

CITY OF KEY WEST, FLORIDA



REQUEST FOR PROPOSAL # 002-17

For

TENNIS PROFESSIONAL SERVICES

MAYOR CRAIG CATES

COMMISSIONERS:

DISTRICT 1: JIMMY WEEKLY

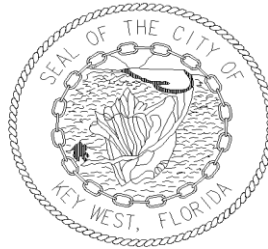
DISTRICT 4: RICHARD PAYNE

DISTRICT 2: SAMUEL KAUFMAN

DISTRICT 5: MARGARET ROMERO

DISTRICT 3: BILLY WARDLOW

DISTRICT 6: CLAYTON LOPEZ



THE CITY OF KEY WEST
Post Office Box 1409
Key West, Florida 33041-1409

September 1, 2016

To: All Prospective Proposers

City of Key West is soliciting competitive sealed Proposals for Tennis Professional Services, RFP# 002-17.

This package contains the following documents.

- a. Cover letter one (1) page in length
- b. Information to Proposers one (1) page in length
- c. Request for Proposal two (2) pages in length
- d. Concession Property Exhibit
- e. Instruction to Proposers seven (6) pages in length
- f. Proposal Form one (1) page in length
- g. Anti-Kickback Affidavit one (1) page in length
- h. Public Entity Crimes Certification three (3) pages in length
- i. Non-Collusion Declaration three (3) pages in length.
- j. Indemnification Form one (1) page in length
- k. Equal Benefits for Domestic Partners Affidavit one (1) page in length
- l. Cone of Silence Affidavit four (4) pages in length
- m. Local Vendor Certification one (1) page in length

Please review your package to ensure it contains all of these documents. If not, contact Sue Snider, City of Key West Purchasing Agent at (305) 809-3815, immediately, to obtain copies of any missing document(s). Please contact Rod Delostrinos, Director of Community Services at (305) 809-3767 or rdelostrinos@cityofkeywest-fl.gov with questions concerning the project.

Proposers submitting proposals should ensure that the following documents are completed, certified, and returned as instructed: Anti-Kickback Affidavit, Public Entity Crimes Certification, Non-Collusion Declaration, Indemnification Form, Equal Benefits for Domestic Partners Affidavit, Cone of Silence Affidavit, No Conflict Statement, Copy of Current United States Professional Tennis Association Certification with rank of at least Professional 2 and/or United States Professional Tennis Registry Certification with the ranking of Professional or higher, Statement of Proposer's Understanding of Work, List of Proposer's References from Similar Projects from the Last Five Years, Maintenance Plan and Local Vendor Certification.

INFORMATION TO PROPOSERS

SUBJECT: Request for Proposal, RFP# 002-17 Tennis Professional Services

ISSUE DATE: October 2, 2016

MAIL PROPOSALS TO: City Clerk
City of Key West
3126 Flagler Avenue
Key West, Florida 33040

DELIVER PROPOSALS TO: City Clerk
City of Key West
3126 Flagler Avenue
Key West, Florida 33040

PROPOSALS MUST BE RECEIVED NO LATER THAN: 3:00 P.M. Eastern Time on October 19, 2016

SUE SNIDER
PURCHASING AGENT
CITY OF KEY WEST

ses

Enclosures

Notice of Advertisement

NOTICE OF ADVERTISEMENT – REQUEST FOR PROPOSAL

NOTICE is hereby given to prospective proposers that responses will be received by the CITY of KEY WEST, FLORIDA by the office of the City Clerk, 3126 Flagler Avenue, Key West, Florida 33040 until 3 p.m. October 19, 2016 for the “**Request for Proposal# 002-17– Tennis Professional Services**” in the Office of the City Clerk. Any responses received after the time announced will not be considered.

Scope of Services and Response Documents may be obtained from DemandStar by Onvia at www.demandstar.com/supplier or at <http://www.cityofkeywest-fl.gov>. One (1) original with two (2) flash drives, to be enclosed in two (2) sealed envelopes, one within the other, each clearly marked on the outside: “**Request for Proposal# 002-17– Tennis Professional Services**” the due date, and the respondent’s name, addressed and delivered to:

CITY CLERK, CITY OF KEY WEST, FLORIDA
3126FLAGLER AVENUE KEY
WEST, FLORIDA 33040

At the time of the proposal, the successful Responder must show satisfactory documentation of state licenses (if applicable).

Any permit and/or license requirement and subsequent costs are located within the response documents. The successful Responder must also be able to satisfy the City Attorney as to such insurance coverage, and legal requirements as may be demanded by the response in question. The City may reject responses: (1) for budgetary reasons, (2) if the responder misstates or conceals a material fact in its response, (3) if the response does not strictly conform to the law or is non-responsive to the response requirements, (4) if the response is conditional, or (5) if a change of circumstances occurs making the purpose of the response unnecessary, (6) if such rejection is in the best interest of the City. The City may also waive any minor formalities or irregularities in any response.

Sue Snider, Purchasing Agent

REQUEST FOR PROPOSAL

Pursuant to City Ordinance, notice is hereby given that The City of Key West is seeking proposals from interested business entities to operate a Tennis Professional Concession at Bayview Park. Bayview Park's hours of operation are daily from 7:00 a.m. to 11:00 p.m. The concession operations consist of a tennis pro shop, professional lesson services. The concession area consists of five (5) public tennis courts (1-two court and 1- three court configuration) and one retail space. Prospective proposers will submit as part of this proposal submission a tennis facility operations plan. The objective is to award a five-year concession agreement. Although private lessons are permissible, a total of three (3) courts shall remain open at all times. Refer to Page 6 of this solicitation for a sample concession agreement the selected concessionaire would be expected to execute. Court maintenance equipment, retail inventory, and materials will be provided by the proposer. The concession will require on-going maintenance and refurbishment to prevent it from falling into disrepair and to ensure uninterrupted quality services. Accordingly, the proposer shall include plans for on-going refurbishment, improvement, and maintenance of, at a minimum, and equipment of the entire concession premises. The proposer will submit a request for any major maintenance tasks for the courts or the retail space costing \$5000 or more to the City of Key West for review and possible inclusion in the City Facility Maintenance Plan or Capital Improvement Program.

The minimum qualifications of the tennis professional sought are:

1. United States Professional Tennis Association with rank of at least "Elite Professional" and/or Professional Tennis Registry ranking of at least "Professional."
2. Experience in all areas of tennis facility maintenance. This includes but is not limited to cleaning, standing water removal, painting, net replacement, minor retail space repair and crack repair. The desired end state is a tennis facility that allows for regulation play throughout the year.
3. Experience in all aspects of directing tournaments.

The successful Proposer must also be able to satisfy the City Attorney as to such insurance coverage, and legal requirements as may be demanded in proposal. The City may reject proposals: (1) if the Proposer misstates or conceals a material fact in its Proposal (2) if the Proposer does not strictly conform to the law or is non-responsive to Proposal requirements, (3) if the Proposal is conditional, (4) if a change of circumstances occurs making the purpose of the proposals unnecessary or (5) if such rejection is in the best interest of the City. The City may also waive any minor informalities or irregularities in any proposal. All proposals will be processed in accordance with Sunshine Laws, Florida Statute, Chapter 119.01

Mandatory Proposal Submittals:

- a) United States Professional Tennis Association Certification with rank of at least Professional 2 and/or United States Professional Tennis Registry Certification with the ranking of Professional or higher.
- b) Anti-Kickback Affidavit (Attachment A)
- c) Public Entity Crimes Certification (Attachment B)
- d) Non-Collusion Declaration (Attachment C)
- e) Indemnification Form (Attachment D)
- f) Equal Benefits for Domestic Partners Affidavit
- g) Cone of Silence Affidavit
- h) No Conflict Statement

- i.) Statement of Proposer's Understanding of Work
- j.) List of Proposer's References from Similar Projects from the Last Five Years
- k.) Plans for on-going refurbishment, improvement, and maintenance
- l.) Local Vendor Certification

Sunshine Committee Scoring Breakdown:

The City of Key West City Commission will evaluate all proposals. The scoring is based on a weighted scoring system. This gives certain criterion more priority than others. A total of 1000 Points are possible. The Scorer, based on his/her assessment of the criterion, assigns a value of one (1) through ten (10). The points assigned is then multiplied by the weighted designation value and a subtotal is determined. All the subtotals are added to arrive at a total score. This total is the basis of the proposal ranking.

Criterion	Points (1-10)		Weight	Subtotal
Demonstrated Tennis Professional Experience		X	30	
Annual Proposal Cost to the City		X	25	
Experience in all areas of tennis facility maintenance		X	20	
Tennis facility operations plan		X	15	
Experience in all aspects of directing tournaments		X	10	
			Total	

For information or questions, contact Rod Delostrinos, Director of Community Services at 809-3767 or email at rdelostrinos@cityofkeywest-fl.gov

SAMPLE CONCESSION AGREEMENT FORMAT
(Details and language will vary based on the response from the Request for Proposals and the City Attorney's Office.)

CONCESSION AGREEMENT

This AGREEMENT is entered into this day _____ of _____ 2016 by and between the City of Key West, Florida (hereinafter referred to as "City"), a municipal corporation organized and existing under the laws of the State of Florida, and _____ (hereinafter referred to as "Concessionee").

WITNESSETH:

WHEREAS, Concessionee wishes to obtain from City certain rights to vend to the public at a concession location at Bayview Park tennis courts and pro shop; and

WHEREAS, City wishes to convey such rights for a stated period, in return for monetary consideration and other assurances, in order that tennis professional services and associated retail shall be available to the public; and

WHEREAS, City and Concessionee desire a written agreement between them providing terms by which City grants, and Concessionee accepts, such rights.

NOW THEREFORE, in mutual consideration of the benefits that will accrue to the parties in faithfully abiding by the terms of this Agreement, City and Concessionee agree as follows:

(1) Concession Premises

City hereby grants to Concessionee the right and authority to use only as hereinafter described the concession premises, consisting of 5 public tennis courts and one retail space, as shown on the attached "Exhibit A" (hereinafter referred to as "Concession Premises").

Concessionee hereby accepts the Concession Premise in an "as is" condition, and shall cause no harm by act or neglect to the Concession Premises or property contiguous thereto owned or controlled by City. Furthermore, the City shall not be responsible for debris or damage to any property of the Concessionee from any cause whatsoever.

In the event that a hurricane warning is issued by the National Weather Service, Concessionee shall immediately remove all personal property, equipment, inventory, storage boxes and other property that pose an imminent and serious danger to the public health, safety or welfare.

(2) Concession Term

City hereby grants to Concessionee's use as hereinafter described, the Concession Premises for a term of five (5) years (hereinafter, "Concession Term"). The Concession Term is subject to all rights of termination as hereinafter described.

(3) Concession Use

Subject to all terms and conditions provided in this Agreement, City hereby grants to Concessionee the right and authority to operate, as herein described, tennis professional services and associated retail (hereinafter, "Concession Use") upon the Concession Premises. It is the sole responsibility of the Concessionee to keep all equipment in good repair and supply all necessary and approved equipment required to conduct the activities specified herein.

Concessionee herein expressly agrees to oversee all aspects of maintaining a tennis facility open to the public, including, but not limited to, the following:

- 1) With regard to the tennis courts and retail space located on the Concession Premises, Concessionee shall be responsible for cleaning area surrounding courts/seating areas as needed and monitor activity in park and notify authorities.
- 2) Court maintenance equipment, retail inventory, and associated materials shall be provided by Concessionee at Concessionee's sole expense.
- 3) Concessionee shall hold and direct tournaments at the Concession Premises such to meet public demand for same, including a minimum of four (4) fundraising tournaments each calendar year for the benefit of community nonprofit entities. In conducting said tournaments, as well as special events, socials, and leagues, Concessionee shall be permitted to utilize all courts located on the Concession Premises.
- 4) Concessionee shall be permitted to utilize a maximum of two (2) courts to conduct private tennis lessons. Provided, however, with the exception of scheduled events such as tournaments wherein all courts are utilized, a minimum of three (3) courts shall be available for public use.

(4) Concession Fee

(A) Payment Amount

Concessionee shall pay to City the amount of _____.

(B) Payments Due

The City will not provide any subsidy in connection with this agreement.

The Concession Fee for each month is due at the City of Key West Revenue Office, P.O. Box 1409, Key West, Florida 33041, on the fifth (5th) day of the following calendar month. Any Concession Fee payment not received at the office by the twentieth (20th) day following the said due date shall bear interest at the highest rate permitted by law from the twenty-first (21st) day after the due date until the date it is received by the City. In addition, all payments received after the due date shall incur a Fifty Dollar (\$50.00) administrative fee to cover the costs of collecting and processing late payments.

**(D) Additional
Rent**

Should any fee, tax, penalty, fine, or other amount due to the City be levied or imposed upon Concessionee for any reason related to Concessionee's use of the Premises involved in this agreement, from any source whatsoever, including but not limited to sales tax, ad valorem tax, or code enforcement fine, the same shall be the responsibility of the Concessionee and Concessionee shall pay the same promptly when due as additional rent hereunder.

(E) Hardship Provision

In the event the Bayview Park tennis courts are deemed "closed" through no fault of the Concessionee by an event beyond his control, including City construction projects or destructive storms, for more than 15 days in a calendar month, the Concessionee may request, by writing to the City Manager, that a hardship provision be invoked wherein the Concessionee will be required to pay 50% of the minimum fee for the month that the hardship provision is invoked. The City Manager's decision regarding the Concessionee's request to invoke the hardship provision shall be final and shall be made in the sole discretion of the City Manager.

(5) Insurance

Concessionee shall provide at his sole expense comprehensive liability insurance insuring itself and the City against all claims of damages or injury to persons or property arising for any reason out of the Concessionee's Use of the Concession Premises, or arising out of its activities related to the Concession Use, or otherwise arising from its exercise of rights or failure to perform obligations pursuant to this Agreement. The insurance policy shall be written by a solvent insurance company in good standing and fully licensed to do business in Florida, and shall provide (i) an occurrence form commercial general liability policy, covering the operations of Concessionee and any person conducting business in, on or about the Concession Premises in which the limits with respect to liability and property damage shall not be less than 1 Million (\$1,000,00.00) Dollars per occurrence (ii) all risk property insurance, including theft coverage, written at replacement cost value and a replacement cost endorsement insuring Concessionee's

improvements and betterments, fixtures, furnishings, equipment and any other property belonging to Concessionee; (iii) workers compensation coverage as required by the provisions of Florida statute (iv) and any additional coverage specific to the Concessionee's Use or activities related to the Concession Use to adequately insure the Concessionee and the City. The policy shall show the City as a named insured, and shall provide that it cannot be canceled or revoked except after a minimum of thirty (30) days written notice to City. A true copy of the insurance contract shall be filed with the City Clerk within ten (10) days after execution of this Agreement, and shall be maintained on file throughout the Concession Term and any Renewal Term. Concessionee's failure to maintain the insurance policy in full force and effect at any time during the Concession Term or any Renewal Term shall be a default hereunder, and upon such default Concessionee shall immediately suspend all Concession Use and shall provide to City written notice of the default.

The insurance amounts here provided shall not in any way operate to limit or release, or be construed to limit or release, Concessionee from any liability to City, or from any obligation to indemnify City as provided herein. Said insurance amounts are minimum requirements, and shall be supplemented by Concessionee as necessary to meet its obligations, and to fully indemnify the City, as provided in this Agreement.

(6) Indemnity

Concessionee agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way grow out of any act or omission of the Concessionee, 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 Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. The Concessionee 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.

Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes

This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, Concessionee shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The Concessionee shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY'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 whether performed by Concessionee, or by persons employed or used by Concessionee.

(7) Assignment and Transfer of Control

Transfer

The Concession shall be a privilege to be held by the Concessionee for the benefit of the public. Said Concession Use cannot under any circumstances be assigned, or control thereof transferred, by any means whatsoever including but not limited to, voluntary or involuntary sale, merger, consolidation, foreclosure, receivership, or other means without the prior written consent of the City, and then only under such conditions as the City may establish.

Any purported transfer of control of, or assignment of, this Concession without prior written authorization by the City Commission shall be null and void. The authorization shall be at the absolute discretion of the City.

(8) Obligations of City

Improvements and Repair

With the exception of minor repair, minor net repair and maintenance, minor retail space repair, and minor crack repair, City shall be responsible for improvements to the Concession Premises, including nets, lights, windscreens, fencing, and court repair as deemed necessary by Concessionee. With regard to major maintenance tasks for the courts or the retail space in excess of \$5,000.00, Concessionee shall submit a request to City for review and possible inclusion in the City Facility Maintenance Plan or Capital Improvement Program.

(9) Notice

(A) Notice from City to Concessionee shall be deemed received and binding:

- 1) Upon written notice hand-delivered to _____; or
- 2) two business days after written notice is locally mailed by certified letter to the following address:

Concessionee agrees that delivery of notice hereunder shall be considered accomplished regardless of whether delivery to the above address is accepted, and regardless of the identity of any person there accepting delivery. Concessionee is fully and solely responsible for the receipt of notice at the above address.

B) Notice from Concessionee to City shall be deemed received and binding:

- 1) Upon written notice hand-delivered to the City Manager; or

2) Two business days after written notice is locally mailed by certified letter to:

City Manager, City of Key West
P.O. Box 1409
Key West, FL 33041

(10) Default

(A) Any one of the following events shall constitute a default and material breach under this

Agreement:

- 1) Any material misrepresentation intentionally made by or on behalf of Concessionee in its concession proposal, or in support thereof, or in connection with the negotiation or renegotiations, or any amendment or modification thereof, or any attempts to evade any of the material provisions of this Concession Agreement, or to practice any fraud or deceit upon the City;
- 2) Any failure by Concessionee to restrict its operations to the Concession Premises and Concession Use as herein provided, or to otherwise comply with Sections 1 through 3 hereof;
- 3) Any failure to comply with the terms of Section 4 hereof governing the Concession Fee and timely payments thereof;
- 4) Any failure by Concessionee to fully comply with Sections 5 or 6 hereof governing liability insurance and indemnification;
- 5) Any failure by Concessionee to comply with Sections 7 or 8 hereof;
- 6) Any failure by Concessionee to provide to the public on a daily basis the concession services described at Section 3 hereof, throughout the Concession Term, unless performance is prevented by force majeure;
- 7) Any failure by Concessionee to comply with all City, State, and Federal law, or with all lawful directives issued by any public agency;
or
- 8) Any material breach of any other duty or obligation of Concessionee by the terms of this Agreement.
- 9) Bankruptcy or Insolvency - If at any time during the term hereof proceedings in bankruptcy shall be instituted against Concessionee and

which proceedings have not been dismissed within a reasonable time period, and which bankruptcy results in an adjudication of bankruptcy; or if any creditor of Concessionee shall file any petition under Chapter X of the Bankruptcy Act of the United States of America, as it is now in force or may hereafter be amended; and Concessionee be adjudicated bankrupt, or Concessionee makes an assignment for the benefit of creditors; or sheriff, marshal, or constable take possession thereof by virtue of any attachment or execution proceedings and offer same for sale publicly, and such taking and offer for sale is not rescinded, revoked, or set aside within ten (10) days thereafter, then City may, at its option, in any of such events, immediately take possession of the Concession Premises and terminate this Agreement. Upon such termination, all Concession Fees to the date of termination and unpaid, shall at once become due and payable; and in addition thereto, City shall have all rights provided by said bankruptcy laws relative to the proof of claims on an anticipatory breach of an executory contract.

(B) Upon finding that Concessionee is in default of this Agreement, the City Manager (or his designee) may:

- 1) Suspend Concessionee's rights conferred by this Agreement, including Concessionee's use of the Concession Premises, by entering upon and taking possession of the Concession Premises, whereupon Concessionee shall surrender possession pending hearing as provided in Paragraph (C) below; or
- 2) Provide to Concessionee written notice of the basis of the default, and request Concessionee to show cause, at a subsequent hearing before the City Commission, why the Concessionee should not be declared in material breach of this Agreement.

(C) Only upon finding that Concessionee has substantially failed to comply with Sections 5 or 6 hereof, or is otherwise in default in a manner presenting a clear and present threat to public health or safety, the City Manager or designee shall proceed pursuant to paragraph (B)(1) of this Section. Within 48 hours after Concessionee's surrender of possession of the Concession Premises as there provided, the City Manager shall fully comply with paragraph (B) (2) above. At all reasonable times after Concessionee's surrender of possession, and pending hearing pursuant to (B)(2) above, the City Manager or his designee shall provide to Concessionee the opportunity informally to be heard why the suspension of rights should be lifted. In reaching decisions under this section, the City Manager/designee shall:

- 1) Consider Concessionee's past record of compliance with provisions of this Agreement and related laws; and
- 2) Consider the degree of risk to public health, safety, and peace arising from

the default by Concessionee.

(D) Upon City Commission finding, after hearing as provided in paragraph (B) 2) above, of default by Concessionee the City Commission may direct Concessionee to surrender possession of the Concession Premises, and Concessionee hereby agrees immediately to so do. Concessionee shall thereafter have no further right to possession of the Concession Premises, and City may occupy same for its own uses, and may rescind the rights granted to Concessionee by this Agreement, and may in its absolute discretion grant any or all concession rights to a new party. Alternatively, the City Commission may direct such other remedy as may be agreed to by the parties.

(11) Cumulative Remedies; Nonwaiver

The specification of certain procedures herein shall not affect the City's right to pursue such other just and appropriate relief as may be provided by law. The remedies provided herein are cumulative and shall be in addition to, and not in derogation of, any other rights or remedies the City may have. The City's waiver of, or failure to exercise any rights or remedies shall have no effect on the enforcement of such rights at any subsequent time, and shall not operate to limit by way of estoppel, laches, or otherwise, City's discretion to exercise any such rights.

(12) Joint, Several Liability

Concessionee shall execute a personal guarantee in a form acceptable to the City for the performance of all duties, obligations, and liabilities of Concessionee as provided by this Agreement, and for payment of the Concession Fees.

(13) Surrender of Possession

Upon expiration of the Concession Term, or sooner termination of Concessionee's rights pursuant to paragraph 10 or 11 hereof, Concessionee agrees to surrender and yield possession of the Concession Premises to City peacefully and without further notice, and in good order and condition.

(14) Utilities and Taxes

City shall bear all costs of any utilities provided to the Concession Premises for its use, including but not limited to all costs for electricity, water, solid waste service, or sewer service. Concessionee shall pay for telephone and internet service. Concessionee shall be responsible for any taxes due or that may become due rising out of the Concessionee's use of the property.

(15) Public Access Concession Premises. The public shall have the right to make full noncommercial use of the property, including but not limited to, enjoyment of the tennis courts with equipment in their own possession.

(16) No Partnership

City does not in any way or for any purpose, become a partner of Concessionee in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Concessionee.

(17) Captions

Headings labeling any provisions herein are for convenience only, and shall not in any way be construed as affecting, limiting, expanding, or stating the contents, meaning, or intent of this Agreement.

(18) Validity of Agreement

If all or any portion of this Agreement is determined by any court of law to be invalid for any reason whatsoever, the Agreement or any such portion shall be subject to renegotiation between the parties insofar as is consistent with the court order. Neither party shall be entitled to any damages whatsoever arising from such invalidity.

(19) Entire Agreement

This Agreement sets forth all the covenants, promises, agreements, and understandings between City and Concessionee concerning the Concession Premises. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon City or Concessionee unless reduced to writing and duly executed by both parties and year first above written. It is understood and accepted by both parties that in the event of a conflict of language between the Request for Proposal 002-17 and the contract, the Request for Proposal 002-17 language shall be considered superior.

IN WITNESS WHEREOF, the parties hereto have executed this Concession Agreement the day and year first above written.

CITY OF KEY WEST

By: _____
James Scholl
City Manager

Concessionee

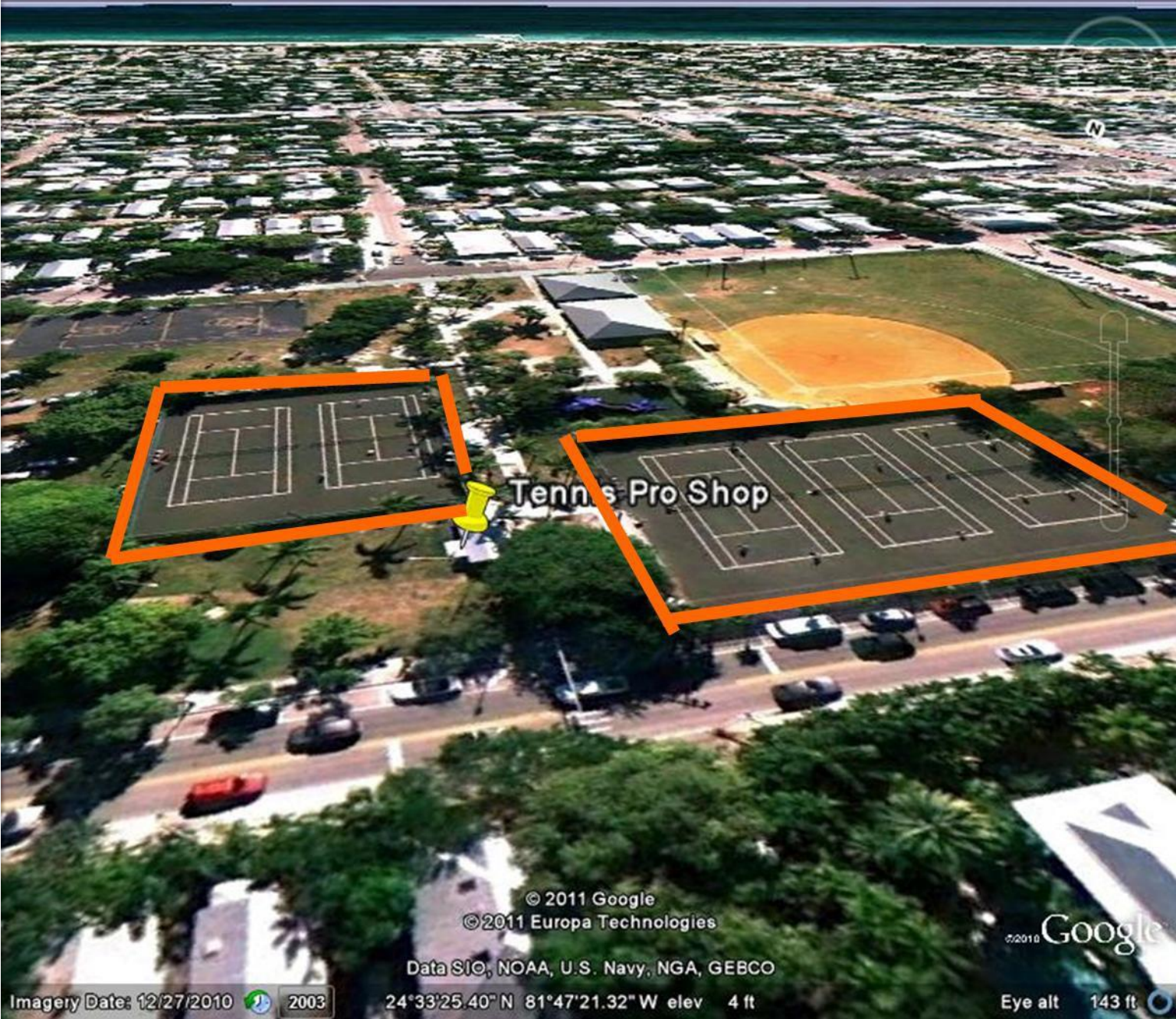
ATTEST:

WITNESS:

Cheryl Smith, City Clerk

Print Name: _____

Exhibit A



Orange Areas and Tennis Pro Shop are the areas which will be listed as “Concession Premises”

INSTRUCTIONS TO PROPOSERS

1. TYPE OF PROPOSAL

Proposals will be accepted on the attached forms for the specific work requested. Alternate proposals offering innovative equipment, services or methods may be offered and will be considered. Alternate proposals shall provide sufficient information for the city to fairly consider alternate options; all information regarding the alternate proposal must be included in the bid and cannot be offered after the opening. If Alternate proposals are proposed, Section B. ADD/ALT Work must be completed and included with all its existing forms in all proposals. Regardless of proposal method selected, "INFORMATION REQUIRED FROM CONTRACTORS" must be provided as indicated

The attached forms are for proposals of PRICE PER ANNUM.

A. PRICE PER ANNUM OFFER

The Proposal for the work is to be submitted on a per annum sum basis. A break down listing of price shall be submitted for all items of work set forth in the Proposal. All items required to complete the work specified in the Proposal shall be considered incidental to those set forth in the Proposal.

B. ADD/ ALT WORK

Unit price- The estimate of annual quantities of work to be done is tabulated in the Proposal and although stated with as much accuracy as possible is approximate only and is assumed solely for the basis of calculation upon which the award of Contract shall be made. Payment to the Contractor will be made on the measurement of the work actually performed by the Contractor as specified in the Contract Documents, whether quantities are similar or significantly different from those in the bid form. No additional fees shall be paid for this work.

2. PREPARATION OF PROPOSALS

A. GENERAL

All blank spaces in the Proposal form must be filled in, as required, in BLACK INK or TYPED. All price information will be shown in both words and figures where required. No changes shall be made in the phraseology of the forms. Written amounts shall govern in case of discrepancy between amounts stated in writing and the amounts stated in figures.

Any Proposal shall be deemed informal, which contains omissions, erasures, alterations, or additions of any kind, or prices uncalled for, or in which any of the prices are obviously unbalanced, or which in any manner shall fail to conform to the conditions of the published RFP.

Proposers shall not submit unbalanced Proposals as requested in the breakdown of Proposals.

Only one (1) Proposal from any individual, firm, partnership, or corporation under the same or different names, will be considered. Should it appear to the Owner that any Proposer is interested in more than one (1) Proposal for work contemplated, all Proposals in which such Proposer is interested will be rejected.

B. SIGNATURE

The Proposer shall sign his/her Proposal in the blank space provided therefore. If Proposer is a corporation, the legal name of the corporation shall be set forth above, together with the signature of the officer or officers authorized to sign Contracts on behalf of the corporation. If the Proposer is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign Contracts on behalf of the partnership. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a notarized power of attorney must be on file with the Owner prior to opening of Proposals or submitted with the Proposal, otherwise the Proposal will be regarded as not properly authorized.

C. SPECIAL PROPOSAL REQUIREMENTS

The Proposer's attention is brought to the hiring practices and licenses and permits of the City of Key West. These are defined in the addition to Article 39, CODES, ORDINANCES, PERMITS, and LICENSES, as set forth in the General Conditions.

D. ATTACHMENTS

Proposer shall complete and submit the following forms with his/her Proposal or as otherwise identified in the Proposal document:

- Proposal Form on Company letter head,
- United States Professional Tennis Association Certification with rank of at least Professional 2 and/or United States Professional Tennis Registry Certification with the ranking of Professional or higher.
- Anti-Kickback Affidavit
- Public Entity Crimes Certification
- Non-Collusion Declaration
- Indemnification Form
- Equal Benefits for Domestic Partners Affidavit
- Cone of Silence Affidavit
- No Conflict Statement
- Statement of Proposer's Understanding of Work
- List of Proposer's References from Similar Projects from the Last Five Years
- Maintenance Plan

Note: if any of the items above or as required in other parts of the document are not included in the Proposal, the City has the option of considering the Proposal none responsive and therefore will be rejected.

3. STATE AND LOCAL SALES AND USE TAX

The Owner is exempt from state sales tax on materials incorporated into the work due to the qualification of the work under this Contract, the Proposer, as required by the laws and statutes of the state and its political subdivisions shall pay all state and local sales and use taxes. Prices quoted in the Proposal shall include all nonexempt sales and use taxes, unless provision is made in the Proposal form to separately itemize the tax.

4. SUBMISSION OF PROPOSALS

All Sealed Proposals must be submitted not later than the time prescribed, at the place, and in the manner set forth in the RFP. Proposals must be made on the Proposal forms provided herewith.

Proposers shall submit one response marked "Original"; and (2) flash drives, each with PDF file(s) of the full Request for Proposal, including items listed on the cover letter. All contents of a Proposer's submittal shall remain the property of the City.

5. MODIFICATIONS OR WITHDRAWAL OF PROPOSALS

Prior to the time and date designated for receipt of Proposals, any Proposal submitted may be modified or withdrawn by notice to the party receiving Proposals at the place designated for the receipt of Proposals. Such notice shall be in writing over the signature of the Proposer or by telephone, fax, or email. If by telephone, fax, or email, written confirmation over the signature of the Proposer shall be mailed and postmarked on or before the date and time set for receipt of Proposals, and it shall be so worded as not to reveal the amount of the original Proposal. No Proposal may be withdrawn after the time scheduled for the opening of Proposals, unless the time specified in AWARD OF CONTRACT, in these Instructions to Proposers shall have elapsed. Any withdrawal will result in the forfeiture of any bid bond.

6. AWARD OF CONTRACT

Within ninety (90) calendar days after the opening of the Proposals, the Owner will accept one of the Proposals or will act in accordance with the following paragraphs. The acceptance of the Proposal will be by written notice of award, mailed to the office designated in the Proposal, or delivered to the Proposer's representative. In the event of failure of the responsive, qualified Proposer to sign the Contract and provide acceptable insurance certificate(s), the Owner may award the Contract to another responsive, qualified Proposer. Such award, if made, will be made within ninety (90) days after the opening of the Proposals.

At the time of the bid, the successful Proposer must show satisfactory documentation of such State, County and City licenses as would be required. The successful Proposer must also be able to satisfy

the City Attorney as to such insurance coverage and legal requirements as may be demanded by the Proposal in question. The Owner reserves the right to reject any and/or all Proposals because of irregularities or due to budgetary considerations, to waive irregularities or informalities in any or all Proposals, and to accept any Proposal that the CRA deems to be in the best interest of the Owner.

It is understood and accepted by both parties that in the event of a conflict of language between this Request for Proposal (RFP) and the contract, the RFP language shall be considered superior.

7. BASIS OF AWARD

The Owner, on the basis of that Proposal, will make the award to the responsible party whose proposal is determined in writing to be the most advantageous to the city, taking into consideration price and the evaluation factors and the criteria set forth in the request for proposals. The final award determination or rejection shall be made by the city commission.

8. EXECUTION OF CONTRACT

The successful Proposer shall, within ten (10) working days after receiving notice of award, sign and deliver to the Owner the Contract together with the acceptable insurance certificates as required in these Documents. Within ten (10) working days after receiving the signed Contract, with acceptable insurance from the successful Proposer, the Owner's authorized agent will sign the Contract. Signature by both parties constitutes execution of the Contract.

9. QUALIFICATION OF CONTRACTORS

The prospective Proposers must meet the statutorily prescribed requirements before award of Contract by the Owner.

10. LICENSES, PERMITS, AND FEES

The Proposer is responsible for identifying, obtaining and paying for all licenses and permits from Federal, State, and Local agencies required to perform the work. The Proposer must obtain a City of Key West Business Tax Receipt not to exceed \$107.

11. PROPOSER'S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the Proposer, 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.

The Proposer further declares that he/she has carefully examined the Contract Documents for the project and conditions of work involved. Contract Documents, and that this Proposal is made according to the provisions and under the terms of the Contract Documents, which Documents are

hereby made a part of this Proposal.

The Proposer further agrees that he/she has exercised his/her own judgment regarding the interpretation of job conditions and has utilized all data, which he/she believes pertinent from the Project Manager, Owner, and other sources in arriving at his/her conclusions.

12. CERTIFICATES OF INSURANCE

Proposer agrees to furnish the Owner, before commencing the work under this Contract, the certificates of insurance as specified in these Documents.

13. START OF PROJECT

The Proposer further agrees to begin work the date of the Notice to Proceed and to complete the all items in the per annum sum per listing in proposal.

14. QUESTIONS AND INTERPRETATIONAL ADDENDA

Prospective Proposers shall promptly notify the City in writing of all conflicts, errors, ambiguities, inconsistencies, or discrepancies that Proposers find in the Request for Proposal documents.

No verbal inquiries shall be received or responded to. All questions and clarification inquiries from Proposers concerning the Request for Proposal must be submitted in writing through mail, email, or facsimile transmission. Any written inquiries must be received by the City no later than ten (10) calendar days prior to the scheduled date for receipt of the proposals. Questions will be answered in writing by the City and distributed on Demandstar.

Any questions or requests for clarification should be sent to:

Mr. Rod Delostrinos
Director of Community Services
627 Palm Avenue Key West, FL
33040 (305) 809-3767
rdelostrinos@cityofkeywest-fl.gov

The Proposer hereby acknowledges that he has received Addenda No's. , , , , (Proposer shall insert No. of each Addendum received) and agrees that all addenda issued are hereby made part of the Contract Documents, and the Proposer further agrees that his Proposal(s) includes all impacts resulting from said addenda.

15. PUBLIC ENTITY CRIMES

“A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Proposal on a contract to provide any goods or services to a public entity, may not submit a Proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit Proposals on leases of real property to a

public entity, may not be awarded or perform work as a Proposer, supplier, subcontractors, or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.”

16. CONFLICT OF INTEREST

In their proposal, each Proposer must disclose the name of any person that is an employee of the City and also an officer, director, employee or agent of the Proposer, or a relative of an officer, director, employee or agent of the Proposer. Further, each Proposer must disclose the name of any City employee that owns, directly or indirectly, an interest of one percent (1%) or more in the Proposer's firm, its affiliates, or parent or subsidiary organizations.

17. PER ANNUM SUM OFFER PROPOSAL

The Proposer agrees to accept as full payment for performance of the work as herein the following per annum sum. The Proposer agrees that the per annum sum price represents a true measure required to perform the work, including all allowances for overhead. The amounts shall be shown in both words and figures. In case of a discrepancy, the amount shown in words shall govern. The Proposal will be awarded on total Proposal amount. A schedule of values shall be submitted with the Proposal.

PROPOSAL FORMS

The forms on the following pages are to be submitted with the proposal.

PROPOSAL FORM

RFP# 002-17

PER ANNUM SUM PROPOSAL OFFER PRICE FOR:

TENNIS PROFESSIONAL SERVICES

\$ _____

Proposal Offer Total in Words

ATTACHMENT: A

ANTI-KICKBACK AFFIDAVIT

PROJECT RFP #002-17 TENNIS PROFESSIONAL SERVICES

STATE OF FLORIDA)

: SS

COUNTY OF MONROE)

I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein Proposal will be paid to any employees 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 subscribed before me this

day of _____, 2016.

NOTARY PUBLIC, State of Florida at Large

My Commission Expires: _____

ATTACHMENT: B

PUBLIC ENTITY CRIMES CERTIFICATION

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 to the City of Key West , Florida, by

(print individual's name and title)

for _____

(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 1, 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:
1. A predecessor or successor of a person convicted of a public entity crime: or
 2. 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 agents 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 Statutes, 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 1, 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 1, 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 1, 1989. However, there has been a subsequent proceeding before an Administrative Law Judge of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Administrative Law Judge 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 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 _____, 2016.

NOTARY PUBLIC

Printed Name

My commission expires:

ATTACHMENT: C

FORM 575-060-13
RIGHT OF WAY -

05/01

**NON-COLLUSION DECLARATION AND
COMPLIANCE WITH 49 CFR §29.**
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

NO.: _____

ITEM/SEGMENT

F.A.P. NO.:
PARCEL NO.:
COUNTY OF:
BID LETTING OF: _____

, _____

I, _____,
hereby

declare that I am _____ (NAME)

of _____ (TITLE) (FIRM)

Of _____ (CITY AND STATE)

and that I am the person responsible within my firm for the final decision as to the price(s) and amount of this Bid on this State Project.

I further declare that:

1. The prices(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition with any other contractor, proposer or potential proposer.
2. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a proposer or potential proposer on this project, and will not be so disclosed prior to the bid opening.
3. No attempt has been made or will be made to solicit, cause or induce any other firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.
4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary bid.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection

with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit a complementary bid on this project.

6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary bid, or agreeing to do so, on this project.

7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this Declaration.

8. As required by Section 337.165, Florida Statutes, the firm has fully informed the Department of Transportation in writing of all convictions of the firm, its affiliates (as defined in Section 337.165(l)(a), Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract or for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees of the firm or affiliates who were convicted of contract crimes while in the employ of another company.

9. I certify that, except as noted below, neither my firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of Federal funds:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR §29.110(a), by any Federal department or agency;

(b) has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against him or her for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, State or local government transaction or public contract; violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(c) is presently indicted for or otherwise criminally or civilly charged by a Federal, State or local governmental entity with commission of any of the offenses enumerated in paragraph 9(b) of this certification; and

(d) has within a three-year period preceding this certification had one or more Federal, State or local government public transactions terminated for cause or

default..

10. I(We), certify that I(We), shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this contract by any Federal Agency unless authorized by the Department.

Where I am unable to declare or certify as to any of the statements contained in the above stated paragraphs numbered (1) through (10), I have provided an explanation in the "Exceptions" portion below or by attached separate sheet.

EXCEPTIONS:

(Any exception listed above will not necessarily result in denial of award, but will be considered in determining proposer responsibility. For any exception noted, indicate to whom it applies, initiating agency and dates of agency action.

Providing false information may result in criminal prosecution and/or administrative sanctions.)

I declare under penalty of perjury that the foregoing is true and correct.

CONTRACTOR: (Seal)

BY: _____ WITNESS: _____
NAME AND TITLE PRINTED

BY: _____ WITNESS: _____
SIGNATURE

Executed on this _____ day of _____, _____

**FAILURE TO FULLY COMPLETE AND EXECUTE THIS DOCUMENT
MAY RESULT IN THE BID BEING DECLARED NONRESPONSIVE**

**ATTACHMENT: D
CITY OF KEY WEST INDEMNIFICATION FORM**

Concessionee agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, 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 Concessionee, 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 Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. The Concessionee 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.

Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes

This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, Concessionee shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The Concessionee shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY'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 whether performed by Concessionee, or by persons employed or used by Concessionee.

CONTRACTOR: _____

SEAL:

Address

Signature

Print Name

Title

DATE: _____

ATTACHMENT: E
EQUAL BENEFITS FOR DOMESTIC PARTNERS AFFIDAVIT

STATE OF _____)

:

SS 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 _
_____ 20_____.

NOTARY PUBLIC, State of _____ at Large

My Commission Expires:

ATTACHMENT: F
CONE OF SILENCE AFFIDAVIT

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

below) STATE OF _____)

:

S

S

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 _____, 20__.

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 PROPOSAL ("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 Firm, lobbyist, or actual or potential subcontractor or sub-Firm 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 publically 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*)

ATTACHMENT: G

LOCAL VENDOR CERTIFICATION PURSUANT TO CKW ORDINANCE 09-22 SECTION 2-798

The undersigned, as a duly authorized representative of the vendor listed herein, certifies to the best of his/her knowledge and belief, that the vendor meets the definition of a "Local Business." For purposes of this section, "local business" shall mean a business which:

- a. Principle address as registered with the FL Department of State located within 30 miles of the boundaries of the city, listed with the chief licensing official as having a business tax receipt with its principle address within 30 miles of the boundaries of the city for at least one year immediately prior to the issuance of the solicitation.
 - b. Maintains a workforce of at least 50 percent of its employees from the city or within 30 miles of its boundaries.
 - c. Having paid all current license taxes and any other fees due the city at least 24 hours prior to the publication of the call for bids or request for proposals.
- Not a local vendor pursuant to Ordinance 09-22 Section 2-798
 - Qualifies as a local vendor pursuant to Ordinance 09-22 Section 2-798

If you qualify, please complete the following in support of the self-certification & submit copies of your County and City business licenses. Failure to provide the information requested will result in denial of certification as a local business.

Business Name _____ Phone: _____
Current Local Address: _____ Fax: _____
(P.O Box numbers may not be used to establish status)

Length of time at this address: _____

Date: _____
Signature of Authorized Representative

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of 2016.

By _____, of _____
(Name of officer or agent, title of officer or agent) (Name of corporation acknowledging)

or has produced identification _____ as identification
(Type of 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