

**REQUEST FOR QUALIFICATIONS
SUNSET CELEBRATION/ MALLORY SQUARE
MASTER PLAN**

City of Key West RFQ # 22-002



MAYOR: TERI JOHNSTON

COMMISSIONERS:

**MARY LOU HOOVER
CLAYTON LOPEZ
JIMMY WEEKLEY**

**SAM KAUFMAN
BILLY WARDLOW
GREG DAVILA**



SUBJECT: CITY OF KEY WEST
REQUEST FOR QUALIFICATIONS # 22-002
SUNSET CELEBRATION/ MALLORY SQUARE
MASTER PLAN

ISSUE DATE: December 8, 2021

**MAIL OR DELIVER RESPONSES
TO:**

City Clerk
City of Key West
1300 White Street
Key West, Florida 33040

**CLARIFICATION SUBMITTAL
DEADLINE:** January 17, 2022 12:00 PM LOCAL TIME

RESPONSES DEADLINE DATE: February 2, 2022 3:00 PM LOCAL TIME

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CITY OF KEY WEST RFQ # 22-002

SUNSET CELEBRATION/ MALLORY SQUARE MASTER PLAN

A. GENERAL

A.1 Purpose

This Request for Qualifications (RFQ) is designed to provide firms with the information necessary for the preparation of competitive responses. The RFQ process is for the benefit of the City of Key West (City) and is intended to provide the City with comparative information to assist in the selection process. This RFQ is not intended to be a comprehensive list of all work and materials necessary to complete the project or supply goods and services. Each firm is responsible for determining all factors necessary for submission of a comprehensive response.

The selected firm or team shall provide services that require expertise in landscape architecture and architecture, with a special emphasis on design for historic waterfronts and public parks/squares in a tropical setting.

A.2 Project Description

Mallory Square is the most iconic historic waterfront space in Key West, where visitors and locals have gathered for decades for “sunset celebration”. Located on the northwest side of the island, the square is surrounded by significant historic buildings that narrate the history of the mercantile and maritime activities that once drove the island’s economy.

The City and community desire to augment this waterfront area, with the assistance of a qualified landscape architecture and architectural team, to attract visitors and locals beyond sunset hours. Needed professional services are further described in Section B, Scope of Work/Services.

Key services include:

- 1) Landscape architecture
- 2) Architecture
- 3) Historic preservation
- 4) Civil engineering

Auxiliary services include:

- 5) Continuing public outreach
- 6) Wayfinding/signage design

A.3 Grant Requirements

Federal or State Funding:

In anticipation of potentially receiving Federal or State funds for this project in the future, the City will comply with §200.318 - §200.327 of 2 CFR 200. Please refer to Exhibit D “Procurement Requirements: 2 CFR 200” for details.

Monroe County Tourist Development Council Grant Funding:

This project will be funded in part through Monroe County Tourist Development Council Grant Funding. The selected firm shall coordinate with the City to meet grant stipulations including deadlines.

A.4 Timetable

RFQ Advertised	<u>December 8, 2021</u>
Mandatory Pre-Submittal Meeting	<u>January 6, 2022, 10 a.m.</u>
Deadline for written questions	<u>January 17, 2022, 12 p.m.</u>
RFQ Submittal Due Date	<u>February 2, 2022, 3 p.m.</u>
Selection Committee Ranking	<u>February 14, 2022 (time TBD)</u>
City Commission Final Selection	<u>March 1, 2022 (tentative)</u>

B. SCOPE OF WORK AND SERVICES

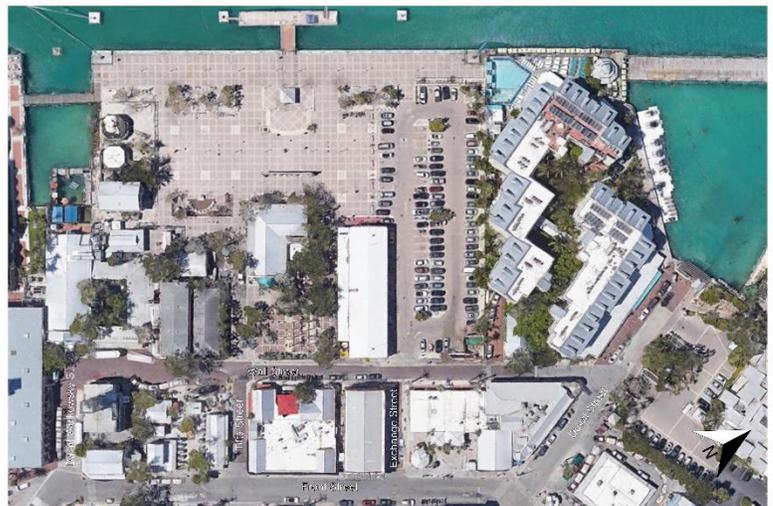
B. 1 Project history and overview

City staff began this project in the spring of 2021 with a public outreach effort to establish a “Community Vision Plan” for Sunset Celebration at Mallory Square. Staff suggested four main areas for improvement: lighting, seating, shade, and signage. In order to receive input, staff conducted public workshops and met with tenants of Mallory Square area properties not only to establish existing challenges and assets, but also to understand community members’ vision for Mallory Square. Landscaping, zoning, connectivity, and programming were then established as other topics for discussion. Public outreach included four workshops, one of which was held via Zoom, from March 11th to April 15th. Sixty local residents participated in the workshops.

Simultaneously with the workshops, the City created an online survey, which was open from March 19th to April 30th. The report entitled, “Sunset Celebration at Mallory Square: A Community Vision Plan”, attached to this document as Exhibit E summarizes findings reflecting the aforementioned public outreach process. This report and associated raw data should be utilized by the vendor to establish priorities and help guide development of the Sunset Celebration/Mallory Square Master Plan.



The narrative in sections B.1.- B.5. describe tasks and deliverables, which shall include a final master plan with conceptual drawings and renderings, including the expansion of the Waterfront Theater towards the square. Construction drawings for shade features and public bathrooms are also required as part of the deliverables.



B.2 Landscape architecture, architecture, and historic preservation services

The vendor shall complete any necessary preliminary work, including review of the document, “Sunset Celebration at Mallory Square: A Community Vision Plan”, and associated raw data, to draft

alternative master plan concepts for Mallory Square. The plan shall be primarily associated with the square itself but shall include features to link together all eleven (11) adjacent City-owned parcels, which include historic buildings and structures.

The master plan will allow for construction drawings to revitalize the square through the creation of a park-like environment surrounding the historic Hospitality House and Cable Huts, and an overall improved visitor experience through installation of landscaping, hardscape (seating, ground surface finishes), lighting, wayfinding (signage), and comfort features, including public restroom facilities and shade structures to ensure the space is inviting throughout the day and evening. The master plan must also include the expansion of the Waterfront Theater on its west elevation to allow for outdoor performances and access to the square from the rear of the historic structure.

The master plan will include recommended improvements for access and circulation within and beyond the square to Zero Duval and Truman Waterfront Park through waterfront promenades and walkways. Central landscape and hardscape features must seamlessly incorporate and feature existing historic structures and sites, while allowing for increased reuse of the square and Port services associated with the T-Pier. The vendor must endeavor to integrate designs with the City initiated Duval Revitalization and Resiliency Plan.

B.3 Public participation

The vendor shall coordinate with City staff to continue to incorporate public input throughout the design process. Draft alternative master plan design concepts shall be prepared for review by the community in a public workshop setting, and virtually. The vendor shall prepare a final master plan and designs and shall present them for review and adoption by local Boards and Commissions, including the City Commission.

B.4 Deliverables

Master Plan: The master plan and architecture deliverables should incorporate comfort features including new public bathroom facility(ies), shade features, improved internal circulation in the square, landscaping and hardscaping (to include seating areas), lighting, and opportunities for expanded land uses and programming. The plan should include narrative descriptions of proposed improvements and potential land use and programmatic opportunities. The master plan will incorporate specific design solutions to optimize access to the square and improve circulation within the square, and should be planned in conjunction with City staff. Architectural deliverables shall also include conceptual and construction drawings to expand and open the rear of the historic City-owned Waterfront Playhouse theater structure; these designs must be coordinated with City Management and the tenant: the Waterfront Playhouse board and director. The master plan shall fully integrate the theater's renovations, and opportunities for indoor/outdoor theater performances

into the overall landscape plan for the Square. *The master plan should be completed and prepared for City Commission approval within twelve (12) months of contract execution. Master plan deliverables shall include site plans, site data, renderings, detailed landscape plans and elevations sufficient for Major Development Plan review and approval by the City of Key West's Tree Commission, Historic Architectural Review Commission, Planning Board, and City Commission.*

Wayfinding/Signage and connectivity: The Master Plan shall include a comprehensive wayfinding and signage strategy, incorporating previous public input, including well developed designs. This strategy and these designs must be closely coordinated with the local arts and business community, nearby property owners, and City of Key West Historic Preservation staff. This work shall include recommendations on improvements for accessibility to the square, and connections to adjacent City properties and businesses, to Zero Duval by waterfront walkway (if agreeable to private property owners), to Duval Street, the Southernmost Point, and Truman Waterfront Park. Connectivity to Truman Waterfront Park would be by waterfront or, as an alternative, through the Truman Annex. The vendor shall include conceptual designs for waterfront promenades to link the square with nearby sites of interest. *Finalized wayfinding plan and designs for each specific feature should be finalized through City Management within six (6) to twelve (12) months of contract execution*

Construction drawings/ architectural and civil engineering services

The Vendor shall provide preliminary drawings, including elevations, for at least initial phases of the full master plan buildout, but must include construction plans for shade feature(s), and public bathroom facility(ies), and the expansion of the rear portion of the historic Waterfront Playhouse Theater. These drawings must be complete sets sufficient for permitting. Designs shall include initial cost estimates. *Construction drawings must be completed for permitting within 24 months of contract execution.*

B.5 Selection Process

The competitive selection process provided for this RFQ will focus on the qualifications and prior history of performance on similar projects of each prime firm (consultant) and the members of the prime firm's proposed team, in accordance with the selection criteria set forth below (and as included in Exhibit B, Submitter Ranking Form).

SELECTION CRITERIA	POINTS ALLOWED
Vendor's history and success in performing similar projects (including subconsultant teams) through examples and references.	20
Qualifications and experience of assigned personnel	15
Landscape architecture design experience specific to South Florida and the Florida Keys region	20
Landscape architecture design experience specific to oceanfront sites	20
Depth of architectural design experience associated with historic sites and structures	20
Public participation expertise	5
Total Points	100

C. RESPONSE INFORMATION

C.1 Response Information

The evaluation of the RFQ will be based on a respondent's aptitude, experience and approach to tasks as identified herein by the City. Responses should be submitted to the submittal address by the date and time listed in the submission details. The City will not be responsible for submittals that are delinquent, lost, mismarked, or sent to an address other than that given above. The City reserves the right, after opening the submittal, to reject any or all responses, or to accept the response(s) that in its sole judgment is (are) in the best interest of the City. Also, the City will not be responsible for responses submitted after the specified date and time.

A mandatory pre-Submittal Meeting will be held at 10:00 AM on January 6, 2022, at Key

West City Hall 1300 White Street, second floor City Manager’s Conference Room, Key West, Florida. The mandatory pre-Submittal meeting may be attended by Zoom and invitations will be provided separately. All questions from any Proposer regarding the RFQ or matters relating thereto must be submitted to Donna Phillips donna.phillips@cityofkeywest-fl.gov via email no later than **12 p.m. on January 17, 2022**. Each question must identify the section number in this RFQ for which clarification is being requested. City will respond to all properly submitted questions by addendum at least five (5) business days prior to the date that the Proposals are due. All questions will be posted as an addendum at www.cityofkeywest-fl.gov and www.DemandStar.com.

C.2 Submission Details

1. **Submit to:**

City Clerk, City of Key West
1300 White Street
Key West, Florida 33040

2. **Due Date: February 2, 2021 NO LATER THAN 3 PM**

3. **Identification of Responses:**

Responses shall be submitted in a sealed envelope, clearly marked on the outside **“Qualifications for Sunset Celebration/ Mallory Square Master Plan, RFQ # 22-002.”** addressed and delivered to the City Clerk at the address and by the date and time noted above.

C.3 Number of Copies

Applicants shall submit seven (7) printed copies and (2) two flash drives, each with a single PDF file of the complete qualifications submittal. PDF shall be named “*Firm Name* RFQ #22-002.”

C.4 Response Preparation Costs

Response preparation costs are the applicant’s total responsibility.

C.5 Authorized Signature

The initial response must contain the signature of a duly authorized officer or agent of the proposer’s company empowered with the right to bind the respondent to the RFQ. The respondent must provide evidence of the authority of the officer or agent to bind the respondent.

C.6 Property of the City

All responses and related materials provided to the City related to this RFQ will become the property of the City of Key West.

C.7 License Requirements

The selected respondent will also be required to obtain and maintain a City of Key West Business Tax Receipt for the duration of the work.

C.8 Post Contractual Restriction

Paragraph Not Used

C.9 Insurance /Indemnification

Per Paragraph 7.9 in Exhibit C (Sample Contract)

C.10 Cone of Silence

Pursuant to Section 2-773 of the City of Key West Code of Ordinances, as amended, a “Cone of Silence” shall be in effect during the course of a competitive solicitation. Cone of Silence Affidavit, attached hereto under Exhibit A.

C.11 Response Evaluation

Responses will be ranked in accordance with the Selection Criteria as noted above and attached hereto as Exhibit B, Submitter Ranking Form. A ranking committee will be formed by the City Manager and may include members of the community and/or City of Key West staff.

C.12 Response Selection:

All complete and responsive submittals will be evaluated by a City Manager appointed ranking committee at a publicly noticed meeting. The City of Key West reserves the right to ask questions, seek clarification of any or all Submitters as part of its evaluation. Evaluation and ranking will be accomplished using the Submitter Ranking Form (Exhibit B). Each short-listed respondent will be required to make a presentation of no more than 10 minutes to the City Commission; the exact length of the presentation is up to the discretion of the Commission. Final award will be made by the City Commission, based solely on that response which, in their opinion, is in the best interest of the City of Key West, all factors considered, irrespective of the City Manager appointed ranking committee ranking.

A final contract, including a detailed scope and fee, must be negotiated by the City Manager and then approved by the City Commission. The City reserves the right, without qualification, to exercise discretion and apply its judgment with respect to any responses submitted, as well as to reject all responses.

C.13 Response Content:

The City requires the Proposer to submit a concise response clearly addressing all the requirements outlined in this RFQ. Responses must include, at a minimum, the following sections in the order indicated.

1. *Cover Letter* – No more than one page
2. *Information Page* – Include project name, name of vendor (prime) submitting the response, contact information (phone and email) for the person who will act as project manager and contact information for the person who has authority to make representations for the firm, including name, title, address, telephone and fax numbers and email addresses.
3. *Organization Chart* – Show prime consultant, sub-consultants, key personnel, areas of responsibility and location of personnel.
4. *Company Information* – Background information about the vendor and each subcontractor and the services each provides.

5. *Methodology and Approach* – Descriptions which enable the City to assess the proposer’s capability to perform requested services in a structured and efficient manner. Provide provide sufficient information for the City ranking committee to assess qualifications per the Selection Criteria noted in Section B.5, above.
6. *Personnel* – Resumes of the principals(s) assigned to the project and staff personnel, and/or subcontractors available to support the proposed efforts.
7. *Qualifications* – Description of relevant experience for the firm and each subcontractor connected with providing similar project work. Experience of team members working successfully together on other similar projects should be included.
8. *Representative Landscape Architecture/Architectural Experience and Client References* – Submit descriptions of similar assignments which were conducted by the consultant, including other agency/client’s contact name, telephone number, and email address.
9. *Sworn Statements and Affidavits* – The Consultant shall have signed and returned all forms attached herein as Exhibit A (Anti-Kickback, Non-Collusion, Public Entity Crimes, Etc.).

Total proposal length (not including required forms, Sworn Statements, or Affidavits) will not exceed 15 double (30 single) sided pages.

Exhibit A: Affidavits

ANTI-KICKBACK AFFIDAVIT

STATE OF _____

COUNTY OF _____

I the undersigned hereby duly sworn, depose and say that no portion of the sum herein response will be paid to any employee of the City of Key West as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

BY: _____

sworn and prescribed before me this _____ day of _____, 2021

NOTARY PUBLIC, State of Florida

My commission expires:

NON-COLLUSION AFFIDAVIT

STATE OF _____
COUNTY OF _____

I, the undersigned hereby declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the Owner, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.

By: _____

Sworn and subscribed before me this

_____ day of _____, 2021.

NOTARY PUBLIC, State of Florida at Large

My Commission Expires: _____

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(A)
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS,

1. This sworn statement is submitted for _____
(print individual's name and title)

by _____
(print name of entity submitting sworn statement)

whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is

(if the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement): _____

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "conviction" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 01, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

a. A predecessor or successor of a person convicted of a public entity crime: or

b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members and agent who are active in the management of an

affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment of income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statute means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement (indicate which statement applies).

_____ Neither the entity submitting this sworn statement, or any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 01, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 01, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (attach a copy of the final order).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH ONE (1) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM

REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR THE CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(SIGNATURE)

(DATE)

STATE OF _____

COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority
_____ who, after first being sworn by me,
(name of individual)
affixed his/her signature in the space provided above on this
_____ day of _____, 2021

_____ NOTARY PUBLIC

My commission expires:

EQUAL BENEFITS FOR DOMESTIC PARTNERS AFFIDAVIT

STATE OF _____

COUNTY OF _____

I, the undersigned hereby duly sworn, depose and say that the firm of _____

_____ provides benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses, per City of Key West Code of Ordinances Sec. 2-799.

By: _____

Sworn and subscribed before me this _____ day of _____ 21_____.

NOTARY PUBLIC, State of _____ at Large

My Commission Expires:

CONE OF SILENCE AFFIDAVIT

Pursuant to City of Key West Code of Ordinances Section 2-773 (attached below)

STATE OF _____

COUNTY OF _____

I the undersigned hereby duly sworn depose and say that all owner(s), partners, officers, directors, employees and agents representing the firm of _____ have read and understand the limitations and procedures regarding communications concerning City of Key West issued competitive solicitations pursuant to City of Key West Ordinance Section 2-773 Cone of Silence (attached). Sworn and subscribed before me this

_____ day of _____, 2021.

NOTARY PUBLIC, State of _____ at Large

My Commission Expires: _____

Sec. 2-773. Cone of Silence.

(a) *Definitions.* For purposes of this section, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- (1) *Competitive solicitation* means a formal process by the City of Key West relating to the acquisition of goods or services, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. Competitive solicitation shall include request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), invitation to bid ("ITB") or any other advertised solicitation.
- (2) *Cone of silence* means a period of time during which there is a prohibition on communication regarding a particular competitive solicitation.
- (3) *Evaluation or selection committee* means a group of persons appointed or designated by the city to evaluate, rank, select, or make a recommendation regarding a vendor or the vendor's response to the competitive solicitation. A member of such a committee shall be deemed a city official for the purposes of subsection (c) below.
- (4) *Vendor* means a person or entity that has entered into or that desires to enter into a contract with the City of Key West or that seeks an award from the city to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a competitive solicitation for compensation or other consideration.
- (5) *Vendor's representative* means an owner, individual, employee, partner, officer, or member of the board of directors of a vendor, or a consultant, lobbyist, or actual or potential subcontractor or sub-consultant who acts at the behest of a vendor in communicating regarding a competitive solicitation.

(b) *Prohibited communications.* A cone of silence shall be in effect during the course of a competitive solicitation and prohibit:

- (1) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the city's administrative staff including, but not limited to, the city manager and his or her staff;
- (2) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the mayor, city commissioners, or their respective staff;
- (3) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and any member of a city evaluation and/or selection committee therefore; and
- (4) Any communication regarding a particular competitive solicitation between the mayor, city commissioners, or their respective staff, and a member of a city evaluation and/or selection committee therefore.

(c) *Permitted communications.* Notwithstanding the foregoing, nothing contained herein shall

prohibit:

- (1) Communication between members of the public who are not vendors or a vendor's representative and any city employee, official or member of the city commission;
 - (2) Communications in writing at any time with any city employee, official or member of the city commission, unless specifically prohibited by the applicable competitive solicitation.
 - (A) However, any written communication must be filed with the city clerk. Any city employee, official or member of the city commission receiving or making any written communication must immediately file it with the city clerk.
 - (B) The city clerk shall include all written communication as part of the agenda item when publishing information related to a particular competitive solicitation;
 - (3) Oral communications at duly noticed pre-bid conferences;
 - (4) Oral presentations before publicly noticed evaluation and/or selection committees;
 - (5) Contract discussions during any duly noticed public meeting;
 - (6) Public presentations made to the city commission or advisory body thereof during any duly noticed public meeting;
 - (7) Contract negotiations with city staff following the award of a competitive solicitation by the city commission; or
 - (8) Purchases exempt from the competitive process pursuant to [section 2-797](#) of these Code of Ordinances;
- (d) *Procedure.*
- (1) The cone of silence shall be imposed upon each competitive solicitation at the time of public notice of such solicitation as provided by [section 2-826](#) of this Code. Public notice of the cone of silence shall be included in the notice of the competitive solicitation. The city manager shall issue a written notice of the release of each competitive solicitation to the affected departments, with a copy thereof to each commission member, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.
 - (2) The cone of silence shall terminate at the time the city commission or other authorized body makes final award or gives final approval of a contract, rejects all bids or responses to the competitive solicitation or takes other action which ends the competitive solicitation.
 - (3) Any city employee, official or member of the city commission that is approached concerning a competitive solicitation while the cone of silence is in effect shall notify such individual of the prohibitions contained in this section. While the cone of silence is in effect, any city employee, official or member of the city commission who is the recipient of any oral communication by a potential vendor or vendor's representative in violation of this section shall create a written record of the event. The record shall indicate the date of such communication, the persons with whom such communication occurred, and a general summation of the communication.

(e) *Violations/penalties and procedures.*

- (1) A sworn complaint alleging a violation of this ordinance may be filed with the city attorney's office. In each such instance, an initial investigation shall be performed to determine the existence of a violation. If a violation is found to exist, the penalties and process shall be as provided in section 1-15 of this Code.
- (2) In addition to the penalties described herein and otherwise provided by law, a violation of this ordinance shall render the competitive solicitation void at the discretion of the city commission.
- (3) Any person who violates a provision of this section shall be prohibited from serving on a City of Key West advisory board, evaluation and/or selection committee.
- (4) In addition to any other penalty provided by law, violation of any provision of this ordinance by a City of Key West employee shall subject said employee to disciplinary action up to and including dismissal.
- (5) If a vendor is determined to have violated the provisions of this section on two more occasions it shall constitute evidence under City Code section 2-834 that the vendor is not properly qualified to carry out the obligations or to complete the work contemplated by any new competitive solicitation. The city's purchasing agent shall also commence any available debarment from city work proceeding that may be available upon a finding of two or more violations by a vendor of this section. (*Ord. No. 13-11, § 1, 6-18-2013*)

CITY OF KEY WEST INDEMNIFICATION FORM

PROPOSER agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all its Departments, Agencies, Boards, Commissions, officers, City’s Consultant, agents, servants and employees, including volunteers, from and against any and all claims, debts, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any act or omission of the PROPOSER, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all its Departments, Agencies, Boards, Commissions, officers, agents, servants and employees. The PROPOSER agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. The City of Key West does not waive any of its sovereign immunity rights, including but not limited to, those expressed in Section 768.28, Florida Statutes.

These indemnifications shall survive the term of this agreement. In the event that any action or proceeding is brought against the City of Key West by reason of such claim or demand, PROPOSER shall, upon written notice from the City of Key West, resist and defend such action or proceeding by counsel satisfactory to the City of Key West.

The indemnification provided above shall obligate PROPOSER to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City of Key West’s option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the City of Key West whether performed by PROPOSER, or persons employed or utilized by PROPOSER.

The PROPOSER’s obligation under this provision shall not be limited in any way by the agreed upon Contract Price as shown in this agreement, or the PROPOSER’s limit of or lack of sufficient insurance protection.

COMPANY SEAL

PROPOSER:

Address

Signature

Print Name

Date

Title

NOTARY FOR THE PROPOSER

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021. By _____,
of _____ (Name of officer or agent, title of officer or agent)

_____ (Name of corporation acknowledging)

or has produced _____ as identification.

Signature of Notary

Return Completed form with

Supporting documents to: City of Key West Purchasing

Print, Type or Stamp Name of Notary

Title or Rank

Exhibit B: Submitter Ranking Form

Project Name: **Sunset Celebration/ Mallory Square Master Plan**

Project Number: RFQ #22-002

Firm

Date

SELECTION CRITERIA	POINTS ALLOWED
Vendor’s history and success in performing similar projects (including subconsultant teams) through examples and references.	20
Qualifications and experience of assigned personnel	15
Landscape architecture design experience specific to South Florida and the Florida Keys region	20
Landscape architecture design experience specific to oceanfront sites	20
Depth of architectural design experience associated with historic sites and structures	20
Public participation expertise	5
Total Points	100

Exhibit C: SAMPLE CONTRACT

(subject to negotiation)

**THE FOLLOWING AGREEMENT IS A
DRAFT AGREEMENT AND SHOULD
NOT BE FILLED OUT AS PART OF THE
SUBMISSION PACKAGE. FINAL
AGREEMENT WILL BE IN
SUBSTANTIAL CONFORMANCE WITH
THE ATTACHED**

AGREEMENT

between

CITY OF KEY WEST

and

for

**PROFESSIONAL SERVICES FOR
SUNSET CELEBRATION/MALLORY SQUARE
MASTER PLAN**

KEY WEST, FLORIDA

This is an Agreement between: CITY OF KEY WEST, its successors and assigns, hereinafter referred to as "CITY," and _____, a corporation organized under the laws of the State of _____, its successors and assigns, hereinafter referred to as "CONSULTANT".

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONSULTANT agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1. Agreement:** This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CITY's RFQ ____-, CONSULTANT's Response to RFQ dated _____, 2021__, exhibits, Task Orders, and supplemental documents that are by this provision expressly incorporated herein by reference.
- 1.2. Commissioners:** Members of the City Commission with all legislative powers of the CITY vested therein.
- 1.3. CONSULTANT:** The firm selected to perform the services pursuant to this Agreement.
- 1.4. Contract Administrator:** The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5. Contractor:** The person, firm, corporation or other entity that enters into an agreement with CITY to perform the construction work for the Task Order.
- 1.6. CITY:** City of Key West.
- 1.7. Task Order:** A detailed description of a particular service or services to be performed by CONSULTANT under this Agreement.

ARTICLE 2

PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and generally to express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1. The CONSULTANT is not entitled to receive, and the CITY is not obligated to pay, any fees or expenses in excess of the amount budgeted for Task Orders authorized under this Agreement in each fiscal year (October 1-September 30) by CITY. The budgeted amount may only be modified per City Ordinance(s).
- 2.2. The CITY has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform the services hereunder based on the Request for Qualifications _____ incorporated by reference and made a part hereof and the Response to the Request for Qualifications from Consultant dated _____, 2021__, incorporated by reference and made part of.
- 2.3. Negotiations pertaining to the services to be performed by CONSULTANT were undertaken between CONSULTANT and staff selected by the Commission, and this Agreement incorporates the results of such negotiations.

ARTICLE 3

SCOPE OF SERVICES AND STANDARD OF CARE

- 3.1.** CONSULTANT's services may include but are not limited to the following in regard to the Agreement:
- 3.2.** CONSULTANT's services shall include comprehensive full-scale engineering, design, surveying, permit preparation, preparing contract specifications, preparing bid and proposal documents and assisting the City with technical review and ranking of the same to attain qualified contractors for work, environmental assessments, construction administration and owner project representation services relating to operation, new construction, permit modification, construction improvements, rehabilitation and or retrofits, and any other lawful professional Engineering services that the CONSULTANT is qualified to provide, and that the CITY authorizes the CONSULTANT to undertake in connection with this Agreement. CONSULTANT shall provide all necessary, incidental and related activities and services as required.
- 3.3.** CONSULTANT and CITY acknowledge that the Scope of Services does not delineate every detail and minor work task required to be performed by CONSULTANT to complete any particular task order. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Task Order which is, in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator in writing in a timely manner before proceeding with the work. If CONSULTANT proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written CITY approval or modification of Task Order is at CONSULTANT's sole risk.
- 3.4.** The specific services to be provided by the CONSULTANT and the compensation for such services shall be as mutually agreed to in separate Task Orders to this AGREEMENT. Each Task Order when fully executed shall become a supplement to and a part of this AGREEMENT.

 - 3.4.1.** Each Task Order shall be supported by appropriate cost and pricing data and such other documentation as required by the CITY.
 - 3.4.2.** Task Orders shall be numbered consecutively as specified by CITY. Each Task Order shall include a description of the scope of services and specified deliverables, time of completion, total estimated costs of services, and method of compensation. Additional information shall be provided to the CITY if required. Amended Task Orders shall include substantially the same information and be submitted to the CITY for approval.
 - 3.4.3.** The CITY may make or approve changes within the general Scope of Services in any Task Order. If such changes affect the CONSULTANT's cost of or time required for performance of the services, an equitable adjustment shall be made through an amendment to the Task Order.

- 3.4.4. A Task Order may be terminated at any time, with or without cause, by the CITY upon written notice to CONSULTANT. CONSULTANT shall perform no further work upon receipt of this notice unless specifically authorized by the City Manager of the City of Key West. On termination, the CONSULTANT shall be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the Task Order. The CITY shall not pay for anticipatory profits. The termination of this Agreement pursuant to Paragraph 7.2, hereof, shall constitute the termination of any and all outstanding Task Orders.
- 3.4.5. The CONSULTANT shall begin services under any Task Order when authorized by a Purchase Order issued by the CITY and delivered to CONSULTANT.
- 3.5.** The CITY and CONSULTANT may negotiate additional scopes of services, compensation, time of performance and other related matters for each Task Order as allowed by this Agreement. If CITY and CONSULTANT cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY and procure services from another source.
- 3.6.** CONSULTANT shall perform the professional services under this Agreement at the level customary for competent and prudent professionals in CONSULTANT'S field performing such services at the time and place where the services are provided. In the event CONSULTANT does not comply with this standard, and omissions or errors are made by CONSULTANT, CONSULTANT will correct such work that contains errors or omissions and reimburse CITY through compensation for damages.
- 3.7.** CONSULTANT is required to perform the Task Orders consistent with current applicable Federal, State and City laws, codes and regulations that pertain to the Task Order. In all Task Orders, where changes to any laws, codes or regulations affecting the Task Order have a Task Ordered effective date or are anticipated to be effective at a future date, or if knowledge of anticipated changes is available to CONSULTANT or any sub-consultant, CONSULTANT shall present options for their use or implementation.
- 3.8.** Construction Responsibility - Notwithstanding anything in this Agreement, CONSULTANT shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety measures, precautions and programs including enforcement of Federal and State safety requirements, in connection with construction work performed by CITY's construction contractors.
- 3.9.** Estimates - Since CONSULTANT has no control over local conditions, the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, CONSULTANT does not guarantee the accuracy of any opinions of probable construction cost as compared to construction contractor's bids or the actual cost to the CITY.

ARTICLE 4

TERM OF AGREEMENT; TIME FOR PERFORMANCE; CONTRACTOR DAMAGES;

The term of this Agreement shall be for a period of two (2) years from the effective date of the Agreement with the option of a one year renewal. The Agreement will be in effect upon execution by both parties. The Agreement may be renewed at the discretion of the CITY.

- 4.1.** CONSULTANT shall perform the services described in each Task Order within the time periods specified. Each such time period shall commence from the date of the purchase order issued for such services.
- 4.2.** CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent Task Order. Prior to granting approval for CONSULTANT to proceed to a subsequent Task Order, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit any deliverables/documents for the Contract Administrator's review.
- 4.3.** In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Task Order, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, CITY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CONSULTANT to notify CITY within 10 days in writing whenever a delay in approval by a governmental agency, including CITY, is anticipated or experienced, and to inform the Contract Administrator of all facts and details related to the delay.
- 4.4.** In the event the Contractor fails to substantially complete the Task Order on or before the substantial completion date specified in its agreement with CITY or if Contractor is granted an extension of time beyond said substantial completion date, and CONSULTANT's services are extended beyond the substantial completion date, through no fault of CONSULTANT, CONSULTANT shall be compensated in accordance with Article 5 for all services rendered by CONSULTANT beyond the substantial completion date.
- 4.5.** In the event Contractor fails to substantially complete the Task Order on or before the substantial completion date specified in its agreement with CITY, and the failure to substantially complete is caused in whole or in part by a negligent act, error or omission of CONSULTANT, then CONSULTANT shall pay to CITY its proportional share of any claim or damages to Contractor or CITY arising out of the delay. This provision shall not affect the rights and obligations of either party as set forth in Paragraph 7.8, INDEMNIFICATION OF CITY.

ARTICLE 5

COMPENSATION AND METHOD OF PAYMENT

5.1. AMOUNT AND METHOD OF COMPENSATION

The types of compensation methods, which shall be used to pay for the CONSULTANT's services, are limited to the following:

5.1.1. Lump sum payment/Not-to-Exceed, which includes compensation for all the CONSULTANT'S salaries, general overhead costs, direct expenses, and profit.

5.1.1.1. If Work timing deviates from the assumed schedule for causes beyond CONSULTANT's control, CONSULTANT and/or the CITY reserves the right to request renegotiation of those portions of the lump sum affected by the time change. During construction contract administration, if tasked, it is agreed by both parties that whether construction is completed earlier or later, that a proportional part of the compensation will be adjusted and either given to CONSULTANT for additional work or deleted from the amount owed CONSULTANT for less time required.

5.1.1.2. In the event of a change of scope, CITY shall authorize in writing an appropriate decrease or increase in compensation.

5.1.1.3. Monthly invoicing will be based on an estimate of the percent of work completed at the end of the preceding month.

5.1.1.4. The CONSULTANT shall submit wage rates and other actual unit costs supporting the compensation. The CONSULTANT shall submit a Truth in Negotiation Certificate stating that all data supporting the compensation is accurate, complete, and current at the time of contracting.

5.1.2. Cost Reimbursable-Per Diem (Time and Expenses)

5.1.2.1. Per diem rates are those hourly or daily rates charged for work performed on the WORK by CONSULTANT's employees of the indicated classifications and include all salaries, overheads, and profit, but do not include allowances for Direct Expenses. These rates are subject to annual adjustments based on the Consumer Price Index Urban U.S. City Average All Items U.S. Department of Labor Bureau of Labor Statistics.

5.1.2.2. Hourly rates for the contract (CONSULTANT AND Sub-consultants): See attached Exhibit A.

A Not-to-Exceed budgetary amount will be established for the Work. This budgetary amount shall not be exceeded unless prior written approval is provided by the CITY. CONSULTANT shall make reasonable efforts to complete the Work within the budget and will keep CITY informed of progress toward that end so that the budget or work effort can be adjusted if found necessary.

5.1.2.5. CONSULTANT is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is CITY obligated to pay CONSULTANT beyond these limits.

5.1.2.6. When any budget has been increased, CONSULTANT's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.

5.2. REIMBURSABLE EXPENSES

5.2.1.1. Direct non-salary expenses, entitled Reimbursable Expenses, directly attributable to the Work shall be charged at actual cost, and shall be limited to the following:

5.2.1.2. Identifiable transportation expenses in connection with the Work, subject to the limitations of Section 112.061, Florida Statutes. There shall be no mileage reimbursement for travel within the City of Key West. Transportation expenses to locations outside the City area or from locations outside the City will not be reimbursed unless specifically pre-authorized in writing by the Contract Administrator.

5.2.1.3. Identifiable per diem, meals and lodgings, taxi fares, automobile rental, and miscellaneous travel- connected expenses for CONSULTANT's personnel subject to the limitations of Section 112.061 Florida Statutes. Meals for class C travel inside the City of Key West will not be reimbursed. Lodging will be reimbursed only for room rates equivalent to Hampton Inn or Best Western located within the City of Key West city limits.

5.2.1.4. Identifiable communication expenses approved by Contract Administrator, long distance telephone, courier and express mail utilized to render the services required by this Agreement.

5.2.1.5. Cost of printing, reproduction or photography that is required by or of CONSULTANT to deliver services set forth in this Agreement.

5.2.1.6. Identifiable testing costs approved by Contract Administrator.

5.2.1.7. All permit fees paid to regulatory agencies for approvals directly attributable to the Work. These permit fees do not include those permits required for the Contractor.

5.2.2. It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in Paragraphs

5.2.1.1 through 5.2.1.7 is a limitation upon, and describes the maximum extent of, CITY's obligation to reimburse CONSULTANT for direct, non-salary expenses. If CITY or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursable Expenses, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by CITY prior to incurring such expenses.

5.2.3. All sub-consultants' hourly rates shall be billed in the actual amount paid by CONSULTANT. Sub-consultant Reimbursable Expenses are limited to the items in Paragraphs 5.2.1.1 through 5.2.1.7 described above when the sub-consultant's agreement provides for reimbursable expenses.

5.3. METHOD OF BILLING

5.3.1. Lump Sum Compensation

CONSULTANT shall submit billings identifying type of work completed on a monthly basis in a timely manner. These billings shall identify the nature of the work performed and the estimated percent of work accomplished. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, CONSULTANT shall provide backup for past and current invoices that record hours, personnel, and expense costs on a task basis, so that total hours and costs by task may be determined.

5.3.2. Cost Reimbursable-Per Diem (Time and Expenses) Compensation

CONSULTANT shall submit billings identifying the type of work completed on a monthly basis in a timely manner for all personnel hours and reimbursable expenses attributable to the Work. These billings shall identify the nature of the work performed, the total hours of work performed and the employee category and name of the individuals performing same. Billings shall itemize and summarize reimbursable expenses by category and identify same as to the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for reimbursable expenses, a copy of the approval shall accompany the billing for such reimbursable. The statement shall show a summary of salary costs and reimbursable expenses with accrual of the total and credits for portions paid previously. External reimbursable expenses and sub-consultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain the purchase order number or other identifier that clearly indicates the expense is identifiable to the Work. Subsequent addition of the identifier to the invoice or receipt by the CONSULTANT is not acceptable except for meals and travel expenses. Appropriate CONSULTANT's cost accounting forms with a summary of charges must document internal expenses by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and rates by employee category, reimbursable expenses by category, and subcontractor fees on a task basis, so that total hours and costs by task may be determined.

- 5.3.3. If requested, CONSULTANT shall provide copies of past paid invoices to any subcontractor or sub-consultant prior to receiving payment. CITY reserves the right to pay any subcontractor or sub-consultant, if CONSULTANT has not paid them timely and the services of the subcontractor or sub-consultant are necessary to complete the Work.

5.4. METHOD OF PAYMENT

5.4.3. CITY shall pay CONSULTANT within forty-five (45) calendar days from receipt of CONSULTANT's proper invoice with documentation as provided above.

5.4.3. In the event CONSULTANT has utilized a Sub-consultant to perform the Work, CONSULTANT will be required to provide documentation that Sub-consultant and Sub-consultants of Sub-consultants have been paid prior to payment being made to CONSULTANT.

5.4.3. Payment will be made to
CONSULTANT at:

Address: _____

ARTICLE 6

CITY 'S RESPONSIBILITIES

- 6.1.** CITY shall assist CONSULTANT by placing at CONSULTANT's disposal all information CITY has available pertinent to the Task Order including previous reports and any other data relative to design or construction of the Task Order.
- 6.2.** CITY shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.
- 6.3.** CITY shall review the CONSULTANT's itemized deliverables/documents identified in the Task Orders and respond in writing with any comment within the time set forth in the Task Order or within a reasonable time.
- 6.4.** CITY shall give prompt written notice to CONSULTANT whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of any Contract.

ARTICLE 7

MISCELLANEOUS

7.1. OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, data matrices and calculations generated and used to evaluate and compute the construction or material requirements for the Task Order, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by CONSULTANT in connection with this Agreement, whether in hard copy or electronic form, shall become the property of CITY, whether the Task Order for which they are made is completed or not. If applicable, CITY may withhold any payments then due to CONSULTANT until CONSULTANT complies with the provisions of this Article. CONSULTANT is not responsible for damages caused by the unauthorized re-use by others of any of the materials for another Task Order.

7.2. TERMINATION

7.2.1. This Agreement may be terminated with or without cause by CITY at any time.

7.2.2. Notice of termination shall be provided in accordance with paragraph 7.12 NOTICES of this Agreement.

7.2.3. In the event this Agreement is terminated, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 7.1 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment of profit for services that have not been performed.

7.3. AUDIT RIGHT AND RETENTION OF RECORDS

7.3.1. CITY shall have the right to audit the books, records, and accounts of CONSULTANT that are related to any Task Order. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Task Order.

7.3.2. CONSULTANT shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, CONSULTANT shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

7.4. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AMERICANS WITH DISABILITIES ACT, AND EQUAL BENEFITS FOR DOMESTIC PARTNERS

7.4.1. CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

7.4.2. CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity or expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor that cannot be lawfully or appropriately used as a basis for service delivery. CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, gender identity or expression, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeships), and accessibility.

7.4.3. Consultant shall comply with City Ordinance Sec. 2-799 Requirements for City Contractors to Provide Equal Benefits for Domestic Partners.

7.5. PUBLIC ENTITY CRIMES ACT

7.5.1. CONSULTANT represents that the execution of this Agreement shall not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY , may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY , and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto and may result in being barred from CITY’s competitive procurement activities.

7.5.2. In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any sub-consultant, has committed an act defined by Section 287.133, Florida Statutes, as a “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.

7.5.3. CONSULTANT shall promptly notify CITY if it or any subcontractor or sub-consultant is formally charged with an act defined as a “public entity crime” or has been placed on the convicted vendor list.

7.6. SUB-CONSULTANTS

CONSULTANT may use the sub-consultants identified in the proposal that was a material part of the selection of CONSULTANT to provide the services under this Agreement. The CITY reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and to inspect all facilities of any sub-consultants in order to make determination as to the capability of the sub-consultant to perform properly under this Contract. The CITY’s acceptance of a sub-consultant shall not be unreasonably withheld. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or adding to the list of sub-consultants. The list of sub-consultants submitted and currently approved is as follows:

- a. _____
- b. _____

- c. _____
- d. _____

Hourly rates for such said Sub-consultants are as on attached Exhibit A.

7.7. ASSIGNMENT AND PERFORMANCE

- 7.7.1. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 7.6.
- 7.7.2. CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY’s satisfaction for the agreed compensation.
- 7.7.3. CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT’s performance and all interim and final product(s) provided to or on behalf of CITY shall be in accordance with the standard of care set forth in Paragraph 3.6.
- 7.7.4. CONSULTANT shall not change or replace overall project manager identified in the CONSULTANT’s response to the RFQ without the Contract Administrator’s prior written approval.

7.8. INDEMNIFICATION OF CITY

- 7.8.1. To the fullest extent permitted by law, the CONSULTANT expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents, and employees (herein called the “indemnities”) from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claims by indemnities for indemnification shall be limited to the amount of CONSULTANT’s insurance or \$1 million per occurrence, whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any.
- 7.8.2. The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT under workers’ compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the CONSULTANT or of any

third party to whom CONSULTANT may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the Work.

7.9. GENERAL INSURANCE REQUIREMENTS:

- 7.9.1 During the Term of the Agreement, the Contractor shall provide, pay for, and maintain with insurance companies satisfactory to the City of Key West, Florida ("City"), the types of insurance described herein.
- 7.9.2 All insurance shall be from responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Monroe County, Florida, and shall be construed in accordance with the laws of the State of Florida.
- 7.9.3 The City shall be specifically included as an additional insured on the Contractor's Liability policies with the exception of the Contractor's Professional Liability policies (if required) and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision). The City's additional insured status should be extended to all Completed Operations coverages.
- 7.9.4 The Contractor shall deliver to the City, prior to commencing work/activities under the Agreement, properly executed "Certificate(s) of Insurance" setting forth the insurance coverage and limits required herein. The Certificates must be signed by the authorized representative of the insurance company(s) shown on the Certificate of Insurance. In addition, certified, true, and exact copies of the insurance policies required herein shall be provided to the City, on a timely basis, if requested by the City.
- 7.9.5 If the Contractor fails to provide or maintain the insurance coverages required in this Agreement at any time during the Term of the Agreement and if the Contractor refuses or otherwise neglects to deliver the required Certificate(s) of Insurance signed by the authorized representative of the insurance company(s) to the City, the City may, at the City's sole discretion, terminate or suspend this Agreement and seize the amount of Contractor's performance bond, letter of credit, or other security acceptable to the City).
- 7.9.6 The Contractor shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the City requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit, the Contractor shall promptly authorize and have delivered such statement to the City.
- 7.9.7 The Contractor authorizes the City and/or its insurance consultant to confirm all information furnished to the City, as to its compliance with its Bonds and Insurance Requirements, with the Contractor's insurance agents, brokers, surety, and insurance carriers.
- 7.9.10 All insurance coverage of the Contractor shall be primary to any insurance or self-insurance program carried by the City. The City's insurance or self-insurance programs or coverage shall not be contributory with any insurance required of the Contractor in this Agreement.
- 7.9.11 The acceptance of delivery to the City of any Certificate of Insurance evidencing the insurance coverage and limits required in the Agreement does not constitute approval or agreement by the City that the insurance requirements in the Agreement have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Agreement requirements.
- 7.9.12 No work/activity under this Agreement shall commence or continue unless and until the required Certificate(s) of Insurance are in effect and the written Notice to Proceed is issued by the City.

- 7.9.13 The insurance coverage and limits required of the Contractor under this Agreement are designed to meet the minimum requirements of the City. They are not designed as a recommended insurance program for the Contractor. The Contractor alone shall be responsible for the sufficiency of its own insurance program. Should the Contractor have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.
- 7.9.15 During the Term of this Agreement, the City and its agents and contractors may continue to engage in necessary business activities during the operations of the Contractor. No personal property owned by City used in connection with these business activities shall be considered by the Contractor's insurance company as being in the care, custody, or control of the Contractor.
- 7.9.16 Should any of the required insurances specified in this Agreement provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, the Contractor shall be responsible for all deductibles and self-insured retentions.
- 7.9.17 All of the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.
- 7.9.18 All policies of insurance required herein shall require that the insurer give the City thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Agreement, except for the application of the Aggregate Limits Provisions.
- 7.9.19 Renewal Certificate(s) of Insurance shall be provided to the City at least twenty (20) days prior to expiration of current coverage so that there shall be no termination of the Agreement due to lack of proof of the insurance coverage required of the Contractor.
- 7.9.20 If the Contractor utilizes contractors or sub-contractors to perform any operations or activities governed by this Agreement, the Contractor will ensure all contractors and sub-contractors to maintain the same types and amounts of insurance required of the Contractor. In addition, the Contractor will ensure that the contractor and sub-contractor insurances comply with all of the Insurance Requirements specified for the Contractor contained within this Agreement. The Contractor shall obtain Certificates of Insurance comparable to those required of the Contractor from all contractors and sub-contractors. Such Certificates of Insurances shall be presented to the City upon request. Contractor's obligation to ensure that all contractor's and sub-contractor's insurance as provided herein shall not exculpate Contractor from the direct primary responsibility Contractor has to the City hereunder. The City will look directly to Contractor for any such liability hereunder and shall not be obligated to seek recovery from any contractor or subcontract or under such contractor's or sub-contractor's insurance coverages.
- 7.9.21 **SPECIFIC INSURANCE COVERAGES AND LIMITS:**
- 7.9.22 All requirements in this Insurance Section shall be complied with in full by the Contractor unless excused from compliance in writing by the City.
- 7.9.23 The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the City.

7.9.24 **Workers' Compensation and Employers' Liability Insurance** shall be maintained in force during the Term of this Agreement for all employees engaged in this work under this Agreement, in accordance with the laws of the State of Florida. The minimum acceptable limits shall be:

Workers' Compensation	Florida Statutory Requirements
Employer's Liability	\$100,000.00 Limit Each Accident
	\$500,000.00 Limit Disease Aggregate
	\$100,000.00 Limit Disease Each

Employee

If the Contractor has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*, the Contractor will be required to issue a formal letter (on the Contractor's letterhead) stating that it has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*. This exception does **not** apply to firms engaged in construction activities.

7.9.25 **Commercial General Liability Insurance** shall be maintained by the Contractor on a Full Occurrence Form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, and Products & Completed Operations Coverage. The limits of such coverage shall not be less than:

Bodily Injury & Property Damage Liability	\$1,000,000.00 Combined Single Limit each Occurrence and Aggregate
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Completed Operations Liability Coverage shall be maintained by the Contractor for a period of not less than four (4) years following expiration or termination of this Agreement.

The use of an Excess, Umbrella and/or Bumbershoot policy shall be acceptable if the level of protection provided by the Excess, Umbrella and/or Bumbershoot policy is equal to or more comprehensive than the Primary Commercial General Liability policy.

7.9.26 **Business Automobile Liability Insurance** shall be maintained by the Contractor as to ownership, maintenance, use, loading and unloading of all owned, non-owned, leased, or hired vehicles with limits of such coverage of not less than:

Bodily Injury	\$1,000,000.00 Limit Each Accident
Property Damage Liability	\$1,000,000.00 Limit Each Accident

or

Bodily Injury & Property Damage Liability	\$1,000,000.00 Combined Single Limit Each Accident
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If the Contractor does not own any vehicles, this requirement can be satisfied by having the Contractor's Commercial General Liability policy endorsed with "Non-Owned and Hired Automobile" Liability coverage.

7.9.27 **Professional Liability Insurance** shall be maintained by the Contractor which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the Contractor arising out of activities governed by this Agreement. The minimum acceptable limits of liability shall be \$1,000,000 per Occurrence and \$2,000,000 Annual Aggregate. If the policy is structured on a “Claims Made” basis, the policy must contain a “Retroactive Date” of no later than the commencement date of the Agreement and will have an extended reporting period of four (4) years following expiration or termination of the Agreement.

7.10. REPRESENTATIVE OF CITY AND CONSULTANT

7.10.1. The parties recognize that questions in the day-to-day conduct of the Task Order will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Task Order shall be addressed.

7.10.2. CONSULTANT shall inform the Contract Administrator in writing of CONSULTANT's representative to whom matters involving the conduct of the Task Order shall be addressed.

7.11. ALL PRIOR AGREEMENTS SUPERSEDED

7.11.1. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document and the exhibits attached. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

7.11.2. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

7.12. NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR CITY OF KEY WEST:

City of Key West

1300 White Street
Key West, FL 33040

FOR CONSULTANT:

Contact Name: _____

Address: _____

7.13. TRUTH-IN-NEGOTIATION CERTIFICATE

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 of this Agreement are accurate, complete, and current at the time of contracting. The original contract price for any Task Order and any additions thereto shall be adjusted to exclude any significant sums, by which CITY determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

7.14. INTERPRETATION

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence or paragraph where they appear, unless the context otherwise requires. Whenever reference is made to a Paragraph or Article of this Agreement, such reference is to the Paragraph or Article as a whole, including all of the subsections of such Paragraph, unless the reference is made to a particular subsection or subparagraph of such Paragraph or Article.

7.15. CONSULTANT'S STAFF

7.15.1. CONSULTANT shall provide the key staff identified in their proposal for Task Order as long as such key staffs are in CONSULTANT's employment.

7.15.2. CONSULTANT shall obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator shall be reasonable in evaluating key staff qualifications.

- 7.15.3. If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.
- 7.15.4. The CITY reserves the right to approve the members of the Consulting Team and the roles they will undertake in the assignment. The CITY's acceptance of a team member shall not be unreasonably withheld.
- 7.15.5. Each assignment issued under this Agreement by the CITY to the Consultant, the Consultant will at the CITY's request, disclose the role, qualifications and hourly rate of each individual working on the assignment.
- 7.15.6. The CITY reserves the right to require replacement of any of the members of the Consulting Team. Any proposed addition or change of members of the Consulting Team initiated by the Consultant must obtain the CITY Representative's prior written approval.
- 7.15.7. In the event of the death, incapacity or termination of employment of any member of the Consulting Team before Completion of the Services, the Consultant shall at its own expense and as soon as reasonably practicable arrange to substitute or replace the individual member concerned.
- 7.15.8. The Consultant shall ensure that the substitute or replacement is no less qualified in terms of relevant experience and qualifications than the outgoing individual and is available at the relevant time to act as such replacement or substitute. The Consultant shall without delay forward curriculum vitae of the proposed substitute or replacement to the CITY. The deployment of such substitute or replacement shall be subject to the CITY's consent.
- 7.15.9. The Consultant shall solely be responsible for all direct, indirect and consequential costs or losses that may arise from the substitution or replacement of members of the Consulting Team.

7.16. INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of CONSULTANT. In providing the services, CONSULTANT or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CITY, nor shall they accrue any of the rights or benefits of a CITY employee. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

7.17. THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor CITY intend directly or substantially to benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. No subcontractor or sub-consultant, whether named or unnamed, shall be a third party beneficiary of this Agreement.

7.18. CONFLICTS

- 7.18.1. Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.
- 7.18.2. CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.
- 7.18.3. In the event CONSULTANT is permitted to use sub-consultants to perform any services required by this Agreement, CONSULTANT agrees to prohibit such sub-consultants from having any conflicts as within the meaning of this section, and shall so notify them in writing.

7.19. CONTINGENCY FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, 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 CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, CITY shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

7.20. WAIVER OF BREACH AND MATERIALITY

- 7.20.1. Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 7.20.2. CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

7.21. COMPLIANCE WITH LAWS

CONSULTANT shall comply with federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement applicable at the time the scope of services was drafted for this agreement. In addition, at the time each Task Order is executed, any revisions to applicable federal state, and local laws, codes, ordinances, rules and regulations shall apply.

7.22. SEVERABILITY

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONSULTANT elects to terminate this Agreement.

7.23. JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CITY and CONSULTANT and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

7.24. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 of this Agreement shall prevail and be given effect.

7.25. APPLICABLE LAW AND VENUE

The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any claims related to it. The venue for mediation, arbitration or any other legal proceeding shall be Monroe County, Florida.

7.26. INCORPORATION BY REFERENCE

The attached exhibits are incorporated into and made a part of this Agreement:

Exhibit A – CONSULTANT/Sub-consultants' Hourly Rates

7.27. COUNTERPARTS

This Agreement may be executed in three (3) counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

By: CITY OF KEY WEST

By: CONSULTANT

Patti McLauchlin, City Manager

(Signature)

(Print Name and Title)

____ day of _____, 20____

____ day of _____, 20____

Attest:

Attest:

Cheryl Smith, City Clerk

(Signature)

(Print Name and Title)

____ day of _____, 20____

____ day of _____, 20____

**Exhibit A
Hourly Fee Schedule**

Company Name: _____ **Date:** _____

Position Title

Hourly Rate

Exhibit D: Procurement Requirements: 2 CFR 200

In anticipation of potentially receiving Federal or State funds for this project in the future, the City will comply with §200.318 - §200.327 of 2 CFR 200. As a result, the following State and Federal requirements will be adhered to:

1. Conflict of Interest: All firms must disclose with their bid the name of any officer, director or agent who is also an employee of the City or any of its departments. Further, all firms must disclose the name of any City employee who owns directly or indirectly, an interest of five percent (5%) or more in the firm's entity or any of its branches or subsidiaries.

1) Non-government Conflicts

- a) A firm shall not submit a response or enter into a contract with the City if the contract would result in the proposer having a conflict of interest. As used herein, the term conflict of interest shall mean:
 - i. The firm's contract with another customer or entity will be averse to the interest of the City; or
 - ii. There is a significant risk that the interest of the City will be materially impacted by the firm's responsibilities to a current customer or entity, a former customer or entity or any other third party.
- b) Notwithstanding the existence of a conflict of interest under paragraph (a), a firm may submit a proposal and enter into a contract with the City if:
 - i. The firm reasonably believes that they will be able to provide competent and diligent representation to each affected customer or entity and;
 - ii. The conflict of interest is not prohibited by law and;
 - iii. The proposal or contract does not involve the assertion of a claim by one customer or entity against another represented by the firm in the same project or other proceeding

In addition, each individual participating in the selection process for professional services contracts must also disclose any conflict of interest. Consultant and subconsultant firms representing the City of Key West must be free of conflicting professional or personal interests. It is the responsibility of the consultant to recuse itself from submitting responses for a project if a conflict of interest exists. Subconsultants are responsible for disclosing potential conflicts of interest to the prime consultant firm and recusing themselves accordingly where conflict of interest exists.

2. Full and Open Competition: All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of §200.319 & §200.320.
3. Contracting with small and minority firms, women's business enterprise and labor surplus area firms:

- 1) The City will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- 2) Affirmative steps shall include:
 - i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
 - vi) Requiring the prime contractor, if subcontracts are to be let to take the affirmative steps listed in paragraphs (e)(2) (i) through(v) of this section.
4. Procurements of Recovered Materials: The City and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
5. Unnecessary or Duplicative Items: Provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
6. Federal Excess and Surplus Property: The City encourages the use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
7. Settlement of All Contractual and Administrative Issues: The City alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the City of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the City unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

8. Local Preference: Local preference is not allowed.
9. Domestic Preferences for Procurements: As appropriate and to the extent consistent with law, the City, to the greatest extent practicable under a Federal award, prefers the purchase, acquisition, or use of goods, products, or materials produced in the United States. For the purposes of this section:
 - 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
10. E-Verify (Execute Order 11-116): Consultant:
 - 1) Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the contract term; and
 - 2) Shall expressly require any subcontractors performing work or providing services pursuant to this contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
11. Executive Order 11246: Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
12. Termination: This agreement may be terminated at any time, with or without cause, by the City upon thirty (30) days written notice to the consultant. No further work will be performed by the consultant upon receipt of this notice unless specifically authorized by the City Manager of the City of Key West. On termination, the consultant will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the City, reasonable expenses incurred during the close-out of the agreement. The City will not pay for anticipatory profits.

Violation of any local, state, or federal law in the performance of this contract shall constitute

a material breach of this contract, which may result in the termination of this contract or other such remedy, as the City deems appropriate.

13. Public Records: Article 1, Section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011(12), Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any firm claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption. Contractors must provide the Sub-recipient, pass-thru entity, Federal awarding agency, Comptroller General of the United States, or any duly authorized representatives right of access to any books, documents, papers, or records which are directly pertinent to the project for the purpose of making audits, examinations, excerpts, and transcriptions.
14. Records Retention: Retention of all required records for six (6) years after final payments are made and all other pending matters are closed.
15. Convicted Vendor List 287.133(2)(a), F.S.: check the convicted vendors list prior to making any awards to ensure that contracts greater than \$35,000 are not awarded to convicted vendors for a period of thirty-six (36) months following the date of their placement on the convicted vendors list.
16. Discriminatory Vendor List 287.134(2)(a), F.S.: check the discriminatory vendors list prior to making any awards to ensure that contracts are not awarded to vendors on the discriminatory vendors list.
17. Monthly and Quarterly Monitoring: The selected firm will provide monthly and quarterly documentation and reports regarding status, changes, and other details as per stipulated grant requirements for submittal by the City.

In addition, Appendix II to Part 200 (see next page) must be included in all contracts:

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See [§ 200.323](#).

(K) See [§ 200.216](#).

(L) See [§ 200.322](#).

[[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014; [85 FR 49577](#), Aug. 13, 2020]

In the event CDBG funding is obtained:

24 CFR 135.38

§ 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).