

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

THIS INTERLOCAL AGREEMENT is entered into by and between the Florida Keys Aqueduct Authority (hereinafter the “Authority”), and The City of Key West, (hereinafter the “City”), 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 (City) is a municipal corporation of the State of Florida; and

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

WHEREAS, the Authority construction project known as “Terminus Transmission Main Replacement” includes the replacement of water transmission pipe along White Street and requiring the partial repaving of White Street; and

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 parties agree as follows:

1. Authority will utilize its existing contract with a construction contractor to mill and resurface the full width of White Street from Fleming Street to Newton Street and install thermoplastic stop bar striping, as described in the Authority work order(s). Authority’s contractor will mill 2 inches and construct a surface course for a total of 2 inches of replacement asphalt.
2. City will reimburse the Authority 50% of the cost of the Work for half of the width of White Street, with respect to Authority work order(s). A not-to-exceed authorization will consider 50% of any possible contingencies.

3. Authority will submit a copy of the construction contract including a schedule of values upon execution of the contract. Requests for reimbursement will include copies of all contractor pay applications, evidence of payment by the Authority, and releases of liens from the contractor(s).
4. The contract for construction will be between Authority and its contractor; City and Authority may monitor the work but is not a party to the contract.

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.

“Contractor” shall mean person or persons, partnership, firm, or corporation who enters into the construction contract

..

“City” means the City of Key West, a municipality established under Florida Law.

ARTICLE II INTERLOCAL AGREEMENT

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

Resurfacing approximately 2123 square yards of asphalt pavement on White Street between Fleming Street and Newton Street.

ARTICLE III GENERAL PROVISIONS

SECTION 3.01 Upon the execution of this ILA by all parties The Authority will proceed with the paving of the White Street section as described above and, upon completion, invoice the City for their percentage share of costs incurred. Actual final cost will be determined based on the actual quantities at the unit prices for the Project as provided by the Authority.

SECTION 3.02 *ASSIGNMENT OF RIGHTS UNDER AGREEMENT.* Neither the “City” nor “Authority” 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 parties.

SECTION 3.03 *AMENDMENT OF AGREEMENT.* This Agreement may be amended only in a writing signed by an Authorized Representative of each of the parties hereto.

SECTION 3.04 *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 “City” and “Authority” 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 3.05 *ATTORNEY'S FEES AND COSTS.* The parties agree that in the event any cause of action or legal proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the parties shall be responsible for their own attorneys' fees, court costs, investigative, and out-of-pocket expenses, including 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. This provision shall be limited to the Sovereign Immunity limits of Section 768.26 Florida Statutes.

SECTION 3.06 *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 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.

SECTION 3.07 *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 VII of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination in employment on the basis of race, color, religion, sex, and 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 disabilities; 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.3601 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. 12101 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, disability, 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 hereto, or the subject matter of, this Agreement.

SECTION 3.08 *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 3.09 *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 3.10 *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 3.11 *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, each party agrees that the other parties 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 3.12 *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 3.13 *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 3.14 *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 3.15 *NON-RELIANCE BY NON-PARTIES.* No person or entity shall be entitled to rely upon any terms 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 “City” nor the “Authority” 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 3.16 *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 3.17 *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 3.18 *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 the 16th Judicial Circuit in and for Monroe County, Florida.

SECTION 3.19 *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 the CITY: Todd Stoughton
Interim City Manager
1300 White Street
Key West, Florida 33040

With a Copy to: Ronald J. Ramsingh
City Attorney
1300 White Street
Key West, Florida 33040

If to AUTHORITY: Greg Veliz
Executive Director
1100 Kennedy Drive
Key West, Florida 33040

With a copy to: Shawn Smith
Office of General Counsel
1100 Kennedy Drive
Key West, Florida 33040

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.

ARTICLE IV

EXECUTION OF AGREEMENT

SECTION 4.1 *DEFAULT.* 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. 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.

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.

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.

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.

SECTION 4.02 *FUNDING.* The parties agree that the City’s only responsibility under this Agreement is to reimburse the Authority for its agreed upon share of the repaving of White Street between White Street and Newton Street.

SECTION 4.03 *COUNTERPARTS.* This Agreement shall be executed in two 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 4.04 *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’s Mayor” .

(SEAL)

CITY OF KEY WEST, FLORIDA

ATTEST:

Clerk

By: _____ *RR*
Mayor

Authority Board Approved:

FLORIDA KEYS AQUEDUCT AUTHORITY

ATTEST:

Clerk

By: _____
Greg Veliz, Executive Director