





**AMENDMENT 1 TO THE AGREEMENT FOR ENGINEERING DESIGN AND PERMITTING SERVICES FOR EMERGENCY REPAIRS TO THE NO NAME KEY BRIDGE**

**THIS CONTRACT AMENDMENT IS ENTERED INTO BETWEEN Monroe County, whose address is 1100 Simonton Street, Room 2-216 Key West, Florida 33040, hereafter the "County", and Kissinger Campo & Associates, Corp. a Corporation of the State of Florida, whose address is 201 North Franklin Street, Suite 400, Tampa, Florida 33602, its successors and assigns, hereinafter referred to as "CONSULTANT",**

**Paragraph 2.1.2 is added to ARTICLE II SCOPE OF BASIC SERVICES, and is to state the following:**

**2.1.2 The CONSULTANT will perform for the COUNTY Construction Engineering and Inspection (CEI) Services as described in Attachment B, Exhibit "A" SCOPE OF SERVICES\_COST PROPOSAL.**

The COST PROPOSAL is based on four (4) week maximum job duration for a not to exceed amount of \$23,040.00.

**Force and Effect.** In all other respects the Contract dated November 17, 2011 remains in full force and effect.

In WITNESS WHEREOF each party hereto has caused this contract to be executed by its duly authorized representative.

(SEAL)  
Attest: DANNY L. KOLHAGE, CLERK

By: \_\_\_\_\_  
Deputy Clerk

(SEAL)  
Attest:  
By: \_\_\_\_\_

Title \_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: \_\_\_\_\_  
Mayor/Chairman

Kissinger Campo & Associates, Corp.

By: \_\_\_\_\_

Title \_\_\_\_\_

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
*Christine M. Limbert-Barrows*  
CHRISTINE M. LIMBERT-BARROWS  
ASSISTANT COUNTY ATTORNEY  
Date 1/3/12

# **ATTACHMENT B**

## **Exhibit "A"**

### **Scope of Services Cost Proposal**

**EXHIBIT "A"**  
**SCOPE OF SERVICES \_ COST PROPOSAL**

CONTRACT NO.: \_\_\_\_

*No Name Key Bridge Emergency Repair- CEI*

**Monroe County**

**1.0 BACKGROUND**

The Consultant was retained by the Department to provide Construction Engineering and Inspection (CEI) Services and Oversight CEI Services for a minor emergency repair.

**2.0 PURPOSE**

The CEI Services are necessary to supplement the County staff and provide the required project inspection.

**3.0 SCOPE**

The following projects shall be added for which Consultant shall provide CEI Services:

Description: No Name Key Emergency Repair - CEI  
County: Monroe

**4.0 CONSULTANT RESPONSIBILITIES**

Consultant responsibilities are to provide field inspection services for the minor, emergency bridge repair.

**5.0 COST PROPOSAL**

Note this estimate is based on a four (4) week maximum job duration for a not to exceed amount for one employee, a Project Administrator/Senior Inspector (John Bailey).

Date: 12/27/11

Kisinger Campo & Associates

ESTIMATED COSTS

CONSTRUCTION ENGINEERING AND INSPECTION SERVICES

<u>Financial Project I.D.#</u>		<u>County: MONROE</u>	
<u>Employee Classification</u>	<u>Regular Time Manhours</u>	<u>Average Hourly Rate</u>	<u>Raw Salary Cost</u>
PA/Sr. Inspector	160	\$48.00	\$7,680.00
<b>TOTALS</b>	<u>160</u>	<u>\$48.00</u>	<u>\$7,680.00</u>
<b>Multiplier</b>		3.00	\$23,040.00
<b>Subtotal Labor</b>			\$23,040.00
<b>Project Total</b>			\$23,040.00

**Contract for Engineering Design and Permitting Services for Emergency Repairs to the No  
Name Key Bridge**

THIS Contract (The AGREEMENT) made and entered into this 17<sup>th</sup> day of Novmby 2011 by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West Florida, 33040, its successors and assigns hereinafter referred to as the "COUNTY," through the Monroe County Board of County Commissioners (BOCC), the Owner

And

**Kisinger Campo & Associates, Corp.** a Corporation of the State of Florida, whose address is **201 North Franklin Street, Suite 400, Tampa, Florida 33602**, its successors and assigns, hereinafter referred to as "CONSULTANT",

WITNESSETH:

NOW, THEREFORE, in consideration of mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, COUNTY and CONSULTANT agree as follows:

**FORM OF AGREEMENT**

**ARTICLE I**  
**REPRESENTATIONS AND WARRANTIES**

By executing this Agreement, the CONSULTANT makes the following express representations and warranties to the COUNTY:

- 1.1.1 The CONSULTANT shall maintain all necessary licenses, permits or other authorizations necessary to act as CONSULTANT for the Project until the CONSULTANT'S duties hereunder have been satisfied;
- 1.1.2 The CONSULTANT has become familiar with the Project site and the local conditions under which the Project is to be designed, constructed, and operated;
- 1.1.3 The CONSULTANT shall prepare all documents required by this Agreement including, but not limited to, all contract plans and specifications, in such a manner that they shall be in conformity and comply with all applicable law, codes and regulations. The CONSULTANT warrants that the documents prepared as a part of this Contract will be adequate and sufficient to accomplish the purposes of the Project, therefore, eliminating any additional construction cost due to missing or incorrect design elements in the contract documents;
- 1.1.4 The CONSULTANT assumes full responsibility to the extent allowed by law with regards to his performance and those directly under his employ.

- 1.1.5** The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project given the serious condition identified at the bridge. In providing all services pursuant to this agreement, the CONSULTANT shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the COUNTY to terminate this agreement immediately upon delivery of written notice of termination to the CONSULTANT.
- 1.1.6** At all times and for purposes under this agreement the CONSULTANT is an independent contractor and not an employee of the Board of County Commissioners for Monroe County. No statement contained in this agreement shall be construed so as to find the CONSULTANT or any other of his/her employees, contractors, servants, or agents to be employees of the Board of County Commissioners for Monroe County.
- 1.1.7** The CONSULTANT shall not discriminate against any person based on race, creed, color, national origin, sex, age or any other characteristic or aspect which is not related, in its recruiting, hiring, promoting, terminating, or other area affecting employment under this agreement or with the provision of services or goods under this agreement.

## **ARTICLE II** **SCOPE OF BASIC SERVICES**

- 2.1.1** The CONSULTANT will perform for the COUNTY services as described in **Attachment A, Scope of Basic Services**. CONSULTANT will proceed with work immediately upon Notice to Proceed from the COUNTY.
- 2.2** **CORRECTIONS OF ERRORS, OMISSIONS, DEFICIENCIES**
- 2.2.1** The CONSULTANT shall, without additional compensation, promptly correct errors, omissions, deficiencies, or conflicts in the work product of the CONSULTANT or its subconsultants, or both.
- 2.3** **NOTICE REQUIREMENTS**
- 2.3.1** All written correspondence to the COUNTY shall be dated and signed by an authorized representative of the CONSULTANT. Any notice required or permitted under this agreement shall be in writing and hand delivered or mailed, postage prepaid, to the COUNTY by certified mail, return receipt requested, to the following:

Ms. Judith Clarke, P.E.  
Monroe County Engineering Services  
1100 Simonton St. Rm 2-216  
Key West, FL 33040

And:

Mr. Roman Gastesi, Jr.  
County Administrator  
1100 Simonton Street  
Key West, FL 33040

For the Consultant

DOUGLAS E. STOKER, P.E.  
VICE PRESIDENT  
201 N. FRANKLIN ST., SUITE 400  
TAMPA, FL 33602

### **ARTICLE III** **ADDITIONAL SERVICES**

**3.1** The services described in this Article III are not included in Basic Services. They shall be paid for by the COUNTY as provided in this agreement as an addition to the compensation paid for the Basic Services but only if approved by the COUNTY before commencement, and as follows:

- A. Providing services of CONSULTANT for other than the previously listed consulting scope of Project provided as a part of Basic Services.
- B. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted consulting practice.
- C. Providing representation before public bodies in connection with the Project, upon approval by the COUNTY.

**3.2** If Additional Services are required, such as those listed above, the COUNTY shall issue a letter requesting and describing the requested services to the CONSULTANT. The CONSULTANT shall respond with fee proposal to perform the requested services. Only after receiving an amendment to the Agreement and a notice to proceed from the COUNTY, shall the CONSULTANT proceed with the Additional Services.

### **ARTICLE IV** **COUNTY'S RESPONSIBILITIES**

**4.1** The COUNTY shall provide full information regarding requirements for the project including physical location of work, county maintained roads and maps.

**4.2** The COUNTY shall designate Monroe County Engineering Services Department to act on the COUNTY'S behalf with respects to the Project. The COUNTY or Monroe County Engineering Services Department shall render decisions in a timely manner pertaining to

documents submitted by the CONSULTANT in order to avoid unreasonable delay in the orderly and sequential progress of the CONSULTANTS services.

**4.3** Prompt written notice shall be given by the COUNTY and its representative to the CONSULTANT if they become aware of any fault or defect in the Project or nonconformance with the Agreement Documents. Written notice shall be deemed to have been duly served if sent pursuant to paragraph 2.3.

**4.4** The COUNTY shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Consultants services and work of the contractors.

**4.5** The COUNTY'S review of any documents prepared by the CONSULTANT or its subconsultants shall be solely for the purpose of determining whether such documents are generally consistent with the COUNTY'S criteria, as, and if, modified. No review of such documents shall relieve the CONSULTANT of responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product.

**4.6** The COUNTY shall provide copies of necessary documents required to complete the work.

**4.7** Any information that may be of assistance to the CONSULTANT that the COUNTY has immediate access to will be provided as requested.

#### **ARTICLE V** **INDEMNIFICATION AND HOLD HARMLESS**

**5.1.1** The CONSULTANT covenants and agrees to indemnify and hold harmless COUNTY/Monroe County and Monroe County Board of County Commissioners, its officers and employees from liabilities, damages, losses and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONSULTANT, subcontractor(s) and other persons employed or utilized by the CONSULTANT in the performance of the contract.

**5.1.2** The first ten dollars (\$10.00) of remuneration paid to the CONSULTANT is for the indemnification provided for above. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement. Should any claims be asserted against the COUNTY by virtue of any deficiency or ambiguity in the plans and specifications provided by the CONSULTANT, the CONSULTANT agrees and warrants that he shall hold the COUNTY harmless and shall indemnify him from all losses occurring thereby and shall further defend any claim or action on the COUNTY'S behalf.

**5.1.3** In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT'S failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify COUNTY from any and all

increased expenses resulting from such delays. Should any claims be asserted against COUNTY by virtue of any deficiencies or ambiguity in the plans and specifications provide by the CONSULTANT the CONSULTANT agrees and warrants that CONSULTANT hold the COUNTY harmless and shall indemnify it from all losses occurring thereby and shall further defend any claims or action on the COUNTY'S behalf.

5.1.4 The extent of liability is in no way limited to, reduced or lessened by the insurance requirements contained elsewhere within the Agreement.

5.1.5 This indemnification shall survive the expiration or early termination of the Agreement.

## ARTICLE VI PERSONNEL

### 6.1 PERSONNEL

The CONSULTANT shall assign only qualified personnel to perform any service concerning the project. At the time of execution of this Agreement, the parties anticipate that the following named individuals will perform those functions as indicated:

<u>NAME</u>	<u>FUNCTION</u>
<u>DAVID B. THOMPSON, P.E.</u>	<u>PROJECT MANAGER</u>
<u>THOMAS J. SHAW, P.E.</u>	<u>CHIEF ENGINEER</u>
<u>JULIAN W. GUTIERREZ, P.E.</u>	<u>CHIEF ENGINEER</u>
<u>JASON L. LABARBERA, P.E.</u>	<u>SENIOR ENGINEER</u>
<u>CARLOS E. LAYRISSÉ, P.E.</u>	<u>ENGINEER</u>

So long as the individuals named above remain actively employed or retained by the CONSULTANT, they shall perform the functions indicated next to their names. If they are replaced the CONSULTANT shall notify the COUNTY of the change immediately.

## ARTICLE VII PAYMENTS

### 7.1 PAYMENT SUM

7.1.1 The COUNTY shall pay the CONSULTANT in current funds for the CONSULTANT'S performance of this Agreement the Total Not to Exceed Lump Sum Amount of **Thirty-Eight Thousand Seven Hundred and Eighty-four Dollars and Twenty Cents (\$38,784.20)**.

## **7.2 PAYMENTS**

**7.2.1** For its assumption and performances of the duties, obligations and responsibilities set forth herein, the CONSULTANT shall be paid monthly.

- (A) If the CONSULTANT'S duties, obligations and responsibilities are materially changed by amendment to this agreement after execution of this Agreement, compensation due to the CONSULTANT shall be equitably adjusted, either upward or downward;
- (B) As a condition precedent for any payment due under this Agreement, the CONSULTANT shall submit monthly, unless otherwise agreed in writing by the COUNTY, an invoice to the COUNTY requesting payment for services properly rendered and reimbursable expenses due hereunder. The CONSULTANT'S invoice shall describe with reasonable particularity the service rendered. The CONSULTANT'S invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought that the COUNTY may require.
- (C) For the performance of the optional additional services and contingent additional services described in Article III of this contract, provided same are first authorized in writing by the COUNTY, the CONSULTANT shall be paid hourly at the rates identified in CONSULTANT's Cost Proposal, or as negotiated.

## **7.3 REIMBURSABLE EXPENSES**

**7.3.1** Reimbursable expenses include expenses incurred by the CONSULTANT in the interest of the Project:

- a. Expenses of transportation submitted by CONSULTANT, in writing, and living expenses in connection with travel authorized by the COUNTY, in writing, but only to the extent and in the amounts authorized by Section 112.061, Florida Statutes;
- b. Cost of reproducing maps or drawings or other materials used in performing the scope of services;
- c. Postage and handling of reports;

## **7.4 BUDGET**

**7.4.1** The CONSULTANT may not be entitled to receive, and the COUNTY is not obligated to pay, any fees or expenses in excess of the amount budgeted for this Agreement in each fiscal year (October 1- September 30) by COUNTY'S Board of County Commissioners. The budgeted amount may only be modified by an affirmative act of the COUNTY'S Board of County Commissioners.

**ARTICLE VIII**  
**INSURANCE**

**8.1.1** The CONSULTANT shall obtain insurance as specified and maintain the required insurance at all times that this Agreement is in effect. In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT'S failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify the COUNTY from any and all increased expenses resulting from such delay.

**8.1.2** The coverage provided herein shall be provided by an insurer with an A.M. Best Rating of VI or better, that is licensed to do business in the State of Florida and that has an agent for service of process within the State of Florida. The insurance certificate shall contain an endorsement providing sixty (60) days notice to the COUNTY prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the COUNTY and shall be in a form acceptable to the COUNTY.

**8.1.3** CONSULTANT shall obtain and maintain the following policies:

- A. Workers' Compensation insurance as required by the State of Florida, sufficient to respond to Chapter 440 Florida Statutes.
- B. Employers Liability Insurance with limits of \$1,000,000 per Accident, \$1,000,000 Disease, policy limits, \$1,000,000 Disease each employee.
- C. Comprehensive business automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, hired or non-owned vehicles, with One Million Dollars (\$1,000,000.00) combined single limit and One Million Dollars (\$1,000,000.00) annual aggregate.
- D. Commercial general liability, including Personal Injury Liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered act or omission of the CONSULTANT or any of its employees, agents or subcontractors or subconsultants, including Premises and/or Operations, Products and Completed Operations, Independent Contractors; Broad Form Property Damage and a Contractual Liability Endorsement with One Million Dollars (\$1,000,000) per occurrence and annual aggregate.

An Occurrence Form policy is preferred. If coverage is changed to or provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this Agreement. In addition, the period for which they may be reported must extend for a minimum of 48 months following the termination or expiration of this Agreement.

- E. Professional liability insurance of One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) annual aggregate. If the policy is a "claims

made" policy, CONSULTANT shall maintain coverage or purchase a "tail" to cover claims made after completion of the project to cover the statutory time limits in Chapter 95 of the Florida Statutes.

- F. COUNTY shall be named as an additional insured with respect to CONSULTANTS liabilities hereunder in insurance coverage identified in Paragraphs C and D.
- G. CONSULTANT shall require its subconsultants to be adequately insured at least to the limits prescribed above, and to any increased limits of CONSULTANT if so required by COUNTY during the term of this Agreement. COUNTY will not pay for increased limits of insurance for subconsultants.
- H. CONSULTANT shall provide to the COUNTY certificates of insurance or a copy of all insurance policies including those naming the COUNTY as an additional insured by including any subsection hereunder. The COUNTY reserves the right to require a certified copy of such policies upon request.
- I. If the CONSULTANT participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the CONSULTANT may be required to submit updated financial statements from the fund upon request from the COUNTY.

## **8.2 APPLICABLE LAW**

This contract is governed by the laws of the State of Florida. Venue for any litigation arising under this contract must be in Monroe County, Florida.

## **ARTICLE IX** **MISCELLANEOUS**

### **9.1 SECTION HEADINGS**

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

### **9.2 OWNERSHIP OF THE PROJECT DOCUMENTS**

The documents prepared by the CONSULTANT for this Project belong to the COUNTY and may be reproduced and copied without acknowledgement or permission of the CONSULTANT.

### **9.3 SUCCESSORS AND ASSIGNS**

The CONSULTANT shall not assign or subcontract its obligations under this Agreement except in writing and with the prior written approval of the Board of County Commissioners for Monroe County and the CONSULTANT, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the

provisions of this Agreement. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assignees and legal representatives to the other and to the successors, assigns and legal representatives of such other party. The CONSULTANT shall not assign its right hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the COUNTY.

#### **9.4 NO THIRD PARTY BENEFICIARIES**

Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party.

#### **9.5 TERMINATION**

A. In the event the CONSULTANT shall be found to be negligent in any aspect of service, the COUNTY shall have the right to terminate this Agreement after five days written notification to the CONSULTANT.

B. The County may terminate this Agreement without cause by giving the other party sixty (60) days written notice of its intention to do so.

#### **9.6 CONTRACT DOCUMENTS**

The contract documents consist of the Form of Agreement (Articles I- IX), the CONSULTANTS proposal the documents referred to in the Form of Agreement as a part of this Agreement, and modifications made after execution by written amendment. In the event any conflict between any of those Agreement documents, the one imposing the greater burden on the CONSULTANT will control.

#### **9.7 PUBLIC ENTITIES CRIMES**

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on contracts to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

By signing this Agreement, CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), Violation of this section shall result in termination of this Agreement and recovery of all moneys paid hereto, and may result in debarment from COUNTY'S competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit that it or any subconsultant has committed an act defined by

Section 287.133, as "public entity crime", and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

**CONSULTANT will promptly notify the COUNTY if it or any subcontractor or subconsultant is formally charged with an act defined as a "public entity crime" or has been placed on the convicted vendor list.**

#### **9.8 MAINTENANCE OF RECORDS**

CONSULTANT shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of five years from the termination of this Agreement. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to CONSULTANT pursuant to this Agreement were spent for purposes not authorized by this Agreement, the CONSULTANT shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to County.

#### **9.9 GOVERNING LAW, VENUE, INTERPERTATION, COST AND FEES**

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, COUNTY and CONSULTANT agree that venue will lie in the 16<sup>TH</sup> Judicial Circuit, Monroe County, Florida, in the appropriate court or before the appropriate administrative body in Monroe County, Florida. This Agreement shall not be subject to arbitration. The County and CONSULTANT agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

#### **9.10 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 County and CONSULTANT 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.

#### **9.11 ATTORNEY'S FEES AND COSTS**

The COUNTY and CONSULTANT 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 be entitled to reasonable attorney's fees and court costs expenses, as an award against the non-prevailing party, and shall include attorney's fees and courts costs expenses in appellate proceedings, as an award against the non-prevailing party. 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.

#### **9.12 BINDING EFFECT**

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the COUNTY and CONSULTANT and their respective legal representatives, successors, and assigns.

#### **9.13 AUTHORITY**

Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary COUNTY and corporate action, as required by law.

#### **9.14 CLAIMS FOR FEDERAL OR STATE AID**

CONSULTANT and COUNTY agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

#### **9.15 ADJUDICATION OF DISPUTES OR DISAGREEMENTS**

COUNTY and CONSULTANT 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 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. 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. This provision does not negate or waive the provisions of paragraph 9.5 concerning termination or cancellation.

#### **9.16 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 CONSULTANT 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 CONSULTANT specifically agree that no

party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

#### **9.17 NON DISCRIMINATION**

CONSULTANT and COUNTY 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. CONSULTANT and COUNTY 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 (PL 88-352) which prohibits discrimination on the basis of race, color or 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 handicaps; 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. 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. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

#### **9.18 COVENANT OF NO INTEREST**

CONSULTANT and COUNTY 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.

#### **9.19 CODE OF ETHICS**

COUNTY agrees that officers and employees of the COUNTY recognize and will be required to comply with the standards of conduct for 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.

#### **9.20 NO SOLICITATION/PAYMENT**

The CONSULTANT and COUNTY 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 the provision, the CONSULTANT agrees that the COUNTY 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.

#### **9.21 PUBLIC ACCESS**

The CONSULTANT and COUNTY shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CONSULTANT and COUNTY in conjunction with this Agreement; and the COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by CONSULTANT.

#### **9.22 NON-WAIVER OF IMMUNITY**

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CONSULTANT 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 be required to contain any provision for waiver.

#### **9.23 PRIVILEGES AND IMMUNITY**

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the COUNTY, when performing their respective functions under this Agreement within the territorial limits of the COUNTY shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the COUNTY.

#### **9.24 LEGAL OBLIGATIONS AND RESPONSIBILITIES**

**Non-Delegation of Constitutional or Statutory 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 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 the COUNTY, except to the extent permitted by the Florida constitution, state statute, and case law.

**9.25 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 CONSULTANT and the COUNTY agree that neither the CONSULTANT nor the COUNTY or any agent, officer, or employee of either 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.

**9.26 ATTESTATIONS AND TRUTH IN NEGOTIATION**

CONSULTANT agrees to execute such documents as the COUNTY may reasonably require including a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement. Signature of this Agreement by CONSULTANT shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation pursuant to the Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or concurrent wage rates and other factual unit costs. All such adjustments must be made within one year following the end of the Agreement.

**9.27 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 Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

**9.28 EXECUTION IN COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

IN WITNESS WHEREOF, each party caused this Agreement to be executed by its duly authorized representative on the day and year first above written.

(SEAL)  
Attest: DANNY L. KOLHAGE, Clerk

By: Isabel C. DeSantis  
Deputy Clerk

Date: 11-16-11

**BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA**

By: [Signature]  
Mayor/Chairman

**WITNESS:**

By: Margie D. Miller

By: Catherine P. Ellis

**KISINGER CAMPO & ASSOCIATES, INC. =**  
CORP.

By: [Signature]  
DOUGLAS E. STOKER, P.E.

Title: VICE PRESIDENT

INITIAL: DS  
KCA  
COUNTY \_\_\_\_\_

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
[Signature]  
CHRISTINE M. LIMBERT-BARROWS  
ASSISTANT COUNTY ATTORNEY  
Date 11/15/11

**ATTACHMENT A  
SCOPE OF BASIC SERVICES**



## KISINGER CAMPO & ASSOCIATES CORP.

www.kiscampo.com      engineering • inspection • planning

November 14, 2011

Mr. Clark Briggs  
Monroe County Engineering  
1100 Simonton St, Rm 216  
Key West, FL 33040

Re:      Emergency Repair Proposal – No Name Key Bridge

Dear Mr. Briggs:

We are pleased to submit this proposal for engineering services for the above referenced project. The scope of services for this task will consist of the development of repair plans for Pier 25 of the No Name Key Bridge. The services will be performed in conformance with the Scope of Services in the Professional Services Agreement, and in accordance with the following:

### 1.      PROJECT OBJECTIVES

This project will consist of designing emergency repairs for Pier 25 of the No Name Key Bridge. Repairs will be based on deficiencies noted in the most recent Florida Department of Transportation (FDOT) bridge inspection reports and a follow-up field review to confirm these conditions. As part of these services, the Consultant shall develop repair plans and construction documents, and coordinate with the County as appropriate.

### 2.      SPECIFIC SERVICES

The Consultant will review the most recent bridge inspection reports and visit the site to observe the current condition of the cap, beams and bearings at Pier 25. Visible deficiencies (cracks, spalls and desegregation of aggregate) in the caps, beams, and bearings shall be documented and included as part of the design calculations. The consultant will rely upon detailed inspection data from the inspection report if access is not provided.

The Consultant will develop contract plans and documents for the restoration of appropriate bearing area for all beams at Pier 25 and concrete restoration of associated bridge elements. Concrete restoration will consist of crack injection and spall repair.

Additional items intended for inclusion in the repair plans:

- Through Anchored Channel Beam or Saddle Beam
- Jacking Design and Details
- Maintenance of Traffic Notes
- Miscellaneous details

The need for TCP plans is not anticipated. Lane closures will be directed in accordance with the FDOT 600 series Design Standards.



### 3. COUNTY RESPONSIBILITIES

The County shall provide copies of bridge inspection reports, allowed lane closure/bridge closure times, previous permitting, and other pertinent information at the Consultant's request. In addition, the County shall provide access to the site at predetermined times for the Consultant as required.

### 4. LIMITATIONS

Subconsultant services such as geotechnical, survey, and hazardous material investigations are not anticipated but, if necessary, can be included under separate task order. Similarly, traffic control plans beyond notations required for the use of FDOT Design Standards are not anticipated but can be included under a separate task order.

Areas of unsound concrete will be estimated from previous inspection reports and visible deficiencies noted during field visits. Unsound areas beyond that anticipated amount found during construction can be addressed by inclusion in the plan quantities and paid for under the designated pay item from contingency construction funds. Subconsultant services to better identify areas of unsound concrete not visible from surface deficiencies through the use of infrared imaging are available and can be provided under separate contract at the County's request.

The drawings will be carried out using Microstation V8 software, however, since the plans are intended for repairs of existing structures only they will not be modeled in 3D format as a cost savings measure.

Post design services such as review of shop drawings, construction inspection, and construction management are not included but can also be provided under separate contract at the County's request.

Additional services omitted from this scope as a cost savings measure include permitting, utility coordination and construction schedule. These services can be provided under a separate contract at the County's request.

### 5. BEGINNING AND LENGTH OF SERVICES

The above outlined services shall begin upon the receipt of the Notice to Proceed from the County. Final plans will be delivered to the County prior to the agreed upon production date with a detailed schedule provided upon approval of this proposal. Submittals will include:

- preliminary plans (in electronic pdf format and 11x17 hard copy of quantity requested)
- Final plans (final signed and sealed hard copies and CD upon approval)

### 6. COMPENSATION

Compensation for the above services shall be a lump sum amount of \$38,784.20 in accordance with the attached Summary Fee Sheet.

Sincerely,

A handwritten signature in black ink that reads 'D.B. Thompson'.

David B. Thompson, P.E.  
Project Manager  
cc: TJS, MM

**KISINGER CAMPO & ASSOCIATES CORP.**  
**FLORIDA DEPARTMENT OF TRANSPORTATION**  
**DISTRICT VI - EMERGENCY REPAIR**  
**NO NAME KEY BRIDGE**  
**TASK AUTHORIZATION NUMBER XX**

10/10/2011

ACTIVITY	Project Manager		Chief Engineer		Senior Engineer		Engineer		Engineering Intern		Serritin, Specialist		Chemical		Total Activity Fee	Months By Activity
	Man-Hours	Hourly Rate	Man-Hours	Hourly Rate	Man-Hours	Hourly Rate	Man-Hours	Hourly Rate	Man-Hours	Hourly Rate	Man-Hours	Hourly Rate	Man-Hours	Hourly Rate		
Key Sheet		\$48.43													\$1,087.76	12.0
General Notes (2)															\$735.43	27.0
Typical Sections															\$982.91	28.0
Cleaning and Coating Details															\$629.50	18.0
Jacklift Design															\$871.18	26.0
Cap Repair Design (Through Bolted Channel Beams)															\$1,780.70	54.0
Cap Repair Details															\$1,942.36	57.0
Complete Restoration Details															\$799.77	17.0
Deficiency List															\$695.56	16.0
TCF Safety Hours															\$1,009.76	20.0
Existing Plans															\$57.92	3.0
Field Visits															\$1,177.04	32.0
Meetings/Coordination															\$837.54	18.0
<b>SUBTOTAL</b>															\$11,438.38	317.0
Quality Control															\$483.28	8.0
Project Management															\$467.41	8.0
<b>TOTALS</b>															\$12,389.10	328.0

**TOTAL CONTRACT FEE COMPUTATIONS**

KCA Activities Fee	\$12,389.10
(a) Overhead Activities:	
Admin, General, & Fringe Combined @ 173.58%	\$ 21,905.00
<b>SUBTOTAL (Salary &amp; Overhead)</b>	\$33,894.10
(b) Lump Sum for Operating Margins @ 28.0%	\$ 3,468.95
<b>SUBTOTAL (Salary Related Costs)</b>	\$37,363.05
(c) Direct (Out of Pocket) Expenses (LS)	\$ 1,942.63
(d) Facilities Capital Cost of Money (FCOM) @ 0.311%	\$ 38.53
<b>SUBTOTAL (Cost Elements applied to Basic Activities)</b>	\$39,344.21
<b>Multiplier:</b>	1.1205
<b>TOTAL AMOUNT</b>	\$44,018.30

**SUBCONSULTANTS:**

- (a) Subconsultant Services: Geotechnical (Hobas and Associates), Survey (Eckhardt & Associates, Inc.), KTA-Tator
- EC Drive
- SOIL Engineering Consultants, Inc.

FP No. 43227-1-52-01  
 Contract No. CHY53  
 F.A.P. No. N/A  
 Project Name: DW Miscellaneous Bridge Design