

**INTERLOCAL AGREEMENT
FOR REMEDIATION OF PESTICIDE CONTAMINATION OF FKAA OWNED OR
LEASED PROPERTIES ADJACENT TO FORMER MOSQUITO CONTROL SITE**

THIS INTERLOCAL AGREEMENT is made and entered into as of this ____ day of May 2021, between the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter the CITY), and The Florida Keys Aqueduct Authority, a public agency under the laws of the State of Florida, (hereinafter FKAA).

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

WHEREAS, the CITY and FKAA are currently planning a cooperative approach to remediate properties either owned by FKAA or leased by FKAA which properties lie immediately to the north and east of the former Monroe County Mosquito Control District Site which has been determined to have suffered pesticide contamination which has spread to the FKAA sites and:

WHEREAS, the CITY and FKAA would like to coordinate remediation and disposal of the contaminated soil and restoration of the properties for the purpose of obtaining a final site closure from the State of Florida Department of Environmental Protection (DEP); and

WHEREAS, the CITY and FKAA are in general agreement that it is in the public interest to enter into this agreement and to expedite the clean-up process as quickly as possible it is therefore covenanted and agreed:

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

1. Each party's scope of work are set forth below:

FKAA Responsibilities:

- Supplying all labor and equipment necessary for soil removal on the two parcels.
- FKAA will follow all health and safety protocols, as maintained by the FKAA's Safety and Training Manager, including the use of PPE vests, hard hats, safety boots, gloves, and other "Level D" or equivalent safety equipment.
- Removal of soil and placement within roll off storage containers provided by City.
- Utility coordination, including locating all existing utilities within the vicinity of the proposed excavation and providing notification of the proposed activities to those utilities.
- All liability regarding conducting this work in the vicinity of their underground and aboveground infrastructure.
- FKAA will not be liable for any damage that occurs on any adjacent properties.

- Backfill and compaction of clean imported fill around areas of removed soils.
- Ability to perform the excavation during the week of 5/25/21 to 5/28/21.
- Ability to return to the site should sampling indicate it is required.

City/Tetra Tech Responsibilities:

- Work Plan.
 - Up-Front Sampling to confirm limits.
 - Clearly marking the area to be excavated by the FKAA.
 - Provide location, on city-owned property, for storage of excavated material.
 - Design, construction and maintenance of a decontamination pad, on city-owned property, including 55-gallon drums for dewatering activities.
 - Demolition & replacement of the chain link fence, for access to storage area and decontamination pad.
 - Haul & dispose of contaminated soil to an acceptable location.
 - Post-excavation confirmation sampling.
 - Provision of clean imported fill (via the same trucks)
 - Well abandonment for both petroleum & pesticide wells.
 - Write-up, SAR Addenda, Construction Closure Report (CCR).
2. The Work will be performed in accordance with FKAA, City of Key West and Florida Department of Environmental Protection (DEP) standards.
 3. This Interlocal Agreement shall become effective immediately upon execution. It is anticipated that the Project completion will be reached in 2021.
 4. 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.
 5. 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.
 6. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the FKAA 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.

The scope of work

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CITY and the FKAA 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 FKAA or CITY be required to contain any provision for waiver.

7. 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 FKAA: Kerry Shelby
 Executive Director
 Florida Keys Aqueduct Authority
 1100 Kennedy Drive
 Key West, Florida 33040

With a copy to: Robert T. Feldman
 General Counsel
 1100 Kennedy Drive
 Key West, Florida 33040

If to CITY: Patti McLaughlin
 Interim City Manager
 City of Key West
 PO Box 1409
 Key West, Florida 33041

With a copy to: Shawn Smith
 City Attorney
 City of Key West
 PO 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.

8. Attorney's 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 trial and appellate levels. Subject to the limitations of Section 768.28 Florida Statutes as provided in paragraph 13 above.

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.

9. Adjudication of disputes or Disagreements

FKAA 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.

10. 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, FKAA 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. FKAA and CITY specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

11. 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 The Lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

12. 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.

13. **No Assignability.**

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

14. **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.

15. **Independent Contractor.**

The FKAA 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 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.

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.

17. **Funding.**

Except as set forth in this Agreement, the parties agree that the FKAA's responsibility under this Agreement is to primarily to provide funding relating to the FKAA's scope of work.

18. **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.

19. **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.

CITY OF KEY WEST, FLORIDA

FLORIDA KEYS AQUEDUCT AUTHORITY

By: _____
Mayor: Teri Johnston

By: _____
Chairman: J. Robert Dean

ATTEST:

City Clerk

(SEAL)