



AGREEMENT

Between

City of Key West

And

mbi | k2m Architecture, Inc.

For

PARK ENHANCEMENT PROJECT (NELSON ENGLISH / WILLIE WARD)

This is an Agreement between: **City of Key West**, a municipal corporation of the State of Florida, its successors and assigns, hereinafter referred to as "CITY," through the Key West City Commission,

AND

mbi | k2m Architecture, 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 8, inclusive. Other terms and conditions are included in the CITY'S RFQ # 11-001, CONSULTANT's Response to RFQ dated November 10, 2010, exhibits, phases, and supplemental documents that are by this provision expressly incorporated herein by reference.
- 1.2. **Commission:** The Key West City Commission of the City of Key West, Florida, which is the governing body of the City of Key West government created by the City of Key West Charter.
- 1.3. **CONSULTANT:** The architect selected to perform the consulting services pursuant to this Agreement known as mbi | k2m Architecture, Inc.
- 1.4. **Contract Administrator:** The ranking managerial employee of the agency of CITY government which requested the Project, or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the Key West City Commission of the City of Key West, Florida, concerning the Project. 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 Project.
- 1.6. **CITY:** City of Key West.
- 1.7. **Notice To Proceed:** A written notice to proceed with the Project issued by the Contract Administrator.

- 1.8. **Project:** Design, architectural, and construction administration services for the Park Enhancement Project (Nelson English/ Willie Ward).

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 CITY has budgeted funds for consulting services for the Project. 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 this contract in each fiscal year (October 1-September 30) by CITY. The budgeted amount may only be modified by Resolution of the Commission.
- 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.
- 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 shall develop a master plan for the Nelson English and Willie Ward parks, obtain necessary Planning and HARC approvals, complete related construction documents and specifications, and assist CITY with Construction Administration services, separated into two (2) tasks of work: Design and Construction Administration. The project shall address the safe and healthy recreation for the residents and visitors of Key West including lighting design, playground design, park furnishings, and landscaping. Improvement to the existing park area shall comply with objectives for safety and community enhancement as stated in 1995 Redevelopment Plan, 1998 Update and the Amended and Restated Community Redevelopment Plan of January 5, 2010. A total of two (2) community meetings, which are publicly advertised, will be lead by CONSULTANT and conducted to determine community needs, concerns, and consensus for the project.

3.2. TASK I: DESIGN AND CONSTRUCTION DOCUMENTS

CONSULTANT shall provide Master Planning and Construction Documents for Bidding and Construction, as required by RFQ and community needs. Construction Documents shall include Civil, Landscape, Electrical, and Architectural plans and specifications as required which define the work. Project Areas should address but are not limited to solar engineering, perimeter landscaping, grading corrections, pump station screening, night/ path lighting, park furnishings/ equipment, new play structures, traffic signage, fencing, and a wayfinding program. Where there are areas for cost reduction opportunities (value engineering) CONSULTANT shall notify CITY.

A specific description of each estimated phase of work and associated costs as presented to the Bahama Village Redevelopment Advisory Committee on January 7, 2010 is attached hereto, incorporated by reference, and more particularly described as Exhibit A.

3.3. TASK II: CONSTRUCTION ADMINISTRATION

The CONSULTANT shall provide Construction Administration services for bidding, implementation, and closeout of the Park Enhancement project. Such services shall include:

- 3.3.1. Preparation of bidding requirements and advertising in association with City staff.
- 3.3.2. Pre-bid conference.
- 3.3.3. Due diligence reviews of potential contractors.
- 3.3.4. Analyzing contractor bids.
- 3.3.5. Bid negotiation and contract award.
- 3.3.6. Coordination of project permitting with selected Contractor.
- 3.3.7. Review of project schedules provided by Contractor.
- 3.3.8. RFI responses, payment application reviews, payment approvals, change order reviews, and field clarifications with CITY representative.
- 3.3.9. The CONSULTANT shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the CONSULTANT shall keep the CITY reasonably informed about the progress and quality of the portion of the Work completed, and report to the CITY (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

ARTICLE 4

PROJECT SCHEDULE

- 4.1. CONSULTANT shall perform the services described in each Task within the time periods specified.

- 4.2. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent Phase. Prior to granting approval for CONSULTANT to proceed to a subsequent Tasks, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit any deliverables/documents for the Contract Administrator's review.
- 4.3. In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Project, 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 Project 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 Project 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 adjudged 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 8.8, INDEMNIFICATION OF CITY.
- 4.6. The CONSULTANT shall perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The CITY acknowledges that the completion of CONSULTANT's services is dependent upon City scheduled meetings not under the control of the CONSULTANT. The CONSULTANT will make all reasonable efforts to complete its work within the CITY's Time of Performance constraints. However, the CONSULTANT's inability to satisfy the CITY's Time of Performance constraints for reasons beyond the control of the CONSULTANT will not be deemed a breach of this Agreement. Upon agreement by both parties, the term of the Schedule may be modified due to unforeseen delays.

Task I - Project Start	March 7, 2011
First Public Meeting	March 23 – March 25, 2011
Second Public Meeting	April 25 – April 29, 2011
HARC Meeting	May 10, 2011
DRC Meeting	May 26, 2011
Planning Board Meeting	June 16, 2011

ARTICLE 5

PAYMENT, METHOD OF PAYMENT, PERFORMANCE

5.1. AMOUNT AND METHOD OF COMPENSATION

5.1.1. Lump sum payment, which includes compensation for all the CONSULTANT'S salaries, general overhead costs, direct expenses, and profit.

5.1.1.1. If the PROJECT 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 Task II services, it is agreed by both parties that if construction differs from the agreed upon schedule, that a proportional part of the compensation may be adjusted up or down.

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. 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.

5.2. The specific services to be provided by the CONSULTANT and the compensation for such services shall be as mutually agreed and are as follows:

5.2.1. TASK I: DESIGN AND CONSTRUCTION DOCUMENTS – NTE \$50,000

5.2.2. TASK II: CONSTRUCTION ADMINISTRATION – NTE \$45,000

* Fee for services in TASK II are based on a maximum three (3) year project phasing for construction. Any adjustments must be approved by CITY.

5.3. Each Task shall be supported by appropriate cost and pricing data and such other documentation as required by the CITY.

5.4. The CITY may make or approve changes within the general Scope of Services in any Task. 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.

5.5. The following hourly rates shall be utilized for CONSULTANT's additional work if authorized (rates are valid thru December 31, 2011).

ARCHITECTURE

Principal	\$225.00 / hour
Director, Architect	\$175.00 / hour
Project Manager, Architect II	\$150.00 / hour
Project Coordinator / CA	\$125.00 / hour
Senior Draftsman	\$ 97.50 / hour

Draftsman II	\$ 80.00 / hour
Administration	\$ 60.00 / hour
Intern	\$ 42.50 / hour

SPECIAL SERVICES

HARC or evening jurisdictional approval meetings outside of scope	\$300.00 / hour
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5.6. A Task may be terminated at any time, with or without cause, by the CITY upon (10) days 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. The CITY shall not pay for anticipatory profits. The termination of this Agreement pursuant to Paragraph 8.2, hereof, shall constitute the termination of any and all outstanding Tasks.

5.7. The CONSULTANT shall begin services under any Task when authorized by a Purchase Order issued by the CITY and delivered to CONSULTANT.

5.8. The CITY and CONSULTANT may negotiate additional scopes of services, compensation, time of performance and other related matters for each Task. If CITY and CONSULTANT cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY and procure services for future Project Tasks from another source.

5.9. REIMBURSABLES

5.9.1. If additional services are requested by the CITY beyond the scope included in the lump sum price, Reimbursables will be charged as follows:

5.9.1.1. Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project shall be charged at actual cost plus 10%, and shall be limited to the following:

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

5.9.1.3. 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.

5.9.1.4. Identifiable communication expenses approved by Contract Administrator, long distance telephone, courier and express mail utilized to render the services required by this Agreement. If applicable, the CONSULTANT's field office at the Project site is not

considered a permanent office. All costs shall be billable at a cost plus 10%, normal and customary to CONSULTANT.

- 5.9.1.5. Cost of in-house 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 are as follows:

24 x 36 Black and White Print	\$2.50 / print
11 x 17 Color Print	\$1.50 / print
11 x 17 Black and White Copy	\$0.40 / copy
8 ½ x 11 Color Copy	\$1.10 / copy
8 ½ x 11 Black and White Copy	\$0.20 / copy

- 5.9.1.6. Identifiable testing costs approved in writing by Contract Administrator shall be billable at a cost plus 10%, normal and customary to CONSULTANT.

- 5.9.1.7. All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the CONTRACTOR. All costs shall be billable at a cost plus 10%, normal and customary to CONSULTANT.

- 5.9.1.8. Any project specific insurance premium of CONSULTANT'S required for CITY's project.

- 5.9.2. It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in Paragraph 5.9.1 is a limitation upon, and describes the maximum extent of, CITY 's obligation to reimburse CONSULTANT for direct, non-salary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT's obligation to incur such expenses in the performance of services hereunder. If CITY or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables, 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.

- 5.9.3. All subconsultants' hourly rates shall be billed in the actual amount paid by CONSULTANT. These amounts shall not increase each fiscal year of CITY by more than the Consumer Price Index Urban U.S. City Average All Items U.S. Department of Labor Bureau of Labor Statistics. Reimbursable subconsultant's expenses are limited to the items in Paragraph 5.9.1 described above when the subconsultant's agreement provides for reimbursable expenses.

5.10. METHOD OF BILLING

- 5.10.1. Lump Sum Compensation

CONSULTANT shall submit billings that are identified by the specific Task 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.

5.11. METHOD OF PAYMENT

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

5.10.3. Payment will be made to CONSULTANT at:

mbi | k2m Architecture, Inc.
1001 Whitehead Street, Suite 101
Key West, Florida 33040

5.12. PERFORMANCE

5.12.1. 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 the Project. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Project 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 Project is at CONSULTANT's sole risk.

5.12.2. 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 within its Standard of Care in an effort to comply. Nothing herein shall be construed to prevent City from pursuing any other remedy provided for herein, including, but not limited to, the filing of a claim pursuant to the insurance coverage required by paragraph 8.9 herein below.

5.12.3. CONSULTANT is required to perform the Tasks consistent with its professional standard of care and will take into account current applicable Federal, State and City laws, codes and regulations that pertain to the project. In all Tasks, where changes to any laws, codes or regulations affecting the project have a projected effective date or are anticipated to be effective at a future date, or if knowledge of anticipated changes is available to CONSULTANT or any subconsultant, CONSULTANT shall present options for their use or implementation.

5.12.4. 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.

- 5.12.5. 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 6

ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

- 6.1. CITY or CONSULTANT may request changes that would modify the Scope of Services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of this Agreement including the initiation of any additional services. CITY shall compensate CONSULTANT for such additional services as provided in Article 5.

ARTICLE 7

CITY'S RESPONSIBILITIES

- 7.1. CITY shall assist CONSULTANT by placing at CONSULTANT's disposal all information CITY has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 7.2. 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.
- 7.3. CITY shall review the CONSULTANT's itemized deliverables/documents identified in the Tasks and respond in writing with any comment within the time set forth in the Task or within a reasonable time.
- 7.4. 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 or in the services of the Consultant.

ARTICLE 8

MISCELLANEOUS

8.1. 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 Project, 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 Project for which they are made is completed or not. Any electronic CADD files to be delivered under this Agreement contain information to be used for the production of Contract Documents for the Project. These electronic files are provided as an accommodation to the CITY to assist in the limited production of the partial details of Contract Documents, assuming that the CITY has the appropriate hardware and software. The official Contract Documents of record are those paper or vellum documents produced by CONSULTANT which bear the company seal and signatures. The electronic files to be delivered under this Agreement are not Contract Documents. These files were created to supplement the official Contract Documents. Due to the possibility that files of this nature can be modified, either unintentionally or otherwise, or that the information contained in these files can be used in a manner for which they were not originally intended, CONSULTANT makes no representation that the files, after delivery, will remain an accurate representation of the source data in CONSULTANT's possession, or are suitable for any other purpose or use, and all indications of CONSULTANT's (or its subconsultants') involvement will be removed from each electronic display and shall not be included in any reuse of prints produced there from. In addition to the foregoing, CITY understands and agrees that the right to use the electronic files provided under this Agreement is specifically limited to same; CONSULTANT does not have the right to sub-license for CITY's use any software required to access said electronic files, and no such license is granted hereby. CITY acknowledges its responsibility to obtain all such hardware and software as necessary to access said electronic files. They shall be delivered by CONSULTANT to CITY as provided in each Task, in hard copy and modifiable electronic format or as otherwise specified. In addition, they shall be provided to CITY within five days of the receipt of request from the Contract Administrator or receipt of a written notice of termination. 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 project.

8.2. TERMINATION

- 8.2.1. This Agreement may be terminated with or without cause by CITY at any time pursuant to the notice provision of paragraph 8.11.
- 8.2.2. 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 8.1 of this Agreement are provided to the CITY. Upon being notified of CITY 's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment of profit for services that have not been performed. CONSULTANT acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by CITY, the adequacy of which is hereby acknowledged by CONSULTANT, is given as specific consideration to CONSULTANT for CITY's right to terminate this Agreement for convenience.

8.3. AUDIT RIGHT AND RETENTION OF RECORDS

- 8.3.1. CITY shall have the right to audit the books, records, and accounts of CONSULTANT that are related to this Project. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.
- 8.3.2. 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.

8.4. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

- 8.4.1. 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.
- 8.4.2. 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, 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.

8.5. PUBLIC ENTITY CRIMES ACT

- 8.5.1. 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.

8.5.2. In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any subconsultant, 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.

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

8.6. SUBCONSULTANTS

CONSULTANT may use subconsultants to provide the services for this Project. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or adding to the following list of subconsultants submitted by CONSULTANT. The list of subconsultants along with hourly rates submitted and currently approved is as follows:

Historic Tours of America (Engineering Department)		
Project / Principal Engineer:	\$90.00	
Drafter:		\$65.00
Solaria Design and Consulting Co.		
Principal:		\$150.00
Sr. Staff:		\$135.00
Staff:		\$120.00
Drafter:		\$85.00
Clerical:		\$45.00
G. M. Selby, Inc.		
Principal, PE		\$195.00
Project Engineer, Structural PE:		\$175.00
Project Engineer, Electrical PE:		\$165.00
Staff Engineer:		\$120.00
Field Engineer:		\$105.00
Field Technician:		\$95.00
CAD Operator:		\$85.00

Administrative Assist:	\$67.00
Elizabeth Newland Landscape Architecture, LLC	
Landscape Architect:	\$150.00
Landscape Designer:	\$100.00
Drafter:	\$75.00

8.7. ASSIGNMENT AND PERFORMANCE

- 8.7.1. 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 8.6.
- 8.7.2. 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.
- 8.7.3. CONSULTANT shall perform its duties, obligations, and services under this Agreement in accordance with its professional standard of care. 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 this Agreement.

8.8. INDEMNIFICATION OF CITY

- 8.8.1. Professional Liability
To the fullest extent permitted by law the CONSULTANT agrees to indemnify and hold the CITY, its officers, officials, and employees (hereinafter "CITY") harmless from and against losses, damages, expenses and costs to the extent arising from a negligent act, error or omission by the CONSULTANT or its employees or anyone for whom the CONSULTANT is legally liable. Nothing herein is intended to waive the sovereign immunity afforded to CITY pursuant to Florida law, including section 768.28, Florida Statutes.
- 8.8.2. Non-Professional Liability (General Liability)
CONSULTANT expressly agrees herein to indemnify, defend and hold harmless CITY, its officers, employees and agents from all actions, claims, penalties, and judgments for damages at law or equity of any nature whatsoever arising, or alleged to arise, out of the subject matter of this Agreement, or out of the acts or omissions of CONSULTANT, its employees, agents, independent contractors, licensees, customers or invitees, including, but not limited to, any and all claims, demands, or causes of action resulting from injuries or damages sustained by any person or property. CONSULTANT shall defend CITY, and shall pay all reasonable expenses incurred by CITY in defending itself, with regard to all damages and penalties CITY may legally be required to pay as a result of the rights granted hereunder. Expenses shall include all incidental expenses including attorney fees, and shall include a reasonable value of any services rendered. The provisions of this section shall survive the expiration or

termination of this Agreement. Nothing herein is intended to waive the sovereign immunity afforded to CITY pursuant to Florida law, including section 768.28, Florida Statutes.

8.9. INSURANCE

- 8.9.1. CONSULTANT shall provide, pay for and maintain in force at all times during the services to be performed suitable insurance, including Professional Liability Insurance, Workers' Compensation Insurance, Comprehensive General or Commercial Liability Insurance, Business Automobile Liability Insurance and Employer's Liability Insurance.
- 8.9.2. Such policy or policies shall be issued by companies authorized or approved to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida and shall be issued by companies having an AM Best rating of A-VI or better. CONSULTANT shall specifically protect CITY by naming CITY as an additional insured under the Comprehensive General or Commercial Liability Insurance policy and Automobile policy hereinafter described:
 - 8.9.2.1. Workers' compensation and employer's liability insurance as required by the State of Florida.
 - 8.9.2.2. Comprehensive business automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, hired or non-owned vehicles, with One Million Dollars (\$1,000,000.00) combined single limits and annual aggregate.
 - 8.9.2.3. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any negligent act or omission of the CONSULTANT or of any of its employees, agents or subconsultants, including Premises and /or Operations, Independent Contractors; Broad Form Property Damage, and a Contractual Liability Endorsement with One Million Dollars (\$1,000,000.00) per occurrence and annual aggregate.
 - 8.9.2.4. Professional liability insurance of \$1,000,000 per claim and annual aggregate. If the policy is a "claims made" policy, Consultant shall maintain coverage or purchase a "tail" to cover claims made after completion of the project to cover the statutory time limits in Chapter 95 of the Florida Statutes.
 - 8.9.2.5. CITY shall be named as an additional insured with respect to CONSULTANT's liabilities hereunder in insurance coverage identified in Paragraphs 8.9.2.2. and 8.9.2.3.
 - 8.9.2.6. CONSULTANT shall require its subconsultants to be adequately insured at least to the limits prescribed above, and to any increased limits of CONSULTANT if so required by the CITY during the term of this contract.

8.9.2.7. CONSULTANT shall provide to CITY the Certificates of Insurance or a copy of all insurance policies including those naming the CITY as an additional insured required by Section 8.9 including any subsection thereunder. CITY reserves the right to require a certified copy of such policies upon request. All certificates required herein shall state that CITY shall be given thirty- (30) days notice prior to cancellation of the policy; ten (10) days for non-payment of premium.

8.10. REPRESENTATIVE OF CITY AND CONSULTANT

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

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

8.11. ALL PRIOR AGREEMENTS SUPERSEDED

8.11.1. 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.

8.11.2. 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.

8.12. 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:

Doug Bradshaw, Senior Project Manager
City of Key West
PO Box 1409
Key West, Florida 33041
and
Jim Scholl, City Manager
City of Key West

PO BOX 1409
Key West, Florida 33041

FOR CONSULTANT:

Michael B. Ingram, Director
mbi | k2m Architecture, Inc.
1001 Whitehead Street, Suite 101
Key West, FL 33040

8.13. 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 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.

8.14. 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.

8.15. CONSULTANT'S STAFF

- 8.15.1. CONSULTANT shall provide the key staff identified in their proposal for Project as long as such key staffs are in CONSULTANT's employment.
- 8.15.2. 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.

8.15.3. 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.

8.16. INDEPENDENT CONTRACTOR

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

8.17. 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 subconsultant, whether named or unnamed, shall be a third party beneficiary of this Agreement.

8.18. CONFLICTS

8.18.1. 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.

8.18.2. 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.

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

8.19. 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.

8.20. WAIVER OF BREACH AND MATERIALITY

8.20.1. Failure by either party 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.

8.20.2. 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.

8.21. COMPLIANCE WITH LAWS

CONSULTANT shall, consistent with its professional standard of care, comply with federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement applicable at the time the scope of services was drafted for this agreement.

8.22. 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.

8.23. 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.

8.24. 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 8 of this Agreement shall prevail and be given effect.

8.25. 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.

8.26. INCORPORATION BY REFERENCE

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

CITY'S RFQ # 11-001
CONSULTANT's Response to RFQ dated November 10, 2010

8.27. COUNTERPARTS

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

**REST OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW**

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

CITY of KEY WEST, by and through its
KEY WEST CITY COMMISSION

ATTEST:

Cheryl Smith, City Clerk

Jim Scholl, City Manager

____ day of _____, 20__

____ day of _____, 20__

mbi | k2m Architecture, Inc.

ATTEST:

By _____
Witness

By _____
Michael B. Ingram, Director

(Print Name of Witness)

(Print Name of Director)

____ day of _____, 20__

____ day of _____, 20__

EXHIBIT A

Description of each estimated phase of work and associated costs

Master Plan / Surveys	
Community Hearing / Meetings	
Design / Working Documents for Phases I, II, III	
Specifications / Engineering	\$ 40,000
Solar Engineering	\$ 10,000
Phase I Construction	
Perimeter Landscape / Grading Corrections	\$ 30,000
Pump Station Screening	\$ 10,000
Night Lighting / Path Lighting	\$ 35,000
Additional Park Furnishings / Equipment	\$ 30,000
New Play Structures	\$ 25,000
Construction Management	\$ 15,000
Year 1	\$195,000
Phase II Construction	
Park Imp / Traffic Signage / Physical Barricades	\$ 12,000
Solar Devices / Pump for Pool Heating	\$ 70,000
Structures: Passive Rec. Shading & Solar Devices	\$ 75,000
Construction Management	\$ 15,000
Year 2	\$172,000
Phase III	
Completion Landscape	\$ 35,000
Fencing / Surfaces	\$ 40,000
Wayfinding Program beyond Immediate Area	\$ 18,000
Construction Management	\$ 15,000
Year 3	\$108,000