

**AGREEMENT**

**between**

**CITY OF KEY WEST**

**and**

**E Sciences, Inc.**

**ENVIRONMENTAL ENGINEERING SERVICES**

**KEY WEST, FLORIDA**

## ENVIRONMENTAL ENGINEERING SERVICES

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

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

### ARTICLE 1

#### DEFINITIONS AND IDENTIFICATIONS

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

- 1.1. **Agreement:** This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CITY's RFQ 20-002 CONSULTANT's Response to RFQ dated January 08, 2020, exhibits, Task Orders, and supplemental documents that are by this provision expressly incorporated herein by reference.
- 1.2. **Commissioners:** Members of the City Commission with all legislative powers of the CITY vested therein.
- 1.3. **CONSULTANT:** The engineer selected to perform the services pursuant to this Agreement.
- 1.4. **Contract Administrator:** The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5. **Contractor:** The person, firm, corporation or other entity that enters into an agreement with CITY to perform the construction work for the Task Order.
- 1.6. **CITY:** City of Key West.
- 1.7. **Task Order:** A detailed description of a particular service or services to be performed by CONSULTANT under this Agreement.

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### **ARTICLE 2**

#### **PREAMBLE**

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

- 2.1. The CONSULTANT is not entitled to receive, and the CITY is not obligated to pay, any fees or expenses in excess of the amount budgeted for Task Orders authorized under this Agreement in each fiscal year (October 1-September 30) by CITY. The budgeted amount may only be modified per City Ordinance(s).
- 2.2. The CITY has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform the services hereunder based on the Request for Qualifications 20-002 incorporated by reference and made a part hereof and the Response to the Request for Qualifications from Consultant dated January 08, 2020, incorporated by reference and made part of.
- 2.3. Negotiations pertaining to the services to be performed by CONSULTANT were undertaken between CONSULTANT and staff selected by the Commission, and this Agreement incorporates the results of such negotiations.

### **ARTICLE 3**

#### **SCOPE OF SERVICES AND STANDARD OF CARE**

- 3.1. CONSULTANT's services may include but are not limited to the following in regard to the Agreement:
  - 3.1.1 Environmental Engineering Services.
- 3.2. CONSULTANT's services shall include general site design, consulting for facilities planning, surveying, permitting, preliminary and ongoing cost estimating, auto CAD services, on-site construction services, and any other lawful professional Environmental Engineering services that the CONSULTANT is qualified to provide and that the CITY authorizes the CONSULTANT to undertake in connection with this Agreement. CONSULTANT shall provide all necessary, incidental and related activities and services as required.
- 3.3. CONSULTANT and CITY acknowledge that the Scope of Services does not delineate every detail and minor work task required to be performed by CONSULTANT to complete any particular task order. If, during the course of the performance of the services included

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in this Agreement, CONSULTANT determines that work should be performed to complete the Task Order which is, in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator in writing in a timely manner before proceeding with the work. If CONSULTANT proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written CITY approval or modification of Task Order is at CONSULTANT's sole risk.

- 3.4. The specific services to be provided by the CONSULTANT and the compensation for such services shall be as mutually agreed to in separate Task Orders to this AGREEMENT. Each Task Order when fully executed shall become a supplement to and a part of this AGREEMENT.
  - 3.4.1. Each Task Order shall be supported by appropriate cost and pricing data and such other documentation as required by the CITY.
  - 3.4.2. Task Orders shall be numbered consecutively as specified by CITY. Each Task Order shall include a description of the scope of services and specified deliverables, time of completion, total estimated costs of services, and method of compensation. Additional information shall be provided to the CITY if required. Amended Task Orders shall include substantially the same information and be submitted to the CITY for approval.
  - 3.4.3. The CITY may make or approve changes within the general Scope of Services in any Task Order. If such changes affect the CONSULTANT's cost of or time required for performance of the services, an equitable adjustment shall be made through an amendment to the Task Order.
  - 3.4.4. A Task Order may be terminated at any time, with or without cause, by the CITY upon written notice to CONSULTANT. CONSULTANT shall perform no further work upon receipt of this notice unless specifically authorized by the City Manager of the City of Key West. On termination, the CONSULTANT shall be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the Task Order. The CITY shall not pay for anticipatory profits. The termination of this Agreement pursuant to Paragraph 7.2, hereof, shall constitute the termination of any and all outstanding Task Orders.
  - 3.4.5. The CONSULTANT shall begin services under any Task Order when authorized by a Purchase Order issued by the CITY and delivered to CONSULTANT.
- 3.5. The CITY and CONSULTANT may negotiate additional scopes of services, compensation, time of performance and other related matters for each Task Order as allowed by this Agreement. If CITY and CONSULTANT cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY and procure services from another source.

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- 3.6. CONSULTANT shall perform the professional services under this Agreement at the level customary for competent and prudent professionals in CONSULTANT'S field performing such services at the time and place where the services are provided. In the event CONSULTANT does not comply with this standard, and omissions or errors are made by CONSULTANT, CONSULTANT will correct such work that contains errors or omissions and reimburse CITY through compensation for damages.
- 3.7. CONSULTANT is required to perform the Task Orders consistent with current applicable Federal, State and City laws, codes and regulations that pertain to the Task Order. In all Task Orders, where changes to any laws, codes or regulations affecting the Task Order have a Task Ordered effective date or are anticipated to be effective at a future date, or if knowledge of anticipated changes is available to CONSULTANT or any sub-consultant, CONSULTANT shall present options for their use or implementation.
- 3.8. Construction Responsibility - Notwithstanding anything in this Agreement, CONSULTANT shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety measures, precautions and programs including enforcement of Federal and State safety requirements, in connection with construction work performed by CITY's construction contractors.
- 3.9. Estimates - Since CONSULTANT has no control over local conditions, the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, CONSULTANT does not guarantee the accuracy of any opinions of probable construction cost as compared to construction contractor's bids or the actual cost to the CITY.

### ARTICLE 4

#### TERM OF AGREEMENT: TIME FOR PERFORMANCE: CONTRACTOR DAMAGES:

The term of this Agreement shall be for a period of three (3) years from the effective date of the Agreement with the option of one (1) two (2) year renewal. The Agreement will be in effect upon execution by both parties. The Agreement may be renewed at the discretion of the CITY.

- 4.1. CONSULTANT shall perform the services described in each Task Order within the time periods specified. Each such time period shall commence from the date of the purchase order issued for such services.
- 4.2. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent Task Order. Prior to granting approval for CONSULTANT to proceed to a subsequent Task Order, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit any deliverables/documents for the Contract Administrator's review.
- 4.3. In the event CONSULTANT is unable to complete the above services because of delays

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resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Task Order, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, CITY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CONSULTANT to notify CITY within 10 days in writing whenever a delay in approval by a governmental agency, including CITY, is anticipated or experienced, and to inform the Contract Administrator of all facts and details related to the delay.

**4.4.** In the event the Contractor fails to substantially complete the Task Order on or before the substantial completion date specified in its agreement with CITY or if Contractor is granted an extension of time beyond said substantial completion date, and CONSULTANT's services are extended beyond the substantial completion date, through no fault of CONSULTANT, CONSULTANT shall be compensated in accordance with Article 5 for all services rendered by CONSULTANT beyond the substantial completion date.

**4.5.** In the event Contractor fails to substantially complete the Task Order on or before the substantial completion date specified in its agreement with CITY, and the failure to substantially complete is caused in whole or in part by a negligent act, error or omission of CONSULTANT, then CONSULTANT shall pay to CITY its proportional share of any claim or damages to Contractor or CITY arising out of the delay. This provision shall not affect the rights and obligations of either party as set forth in Paragraph 7.8, INDEMNIFICATION OF CITY.

## **ARTICLE 5**

### **COMPENSATION AND METHOD OF PAYMENT**

#### **5.1. AMOUNT AND METHOD OF COMPENSATION**

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

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

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

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- 5.1.1.2. In the event of a change of scope, CITY shall authorize in writing an appropriate decrease or increase in compensation.
- 5.1.1.3. Monthly invoicing will be based on an estimate of the percent of work completed at the end of the preceding month.
- 5.1.1.4. The CONSULTANT shall submit wage rates and other actual unit costs supporting the compensation. The CONSULTANT shall submit a Truth in Negotiation Certificate stating that all data supporting the compensation is accurate, complete, and current at the time of contracting.

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

- 5.1.2.1. Per diem rates are those hourly or daily rates charged for work performed on the TASK ORDER by CONSULTANT's employees of the indicated classifications and include all salaries, overheads, and profit, but do not include allowances for Direct Expenses. These rates are subject to annual adjustments based on the Consumer Price Index Urban U.S. City Average All Items U.S. Department of Labor Bureau of Labor Statistics.
- 5.1.2.2. Hourly rates for the first year of the contract (CONSULTANT AND Sub-consultants): See attached Exhibit A
- 5.1.2.3. CONSULTANT and Sub-consultants allowed annual wage adjustment shall not exceed the Data Resource Institute (DRI) forecast of wage and price escalation (the U.S. Bureau of Labor Statistics [BLS] Employment Cost Index [ECI] for Private Industry)
- 5.1.2.4. A budgetary amount will be established for each Task Order. This budgetary amount shall not be exceeded unless prior written approval is provided by the CITY. CONSULTANT shall make reasonable efforts to complete the work within the budget and will keep CITY informed of progress toward that end so that the budget or work effort can be adjusted if found necessary.
- 5.1.2.5. CONSULTANT is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is CITY obligated to pay CONSULTANT beyond these limits.
- 5.1.2.6. When any budget has been increased, CONSULTANT's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.

## **5.2. REIMBURSABLE EXPENSES**

- 5.2.1.1. Direct non-salary expenses, entitled Reimbursable Expenses, directly attributable to the Task Order shall be charged at actual cost, and shall be limited to the following:
- 5.2.1.2. Identifiable transportation expenses in connection with the Task Order, subject to the limitations of Section 112.061, Florida Statutes. There shall be no mileage reimbursement for travel within the City of Key West. Transportation expenses to locations outside the City area or from locations outside the City will

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not be reimbursed unless specifically pre-authorized in writing by the Contract Administrator.

- 5.2.1.3. Identifiable per diem, meals and lodgings, taxi fares, automobile rental, and miscellaneous travel-connected expenses for CONSULTANT's personnel subject to the limitations of Section 112.061 Florida Statutes. Meals for class C travel inside the City of Key West will not be reimbursed. Lodging will be reimbursed only for room rates equivalent to Holiday Inn, Hampton Inn, or Best Western located within the City of Key West city limits.
- 5.2.1.4. Identifiable communication expenses approved by Contract Administrator, long distance telephone, courier and express mail utilized to render the services required by this Agreement.
- 5.2.1.5. Cost of printing, reproduction or photography that is required by or of CONSULTANT to deliver services set forth in this Agreement. Unit costs must be specified on the Task Order.
- 5.2.1.6. Identifiable testing costs approved by Contract Administrator. Unit costs must be specified on the Task Order.
- 5.2.1.7. All permit fees paid to regulatory agencies for approvals directly attributable to the Task Order. These permit fees do not include those permits required for the Contractor.
- 5.2.2. It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in Paragraph 5.2.1.1 is a limitation upon, and describes the maximum extent of, CITY's obligation to reimburse CONSULTANT for direct, non-salary expenses. If CITY or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursable Expenses, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by CITY prior to incurring such expenses.
- 5.2.3. All sub-consultants' hourly rates shall be billed in the actual amount paid by CONSULTANT. These amounts shall not increase each fiscal year to the CITY by more than the Consumer Price Index Urban U.S. City Average All Items U.S. Department of Labor Bureau of Labor Statistics. Sub-consultant Reimbursable Expenses are limited to the items in Paragraphs 5.2.1.1 through 5.2.1.7 described above when the sub-consultant's agreement provides for reimbursable expenses.

### 5.3. METHOD OF BILLING

#### 5.3.1. Lump Sum Compensation

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



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

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

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

### 5.4. METHOD OF PAYMENT

- 5.4.1. CITY shall pay CONSULTANT within forty-five (45) calendar days from receipt of CONSULTANT's proper invoice with documentation as provided above.
- 5.4.2. In the event CONSULTANT has utilized a Sub-consultant in order to perform the Task Order, CONSULTANT will be required to provide documentation that Sub-consultant and Sub-consultants of Sub-consultants have been paid prior to payment being made to CONSULTANT.
- 5.4.3. Payment will be made to CONSULTANT at:

Address: E Sciences, Inc.  
34 East Pine Street  
Orlando Fl 32801

## ARTICLE 6

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### **CITY'S RESPONSIBILITIES**

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

### **ARTICLE 7**

#### **MISCELLANEOUS**

##### **7.1. OWNERSHIP OF DOCUMENTS**

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

##### **7.2. TERMINATION**

- 7.2.1. This Agreement may be terminated with or without cause by CITY at any time.**
- 7.2.2. Notice of termination shall be provided in accordance with paragraph 7.12 NOTICES of this Agreement.**
- 7.2.3. In the event this Agreement is terminated, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 7.1 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONSULTANT**

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shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment of profit for services that have not been performed.

### **7.3. AUDIT RIGHT AND RETENTION OF RECORDS**

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

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

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

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

7.4.2. CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity or expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor that can not be lawfully or appropriately used as a basis for service delivery. CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender,

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sexual orientation, national origin, gender identity or expression, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

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

### 7.5. PUBLIC ENTITY CRIMES ACT

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

- 7.5.2. In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any sub-consultant, has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

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

### 7.6. SUB-CONSULTANTS

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

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sub-consultants. The list of sub-consultants submitted and currently approved is as follows:

- a. Moffatt and Nichol Inc.
- b. Perez Engineering and Development Inc.
- c. EBS Engineering Inc.

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

### **7.7. ASSIGNMENT AND PERFORMANCE**

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

### **7.8. INDEMNIFICATION OF CITY**

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

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7.8.2. The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the CONSULTANT or of any third party to whom CONSULTANT may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the Work.

### 7.9. INSURANCE

7.9.1. CONSULTANT is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for workers' compensation, public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the CONSULTANT shall provide the minimum limits of liability insurance coverage as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate (Per Project)
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$ 300,000	Fire Damage/Legal
Professional Liability	\$2,000,000	Per Claim / Aggregate
Additional Umbrella Liability	\$2,000,000	Occurrence / Aggregate

7.9.2. CONSULTANT shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as an additional insured on all policies— excepting Professional Liability—on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, (combination of CG 2010 07 04 and CG 2037 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of City of Key West on all policies. CONSULTANT will maintain the Professional Liability, General Liability, and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the additional insured endorsement until at least 3 years beyond completion and delivery of the work contracted herein.

7.9.3. Notwithstanding any other provision of the Contract, the CONSULTANT shall maintain complete workers compensation coverage for each and every employee, principal, officer, representative, or agent of the CONSULTANT who is performing any labor, services, or material under the Contract. Further, CONSULTANT shall additionally maintain the following minimum limits of coverage:

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Bodily Injury Each Accident	\$1,000,000
Bodily Injury by Disease Each Employee	\$1,000,000
Bodily Injury by Disease Policy Limit	\$1,000,000

- 7.9.4. If the work is being done on or near a navigable waterway, CONSULTANT's workers compensation policy shall be endorsed to provide USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage if specified by the City of Key West. CONSULTANT shall provide the City of Key West with a Certificate of Insurance verifying compliance with the workers compensation coverage as set forth herein and shall provide as often as required by the City of Key West such certification which shall also show the insurance company, policy number, effective and expiration date, and the limits of workers compensation coverage under each policy.
- 7.9.5. CONSULTANT's insurance policies shall be endorsed to give 30 days written notice to the City of Key West in the event of cancellation or material change, using form CG 02 24, or its equivalent.
- 7.9.6. Certificates of Insurance submitted to the City of Key West will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary. PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.
- 7.9.7. CONSULTANT will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. CONSULTANT will notify City of Key West immediately by telephone at (305) 809-3964 any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the CONSULTANT.
- 7.9.8. It shall be the responsibility of the Consultant to ensure that all sub-consultants/subcontractors comply with the same insurance requirements as is required of Consultant.
- 7.9.9. In addition, it is understood if at any time any of the policies required by the City shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the City, the Consultant shall obtain a new policy, submit the same to the City for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of the Consultant to furnish, deliver and maintain such insurance as required above, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of the Consultant to take out and/or maintain any required insurance shall not relieve the Consultant from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the Consultant concerning indemnification.

### 7.10. REPRESENTATIVE OF CITY AND CONSULTANT

- 7.10.1. The parties recognize that questions in the day-to-day conduct of the Task Order will

## ENVIRONMENTAL ENGINEERING SERVICES

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

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

### 7.11. ALL PRIOR AGREEMENTS SUPERSEDED

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

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

### 7.12. NOTICES

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

#### FOR CITY OF KEY WEST:

City of Key West  
1300 White Street  
Key West, FL 33040

#### FOR CONSULTANT:

Contact Name: Nadia Locke, PE  
Address: E Sciences Inc. Inc,  
1021 Ives Dairy Rd. Suite 216  
Miami, Fl 33179



## **ENVIRONMENTAL ENGINEERING SERVICES**

### **7.13. TRUTH-IN-NEGOTIATION CERTIFICATE**

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

### **7.14. INTERPRETATION**

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

### **7.15. CONSULTANT'S STAFF**

- 7.15.1. CONSULTANT shall provide the key staff identified in their proposal for Task Order as long as such key staffs are in CONSULTANT's employment.
- 7.15.2. CONSULTANT shall obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator shall be reasonable in evaluating key staff qualifications.
- 7.15.3. If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.
- 7.15.4. The CITY reserves the right to approve the members of the Consulting Team and the roles they will undertake in the assignment. The CITY's acceptance of a team member shall not be unreasonably withheld.

## **ENVIRONMENTAL ENGINEERING SERVICES**

- 7.15.5. Each assignment issued under this Agreement by the CITY to the Consultant, the Consultant will at the CITY's request, disclose the role, qualifications and hourly rate of each individual working on the assignment.
- 7.15.6. The CITY reserves the right to require replacement of any of the members of the Consulting Team. Any proposed addition or change of members of the Consulting Team initiated by the Consultant must obtain the CITY Representative's prior written approval.
- 7.15.7. In the event of the death, incapacity or termination of employment of any member of the Consulting Team before Completion of the Services, the Consultant shall at its own expense and as soon as reasonably practicable arrange to substitute or replace the individual member concerned.
- 7.15.8. The Consultant shall ensure that the substitute or replacement is no less qualified in terms of relevant experience and qualifications than the outgoing individual and is available at the relevant time to act as such replacement or substitute. The Consultant shall without delay forward curriculum vitae of the proposed substitute or replacement to the CITY. The deployment of such substitute or replacement shall be subject to the CITY's consent.
- 7.15.9. The Consultant shall solely be responsible for all direct, indirect and consequential costs or losses that may arise from the substitution or replacement of members of the Consulting Team.

### **7.16. INDEPENDENT CONTRACTOR**

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

### **7.17. THIRD PARTY BENEFICIARIES**

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

### **7.18. CONFLICTS**

## **ENVIRONMENTAL ENGINEERING SERVICES**

7.18.1. Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

7.18.2. CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

7.18.3. In the event CONSULTANT is permitted to use sub-consultants to perform any services required by this Agreement, CONSULTANT agrees to prohibit such sub-consultants from having any conflicts as within the meaning of this section, and shall so notify them in writing.

### **7.19. CONTINGENCY FEE**

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

### **7.20. WAIVER OF BREACH AND MATERIALITY**

7.20.1. Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

7.20.2. CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

### **7.21. COMPLIANCE WITH LAWS**

CONSULTANT shall comply with federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this

## **ENVIRONMENTAL ENGINEERING SERVICES**

Agreement applicable at the time the scope of services was drafted for this agreement. In addition, at the time each Task Order is executed, any revisions to applicable federal state, and local laws, codes, ordinances, rules and regulations shall apply.

### **7.22. SEVERABILITY**

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

### **7.23. JOINT PREPARATION**

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

### **7.24. PRIORITY OF PROVISIONS**

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

### **7.25. APPLICABLE LAW AND VENUE**

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

### **7.26. INCORPORATION BY REFERENCE**

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

Exhibit A – CONSULTANT/Sub-consultants' Hourly Rates

### **7.27. COUNTERPARTS**

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

## **8.0 FEDERAL REQUIREMENTS**

## ENVIRONMENTAL ENGINEERING SERVICES

- 8.1 ACCESS BY THE GRANTEE, SUBGRANTEE, FEDERAL GRANTOR AGENCY AND COMPTROLLER GENERAL:** The CONSULTANT shall allow access by the grantee, subgrantee, Federal grantor agency and Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.
- 8.2 COPYRIGHTS:** The Grantee is free to copyright original work developed in the course of or under the agreement. FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Publication resulting from work performed under this agreement shall include an acknowledgement of FEMA financial support, by granted number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA views.
- 8.3 DISADVANTAGED BUSINESS ENTERPRISES (DBE) CONSULTANTS:** The CONSULTANT agrees to ensure that Disadvantage Business Enterprises as defined in 49 C.F.R. Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and this agreement. In this regard, CONSULTANT shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The CONSULTANT shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federal assisted contracts.
- 8.4 ENERGY POLICY AND CONSERVATION ACT:** The CONSULTANT shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- 8.5 EQUAL EMPLOYMENT OPPORTUNITY:** During the performance of this contract, the CONSULTANT agrees as follows:
- 8.5.1** The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - 8.5.2** The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
  - 8.5.3** The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the

## ENVIRONMENTAL ENGINEERING SERVICES

CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 8.5.4** The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 8.5.5** The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 8.5.6** In the event of the CONSULTANT's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8.5.7** The CONSULTANT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subCONSULTANT or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub CONSULTANT or vendor as a result of such direction by the administering agency the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- 8.5.8** CONSULTANT shall:
1. Place qualified small and minority businesses and women's business enterprises on solicitation lists.
  2. Assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
  3. Divide work, when economically feasible, into smaller tasks to permit maximum participation by small and minority businesses, and women's business enterprises.
  4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
  5. Provide documentation of compliance with 1-4 above.

## 8.6 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT COMPLIANCE

- 8.6.1** Overtime requirements. No CONSULTANT or subCONSULTANT contracting for any part of the contract work which may require or involve the employment of

## ENVIRONMENTAL ENGINEERING SERVICES

laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**8.6.2** Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the CONSULTANT and any subCONSULTANT responsible therefor shall be liable for the unpaid wages. In addition, such CONSULTANT and subCONSULTANT shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

**8.6.3** Withholding for unpaid wages and liquidated damages. The Federal Emergency Management Agency (FEMA) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONSULTANT or subCONSULTANT under any such contract or any other Federal contract with the same prime CONSULTANT, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONSULTANT, such sums as may be determined to be necessary to satisfy any liabilities of such CONSULTANT or subCONSULTANT for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**8.6.4** Subcontracts. The CONSULTANT Or subCONSULTANT shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subCONSULTANTS to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for compliance by any subCONSULTANT or lower tier subCONSULTANT with the clauses set forth in paragraphs (1) through (4) of this section."

### 8.7 CLEAN AIR ACT

**8.7.1** The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The CONSULTANT agrees to report each violation to the City of Key West and understands and agrees that the City of Key West will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### 8.8 FEDERAL WATER POLLUTION CONTROL ACT

## ENVIRONMENTAL ENGINEERING SERVICES

- 8.8.1** The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 8.8.2** The CONSULTANT agrees to report each violation to the City of Key West and understands and agrees that the City of Key West will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 8.8.3** The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### **8.9 DEBARMENT AND SUSPENSION:**

- 8.9.1** This contract is a covered transaction for purposes of 2 C.F.R. pt.180 and 2 C.F.R. pt. 3000. As such the CONSULTANT is required to verify that none of the CONSULTANT, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 8.9.2** The CONSULTANT must comply with 2 C.F.R. pt. 180, subpart C and 2C.F.R. part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 8.9.3** This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the CONSULTANT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 8.9.4** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **8.10 BYRD ANTI-LOBBYING AMENDMENT,**

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

- 8.10.1** CONSULTANTS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by



## ENVIRONMENTAL ENGINEERING SERVICES

31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8.10.2 Attach Certification for Contracts, Grants, Loans, and Cooperative Agreements submitted with bid if exceeding \$100,000)

### 8.11 PROCUREMENT OF RECOVERED MATERIALS

8.11.1 In the performance of this contract, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-

8.11.1.1 Competitively within a timeframe providing for compliance with the contract performance schedule;

8.11.1.2 Meeting contract performance requirements; or At a reasonable price.

8.11.1.3 Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

8.12 RETENTION OF ALL RECORDS: The CONSULTANT is required to retain all records for seven (7) years after grantees or subgrantees make final payments and all other pending matters are closed.

### 9.0 ADDITIONAL FEDERAL REQUIREMENTS

9.1 REMEDIES – In the event of a breach by CONSULTANT of the terms and conditions of this Agreement CITY shall be entitled to recover any and all monetary damages arising therefrom including the recovery of reasonable attorney fees at all trial and appellate levels.

### 9.2 ACCESS TO RECORDS

9.2.1 The CONSULTANT agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

9.2.2 The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

9.2.3 The CONSULTANT agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

9.3 DHS SEAL, LOGO AND FLAGS: the CONSULTANT shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

9.4 COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS: This is an acknowledgement that FEMA financial assistance will be used to fund the contract

## ENVIRONMENTAL ENGINEERING SERVICES

only. The CONSULTANT will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**9.5 NO OBLIGATION:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT, or any other party pertaining to any matter resulting from the contract."

**9.6 FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS:** The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT's actions pertaining to this contract.

## ENVIRONMENTAL ENGINEERING SERVICES

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

By: CITY OF KEY WEST

  
\_\_\_\_\_  
Greg Veliz, City Manager

23 day of March, 2020



By: E Sciences Inc.

  
\_\_\_\_\_  
(Signature)

Peter Parlow, President  
(Print Name and Title)


10 day of March, 2020

Attest:

  
  
\_\_\_\_\_  
Cheryl Smith, City Clerk

24 day of March, 2020

Attest:

  
\_\_\_\_\_  
(Signature)  
Melanie Aldridge, Office Admin.  
(Print Name and Title)

10 day of March, 2020



"Exhibit A"

**E SCIENCES, INCORPORATED  
2020 SCHEDULE OF FEES**

<b><u>EMPLOYEE CLASSIFICATION</u></b>	<b><u>RATE PER HOUR</u></b>
<b>PRINCIPAL</b> Registered Engineer/Geologist/Scientist	\$220.00
<b>DIRECTOR/CHIEF</b> Engineer/Geologist/Scientist	\$220.00
<b>SENIOR II</b> Registered Engineer/Geologist/Scientist	\$195.00
<b>SENIOR I</b> Registered Engineer/Geologist/Scientist	\$160.00
<b>PROJECT II</b> Engineer/Geologist/Scientist	\$135.00
<b>PROJECT I</b> Engineer/Geologist/Scientist	\$120.00
<b>STAFF II</b> Engineer/Geologist/Scientist	\$105.00
<b>STAFF I</b> Engineer/Geologist/Scientist	\$90.00
<b>SENIOR GIS Analyst</b>	\$120.00
<b>CADD/GIS Analyst</b>	\$90.00
<b>TECHNICIAN II</b>	\$80.00
<b>TECHNICIAN I</b>	\$70.00
<b>ADMINISTRATIVE ASSISTANT/CLERICAL SUPPORT</b>	\$60.00

**Exhibit "A"**  
**Moffat & Nichol**  
**2020 Southeast U.S. Rate**  
**Sheet**

General Client Classification	Rate (USD)
Principal Engineer	\$ 250
Environmental Manager	\$ 235
Supervisory Engineer	\$ 205
Senior Engineer	\$ 175
Environmental Senior PM	\$ 175
Engineer III	\$ 155
Environmental PM	\$ 155
Engineer II	\$ 140
Environmental Scientist	\$ 125
Engineer I	\$ 110
Staff Engineer II	\$ 95
Staff Engineer I	\$ 85
Senior Technician	\$ 145
Designer	\$ 110
CADD II	\$ 95
CADD I	\$ 85
CADD Apprentice	\$ 50
Word Processor	\$ 65
Admin	\$ 70
General Clerical	\$ 55

**Exhibit "A"**

**Perez Engineering & Development, Inc.**

**CITY OF KEY WEST**  
**Environmental Engineering Services**

***Fee Schedule - 2020***

Discipline/Position	Registration	Rate
Principal	P.E.	\$210/hr
Senior Engineer	P.E.	\$165/hr
Project Engineer	P.E.	\$130/hr
Design Engineer	E.I.	\$105/hr
Resident Inspector		\$90/hr
CAD Designer	None	\$85/hr
Clerical	None	\$55/hr

The depicted rate ranges for each classification include all salaries, overheads, and profit, but do not include allowances for Reimbursable Expenses. These rates are subject to fiscal year adjustments.



ESCIE-1

OP ID: BB

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/02/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> JCJ Insurance Agency 2208 Hillcrest Street Orlando, FL 32803 Erin K. Kelley	321-445-1117	<b>CONTACT NAME:</b> Kristin McIntosh	
		<b>PHONE (A/C, No, Ext):</b> 321-445-1117	<b>FAX (A/C, No):</b> 321-445-1076
		<b>E-MAIL ADDRESS:</b> certs@cj-insurance.com	
<b>INSURED</b> E Sciences, Inc 54 E. Pine St Orlando, FL 32801	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> Continental Casualty Company		20443
	<b>INSURER B:</b> Old Dominion Insurance Co.		40231
	<b>INSURER C:</b> The Zenith Insurance Co.		13269
	<b>INSURER D:</b> Scottsdale Insurance Company		41297
	<b>INSURER E:</b>		
<b>INSURER F:</b>			

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	B6074584025	11/02/2019	11/02/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	B1T6941T	11/02/2019	11/02/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	B6074584039	11/02/2019	11/02/2020	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N N/A If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/>	Z133790604	11/02/2019	11/02/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	<input checked="" type="checkbox"/> Professional Liab		BK1076896	11/02/2019	11/02/2020	Per Claim 2,000,000
D	<input checked="" type="checkbox"/> Pollution Liab		BK1076896	11/02/2019	11/02/2020	Aggregate 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: RFQ 20-002. Certificate Holder is an Additional Insureds with regards to General, Auto and Umbrella Liability when required by written contract. Coverage is Primary & Non-Contributory with respect to all policies. A Waiver of Subrogation for all policies applies when required by written contract. 30 Day Notice of Cancellation, except for 10 days for

## CERTIFICATE HOLDER

## CANCELLATION

<b>City of Key West</b> 1300 White Street Key West, FL 33040	KEYW130	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
		AUTHORIZED REPRESENTATIVE <i>Erin K. Kelley</i>

**NOTEPAD:**

HOLDER CODE    **KEYW130**  
INSURED'S NAME    **E Sciences, Inc**

**ESCIE-1**  
**OP ID: BB**

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**non-payment.**





**E SCIENCES, INCORPORATE  
2020 SCHEDULE OF FEES**

**A. PERSONNEL**

Charges will be made at the following rates for staff time spent in administration, consultation or meetings related to the project, field inspection and evaluation, review and analysis of field and laboratory data, travel time, report preparation and review, etc. **Preparation and time spent for expert testimony will be charged at 1.5 times the standard rates.**

	<u>Rate Per Hour</u>
<b>PRINCIPAL</b> Registered Engineer/Geologist/Scientist	\$220.00
<b>DIRECTOR/CHIEF</b> Engineer/Geologist/Scientist	\$220.00
<b>SENIOR II</b> Registered Engineer/Geologist/Scientist	\$195.00
<b>SENIOR I</b> Registered Engineer/Geologist/Scientist	\$160.00
<b>PROJECT II</b> Engineer/Geologist/Scientist	\$135.00
<b>PROJECT I</b> Engineer/Geologist/Scientist	\$120.00
<b>STAFF II</b> Engineer/Geologist/Scientist	\$105.00
<b>STAFF I</b> Engineer/Geologist/Scientist	\$90.00
<b>SENIOR GIS Analyst</b>	\$120.00
<b>CADD/GIS Analyst</b>	\$90.00
<b>TECHNICIAN II</b>	\$80.00
<b>TECHNICIAN I</b>	\$70.00
<b>ADMINISTRATIVE ASSISTANT/CLERICAL SUPPORT</b>	\$60.00