

CONSULTING AGREEMENT

This consulting agreement made on this _____ day of _____ 2023, by and between MOTE MARINE LABORATORY, hereinafter referred to as "MOTE MARINE" and City of Key West hereinafter referred to as "CITY" on the following terms and conditions:

RECITALS

WHEREAS, according to MOTE MARINE, the coral reefs of Key West are an integral part of Florida's larger coral reef tract, the only barrier reef in the continental U.S., attracting millions of visitors every year, and acting as the frontline defense of our infrastructure against major storms;

WHEREAS, according to MOTE MARINE, Key West's coral reefs are now essentially functionally extinct, with less than 5% of living coral in many areas due to impacts of disease, rising water temperatures, and ocean acidification; and

WHEREAS, in 2020, MOTE MARINE became the first scientific organization to carry out every step of the staghorn coral sexual propagation process— from spawning and outgrowing in the laboratory, to outplanting and maintaining corals on the reef until they reached sexual maturity, became gravid, and spawned again to create an entire second generation of disease-resistant and climate-resilient corals;

WHEREAS, with such innovative science and success in demonstrating that coral genetic resilience is the key for successfully restoring the coral reefs of the Florida Keys, MOTE MARINE has been designated as a core partner with NOAA in their Mission: Iconic Reefs program;

WHEREAS, MOTE MARINE's overarching vision for response, restoration and recovery is called 'The Florida Keys Coral Disease Response & Restoration (FKCDRR) Initiative' and with its 1) demonstrated experience and expertise in developing innovative technologies for coral restoration, 2) significant existing coral research and restoration infrastructure and ongoing activities in the Florida Keys, 3) ability to coordinate closely with appropriate federal and state agencies, as well as university and NGO partners, and 4) significant local community engagement and public outreach, Mote is uniquely positioned to lead this initiative;

WHEREAS, CITY, pursuant to City of Key West code section 80-3, shall establish a fund for the express purpose to restore and maintain coral reefs adjacent to the City of Key West and engage certified, independent, qualified reef restoration experts, to be identified by resolution of the City of Key West annually, to restore and maintain such reefs and shall allocate annually these funds to the respective programs;

WHEREAS, CITY wishes to engage MOTE MARINE for the express purpose of restoring and maintaining coral reefs adjacent to the City of Key West.

IT IS THEREFORE agreed as follows:

1. This Agreement shall commence on the effective date, defined as the date the last party has executed the agreement, and ending February 29, 2024. This Agreement may be extended for two additional one-year terms, March 1, 2024, through February 28, 2025, and/or March 1, 2025, through February 28, 2026, respectively, upon the mutual consent of both parties and the approval of the City of Key West City Commission and in accordance with the City of Key West Code of Ordinances and State of Florida law.

2. Pursuant to City of Key West code section 80-3, CITY agrees to pay \$100,000.00 to MOTE MARINE for the purposes of science-based coral reef restoration and maintenance. In the event of unforeseen circumstances, any unused funds must be acknowledged to City for reimbursement, extension of time or approval of alternate use.

Commented [A1]: Finance should review this agreement.

3. MOTE MARINE agrees to outplant over 1,000 corals to restore nearly 100 m2 of a targeted coral reef to ~30% coral cover in Key West waters at a mutually agreed upon area for maximum species diversity and historically & culturally important local reefs upon the mutual consent of both parties and the approval of the City of Key West City Commission and in accordance with the City of Key West Code of Ordinances.

4. MOTE MARINE further agrees to:

- a. utilize endemic coral species' genetic strains that demonstrate enhanced resiliency to primary threats (increasing water temperatures/acidification & coral disease);
- b. conduct multi-year monitoring to assess survival and ecosystem health;
- c. implement a Key West public outreach campaign stressing importance of local coral reefs while highlighting City-sponsored conservation and restoration efforts; AND
- d. provide City with a report on funding expenditures within thirty (30) days of the annual anniversary of this agreement, which said report will include but not be limited to:
 - i. Accounting of how all dollars are spent;
 - ii. Accounting of number of services provided;
 - iii. Description of how funds aided in reef restoration and maintenance; and
 - iv. Acknowledgement of how funding was recognized via a press release, social media, or other outreach effort pursuant to paragraph 3.c. above.

5. MOTE MARINE shall not commence work under this contract until it has obtained all insurance required under this paragraph and such insurance has been approved by the CITY nor shall MOTE MARINE allow any Subcontractor to commence work on its subcontract until all

similar such insurance required of the subcontractor has been obtained and approved. Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY prior to the commencement of the work. These Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days prior written notice has been given to the CITY. Policies shall be issued by companies authorized to do business under the laws of the State of Florida and acceptable to the City. Insurance shall be in force and effect until all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance by the CITY. If any of the insurance was provided on a "Claims Made" basis, coverage shall be maintained by MOTE MARINE for a minimum of 4 years following the termination of the Agreement, including all renewals. In the event that insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, MOTE MARINE shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect. MOTE MARINE shall not continue to work pursuant to this contract unless all required insurance remains in full force and effect. MOTE MARINE shall name the CITY as an additional insured under the policy.

6. The Consultant shall maintain the following types and amounts of insurance throughout the term of the Agreement:

GENERAL INSURANCE REQUIREMENTS:

- 1.01 During the Term of the Agreement, Mote Marine shall provide, pay for, and maintain with insurance companies satisfactory to the City of Key West, Florida ("City"), the types of insurance described herein.
- 1.02 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.
- 1.03 The City shall be specifically included as an additional insured on Mote Marine's Liability policies with the exception of Mote Marine'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.
- 1.04 Mote Marine 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.
- 1.05 If Mote Marine fails to provide or maintain the insurance coverages required in this Agreement at any time during the Term of the Agreement and if Mote Marine 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).

- 1.06 Mote Marine 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, Mote Marine shall promptly authorize and have delivered such statement to the City.
- 1.07 Mote Marine 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 Mote Marine's insurance agents, brokers, surety, and insurance carriers.
- 1.08 All insurance coverage of Mote Marine 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 Mote Marine in this Agreement.
- 1.09 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.
- 1.10 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.
- 1.11 The insurance coverage and limits required of Mote Marine under this Agreement are designed to meet the minimum requirements of the City. They are not designed as a recommended insurance program for Mote Marine. Mote Marine alone shall be responsible for the sufficiency of its own insurance program. Should Mote Marine have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.
- 1.12 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 Mote Marine. No personal property owned by City used in connection with these business activities shall be considered by Mote Marine's insurance company as being in the care, custody, or control of Mote Marine.
- 1.13 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, Mote Marine shall be responsible for all deductibles and self-insured retentions.
- 1.14 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.
- 1.15 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.
- 1.16 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 Mote Marine.
- 1.17 If Mote Marine utilizes contractors or sub-contractors to perform any operations or activities governed by this Agreement, Mote Marine will ensure all contractors and sub-contractors to maintain the same types and amounts of insurance required of Mote Marine. In addition, Mote Marine will ensure that the contractor and sub-contractor insurances comply with all of the Insurance Requirements specified for Mote Marine contained within this Agreement. Mote Marine shall obtain Certificates of Insurance comparable to those required of Mote Marine 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.

2.0 **SPECIFIC INSURANCE COVERAGES AND LIMITS:**

- 2.01 All requirements in this Insurance Section shall be complied with in full by Mote Marine unless excused from compliance in writing by the City.
- 2.02 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.

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	\$1,000,000.00 Limit Each Accident
	\$1,000,000.00 Limit Disease Aggregate
	\$1,000,000.00 Limit Disease Each

Employee

If Mote Marine has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*, Mote Marine will be required to issue a formal letter (on Mote Marine'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.

Jones Act Coverage shall be maintained by Mote Marine that will respond to claims filed under the federal Jones Act (*46 U.S.C.A. sub-section 688*). The limits of such coverage shall not be less than \$1,000,000.

Marine General Liability Insurance shall be maintained by Mote Marine 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 &	\$2,000,000.00 Combined Single Limit each
Property Damage Liability	Occurrence and Aggregate

Completed Operations Liability Coverage shall be maintained by Mote Marine 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 and/or Umbrella policy is equal to or more comprehensive than the Primary Marine General Liability policy.

Protection & Indemnity Insurance (P&I) shall be maintained by Mote Marine and shall include Water

Craft Liability coverage, Crew coverage, and Wreckage Removal coverage. The limits of such coverage shall not be less than \$2,000,000.

Business Automobile Liability Insurance shall be maintained by Mote Marine 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 Mote Marine does not own any vehicles, this requirement can be satisfied by having Mote Marine's Commercial General Liability policy endorsed with "Non-Owned and Hired Automobile" Liability coverage.

Professional Liability Insurance shall be maintained by Mote Marine which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of Mote Marine 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. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Vendor Certification Regarding Scrutinized Companies List Affidavit is attached hereto as Exhibit A.

8. MOTE MARINE agrees to protect, defend, indemnify, save and hold harmless 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 MOTE MARINE, its SUBCONTRACTOR(S), 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 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. Nothing contained herein shall be construed to alter or waive the City's sovereign immunity under 768.28, Florida Statutes. MOTE MARINE understands and agrees that any and all liabilities regarding the use of any subcontractor for services related to this agreement shall be borne solely by MOTE MARINE. 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 MOTE MARINE 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 MOTE MARINE or of any third party to whom MOTE MARINE may subcontract a part or all of the Work. 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, MOTE MARINE 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.

9. Should litigation be necessary to enforce any provision of this agreement then the prevailing party shall be entitled to recover a reasonable attorney's fee from the other side subject to the Sovereign Immunity limitations of Section 768.28 Florida Statutes. Nothing contained herein shall be construed to alter or waive the City's sovereign immunity under 768.28, Florida Statutes. MOTE MARINE acknowledges that this provision may be unenforceable under Florida law, and that the City of Key West does not waive any legal defense based on the unenforceability of such provision.

10. MOTE MARINE 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 MOTE MARINE's records, including but not limited to any subcontractors, MOTE MARINE shall comply with all requirements thereof. 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.

11. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

12. MOTE MARINE and its employees, volunteers, agents, vendors and subcontractors, etc., shall be and remain an independent contractor and not agents or employees of the CITY with respect to all of the acts and services performed by and under the terms of this

Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise, or venture between the parties.

13. This Agreement shall not be assignable by either party unless such assignment is first approved by CITY in the same manner that this Agreement is approved.

14. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

15. Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

16. The failure of CITY to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

17. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

18. This Agreement has been carefully reviewed by each of the parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

19. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

[Signature Pages to Follow]

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)
ATTEST:

CITY OF KEY WEST

By: _____
Clerk

By: _____
Teri Johnston,
Mayor of the City of Key West

MOTE MARINE LABORATORY

By: _____
Allison Delashmit,
Director of Regional Operations,
Florida Keys

STATE OF: _____

COUNTY OF: _____

Subscribed and sworn to (or affirmed) before me, by means of ☐ physical presence or ☐ online notarization, on _____ (date) by _____
(name of affiant). He/She is personally known to me or has produced _____
(type of identification) as identification.

NOTARY PUBLIC