
CONSULTANT AGREEMENT

between

CITY OF KEY WEST

and

NV5 Consultants, Inc

for

Owners Representative for Key West Energy Savings and Resiliency Project

KEY WEST, FLORIDA

This is an Agreement between: CITY OF KEY WEST, its successors and assigns, hereinafter referred to as "CITY," and NV5 Consultants, Inc., a corporation organized under the laws of the State of Minnesota, its successors and of assigns, hereinafter referred to as "CONSULTANT".

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

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

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

- 1.1. Agreement:** This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CITY's, CONSULTANT's Response to RFP # 24-002 dated September 28, 2024, Exhibits, Task Orders, and supplemental documents that are by this provision expressly incorporated herein by reference.
- 1.2. Commissioners:** Members of the City Commission with all legislative powers of the CITY vested therein.
- 1.3. Consultant:** The firm selected to perform the services pursuant to this Agreement.
- 1.4. Contract Administrator:** The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5. CONSULTANT:** The person, firm, corporation or other entity that enters into an agreement with CITY to perform the construction work for the Task Order.
- 1.6. CITY:** City of Key West.
- 1.7. Task Order:** A detailed description of a particular service or services to be performed by CONSULTANT under this Agreement.

ARTICLE 2

PREAMBLE

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

- 2.1. The CONSULTANT is not entitled to receive, and the CITY is not obligated to pay, any fees or expenses in excess of the amount budgeted for Task Orders authorized under this Agreement in each fiscal year (October 1-September 30) by CITY. The budgeted amount may only be modified per City Ordinance(s).
- 2.2. The CITY has met the requirements of the Consultant's Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform the services hereunder based on the Request for Proposals #24-002 incorporated by reference and made a part hereof and the Response to the Request for Proposals from CONSULTANT dated November 6, 2024, incorporated by reference and made part of.
- 2.3. Negotiations pertaining to the services to be performed by CONSULTANT were undertaken between CONSULTANT and staff selected by the Commission, and this Agreement incorporates the results of such negotiations.

ARTICLE 3

SCOPE OF SERVICES AND STANDARD OF CARE

- 3.1. CONSULTANT's services may include but are not limited to the following in regard to the Agreement:
- Key West Energy Savings and Resiliency Project Development Assistance
 - Energy Savings Company (ESCO) RFP Development Assistance
 - ESCO Proposal Evaluation
 - ESCO Audit Contract Negotiation and Technical Review
 - ESCO Energy Audit and Adaptation Survey Review
 - ESCO Energy Savings Performance Contract (ESPC) Negotiation and Technical Review
 - ESPC Project Implementation Assistance
 - Periodic reviews of ESPC Measurement and Verification and Operation and Maintenance reports
- 3.2. CONSULTANT's services shall include comprehensive Owners Representative consulting services in all aspects relating to ESPC as covered in the Scope of Services (Appendix B) and any other lawful professional services that the CONSULTANT is qualified to provide, and that the CITY authorizes the CONSULTANT to undertake in connection with this Agreement. CONSULTANT shall provide all necessary, incidental and related activities and services as required.
- 3.3. CONSULTANT and CITY acknowledge that the Scope of Services does not delineate every detail and minor work task required to be performed by CONSULTANT to complete any particular task order. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Task Order which is, in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator in writing in a timely manner before proceeding with the work. If CONSULTANT proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written CITY approval or modification of Task Order is at CONSULTANT's sole risk.
- 3.4. The specific services to be provided by the CONSULTANT and the compensation for such services shall be as mutually agreed to in separate Task Orders to this AGREEMENT and in accordance with the Proposal attached hereto as AGREEMENT Exhibit A or in accordance with the rate/fee scheduled attached hereto as AGREEMENT Exhibit B. Each Task Order when fully executed shall become a supplement to and a part of this AGREEMENT.
- 3.4.1. Each Task Order shall be supported by appropriate cost and pricing data and such other documentation as required by the CITY.
- 3.4.2. Task Orders shall be numbered consecutively as specified by CITY. Each Task Order shall include a description of the scope of services and specified deliverables, time of completion, total estimated costs of services, and method of compensation. Additional information shall be provided to the CITY if required. Amended Task Orders shall include substantially the same information and be submitted to the CITY for approval.
- 3.4.3. The CITY may make or approve changes within the general Scope of Services in any Task Order. If such changes affect the CONSULTANT's cost of or time required for performance of the services, an equitable adjustment shall be made through an amendment to the Task Order.

- 3.4.4. A Task Order may be terminated at any time, with or without cause, by the CITY upon written notice to CONSULTANT. CONSULTANT shall perform no further work upon receipt of this notice unless specifically authorized by the City Manager of the City of Key West. On termination, the CONSULTANT shall be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the Task Order. The CITY shall not pay for anticipatory profits. The termination of this Agreement pursuant to Paragraph 7.2, hereof, shall constitute the termination of any and all outstanding Task Orders.
- 3.4.5. The CONSULTANT shall begin services under any Task Order when authorized by a Purchase Order issued by the CITY and delivered to CONSULTANT.
- 3.5. The CITY and CONSULTANT may negotiate additional scopes of services, compensation, time of performance and other related matters for each Task Order as allowed by this Agreement. If CITY and CONSULTANT cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY and procure services from another source.
- 3.6. CONSULTANT shall perform the professional services under this Agreement at the level customary for competent and prudent professionals in CONSULTANT'S field performing such services at the time and place where the services are provided. In the event CONSULTANT does not comply with this standard, and omissions or errors are made by CONSULTANT, CONSULTANT will correct such work that contains errors or omissions and reimburse CITY through compensation for damages.
- 3.7. CONSULTANT is required to perform the Task Orders consistent with current applicable Federal, State and City laws, codes and regulations that pertain to the Task Order. In all Task Orders, where changes to any laws, codes or regulations affecting the Task Order have a Task Ordered effective date or are anticipated to be effective at a future date, or if knowledge of anticipated changes is available to CONSULTANT or any sub-consultant, CONSULTANT shall present options for their use or implementation.

ARTICLE 4

TERM OF AGREEMENT; TIME FOR PERFORMANCE; CONSULTANT DAMAGES;

The Agreement will be in effect upon execution by both parties and end after five years on 12/31/2030. This agreement may be extended for two additional five-year terms, upon the mutual consent of both parties and the approval of the City of Key West City Commission and in accordance with the City of Key West Code of Ordinances and State of Florida Law

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

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

- 4.3. In the event the CONSULTANT fails to substantially complete the Task Order on or before the substantial completion date specified in its agreement with CITY or if CONSULTANT 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 shall be compensated in accordance with Article 5 for all services rendered by CONSULTANT beyond the substantial completion date.
- 4.4. In the event CONSULTANT fails to substantially complete the Task Order on or before the substantial completion date specified in its agreement with CITY, and the failure to substantially complete is caused in whole or in part by a negligent act, error or omission of CONSULTANT, then CONSULTANT shall pay to CITY its proportional share of any claim or damages to CONSULTANT or CITY arising out of the delay. This provision shall not affect the rights and obligations of either party as set forth in Paragraph 7.8, INDEMNIFICATION OF CITY.

ARTICLE 5

COMPENSATION AND METHOD OF PAYMENT

5.1. AMOUNT AND METHOD OF COMPENSATION

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

- 5.1.1 Lump sum payment/Not-to-Exceed, which includes compensation for all the CONSULTANT salaries, general overhead costs, direct expenses, and profit.
 - 5.1.1.1 If Work timing deviates from the assumed schedule for causes beyond CONSULTANT 's control, CONSULTANT and/or the CITY reserves the right to request renegotiation of those portions of the lump sum affected by the time change. During construction contract administration, if tasked, it is agreed by both parties that whether construction is completed earlier or later, that a proportional part of the compensation will be adjusted and either given to CONSULTANT for additional work or deleted from the amount owed CONSULTANT for less time required.
 - 5.1.1.2 Each major task or project the CITY wishes CONSULTANT to perform will be defined in a Task Order which shall include, but not be limited to, a description of the scope of services, time of completion, type of professional involved (hourly wage) and the total estimated hours required to complete the tasking. Unless authorized by the City, the total hours invoiced for a specific task or project shall not exceed the initially approved task order amount.
 - 5.1.1.3 In the event of a change of scope, CITY shall authorize in writing an appropriate decrease or increase in compensation.
 - 5.1.1.4 Monthly invoicing will be based on an estimate of the percent of work completed at the end of the preceding month.

- 5.1.1.5 The CONSULTANT shall submit wage rates and other actual unit costs supporting the compensation. The CONSULTANT shall submit a Truth in Negotiation Certificate stating that all data supporting the compensation is accurate, complete, and current at the time of contracting.

5.1.2 Cost Reimbursable-Per Diem (Time and Expenses)

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

5.2 REIMBURSABLE EXPENSES

- 5.2.1 Direct non-salary expenses, entitled Reimbursable Expenses, directly attributable to the Work shall be charged at actual cost, and shall be limited to the following:
 - 5.2.1.1 Identifiable transportation expenses in connection with the Work, 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.
 - 5.2.1.2 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 Hampton Inn or Best Western located within the City of Key West city limits.
 - 5.2.1.3 Identifiable communication expenses approved by the Contract Administrator, long-distance telephone, courier and express mail utilized to render the services required by this Agreement.
 - 5.2.1.4 Cost of printing, reproduction or photography that is required by or of CONSULTANT to deliver services set forth in this Agreement.

5.2.1.5 All permit fees paid to regulatory agencies for approvals directly attributable to the Work. These permit fees do not include those permits required for the CONSULTANT.

5.2.1.6 It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in paragraphs 5.2.1.1 through 5.2.1.7 is a limitation upon, and describes the maximum extent of, CITY's obligation to reimburse CONSULTANT for direct, non-salary expenses. If CITY or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursable Expenses, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by CITY prior to incurring such expenses.

5.2.1.7 Identifiable testing costs approved by Contract Administrator.

5.2.2 It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in a Task Order is a limitation upon, and describes the maximum extent of, CITY's obligation to reimburse CONSULTANT for direct, non-salary expenses. If CITY or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursable Expenses, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by CITY prior to incurring such expenses.

5.2.3 All sub-consultants' hourly rates shall be billed for the actual amount paid by CONSULTANT. Sub-consultant Reimbursable Expenses are limited to the items in Paragraphs 5.2.1.1 through 5.2.1.7 described above when the sub-consultant's agreement provides for reimbursable expenses.

5.3. METHOD OF BILLING

5.3.1. Lump Sum Compensation by Task Order

CONSULTANT shall submit Task Order billings identifying the type of work completed on a monthly basis in a timely manner. These Task Order billings shall identify the nature of the work performed, identifying the specific task or project, and the estimated percentage 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. Unless authorized by the City, the total hours invoiced for a specific task or project shall not exceed the initially approved task order amount.

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

CONSULTANT shall submit billings identifying the type of work completed on a monthly basis in a timely manner for all personnel hours and reimbursable expenses attributable to the Work. These billings shall identify the nature of the work performed, the total hours of work performed and the employee category and name of the individuals performing same. Billings shall itemize and summarize reimbursable expenses by category and identify same as to the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by the Contract Administrator is required for reimbursable expenses, a copy of the approval shall accompany the billing for such reimbursable. The statement shall show a summary of salary costs and reimbursable expenses with accrual of the total and credits for portions paid previously. External reimbursable expenses and sub-consultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain the purchase order number or other identifier that clearly indicates the expense is identifiable to the Work. The subsequent addition of the identifier to the invoice or receipt by the CONSULTANT is not acceptable except for meals and travel expenses. Appropriate

CONSULTANT's cost accounting forms with a summary of charges must document internal expenses by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and rates by employee category, reimbursable expenses by category, and subcontractor fees on a task basis, so that total hours and costs by task may be determined.

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

5.4. METHOD OF PAYMENT

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

Address PO Box 74008680, Chicago, IL 60674-8680

ARTICLE 6

CITY'S RESPONSIBILITIES

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

ARTICLE 7

MISCELLANEOUS

7.1. OWNERSHIP OF DOCUMENTS

Any and all records provided or created in connection with his Agreement are and shall remain property of CITY. All finished or unfinished documents, data, data matrices, analyses, compiled information and calculations generated and used to evaluate and compute the construction or material requirements for the Task Order, studies, surveys, drawings, maps, models, photographs, analyses, compiled information and reports prepared or provided by CONSULTANT in connection with this Agreement, whether in hard copy or electronic form, shall become the property of CITY, whether the Task Order for which they are made is completed or not. CONSULTANT agrees to perform all actions reasonably requested by CITY (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments). CONSULTANT is not responsible for damages caused by the unauthorized re- use by others of any of the materials for another Task Order. Upon completion of this Agreement or Termination by either party, any and all records relating to the Agreement in the possession of CONSULTANT shall be delivered by the CONSULTANT to the CITY, at no cost to the CITY, within ten (10) days. All such records stored electronically by CONSULTANT shall be delivered to CITY in a format compatible with the CITY'S information technology systems.

If applicable, CITY may withhold any payments then due to CONSULTANT until CONSULTANT complies with the provisions of this Article.

CONSULTANT's failure or refusal to comply with the provisions of this Article shall result in the immediate termination of this Agreement by the CITY.

7.2. TERMINATION

- 7.2.1. This Agreement may be terminated with or without cause by CITY at any time.
- 7.2.2. Notice of termination shall be provided in accordance with paragraph 7.12 NOTICES of this Agreement.
- 7.2.3. In the event this Agreement is terminated, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 7.1 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment of profit for services that have not been performed.

7.3. AUDIT RIGHT AND RETENTION OF RECORDS

- 7.3.1. CITY shall have the right to audit the books, records, and accounts of CONSULTANT that are related to any Task Order. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Task Order.
- 7.3.2. CONSULTANT shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents

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

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

- 7.4.1. CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.
- 7.4.2. CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity or expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor that cannot 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 apprenticeships), and accessibility.
- 7.4.3. CONSULTANT shall comply with City Ordinance Sec. 2-799 Requirements for City CONSULTANTS to Provide Equal Benefits for Domestic Partners

7.5. PUBLIC ENTITY CRIMES ACT

- 7.5.1. CONSULTANT represents that the execution of this Agreement shall not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a CONSULTANT, 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 CONSULTANT, supplier, or subcontractor under a contract with CITY , and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto and may result in being barred from CITY's competitive procurement activities.
- 7.5.2. In addition to the foregoing, CONSULTANT further represents that there has been no determination,

based on an audit, that it or any sub-contractor, has committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

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

7.6. SUB-CONTRACTS

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

- a. _____
- b. _____
- c. _____
- d. _____

7.7. ASSIGNMENT AND PERFORMANCE

- 7.7.1. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 7.6.
- 7.7.2. CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY’s satisfaction for the agreed compensation.
- 7.7.3. CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT’s performance and all interim and final product(s) provided to or on behalf of CITY shall be in accordance with the standard of care set forth in Article 3.
- 7.7.4. CONSULTANT shall not change or replace overall project manager identified in the CONSULTANT’s response to the RFP without the Contract Administrator’s prior written approval.

7.8. INDEMNIFICATION OF CITY

- 7.8.1. To the fullest extent permitted by law, the CONSULTANT expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents, and employees (herein called the “indemnities”) from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees and court costs, such legal expenses to include costs incurred in establishing the

indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT, its sub-consultant or persons employed or utilized by them in the performance of the Contract. Claims by indemnities for indemnification shall be limited to the amount of CONSULTANT's insurance required under this agreement 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.

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

7.8.3 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

7.8.4 It is not intended by any of the provisions of any part of this Agreement to create in the public, or any member thereof, a third-party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage, pursuant to the terms or provisions of this Agreement.

The CONSULTANT shall not be liable for the payment of any just claims regarding materials, supplies, tools, or labor arising in connection with this Agreement. The CONSULTANT shall be liable for and guarantees the payment of any and all other just claims against the CONSULTANT or any subconsultant, arising in connection with this Agreement.

Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the CONSULTANT agrees to indemnify and hold harmless the Department and the Division, including their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONSULTANT and persons employed or utilized by the CONSULTANT in the performance of this Agreement. Nothing contained in this paragraph is intended to, nor shall it constitute a waiver of the State of Florida and the CONSULTANT's sovereign immunity. Additionally, the CONSULTANT agrees to include the following indemnification in all contracts with CONSULTANTS/subcontractors and consultants/sub-consultants (CONSULTANTS/subcontractors and consultants/sub-consultants are referred to as "ENTITY") who perform work in connection with this Agreement:

"To the extent provided by law, [ENTITY] shall indemnify, defend, and hold harmless the [CONSULTANT] and the State of Florida Department of Historic Resources, including their officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of [CONSULTANT], or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or

exercised by [CONSULTANT] hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes.

The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify [CONSULTANT] for the negligent acts or omissions of [CONSULTANT], its officers, agents, employees, or third parties. Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify the Department or the Division for the negligent acts or omissions of the Department or the Division, its officers, agents, employees, or third parties. This indemnification shall survive the termination of this Agreement.”

7.9. INSURANCE

7.9.1. General Requirements

- 7.9.1.01 During the Term of the Agreement, the CONSULTANT shall provide, pay for, and maintain with insurance companies satisfactory to the City of Key West, Florida (“City”), the types of insurance described herein.
- 7.9.1.02 All tax shall be from responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Monroe County, Florida, and shall be construed in accordance with the laws of the State of Florida.
- 7.9.1.03 The City shall be specifically included as an additional insured on the CONSULTANT’s Liability policies with the exception of the CONSULTANT’s Professional Liability and Worker’s Compensation policies (if required) and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured’s" provision). The City’s additional insured status should be extended to all Completed Operations coverages.
- 7.9.1.04 The CONSULTANT shall deliver to the City, prior to commencing work/activities under the Agreement, properly executed "Certificate(s) of Insurance" setting forth the insurance coverage and limits required herein. The Certificates must be signed by the authorized representative of the insurance company(s) shown on the Certificate of Insurance. In addition, certified, true, and exact copies of the insurance policies required herein shall be provided to the City, on a timely basis, if requested by the City.
- 7.9.1.05 If the CONSULTANT fails to provide or maintain the insurance coverages required in this Agreement at any time during the Term of the Agreement and if the CONSULTANT refuses or otherwise neglects to deliver the required Certificate(s) of Insurance signed by the authorized representative of the insurance company(s) to the City, the City may, at the City’s sole discretion, terminate or suspend this Agreement.
- 7.9.1.06 The CONSULTANT shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the City requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit, the CONSULTANT shall promptly authorize and have delivered such statement to the City.
- 7.9.1.07 The CONSULTANT authorizes the City and/or its insurance consultant to confirm all information furnished to the City, as to its compliance with its Insurance Requirements, with the CONSULTANT’s insurance agents, brokers, surety, and insurance carriers.
- 7.9.1.08 All insurance coverage of the CONSULTANT shall be primary to any insurance or self-insurance program carried by the City. The City’s insurance or self-insurance programs or coverage shall not be contributory with any insurance required of the CONSULTANT in this Agreement.

- 7.9.1.09 The acceptance of delivery to the City of any Certificate of Insurance evidencing the insurance coverage and limits required in the Agreement does not constitute approval or agreement by the City that the insurance requirements in the Agreement have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Agreement requirements.
- 7.9.1.10 No work/activity under this Agreement shall commence or continue unless and until the required Certificate(s) of Insurance are in effect and the written Notice to Proceed is issued by the City.
- 7.9.1.11 The insurance coverage and limits required of the CONSULTANT under this Agreement are designed to meet the minimum requirements of the City. They are not designed as a recommended insurance program for the CONSULTANT. The CONSULTANT alone shall be responsible for the sufficiency of its own insurance program. Should the CONSULTANT have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.
- 7.9.1.12 During the Term of this Agreement, the City and its agents and contractors may continue to engage in necessary business activities during the operations of the CONSULTANT. No personal property owned by the City used in connection with these business activities shall be considered by the CONSULTANT's insurance company as being in the care, custody, or control of the CONSULTANT.
- 7.9.1.13 Should any of the required insurances specified in this Agreement provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, the CONSULTANT shall be responsible for all deductibles and self-insured retentions.
- 7.9.1.14 All of the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.
- 7.9.1.15 All policies of insurance required herein shall require that the insurer give the City thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Agreement, except for the application of the Aggregate Limits Provisions.
- 7.9.1.16 Renewal Certificate(s) of Insurance shall be provided to the City at expiration of current coverage so that there shall be no termination of the Agreement due to lack of proof of the insurance coverage required of the CONSULTANT.
- 7.9.1.17 If the CONSULTANT utilizes contractors or sub-contractors to perform any operations or activities governed by this Agreement, the CONSULTANT will ensure all contractors and sub-contractors to maintain the same types and amounts of insurance required of the CONSULTANT. In addition, the CONSULTANT will ensure that the contractor and sub-contractor insurances comply with all of the Insurance Requirements specified for the CONSULTANT contained within this Agreement. The CONSULTANT shall obtain Certificates of Insurance comparable to those required of the CONSULTANT from all contractors and sub-contractors. Such Certificates of Insurances shall be presented to the City upon request. The CONSULTANT's obligation to ensure that all contractor's and sub-contractor's insurance as provided herein shall not exculpate CONSULTANT from the direct primary responsibility CONSULTANT has to the City hereunder. The City will look directly to the CONSULTANT for any such liability hereunder and shall not be obligated to seek recovery from any contractor or subcontract or under such contractor's or sub-contractor's insurance coverages.

7.9.2 SPECIFIC INSURANCE REQUIREMENTS

- 7.9.2.01 All requirements in this Insurance Section shall be complied with in full by the CONSULTANT unless excused from compliance in writing by the City.
- 7.9.2.02 The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing,

the wording of all policies, forms, and endorsements must be acceptable to the City.

Workers' Compensation and Employers' Liability Insurance shall be maintained in force during the Term of this Agreement for all employees engaged in this work under this Agreement, in accordance with the laws of the State of Florida. The minimum acceptable limits shall be:

Workers' Compensation	Florida Statutory Requirements
Employer's Liability	\$100,000.00 Limit Each Accident
	\$500,000.00 Limit Disease Aggregate
	\$100,000.00 Limit Disease Each Employee

If the CONSULTANT has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*, the CONSULTANT will be required to issue a formal letter (on the CONSULTANT's letterhead) stating that it has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*. This exception does **not** apply to firms engaged in construction activities.

Commercial General Liability Insurance shall be maintained by the CONSULTANT on a Full Occurrence Form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent CONSULTANTS, and Products & Completed Operations Coverage. The limits of such coverage shall not be less than:

Bodily Injury & Property Damage Liability	\$1,000,000.00 Combined Single Limit each Occurrence and Aggregate
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Completed Operations Liability Coverage shall be maintained by the CONSULTANT for a period of not less than four (4) years following expiration or termination of this Agreement.

The use of an Excess, Umbrella and/or Bumbershoot policy shall be acceptable if the level of protection provided by the Excess, Umbrella and/or Bumbershoot policy is equal to or more comprehensive than the Primary Commercial General Liability policy.

Business Automobile Liability Insurance shall be maintained by the CONSULTANT as to ownership, maintenance, use, loading and unloading of all owned, non-owned, leased, or hired vehicles with limits of such coverage of not less than:

Bodily Injury	\$500,000.00 Limit Each Accident
Property Damage Liability	\$500,000.00 Limit Each Accident

or

Bodily Injury & Property Damage Liability	\$500,000.00 Combined Single Limit Each Accident
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If the CONSULTANT does not own any vehicles, this requirement can be satisfied by having the CONSULTANT's Commercial General Liability policy endorsed with "Non-Owned and Hired Automobile" Liability coverage.

Professional Liability Insurance shall be maintained by the CONSULTANT which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the CONSULTANT arising out of activities governed by this Agreement. The minimum

acceptable limits of liability shall be \$1,000,000 per Occurrence and \$2,000,000 Annual Aggregate. If the policy is structured on a “Claims Made” basis, the policy must contain a “Retroactive Date” of no later than the commencement date of the Agreement and will have an extended reporting period of four (4) years following expiration or termination of the Agreement.

7.10. REPRESENTATIVE OF CITY AND CONSULTANT

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

7.11. ALL PRIOR AGREEMENTS SUPERSEDED

- 7.11.1. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document and the exhibits attached. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.
- 7.11.2. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

7.12. NOTICES

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

If to City: City Manager
P.O. Box 1409
Key West, Florida 33041

With copies to: City Attorney
P.O. Box 1409
Key West, Florida 33041

AND
Contract Administrator (Sustainability Coordinator)
P.O. Box 1409
Key West, Florida 33041

If to Consultant:

Contact Name:

NV5 Legal

Address:

200 South Park Road

Suite 350

Hollywood, FL 33021

7.13. TRUTH-IN-NEGOTIATION CERTIFICATE

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

7.14. INTERPRETATION

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

7.15. CONSULTANT'S STAFF

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

individual working on the assignment.

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

7.16. INDEPENDENT CONSULTANT

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.

7.17. THIRD PARTY BENEFICIARIES

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

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 CITY. Any unauthorized assignment of related work product shall be void and unenforceable.

7.18. CONFLICTS

- 7.18.1. Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.
- 7.18.2. CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a

report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

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

7.19. CONTINGENCY FEE

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

7.20. WAIVER OF BREACH AND MATERIALITY

- 7.20.1. Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 7.20.2. CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

7.21. COMPLIANCE WITH LAWS

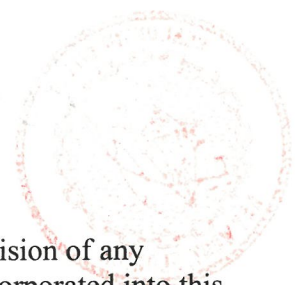
CONSULTANT shall comply with federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement applicable at the time the scope of services was drafted for this agreement. In addition, at the time each Task Order is executed, any revisions to applicable federal state, and local laws, codes, ordinances, rules and regulations shall apply.

7.22. SEVERABILITY

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

7.23. JOINT PREPARATION

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



7.24. PRIORITY OF PROVISIONS

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

7.25. APPLICABLE LAW AND VENUE

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

7.26. INCORPORATION BY REFERENCE

The attached exhibits are incorporated into and made a part of this Agreement: **Exhibit X the CONSULTANTS response**, Exhibit x is CONSULTANTS's Hourly Rates, Exhibit X is RFP 24-002.

7.27. SURVIVAL OF PROVISIONS.

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


7.28. COUNTERPARTS

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


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

By: CITY OF KEY WEST

By: CONSULTANT



Brian L Barosso, City Manager



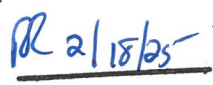
(Signature)
Aldo Mazzaferro
Executive Director of Business Development
(Print Name and Title)

19 day of Feb, 2025

27th day of January, 2025

Attest:

Attest:

Reviewed for Legal Sufficiency


Ronald J. Ramsingh, City Attorney



Keri O'Brien, City Clerk

19th day of February, 2025

Jim Pagliaro

(Signature)

Jim Pagliaro

Executive Director of Operations

(Print Name and Title)

27th day of January, 2025



APPENDIX B

Contract Scope of Services

Owners Representative for Key West Energy Savings & Resiliency Project *(subject to negotiation)*

The scope of service envisioned to accomplish the project purpose includes the following tasks:

A) Task 1: Key West Efficiency and Resiliency Project Administration

- **Project Kickoff Meeting with City of Key West Staff:**
City staff will hold a kick-off meeting with the OR team to discuss communication, procedures, and Project expectations, including invoicing, quarterly reporting, and all other relevant project info.
- **General Project Administration**
The Consultant will manage all aspects of the Project, ensuring adequate Project progress. The Consultant will be responsible for maintaining a joint-access, web-based repository of Project-related documents, including schedules, meeting minutes, contact lists, resources, photos, and other key documents. Information gathered from the IGA and Adaptation Surveys will be uploaded to the City's Asset Management Software (Maintain X) by the OR. The City will supply a login for the OR. In addition, the Consultant will be responsible for preparing and maintaining access to meeting minutes. Other responsibilities include monthly invoicing and quarterly reporting.
- **Project Meetings**
The consultant will work with City staff to organize and develop a City Team charged with the plan's development, implementation, and monitoring. The Task Force will comprise relevant staff from various departments (e.g., planners, engineers, first responders, communications staff) with potential participation from our local Utility, Keys Energy Services.

B) Task 2: ESCO RFP Review & ESCO Selection

The OR will review the City's Request for Proposals for an ESCO, advise on the submittals received, and assist the City in negotiating master contracts for the chosen ESCO(s).

- **Performance Contracting Project Development Assistance**
Serve as trouble-shooter and communication facilitator and support the City throughout the process to ensure City's expectations are appropriately met by the ESCO. Work in a team approach with City. Provide a cursory assessment of the potential for an energy savings performance contracting project ("go" or "no-go" assessment based on knowledge of the ability of ESCOs to develop a project). Facilitate training sessions for City staff members to establish concept-level buy-in from key decision-makers (procurement, legal, finance, administration, facilities), determine the decision-making process and authority needed for each step, identify the champion to lead the process, and serve as the point person representing the City.
- **Performance Contracting RFP Development Assistance**
Including, but not limited to, ensuring understanding and buy-in from key decision-makers (procurement, legal, finance, administration, facilities) and gaining full approval to proceed on the RFP, guidance in developing the Facility Profile to include in the RFP as information for ESCOs, Proposed Project Schedule, and identification of special needs or specific desired projects that may not otherwise be considered by an ESCO. The City may choose to use their own staff or consultants for RFP development rendering this service unnecessary. Attend the site visit and help educate ESCOs about the City's needs, interests and requirements. Answer technical questions that arise during the RFP process.

- **Proposal Technical Review**

Including, but not limited to, review of written proposals submitted by ESCOs for the purpose of identifying key technical issues that need to be addressed or considered by the evaluation committee or that need to be clarified by the ESCO. It is generally recommended that the Consultant not be part of the scoring/ranking process but rather be an advisor to help ensure the City selects an ESCO whose proposal is most advantageous to the City.

- **Assistance with ESCO Oral Interviews**

Including, but not limited to, preparing proposal-specific questions for oral interviews, participating in ESCO oral interview sessions, and participating in debriefing sessions for ESCOs.

- **Proposal Evaluation Services**

Including, but not limited to, compiling, and generating written, numeric and graphic cumulative evaluation ranking instruments for procurements.

C) Task 3: Contract Negotiation and Technical Review Services

Assist the City with negotiations and final contract approval. Act as the Owners Representative in negotiating all issues with the ESCO.

- **Negotiation of Audit Contract**

Assist in negotiation of the audit contract. Attend the audit kick-off meeting and subsequent meetings and calls including interim review meetings for the 30%, 60%, 90% and final audit completion.

- **Technical Review Services**

Including, but not limited to, review of contract technical schedules, equipment to be installed, proposed baselines and baseline development methodology, operations and maintenance strategies and responsibilities, economic and cash flow analysis, project commissioning plans, efficiency savings measurement and verification plan for each measure, thorough documentation, and consultation with City staff as required. Evaluate the risks and cost of the performance Measurement and Verification and O&M.

D) Task 4: Investment Grade Audit and Adaptation Surveys

The OR will assist the City in reviewing the Audit Phase Task Order for the chosen ESCO(s). The ESCO will conduct IGA and Adaptation Surveys simultaneously on agreed upon city facilities and present a project proposal. The ESCO Project Proposal will present energy and water saving measures for each of the buildings and a Return on Investment for each proposed action, both with and without potential adaptation mitigation synergies.

- **Task 4A: Energy Audit Review Services.**

Review the selected ESCO's investment grade technical energy audit including, but not limited to:

- Baseline development for units and costs of energy, water, operational and maintenance, and other usage/cost categories to be used in efficiency savings calculations
- Analysis of recommended measures
- Cost estimates for each measure, itemized, and reasonableness
- Efficiency savings estimates for each measure with associated costs, savings analysis methodologies, supporting calculations and assumptions, and reasonableness
- Life expectancies for each measure
- Related operation and maintenance procedures that are impacted and how to ensure persistence of efficiency and cost savings
- Commissioning plan

- Efficiency savings Measurement and Verification Plan
- Operations and Maintenance Plan
- Potential environmental impacts
- Cumulative efficiency and cost savings estimates and interactions among measures
- Potential synergies based on results from the Adaptation Survey

• **Task 4B: Adaptation Survey**

The Adaptation Survey will verify and assess existing conditions of the structures' primary elements and systems, including foundation, envelope components, structural components, windows, doors, roof assembly, roofing, utility feeds, distribution including back-up systems. This will be completed by either an ESCO staff member or subcontractor with an expertise in architecture and structural integrity and be conducted at the same time as the IGA alongside the ESCO energy efficiency experts.

The purpose of the Adaptation Survey is to find potential climate mitigation actions (wind hardening, stabilization, floodproofing, elevation, etc.) that may compliment energy and water efficiency measures. The City believes that it will be advantageous to survey a building once with dual sector expertise.

The City will review the Adaptation Survey for accuracy and work with the OR to find potential synergies for efficiency and mitigation goals.

The OR will review the IGA Project Proposal for accuracy and additional savings and work with the City on a recommended course of action. The results from the Adaptation Survey report may or may not be included in the project proposal but should be considered during this phase for complimentary actions.

Information gathered from the IGA and Adaptation Surveys will be uploaded to the City's Asset Management Software (Maintain X) by the OR. The City will supply a login for the OR.

If no construction has been authorized, this Task Order will not be issued.

E) Task 5: Financing

The City plans to finance a portion of the ESPC project with in-house funds and grant money. Third party financing will also be necessary. The OR will educate the City staff on general financing provisions and financial products. The OR will ensure project costs and markup structures proposed by the ESCO are reasonable. The OR will work with the City's financial advisor as needed and the selected 3rd party financing to ensure that the procurement aspect of the project is being conducted correctly and efficiently.

The OR will review and oversee the entire procurement process, 3rd party procurement documents and contracts as needed. The OR will also ensure that the financial payment structure on the debt service is coordinated with the revenue from the project (energy, O&M, rebates, grants, etc.).

If no 3rd Party funding has been authorized or is deemed unnecessary, this Task Order will not be issued.

F) Task 6: Construction/Implementation/Commissioning

If deemed beneficial, an Energy Savings Performance Contract (ESPC) will be negotiated following the audits. This establishes the project scope and costs and provides for construction and follow-up services to be provided during the financing term. A separate financing agreement may be developed as deemed necessary.

The OR will assist the City in reviewing ESCO Task Order #2, the creation of an ESPC. The OR will also

assist with the negotiation of said Performance Contract and review final construction documents to ensure they will meet the guaranteed savings and ESPC goals.

- **Project Implementation Assistance**

To function as a third party to make unbiased recommendations for fast and fair resolution to any project related issues that might arise during the design and construction phase. Review the ESCO's commissioning report. Participate in final project acceptance.

- **Reporting via eProject Builder:**

OR will report project data, recommendations on behalf of the City and with approval by the City, as identified in the ESPC using eProject Builder and as amended on the LBNL website (<http://eprojectbuilder.lbl.gov>).

If no construction has been authorized, this Task Order will not be issued.

G) Task 7: Post-Construction Guarantee/Monitoring

If construction has occurred, the ESCO will offer a variety of services to ensure savings are met, such as guaranteed savings, staff training, follow-up monitoring, and contract maintenance services. The OR will review these guarantees, monitoring and maintenance actions and provide guidance to the City.

If no construction has been authorized, this Task Order will not be issued.

- **Negotiation of Measurement and Verification Plan.**

The OR will rigorously review and assist in final approval of the Measurement and Verification plan and ensure that the plan has been developed per the ESPC guidelines and offer the City the best and highest value of guaranteed savings.

- **Periodic reviews of Measurement and Verification Reports**

OR will review annual efficiency savings/shortfall calculations, Measurement and Verification methodology, and baseline adjustment methodology.

- **Periodic reviews of Operating and Maintenance (O&M)**

OR will review the O&M reports as needed to ensure that all equipment is performing as per the standards to deliver the promised guaranteed savings. The OR will review the reports to also ensure that the ESCO takes full responsibility of any negligence or mistake that has occurred during either the IGA, Measurement and Verification or the implementation process of the ESPC which could result in a short fall of the guaranteed savings.

H) Renewal

The ESPC contract term may be up to 25 years provided the average lifetime of the ESPC PROJECT exceeds the contract term, however a lesser term of 12-15 years is typically desired. The ASHRAE Book of Standards will be used to determine the average useful life CONTRACT.

The OR's consulting agreement may be extended for two additional five-year periods and Task Orders may begin again at Task Order 1 for the next cohort of City buildings.

APPENDIX C

Verification Examples

Examples of successful verification of an ESCO's proposed recommendations to ensure maximum productivity within cost:

Example 1:

Business Case for Retaining an Owner's Rep: A State Capitol Project Saved \$250,000 on Equipment

- Project description: A state capitol complex in the Northeast with upgrades to lighting, HVAC controls, and central plant upgrades and controls.
- Project Value: \$5.9 million
- Guaranteed Annual Savings: \$525,000
- Performance Period: 13 years
- M&V Methods: IPMVP Options A and B⁴
- Owner's Representative Benefit Included: \$250,000 savings to the state

The ESCO proposed removing an 8-year-old controls system and replacing it with their building automation system, which would cost \$300,000 to be installed. The owner's rep used its in-house controls expertise to determine that the existing system could be effectively retro-commissioned at a cost of \$50,000, so the state saw a \$250,000 reduction of the total ESPC project costs. The retro-commissioned system saved nearly the same amount of energy as the proposed new system and the owner was happy with the results of the energy conservation measure.

Example 2:

Business Case for Retaining an Owner's Rep: A University Saved \$350,000 With One Day of Negotiation

- Project description: A university in the Southeast with lighting upgrades, water conservation, retro-commissioning, comprehensive direct digital controls (DDC) upgrades to multiple buildings, HVAC upgrades, and a central plant upgrade.
- Project Value: \$5.5 million
- Guaranteed Annual Savings: \$441,000
- Performance Period: 17 years
- M&V Methods: IPMVP Options A and B
- Owner's Representative Benefit Included: \$350,000 savings to the university

The owner's rep reviewed the ESCO's engineering studies and final proposal documents in great detail and discovered the ESCO overlooked a number of issues that would have significantly increased charges to the customer, and identified several places in the project proposal where the customer could save significant funds. The owner's rep negotiated with the ESCO for one day, yielding a \$350,000 reduction in project costs for the university.

APPENDIX D:
TENTATIVE ESCO PROJECT SCHEDULE

Milestone	Tentative Dates
OR Contract Signed	Feb 2025
ESCO RFP Draft for Routing	March 2025
ESCO RFP Advertised	April 2025
RFP Responses Due	June 2025
Ranking Meeting	June 2025
City Commission Meeting	July 2025
ESCO Audit Contract Signed	September 2025
ESCO Task Order for IGA & Adaptation Surveys Issued	August 2025
Review of IGA and Adaptation Surveys	January 2026
Final Project Selection	April 2026
Financing Arranged	September 2026
Construction Task Order Issued	October 2026
Projects Completed	Sept 2028
Measurement and Verification Phases	2028-2030