Legal Provisions**

### **6.1 Agreement Period**

The duration of the agreement shall be for a period of two (2) years commencing from the effective date of this Agreement and until all items in the scope of services have been completed; or until terminated as provided herein, whichever occurs first.

### **6.2. Reuse of Project Documents**

Reports, drawings, specifications, documents and other deliverables of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for the project of the City. All specifications, plans and documents shall be made available on re-writable CD and are the property of the City of Key West. Reuse, change, or alteration on another project, by the CITY or by others acting on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk.

### **6.3 Force Majeure**

- A. The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER.
- B. In the event of a delay that results in additional costs to the ENGINEER, an appropriate increase in compensation and schedule will be authorized in writing.

### **6.4 Termination**

- A. This agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to ENGINEER. No further work will be performed by ENGINEER upon receipt of this notice unless specifically authorized by the Director/Senior Project Manager of General Services of the City of Key West.
- B. On termination, the ENGINEER will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the AGREEMENT. The CITY will not pay for anticipatory profits.

### **6.5 Suspension, Delay, or Interruption of Work**

- A. The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, or any other act or neglect of CITY or CITY's subcontractors, CITY will pay ENGINEER for work performed to date. An equitable adjustment in the PROJECT'S schedule and ENGINEER's compensation will be made as agreed to by both parties.
- B. In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

### **6.6 Third Party Beneficiaries**

- A. This Agreement gives no rights or benefits to anyone other than the CITY and ENGINEER and has no third party beneficiaries. ENGINEER's services are

defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the Project.

- B. All work products will be prepared for the exclusive use of CITY for specific application to the property described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of ENGINEER. Any unauthorized assignment of related work product shall be void and unenforceable.

#### 6.7 Indemnification

- A. The ENGINEER shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, property damage, losses, personal injuries, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of ENGINEER, its employees or agents, in the performance of this Agreement. Nothing herein is intended to waive the sovereign immunity afforded to CITY pursuant to Florida law, including section 768.28.
- B. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, ENGINEER shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The ENGINEER shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CITY whether performed by ENGINEER, or by persons employed or used by ENGINEER.

#### 6.8 Assignment

The ENGINEER shall not assign all or any part of this Agreement without the prior consent of the CITY by Resolution of the Key West City Commission, which consent may be withheld for any reason whatsoever.

#### 6.9 Jurisdiction

The law of the State of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

#### 6.10 Severability and Survival

- A. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- B. ARTICLES 4, 5, and 6 will survive termination of this AGREEMENT for any cause.

6.11 Attorney's Fees

In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder.

6.12 Local Hiring Preference

Per 23 CFR 635.117, local hiring preferences will not be allowed in this contract.

**Article 7. Schedules, and Signatures**

This AGREEMENT, including its Schedules, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, we, the parties hereto, execute below, each herewith subscribe the same this 2<sup>ND</sup> day of JULY, A.D., 2012.

**CITY OF KEY WEST**

By JKS Ball

Title CITY MANAGER

ATTEST:

Cheryl Smith

Clerk for the City of Key West

July 2, 2012  
Date

**ENGINEER: AMEC Environmental & Infrastructure, Inc.**

By [Signature]

Title Sr. Vice President

Date June 28, 2012

ATTACHMENT "A"

HOURLY PER DIEM RATES

<b>Categories</b>	<b>Per Diem Rate</b>
Principle	\$120.00
Project Manager	\$120.00
Senior Engineer	\$120.00
Project Engineer	\$100.00
Senior Technician	\$72.00
Senior Technician Over-time Rate	\$90.00
Laboratory Manager	\$65.00
Administrative/Clerk	\$40.00
Level II Asphalt Plant Inspector (10 hours per Lot Verification, min.)	\$65.00

CONCRETE/EARTHWORK/ASPHALT TESTING RATES

<b>Testing Description</b>	<b>Location of Service</b>	<b>Bill Rate</b>
Drilling Core of Asphalt, 4" dia.	Field Testing	\$30.00 per core
Concrete Slump Test	Field Testing	\$8.00
Concrete Temperature of Mix	Field Testing	\$8.00
Concrete Air Content	Field Testing	\$25.00
Concrete Cylinder Compression Strength	Laboratory	\$15 per cylinder
Asphalt Plant Extract: Asphalt Contents & Gradation	Laboratory	\$75.00
Asphalt Plant Asphalt Plant Bituminous Concentration, Theoretical Max. Specific Gravity (Rice Method)	Laboratory	\$75.00
Plant Sampled Asphalt Core: Bulk Specific Gravity/Density	Laboratory	\$30.00 per core
Field Sampled Asphalt Core: Bulk Specific Gravity/Density	Laboratory	\$75.00 each
Nuclear Gauge Field Density Test	Field Testing	\$18 per test, minimum 3 tests per trip