

**INTERLOCAL AGREEMENT  
FOR ENGINEERING DESIGN, PERMITTING AND CONSTRUCTION SERVICES  
FOR 1<sup>ST</sup> STREET/BERTHA STREET (KEY WEST) ROAD IMPROVEMENT PROJECT**

THIS INTERLOCAL AGREEMENT is made and entered into as of this 23<sup>rd</sup> day of January 2019, between Monroe County, a political subdivision of the State of Florida, (hereinafter the COUNTY), and the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter the CITY).

WHEREAS, 1<sup>st</sup> Street and Bertha Street are COUNTY maintained roads within the municipal limits of the CITY, and

WHEREAS, in accordance with Florida Statutes, the COUNTY is responsible for the maintenance of the roadway from curb face to curb face and associated drainage of the road and the CITY is responsible for the maintenance of physical improvements within the right of way including but not limited to sidewalks, traffic control devices and utilities operated by the CITY, and

WHEREAS, the COUNTY is currently under contract in the engineering design and permitting phase of the 1<sup>st</sup> Street/Bertha Street Road Improvement Project (Project) with EAC Consulting, Inc. (Consultant) and the CITY has requested sidewalk and traffic control improvements to be added to the COUNTY's Consultant contract as outlined in "Attachment A"; and

WHEREAS, the CITY will be responsible for reimbursing the COUNTY for the costs of the additional Consultant design as defined in "Task 6 of Attachment A" (CITY scope of work) and the portion of the construction costs associated with the CITY scope of work to be determined during the COUNTY's construction bid phase of the project;

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

1. The COUNTY will enter into Amendment 1 (Task 6) to the contract with EAC Consulting, Inc. (EAC) for Engineering Design and Permitting Services for 1<sup>st</sup> Street/Bertha Street Roadway Improvement Project, specifically for the requested CITY scope of work.
2. The Work will be performed in accordance with COUNTY and Florida Department of Transportation (FDOT) standards.
3. The CITY will reimburse the COUNTY 100% of the CITY scope of work in the amount of \$20,495.00 as defined in EAC Task 6 of Attachment A. The COUNTY will submit a copy of the Amendment 1 to the EAC Engineering Design and Permitting Services contract for 1<sup>st</sup> Street/Bertha Street Roadway Improvement Project, to the CITY with the request for reimbursement and will include copies of all consultant pay applications, evidence of payment to the consultant by the COUNTY.

4. Additionally, in the future construction phase of the project, the CITY will reimburse the COUNTY for 100% of the cost associated with the CITY scope of work as determined by the construction pay items and unit costs that are directly applicable to that work. The CITY will also pay a percentage share of the mobilization and maintenance of traffic costs that is proportional to the CITY's direct pay items of the total cost of construction, which will be itemized in the schedule of values. The CITY will also pay any change order requested and approved by the CITY.

The COUNTY will make requests for reimbursements to the CITY based upon the Consultant's invoices and construction contractor's pay applications. The COUNTY will include copies of all contractor pay applications, evidence of payment to the construction contractor by the COUNTY, and releases of liens from the contractor and all subcontractors (if applicable).

5. The separate contracts for engineering design and construction will be between the COUNTY and its Consultant (EAC) and Contractor (to be determined); the CITY may monitor the work but is not a party to the contract.

6. This Interlocal Agreement in no way relieves the CITY from its obligation to maintain any of the items for which it is responsible, nor does this alter the COUNTY's liability and responsibility regarding maintenance of the roadway from curb face to curb face and associated drainage of the road. This Agreement shall not alter the CITY or COUNTY'S maintenance responsibilities as proscribed by law.

7. This Interlocal Agreement shall become effective immediately upon execution. It is anticipated that the Project completion will be reached in 2020.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the COUNTY 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.

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

**14. 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 COUNTY: Roman Gastesi, Jr.  
County Administrator  
Monroe County Historic Gato Bldg.  
1100 Simonton Street  
Key West, Florida 33040

With a copy to: Christine Limbert- Barrows  
Assistant County Attorney  
P.O. Box 1026  
Key West, Florida 33041-1026

If to CITY: James Scholl  
City Manager  
City of Key West  
P.O. Box 1409  
Key West, Florida 33041

With a copy to: Shawn Smith, Esq.  
City Attorney  
City of Key West  
P.O. Box 1409  
Key West, Florida

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.

**15. 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.

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.

**16. Adjudication of disputes or Disagreements**

COUNTY 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.

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

**18. 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 Monroe County, Florida, lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

**19. 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.

**20. No Assignability.**

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

**21. 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.

**22. Independent Contractor.**

The COUNTY 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 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.

**23. 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.

**24. Funding.**

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

**25. 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.

**26. 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.

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: *Sylvia J. Murphy*  
Mayor/Chairperson



(SEAL)

KEVIN MADOK, Clerk

By: *Kevin Madok*  
Deputy Clerk

CITY OF KEY WEST, FLORIDA

By: *Trini Johnson*  
Mayor



(SEAL)

ATTEST

Clerk

*Cheryl Smith*  
Clerk

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
*Christine Limbert-Barrows*  
CHRISTINE LIMBERT-BARROWS  
ASSISTANT COUNTY ATTORNEY  
DATE: *1/4/19*

ATTACHMENT

A



November 14, 2018

Debra (Debbie) London  
Project Manager  
Monroe County  
102050 Overseas Hwy., Suite 229  
Key Largo, FL  
Florida 33037

**Re: Engineering Design and Permitting for 1<sup>st</sup> Street/Bertha Street (Key West)  
Roadway Improvement Project  
Additional Services: Supplemental No. 1 – City of Key West Scope Request**

Dear Ms. London,

**EAC Consulting Inc. (EAC)** is pleased to submit this fee proposal to provide civil engineering services in reference to the request from the City of Key West to include additional improvements as part of this project.

**Background & Scope of Services**

It is our understanding that the City of Key West requested to include additional scope elements that fall within the City’s jurisdiction as part of the above referenced project. EAC will perform the necessary analysis and design to include the improvements requested by the City (see Attachment A).

**Project Limits**

- 1. 1<sup>st</sup> Street from North Roosevelt Boulevard (US-1) to Flagler Avenue
- 2. Bertha Street from Flagler Avenue to South Roosevelt Boulevard (A1A)

**Scope of Work**

Our scope of works will include the following:

**Task 6 - City of Key West Additional Scope Request**

Refer to Attachment A

Our fee proposal is summarized as follows:

| Task No. | Description                               | Fee         |
|----------|---|-------------|
| Task 6   | City of Key West Additional Scope Request | \$20,495.00 |





The aforementioned scope of services **assumes** that:

1. No utility relocation design is included in this supplemental.
2. No Right of Way modifications are required.
3. A study of traffic volumes and pedestrian volumes along the corridor is not included in this supplemental.
4. Anticipated permitting fees have been included as part of the reimbursables in the original approved contract. In the event that permit and reimbursables exceeds the budgeted amounts, then the County will approve a supplemental to reimburse EAC for additional direct expenses.

Sincerely,  
**EAC Consulting, Inc.**

A handwritten signature in blue ink, appearing to read "Danny Greenberg", is written over a light blue horizontal line.

Daniel (Danny) Greenberg, P.E.  
Project Manager

cc. File, Rick Crooks, P.E. – EAC, Rodney C. Devera, P.E. – EAC and David Kuang - EAC

# City of Key West Scope Request



## THE CITY OF KEY WEST

1300 White Street Key West, FL 33040

October 31, 2018

Judith Clarke, P.E.  
Monroe County Department of Engineering  
1100 Simonton Street, Room 2-216  
Key West, FL 33040

RE: 1<sup>st</sup> and Bertha Project Coordination-Key West Scope Request (Revised)

Per the City of Key West (CKW) Engineering Department's review of the base maps dated September 13, 2018 by EAC Consulting, Inc., we request the following improvements to be evaluated and implemented in conjunction with the 1<sup>st</sup> and Bertha Street Improvement Project led by the Monroe County Department of Engineering:

### **General Requests**

1. Correct existing non-compliant ADA sidewalks and curb ramps
2. Add ADA compliant curb ramps where none exist along ADA paths of travel
3. Replace damaged sidewalk panels
4. Evaluate feasibility of adding a 5' bike lane northbound on Bertha between South Roosevelt and Flagler. Sharrows are acceptable in the southbound direction within this same segment.

### **Sheet 2/3**

1. Correct grades on shared use path to be ADA compliant
2. Resurface shared use path
3. Add tactile warnings as needed
4. Perform study to identify feasibility of cross walk at intersection of Bertha Street and Atlantic Boulevard.

### **Sheet 4/5**

1. Evaluate feasibility of adding sidewalk between Station 209+00 and 212+40 on the west side of Bertha Street. Implement if feasible.
2. Fix broken sidewalk panels on west side of Bertha between Station 212+80 and 216+40. Upgrade to current ADA standards as needed.
3. Upgrade curb ramps (SW and NW corners) along west side of Bertha and Venetia
4. Evaluate feasibility of adding ADA sidewalk along the west side of Bertha between Venetia and Flagler. Implement if feasible.

*Key to the Caribbean – Average yearly temperature 77° F.*

**Sheet 6/7**

1. Add sidewalk along west side of 1<sup>st</sup> Street from Flagler to Seidenberg
2. Add sidewalk at gap between Station 230+40 and 231+50

**Sheet 8/9**

1. Raise western sidewalk as practicable between Station 236+20 and 240+20
2. Add sidewalk along east side of street between Station 240+40 and 241+60

It is my understanding that the improvements requested by CKW will be an amendment to the county's existing contract with EAC. Furthermore, as discussed on the telephone, the county will send a draft Interlocal Agreement (ILA) for CKW review. We appreciate the opportunity to coordinate with the county on the project. Please let me know if EAC needs any additional information regarding the amendment of their scope.

Sincerely,

Kelly M. Crowe, P.E.  
City Engineer

Cc: Steve McAlearney, City of Key West, Director of Engineering  
James Bouquet, P.E., City of Key West, Senior Project Manager