

# CONTRACT

CITY OF KEY WEST

AGREEMENT TO PROVIDE  
A BICYCLE AND  
PEDESTRIAN MASTER  
TRANSPORTATION PLAN  
TO THE  
CITY OF KEY WEST

January 2017

# **Agreement to Furnish a Bicycle and Pedestrian Master Transportation Plan to the City of Key West**

This AGREEMENT made and entered into by and between the City of Key West, a municipal corporation of the State of Florida, whose address is P.O. Box 1409, Key West, Florida 33041, hereafter referred to as the "CITY" and Toole Design Group, LLC, whose address is 8484 Georgia Ave, Suite 800, Silver Spring, MD 20910 hereafter referred to as the "CONSULTANT". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

## **Article 1. Scope of Services**

The CITY engages CONSULTANT to perform those Services enumerated below and as described in CITY'S Request for Proposals #16-006, which is attached hereto, incorporated by reference, and more particularly described as Exhibit "A", and CONSULTANTS' Proposal dated August 31, 2016, which is attached hereto, incorporated by reference, and more particularly described as Exhibit "B." The CONSULTANT's primary responsibilities include, but are not limited to the following:

### **TASK 1. PROJECT ADMINISTRATION – REFINING THE SCOPE, AND ONGOING PROJECT MANAGEMENT**

#### **1.1 - Finalize Scope and Timeline**

The CONSULTANT will review the timeline and associated tasks with the City Project Manager (CPM)/City's Bicycle/Pedestrian Coordinator to make any minor adjustments and non-substantive revisions. We believe that 12 months is a reasonable timeframe for completing the plan; should an anticipated opportunity or challenge arise that would significantly affect this timeframe, we will come to agreement with the CPM about the best way to proceed.

#### **1.2 - Ongoing Project Management**

The CONSULTANT shall provide 10 to 12 project planning meetings either by conference call or face-to-face. When possible, face-to-face project coordination meetings will be conducted in conjunction with CONSULTANT visits for field work, steering committee meetings, and public meetings. Local CONSULTANT members will be available to the CPM as needed. Written reports outlining the progress of the project will be submitted monthly in conjunction with routine invoices.

CONSULTANT shall assist CPM to establish a Project Advisory Committee (PAC) to help guide important tasks and decisions in the plan development process. This type of oversight helps ensure the plan developed will meet the community's needs, especially if team members represent a cross-section of interests, such as residents, the business community and tourists. The CONSULTANT will meet with the PAC for up to four meetings throughout the duration of the project.

***Task 1 Deliverables:***

- Updated Scope of Services and Timeline
- Regular communication with the CPM regarding the project
- Monthly progress reports and invoices
- Meeting agenda materials and notes
- Database of stakeholders and participants
- Advisory Committee meetings (up to 4)

**TASK 2 – PUBLIC ENGAGEMENT AND NEEDS ASSESSMENT PLAN AND IMPLEMENTATION**

The CONSULTANT will use a robust, innovative and accessible public engagement plan with the goal of building consensus around two broad areas: what the plan should achieve (its vision and goals) and how to achieve the vision and goals (built around the 5 E's approach). To this end, the CONSULTANT will develop a Public Participation Plan (PPP) that outlines target audiences, identifies specific engagement tactics and tools that will be used, and presents a schedule for outreach activities.

The PPP will be developed within the first 30 days after receiving the notice to proceed. The tactics CONSULTANT shall expect to use for public engagement are multi-purpose, i.e., expect to use each tactic throughout the plan development process for different reasons.

Tactics include:

- Plan Branding –coordinate branding (logo and tagline) with efforts underway related to the Car Free Key West program marketed by South Florida Commuter Services The branding will be used on the website and in all public engagement materials.
- Vision Zero principles
- Complete Streets approach
- Website and social media
- Multi-lingual team members
- Key figures/spokespeople—both locally and nationally-known
- Database of stakeholders and participants
- Prize incentives
- Existing Key West events,
- Tactical urbanism and Open Streets events: use this strategy for proof of concept and to raise awareness

- Community walking and bicycling events
- Free-form public input, such as boards for capturing ideas.
- Video recording

The CONSULTANT will use the following four-step approach to our public participation plan. This approach is both linear and iterative:

1. Create the buzz: Using a series of visible events, advertising, social media and community meetings, we will let people know about the plan and ways to be involved. Activities will include:
  - Tabling at school and community events.
  - Social media, such as Twitter, Facebook and Flickr. CONSULTANT will work with the CPM to develop a set of social media posts that can help promote and create the buzz about the plan.
  - One-on-one contact during everyday events, such as talking to people at bus stops, while bicycling, at City Hall and libraries, the grocery store, etc.
  - Outreach at community meetings and to religious institution meetings; safety meetings at the workplace (e.g., construction).
  - Outreach to business community: CONSULTANT is expected to work closely with the business community to expand awareness and excitement about the plan— and to provide a mechanism for this community to invest in it by funding a speakers' bureau.
2. Inspire the vision: Once people are aware of the plan, create opportunities to contribute, regardless of their age, ability, income or where they sit relative to the digital divide, especially to envision the future of bicycling and walking in Key West and Stock Island.
  - Community walkabouts
  - WikiMap (interactive online map)
  - Flyers, mailers, post cards at coffee shops, grocery stores, hotels, etc.
  - Posters to write on
  - Discussions at PTA/PTOs; with employees, etc.
  - Coordinate with marketing firm on public engagement strategies

Early in the project, CONSULTANT will collaborate with the CPM to develop a Vision Statement and Goals for the plan. The plan goals will become the guiding principles used for the duration of the project and will be represented in the Final Plan. CONSULTANT will rely on the city and its on-going work with South Florida Commuter Services for project branding and communication to ensure the word is getting out about related meetings and events.

3. Focus on task: Work through what is needed to reach the vision, starting with goals and strategies, then moving on to specific programs, design guidelines and measures. This includes public events such as open streets events and pop-ups,

topical discussions such as bikeshare and bike parking, and pedestrian hot spot locations identified through public input.

4. Capture the plan: Write the plan as the first step in its implementation. CONSULTANT shall use a transparent process for developing the plan to ensure it has the greatest public support. The Advisory Committee would review the draft plan and perhaps hold listening sessions with those they represent to help refine the draft plan.

Video Documentation: As time, budget and opportunity allow CONSULTANT proposes using a “Street Films” video technique to document and inspire the public process. To ensure any street films produced from this project are of high quality, CONSULTANT will examine ways to accomplish this through a partnership with the business community and Key West’s award-winning high school videography program. CONSULTANT will work with the CPM to determine the best course of action.

***Task 2 Deliverables:***

- Public Engagement Plan and Timeline

**TASK 3 – INVENTORY: EXISTING CONDITIONS REPORT**

This task provides a baseline of existing conditions of the bicycle and pedestrian networks, and their relationship with other elements of the overall transportation network. The CONSULTANT will provide a written summary of existing conditions, supplemented with video documentation and public input.

**3.1 - Plans Review**

The CONSULTANT will conduct a brief review of relevant plans to better understand the current and future context for the bicycle and pedestrian transportation networks. These plans include the City’s Comprehensive Plan (2013) and the Monroe County Comprehensive Plan (2010), Strategic Plan (2011), Climate Action Plan (2009), Open Space and Recreation Master Plan and the Transit Development Plan (2014) as well as earlier plans like the 1996 Key West Bicycle and Pedestrian Strategic Plan and the 2010 Bicycle Master Plan (un-adopted).

**3.2 - Best Practices and Peer Review**

The CONSULTANT will work to identify and synthesize a range of existing methods, tools, and techniques related to the development and implementation of a bicycle and pedestrian network including a brief review of Bicycle and Pedestrian Level of Service (BLOS) as outlined in the City’s Comprehensive Plan. The CONSULTANT will also identify best practices in facility design and operation starting with the recently published FHWA guide – Achieving Multimodal Networks. CONSULTANT will work with the CPM to identify peer communities for this research.

### 3.3 - Technology, Trends and Policies

Because the transportation network affects all sectors in Key West—land development, employment and journey to work patterns, and urban design—the CONSULTANT will spend time conducting a review of the plans, policies (including “Stop-as-Yield” laws), socioeconomic trends and technology on efforts to get more people bicycling and walking. The review will include policies and plans from Key West as well as other communities.

### 3.4 - Field Assessment

Cataloguing existing conditions through field work and video recording is a critical path task for the plan. The CONSULTANT shall use efficient methods for conducting field assessments that capture information suitable for GIS. CONSULTANT will use a four-step process for the assessment aimed at identifying the most common needs and an effective network of bicycle and pedestrian facilities.

1. Initial Review. Based on past work and local knowledge of Key West and Stock Island, CONSULTANT will complete a higher-level review of up to 75% of streets. CONSULTANT shall focus on key corridors and transition points on Stock Island that will support existing residents and businesses. This will be a desktop review using google maps. Based on this review, CONSULTANT will identify a preliminary bicycle network and key pedestrian pathways and connections for a more detailed assessment.
2. Identify Study Network. CONSULTANT will complete a more thorough assessment of a smaller set of streets, based on the initial review, an analysis of bicycle and pedestrian crash data for the last five years, bus stop ridership and key destinations. To aid in this analysis CONSULTANT will produce a heat map that highlights areas of high activity and areas of need. CONSULTANT shall recognize the diversity of transportation and land use on Key West and Stock Island, including its primary retail tourist corridor, beach corridors, year-round residential neighborhoods and transition points. CONSULTANT will review the resulting study network with the Key West CPM before completing Step 3.
3. Assess Study Network. Using teams of two, CONSULTANT will complete a field review of the study network. Data collected will include photos and videos, geo-coded so they can easily be jointed with the GIS inventories created through this task. The majority of the assessment will occur during daylight hours; however, some of the assessment will occur during low light and evening hours (the location and times to be determined later).
4. Map and Review Assessment. Findings from the field assessment will be mapped. CONSULTANT will work with the CPM to create a map that is easily

understood (for the public review) and serves as the first step in identifying project recommendations.

The nature of field work typically involves a relatively short period of time to take photos, observe behaviors and capture existing conditions. As a compliment to Task 3 activities, CONSULTANT proposes to use video as a method of documenting conditions, travel behavior and public engagement. CONSULTANT will document existing conditions through GPS-enabled hand-held video cameras and cameras mounted on bicycles or helmets. As time, budget and opportunities allow CONSULTANT will work with the City to use stationery web or video cameras to capture travel patterns over longer periods of times at specific locations.

### 3.5 - Level of Service Assessment

CONSULTANT understands that the Key West Comprehensive Plan (2013) sets a target of at least LOS B for bicycle and pedestrian facilities. With this target in mind, CONSULTANT will determine the LOS of existing major bicycle and pedestrian corridors based on the field assessment and relevant improvement projects that are active. Those improvement projects that are budgeted or planned for the next 10 years will be noted for their effect on bicycle and pedestrian level of service. In addition, CONSULTANT will identify streets whose LOS can increase by at least one level with a small investment.

*Note: Maps and data will be available using open source tools and open data, including Open Street Map and transit, bikeshare and bike GTFS formats. The public will be encouraged to use the data gathered by this project.*

#### **Task 3 Deliverables:**

- Map based summary of Existing Conditions Assessment and associated map detail
- GIS files
- Photo and video documentation (as agreed with CPM)

### **TASK 4 – COMPLETE STREETS DESIGN GUIDE (ACTIVE TRANSPORTATION RESOURCE)**

This task provides the City of Key West with resources to plan and design public streets going forward. CONSULTANT will build upon the city's recent Complete Streets work by developing draft guidelines that incorporate what has been learned from developing guidelines for similarly sized communities.

The resource will include a set of street types that reflect existing roadway classifications with adjacent land use and accompanying cross-sections. Furthermore, a glossary of facility types and treatments will be assembled from current and best practices documented in resources such as the National Association of City Transportation Officials (NACTO) Urban Street Design Guide, the Urban Bikeway

Design Guide and Transit Street Design Guide, along with the Achieving Multimodal Networks guidebook referenced in Task 3. The glossary will include facilities and treatment for various on-street bicycle facilities, pedestrian crossing facilities, multimodal intersections, off-road paths for bicycling and walking. CONSULTANT will coordinate its work with FDOT as it completes its Complete Streets Manual.

***Task 4 Deliverables:***

- Draft Complete Streets Design Guide (Active Transportation Resource)

**TASK 5- DEVELOPMENT OF BICYCLE AND PEDESTRIAN NETWORK PLAN(S)**

The CONSULTANT, in consultation with the CPM, will determine how to structure plans for the bicycle and pedestrian network recommendations. Preliminarily, the CONSULTANT recommends including both plans in a single document. The document will include a focus element on key intersections and bridges.

In order to provide plan maps with sufficient scale, maps for Key West and Stock Island will be separate with joint lines that allow the maps to be printed and assembled as a single document. The maps will be high quality, showing the existing (developed in Task 3.4.4 and 3.5) and proposed facilities within the network.

The network plans will reflect active transportation goals of a high LOS (B or above or corresponding Level of Traffic Stress evaluation) and provide multi-directional travel for bicyclists and pedestrians within Key West and Stock Island, and between the two. Facility recommendations will be tailored to the transportation and land use context—striving to make walking and bicycling a viable travel option for all, including more vulnerable and risk-adverse populations.

CONSULTANT will focus the network plan for Stock Island on key corridors where bicycling and pedestrian conditions may be lower than an LOS B. Using the Complete Streets design guide as a resource for the street type and associated cross-section, the CONSULTANT will recommend facility types along the study network that factor elements, such as public right-of-way, street width, traffic volumes, needs at intersections, transit connections, streetscaping and signage.

Recommendations in the plans will be phased based on their priority that reflects benefit, ease of implementation and cost. Where appropriate, implementation challenges and opportunities will be identified, for example, understanding how the “Triangle” high hazard zone (where U.S. 1, North Roosevelt Boulevard, South Roosevelt Boulevard) can be a safe transition point between the City and Stock Island.

***Task 5 Deliverables:***

- Draft Bicycle and Pedestrian Network Plan

**TASK 6 – DEVELOPMENT OF ENGINEERING PLAN**



CONSULTANT will prepare an engineering plan for the bicycle and pedestrian network plan(s) as a first step towards implementation. The Engineering Plan will include an infrastructure work plan and preliminary design of selected network recommendations with a section on bicycle parking and end of trip facilities. CONSULTANT will also provide wayfinding and signage design guidelines resource.

#### 6.1. Infrastructure Work Plan

The plan will consolidate phasing developed in Task 5 into a single plan consisting of one, five and 10-year increments (i.e., short, medium and long term). Projects recommended for implementation during the first 12 months will be detailed more fully, especially when they are low-cost items that can be leveraged through other planned work, such as resurfacing. Items included in the next five years will also have a high benefit-to-cost ratio, especially if they address safety, mobility and network connectivity needs. Projects included in the 10-year increment will be those that require more time and money, and are more complex, such as a network recommendation included as part of a major roadway design project.

#### 6.2 Preliminary design concepts

CONSULTANT will also work with the CPM to identify up to three locations to develop preliminary design concept documents. These initial designs would include before and after typical sections and plan views to show recommended changes, such as bulb out, etc. Where appropriate, the designs will include references to elements aimed at reducing conflicts between modes. The preliminary design documents will include notes on relevant issues required by the prospective funding source, along with planning level cost estimates based on local unit costs. The preliminary design concepts would be suitable for Key West to provide to FDOT for federal transportation funding programs.

#### 6.3 Bicycle Parking and End of Trip Facilities

Using information gained from the public, the field assessment and past experience, CONSULTANT will include in the engineering plan a map of recommended bicycle parking locations keyed to a glossary of facility type and coded for phasing. The recommended locations will be based on the Bicycle Network Plan included in Task 5. CONSULTANT will also develop a Bicycle Parking resource so that it can be used as a marketing piece. The resource will be organized in three parts:

1. **Bicycle Parking Glossary:** The glossary will include a description of each facility, its benefits and limitations, and performance standards.
2. **Making the Public Realm Work:** This section will provide examples of programs aimed at refurbishing and re-purposing abandoned bicycles to increase bicycle transportation.
3. **Working with the Private Sector.** The private sector is an important partner in many ways. This section will include examples of local and other private sector organizations that provide on-site bicycle parking, end of trip facilities

for employees, facilitate bikeshare, and manage temporary parking for events.

#### 6.4. Wayfinding and Signage Design Resource

CONSULTANT will develop a resource for Wayfinding and Signage Design Guidelines that includes sign placement, markings and maps to provide network coherence and safety. To efficiently accomplish this task the TDG Team will adapt and apply guidelines it has prepared for other similar communities to Key West.

##### ***Task 6 Deliverables:***

- Draft Engineering Plan
  - Infrastructure work plan
  - Preliminary design concepts (up to three locations)
  - Bicycle parking and end of trip facilities resource
  - Wayfinding and signage design resource

#### **TASK 7 – PROGRAMMATIC RECOMMENDATIONS**

Through this task, CONSULTANT will work with the CPM to develop recommendations on the four programmatic E's (i.e., Education, Encouragement, Enforcement and Evaluation). The recommendations will be framed around the plan vision, which will reflect Vision Zero principles.

More specifically, CONSULTANT will review and evaluate existing programs targeting the four E's and will draw from information received during the public engagement and current best practices to develop programmatic recommendations. CONSULTANT will also develop an evaluation plan built around targets for the Bicycle and Pedestrian Master Transportation Plan. The program will include outcome measures, such as mode shift and crash reduction targets, as well as workload and other supporting measures, such as bicycle and pedestrian counts, transit ridership counts, average daily traffic and speed on key roads and implementation targets for the plan itself such as miles of bicycle facilities constructed and number of employers participating in the active commute program. This plan will also include opportunities for public involvement in data collection such as using new applications for counting facility use recently launched through the Trail Modeling and Assessment Platform (T-MAP).

##### ***Task 7 Deliverables:***

- Draft Education, Encouragement and Enforcement recommendations
- Draft Evaluation Plan

#### **TASK 8 – MULTIMODAL CONNECTIVITY PLAN**

CONSULTANT will develop a structure for a community-wide discussion of how multimodal connectivity can be achieved in Key West and Stock Island. The conversation is envisioned to run the course of the Master Plan development,

consolidating comments into a recommended course of action for inclusion in the final Master Plan.

The discussion will be focused on answering the following questions:

- What would make it attractive for people to vacation here without the need for a car?
- How can shared transportation economies (bikeshare, Uber, car- and van-pools) serve the transportation needs of residents and employees?

Topics to be included in this discussion may include parking policies (cars, bikes, and scooters), bike share implementation, transit routing, automated bike and scooter rental, e-bikes and scooter bikes.

***Task 8 Deliverables:***

- Draft recommendations for encouraging multi-modalism

**TASK 9 – FUNDING, MAINTENANCE AND IMPLEMENTATION PLAN**

CONSULTANT will build upon the Task 6 deliverables to develop an implementation plan. The plan will include the following:

1. **Planning-Level Cost Estimates:** CONSULTANT will develop planning level cost estimates for Year 1 and 5 projects, which are most likely to be funded in a timeframe for which costs are relevant. It is anticipated that unit costs that reflect local design and construction costs will be provided by Key West or FDOT. These cost estimates, along with opportunities for quick implementation and leveraging other projects identified in the Infrastructure Plan, will be captured for Task 9.
2. **Maintenance Proposal:** CONSULTANT will summarize life-cycle costing for bicycle and pedestrian facilities to recommend a maintenance schedule, along with recommendations for maintenance equipment. CONSULTANT expects to learn about maintenance needs through the public engagement process and will incorporate this input into the recommendations.
3. **Implementation Plan:** The implementation plan will formalize the phased recommendations and planning level cost estimates developed in Task 9 into a matrix for review by the CPM. CONSULTANT will ask the CPM to review this matrix with appropriate City and County staff to determine the lead agency and partner for advancing each project and programmatic recommendation. CONSULTANT will recommend that the GIS files generated through the field assessment can be used as the system for tracking progress. CONSULTANT will work with the CPM to identify a tracking system and staffing responsibilities to gauge progress in achieving the goals of the plan.

***Task 9 Deliverables:***

- Draft Funding, Maintenance and Implementation Plan

## **TASK 10 – FINAL BICYCLE AND PEDESTRIAN MASTER TRANSPORTATION PLAN**

CONSULTANT will deliver the plan to City staff for review within 11 months of notice to proceed and will present it in its final form for approval by the City Council within 12 months. Below is a summary of final plan elements from the RFP that will be included in the plan, unless changes are agreed upon during Task 1.

1. Introduction
2. State of the Bicycling and Pedestrian Environment in Key West and Stock Island
3. Policy Framework
4. Complete Streets Design Guide
5. Bicycle and Pedestrian Network (s)
6. Engineering (Infrastructure) Plan
7. Education, Encouragement, Enforcement and Evaluation Plan
8. Multimodal Connectivity Plan
9. Funding, Maintenance and Implementation Plan
10. Appendix

After a Draft Plan is released for comment by the City (Task 4), CONSULTANT will prepare for and conduct up to two presentations of the Plan to the appropriate advisory body or other identified decision makers and respond to their comments. The comments from the Advisory Board and City Staff on the Draft Plan will be incorporated into a Second Draft, which TDG may present at a City Commission Public Hearing, if requested. Comments from the Public and the City Commission and Public Hearing will be incorporated in the Final Plan and submitted to the City Commission for adoption. Handouts, electronic presentations and display boards will be provided to the Project Manager 7 days preceding scheduled steering committee and City Commission meetings at which the plan will be presented.

CONSULTANT will provide a final plan in the following format: The Key West Bicycle and Pedestrian Transportation Master Plan will be a bound, letter (8.5x11 in.) sized, and vertically oriented document with reduced and tabloid (11x17in.) fold-out maps contained within the document and an Acrobat file with an executable table of contents suitable for digital distribution. All original electronic files used to generate the Acrobat file will be provided to the City in editable condition with full access rights. Ten Bicycle and Pedestrian Master Plan documents will be printed, bound and mailed to the Project Manager upon adoption and approval of the Final Plan by the City.

### ***Task 10 Deliverables:***

- Final report and maps in PDF and original source files (per referenced file types above).
- Attend up to two (2) meetings to present the draft and/or final plan

## **Article 2. Compensation**

As consideration for providing the services enumerated in Article 1, the CITY shall pay the CONSULTANT fees as defined as follows:

- 2.1 Payment in the total, not-to-exceed, fixed amount of \$248,150 for the initial project, paid in monthly progress installments which includes compensation for all tasks identified in the CONSULTANT' proposal (Exhibit "B"), including but not limited to CONSULTANT' travel costs (meals and lodging), transportation, fringe benefits, clerical support, salaries, general overhead costs, direct expenses, profit and all other out-of-pocket expenses.
- 2.2 The CITY agrees to remit payment to the CONSULTANT by the 10<sup>th</sup> day of the following month after receipt of invoice. The fee is inclusive of travel to and from the City of Key West and grant application production cost.
- 2.3 All fees shall be addressed to: City of Key West, Planning Department, P.O. Box 1409, Key West, Florida 33041

## **Article 3. Invoicing and Payment**

Monthly invoices will be issued by CONSULTANT for all work performed during the preceding month under this AGREEMENT, as prescribed in Article 2. Invoices are to be submitted and paid in accordance with the Florida Prompt Payment Act.

## **Article 4. Obligations of the CONSULTANTS**

### **4.1. General**

The CONSULTANT will serve as CITY'S professional representative under this AGREEMENT, providing bicycle and pedestrian transportation planning services and furnish customary services incidental thereto.

### **4.2. Standard of Care**

The standard of care applicable to CONSULTANT' services will be the degree of skill and diligence normally employed by bicycle and pedestrian transportation planning and other related CONSULTANT performing the same or similar services at the time said services are performed. The CONSULTANT will perform any services not meeting this standard without additional compensation.

### **4.3. CONSULTANT' Insurance**

- A. The CONSULTANT will maintain throughout this AGREEMENT the insurance requirements found in CITY'S Request for Proposals #16-006 (Exhibit "A") of this AGREEMENT.
- B. 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 above provided, 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 CONSULTANTS concerning indemnification.

#### 4.4 Subconsultants

The CONSULTANT may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY.

#### 4.5 Licenses

The CONSULTANT will be required to obtain a local required license prior to performing any work for the CITY. This license will be a Business Tax Receipt.

### **Article 5. Obligations of the City**

#### 5.1. Authorization to Proceed

Authorization to proceed will be considered to be given upon execution of this Agreement by CITY.

#### 5.2 City-Furnished Data

The CITY will provide to the CONSULTANT in a timely and accurate manner all data, in the CITY'S possession, necessary for the CONSULTANT to execute those scope of services stated under Article 1.

#### 5.3. Prompt Notice

The CITY will give prompt written notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT' services, or any defect in the work of the CONSULTANT.

### **Article 6. General Legal Provisions**

#### 6.1 Agreement Period

The duration of the agreement shall be two (2) years commencing from the date this Agreement was entered into, with an option by the City to extend the agreement on an optional basis for one (1) year under the same terms and conditions for a total of three years upon mutual agreement of the parties.

## 6.2. Reuse of Project Document; Public Records

- A. Reports, documents and other deliverables of the CONSULTANT, whether in hard copy or in electronic form, are instruments of service for the project of the CITY. All documents provided to the City are the property of the City of Key West. Reuse, change, or alteration on another project, by the CITY or by others acting on behalf of the CITY of any such instruments of service without the written permission of the CONSULTANT will be at the CITY's sole risk. Nothing herein shall constitute a waiver of City's sovereign immunity rights, including, but not limited to, those expressed in Section 768.28, Florida Statutes.
- B. CONSULTANT has reviewed Florida Statute section 119.07 and is otherwise knowledgeable of Florida's broad public records laws. CONSULTANT understands and agrees that all records made in connection with the services provided under or related to this agreement are public records as defined by Florida Statute section 119.011(11). Such records must be maintained and made available by the CONSULTANT in accordance with the public records law provisions.

## 6.3 Ownership of Work Product and Inventions

All of the work product of CONSULTANT in executing a grant opportunity under this AGREEMENT shall become the property of the CITY. The City may use the deliverables solely for the purpose for which they were intended.

CONSULTANT's proprietary and/or preexisting intellectual property previously belonging or licensed to CONSULTANT ("Data") and used to perform the Services shall remain the sole property of CONSULTANT. To the extent the Services contain this Data, CONSULTANT hereby grants to CITY a non-transferable, non-assignable, royalty-free license to use the Data for the sole purpose of completing and maintaining this project.

## 6.4 Force Majeure

- A. The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.
- B. In the event of a delay that results in additional costs to the CONSULTANT, an appropriate increase in compensation and schedule will be authorized in writing.

## 6.5 Termination

- A. This agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to CONSULTANT. No further work will be performed by CONSULTANT upon receipt of this notice unless specifically authorized by the City Manager of the City of Key West.
- B. On termination, the CONSULTANT will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the AGREEMENT. The CITY will not pay for anticipatory profits.

#### 6.6 Third Party Beneficiaries

- A. This Agreement gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third party beneficiaries. CONSULTANT' services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the AGREEMENT.
- B. All work products will be prepared for the exclusive use of CITY for specific application as described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of CONSULTANT. Any unauthorized assignment of related work product shall be void and unenforceable.

#### 6.7 Insurance and Indemnification

##### A. Insurance

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	\$1,000,000	Per Claim / Aggregate
<b>Additional Umbrella Liability</b>	<b>\$_,000,000</b>	<b>Occurrence / Aggregate</b>

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 20 10 07 04 and



CG 20 37 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.

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:

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

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 workman's 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 workman's compensation coverage under each policy.

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.

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.

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) xxx-xxxx any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the CONSULTANT.

B. Indemnification

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 "indemnitees") from liabilities, damages, losses and reasonable 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 indemnitees 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.

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.

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 "indemnitees") from any and all liability for damages, including, if allowed by law, 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, caused in whole or in part by any act, omission, or default by CONSULTANT or its subcontractors, material men, or agents of any tier or their employees, arising out of this agreement or its performance, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the CONSULTANT or its subcontractors, material men or agents of any tier or their respective employees. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of the City of Key West and CONSULTANT, they shall be borne by each party in proportion to its negligence.

Indemnification by CONSULTANT for Professional Acts. CONSULTANT hereby agrees to indemnify the City of Key West and each of its parent and subsidiary companies and the directors, officers and employees of each of them (collectively, the "indemnitees"), and hold each of the indemnitees harmless, against all losses, liabilities, penalties (civil or criminal), fines and reasonable expenses (including reasonable attorneys' fees and expenses) (collectively, "Claims") to the extent resulting from the performance of CONSULTANT's negligent acts, errors or omissions, or intentional acts in the performance of CONSULTANT's services, or any of their respective affiliates, under this Agreement. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of the City of Key West and CONSULTANT, they shall be borne by each party in proportion to its negligence.

Except to the extent specified above, the indemnification obligations under this Agreement 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 work.

#### 6.8 Limitation of Liability

- A. CONSULTANT' services shall be governed by the negligence standard for professional services, measured as of the time those services are performed.
- B. This Provision takes precedence over any conflicting Provision of this Agreement or any document incorporated into it or referenced by it.
- C. This limitation of liability will apply whether CONSULTANT' liability arises under breach of contract or warranty; tort; including negligence; strict liability; statutory liability; or any other cause of action, and shall include CONSULTANT' officers, affiliated corporations, employees, and subcontractors.

#### 6.9 Assignment

CONSULTANT shall not assign all or any part of this Agreement without the prior consent of the CITY by Resolution of the Key West City Commission.

#### 6.10 Jurisdiction and Venue

The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. Venue for any such action shall be in the state court located in Key West, Monroe County, Florida.

#### 6.11 Severability and Survival

- A. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- B. ARTICLES 4, 5, and 6 will survive termination of this AGREEMENT for any cause.

6.12 Dispute Resolution

- A. The parties will use their best efforts to resolve amicably any dispute, including the use of alternative dispute resolution options.
- B. Unless otherwise agreed in writing, the CONSULTANT shall continue the Work and maintain the approved schedules during any dispute resolution or legal proceedings. If the CONSULTANT continues to perform, CITY shall continue to make payments in accordance with this Agreement.

## Article 7. Schedules, and Signatures

This AGREEMENT, including its Exhibits, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

Attest:

THE CITY OF KEY WEST

\_\_\_\_\_

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

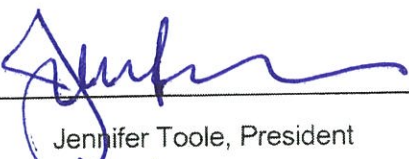
Jim Scholl, City Manager

Date: \_\_\_\_\_

Attest:

Lu Chang, Contracts Admin

For the CONSULTANT

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

Jennifer Toole, President

Date: 1/18/17

See Attached:

Exhibit A – RFP #16-006

Exhibit B – Consultant's Proposal

Exhibit C – Local Agency Program Federal-Aid Terms for Professional Services Contracts  
(Form 375-040-84)

Exhibit D – Final Contracted Budget by Task for RFP 16-006