

**AGREEMENT**

**between**

**CITY OF KEY WEST**

**and**

**JACOBS ENGINEERING GROUP, INC.**

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**for**

**PROFESSIONAL SERVICES FOR  
TRENCHLESS INSTALLATION OF UTILITIES ACROSS  
FLEMING CHANNEL**

**KEY WEST, FLORIDA**

This is an Agreement between: CITY OF KEY WEST, FLORIDA, a municipal corporation, its successors and assigns, hereinafter referred to as "CITY," and Jacobs Engineering Group, Inc., a corporation organized under the laws of the State of Florida, authorized to conduct business in the State of Florida, its successors and assigns, hereinafter referred to as "CONSULTANT."

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

## **ARTICLE 1**

### **DEFINITIONS AND IDENTIFICATIONS**

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

- 1.1. Agreement: This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CITY's RFQ 22-008, CONSULTANT's Response to RFQ, dated August 2022, exhibits, task orders, and supplemental documents that are by this provision expressly incorporated herein by reference. The Professional Services Agreement between the City and the Consultant setting forth the obligations of the parties thereto, including but not limited to the performance of the work, furnishing of services, and the basis of payment.
- 1.2. Commissioners: Members of the city commission with all legislative powers of the city vested therein. The city commission shall consist of seven (7) commissioners, six (6) of whom shall be elected from single member districts numbered I, II, III, IV, V and VI. The mayor shall be elected by the people at large for a term of two (2) years. Commissioners from districts numbered I, II, III, IV, V and VI shall be elected for a term of four (4) years.
- 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. Contractor: The person, firm, corporation or other entity that enters into an agreement with CITY to perform the construction work for the Task Order.
- 1.6. CITY: City of Key West.
- 1.7. Task Order: A detailed description of a particular service or services to be performed by CONSULTANT under this Agreement.

## **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 the work authorized under this Agreement in each fiscal year (October 1-September 30) by CITY. The budgeted amount may only be modified per the rules set forth in the City of Key West Code of Ordinances.
- 2.2. The CITY has met the requirements of Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform the services hereunder based on the Request for Qualifications #22-003 incorporated by reference and made a part hereof and the Response to the Request for Qualifications from Consultant, dated February 2022, 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:

Comprehensive engineering, design, surveying, permit preparation, preparing contract specifications, preparing bid and proposal documents, and assisting the City with technical review and ranking of the same to attain qualified contractors for work, environmental assessments, construction administration and owner project representation services relating to operation, new construction, permit modification, construction improvements, rehabilitation and/or retrofits, and any other lawful professional engineering services that the CONSULTANT is qualified to provide, and the CITY authorizes the CONSULTANT to undertake in connection with this Agreement. CONSULTANT shall provide all necessary, incidental and related activities and services required.

- 3.2. 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.

3.3. The specific services to be provided by the CONSULTANT and the compensation for such services shall be as mutually agreed to in a separate Task Order to this AGREEMENT. The Task Order in Exhibit 'A' shall become a supplement to and a part of this AGREEMENT.

3.3.1. The CITY may make or approve changes within the general scope of services in any Task Order. If such changes affect the CONSULTANT's materials cost or time required for the performance of the services, an equitable adjustment shall be made through an amendment to the Task Order.

3.3.2. 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. Termination of this Agreement, pursuant to Section 7.2, hereof, shall constitute the termination of any and all outstanding task orders.

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

3.3.4. 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.

3.3.5. 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.

3.3.6. CONSULTANT is required to perform the task orders consistent with current applicable Federal, state and local 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 order effective date or are anticipated to be effective at a future date, or if knowledge

of anticipated changes is available to CONSULTANT or any subcontractor, CONSULTANT shall present options for their use or implementation.

- 3.3.7. 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 construction contractors.
- 3.3.8. Estimates. Since CONSULTANT has no control over local conditions, the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, CONSULTANT does not guarantee the accuracy of any opinions of probable construction cost as compared to construction contractor's bids or the actual cost to the CITY.

#### **ARTICLE 4**

##### **TERM OF AGREEMENT; TIME FOR PERFORMANCE; CONTRACTOR DAMAGES**

The term of this Agreement shall run for the duration of the project as determined by the CITY and CONSULTANT and shall be incorporated into the Agreement by an attachment that will include required milestones to be met by CONSULTANT.

- 4.1. CONSULTANT shall perform the services described in this Agreement within the time periods specified.
- 4.2. 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 work on or before the substantial completion date specified in its agreement with CITY, or if the 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, 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 the CONSULTANT fails to substantially complete the work 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 for 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 Section 7.8, INDEMNIFICATION OF CITY.

## ARTICLE 5

### COMPENSATION AND METHOD OF PAYMENT

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

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

- 5.1.1. Lump sum payment/not-to-exceed, which includes compensation for all the CONSULTANT's salaries, general overhead costs, direct expenses, and profit.
- 5.1.2. If work timing deviates from the assumed schedule for causes beyond CONSULTANT's control, CONSULTANT and/or 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 amount owed CONSULTANT for less time required.
- 5.1.3. In the event of a change of scope, CITY shall authorize in writing an appropriate decrease or increase in compensation.
- 5.1.4. Monthly invoicing will be based on an estimate of the percent of work completed at the end of the preceding month.
- 5.1.5. Cost Reimbursable Per Diem (Time and Expenses)
  - 5.1.5.1 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, overhead, and profit, but do not include allowances for direct expenses. These rates are subject to annual adjustments based on the Consumer Price Index for All Urban Consumers: U.S. city average, all items index, U.S. Department of Labor Bureau of Labor Statistics.
  - 5.1.5.2 Hourly rates for the contract (CONSULTANT and sub-consultants). Refer to Exhibit A.
  - 5.1.5.3 A not-to-exceed budgetary amount will be established for the work. 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.
  - 5.1.5.4 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.

- 5.1.5.5 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 Identifiable testing costs approved by Contract Administrator.
- 5.2.1.6 All permit fees paid to regulatory agencies for approvals directly attributable to the work. Permit fees do not include those permits required for the Contractor.
- 5.2.2. It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in Sections 5.2.1.1 through 5.2.1.7 is a limitation upon and describes the maximum extent of the CITY's obligation to reimburse CONSULTANT for direct, non-salary expenses. If the CITY or Contract Administrator requests CONSULATANT to incur expenses not contemplated in the amount for reimbursable expenses, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by CITY prior to incurring such expenses.
- 5.2.3. All sub-consultants' hourly rates shall be billed in the actual amount paid by CONSULTANT. Sub-consultant reimbursable expenses are limited to the items in Sections 5.2.1.1 through 5.2.1.7 described above, when the sub-consultant's agreement provides for reimbursable expenses.

### **5.3. METHOD OF BILLING**

#### **5.3.1 Lump Sum Compensation**

CONSULTANT shall submit billings identifying the type of work completed on a monthly basis, in a timely manner. Billings shall identify the nature of the work performed and estimate the percentage of work accomplished. The statement shall show a summary of fees with accrual of 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.

#### **5.3.2 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. Billings shall identify the nature of the work performed, total hours of work performed, and 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 sub-consultant 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 sub-consultant prior to receiving payment. CITY reserves the right to pay any sub-consultant if CONSULTANT has not paid them in a timely manner and the services of the sub-consultant are necessary to complete the WORK.

### **5.4.METHOD OF PAYMENT**

5.4.1. CITY shall pay CONSULTANT within thirty (30) 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 subconsultant has been paid prior to payment being made to CONSULTANT.

5.4.3. Payment will be made to CONSULTANT at:



Jacobs Engineering Group, Inc.

c/o Bank of America  
800 Market Street, Lockbox 18713F  
St. Louis, MO 63150-8713

## **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 and 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.

## **ARTICLE 7**

### **MISCELLANEOUS**

#### **7.1 OWNERSHIP OF THE WORK**

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

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

#### **7.2 TERMINATION**

- 7.2.1 This Agreement may be terminated with or without cause by CITY upon thirty (30) days

written notice to CONSULTANT. No further work will be performed by CONSULTANT upon receipt of this notice, unless specifically authorized by the City Manager of the City of Key West.

7.2.2 Notice of termination shall be provided in accordance with Section 7.12 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, Florida Statutes), 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 the 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 apprenticeship), and accessibility.
- 7.4.3 CONSULTANT shall comply with City Ordinance Sec. 2-799 Requirements for City Contractors to Provide Equal Benefits for Domestic Partners.

## **7.5 PUBLIC ENTITY CRIMES ACT**

- 7.5.1 CONSULTANT represents that the execution of this Agreement shall not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto and may result in being barred from CITY's competitive procurement activities.
- 7.5.2 In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any subcontractor, 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 is formally charged with an act defined as a "public entity crime" or has been placed on the convicted vendor list.

## **7.6 SUBCONTRACTORS**

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

- a. Avirom & Associates, Inc.
- b. Cummings Cederberg, Inc.
- 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.

## **7.8 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 Section, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claims by indemnities for indemnification shall be limited to the amount of CONSULTANT's insurance or \$1 million per occurrence, whichever

is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any.

- 7.8.2 The indemnification obligations under the Agreement shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the CONSULTANT or of any third party to whom CONSULTANT may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of 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. CONSULTANT guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the CONSULTANT or any subcontractor, 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 contractors/subcontractors and consultants/sub-consultants (contractors/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 Division of Emergency Management and the State of Florida Department of Economic Opportunity, 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 CONSULTANT is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for workers' compensation, public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following amounts, with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the CONSULTANT shall provide the limits of liability insurance coverage as follows:

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

7.9.2 CONSULTANT shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West included as an additional insured on all policies and on Forms CG 20166704 and CG 20370704, excepting Professional Liability on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of City of Key West on the General and Auto Liability policies. CONSULTANT will maintain Professional Liability, General Liability and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the additional insured endorsement until at least three years beyond completion and delivery of the work contracted herein.

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

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

- 7.9.4 If the work is being done on or near a navigable waterway, CONSULTANT's workers compensation policy shall be endorsed to provide USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage, if specified by the City of Key West. CONSULTANT shall provide the City of Key West with a Certificate of Insurance verifying compliance with the workers compensation coverage as set forth herein and shall provide as often as required by the City of Key West such certification which shall also show the insurance company, policy number, effective and expiration date, and the limits of workers compensation coverage under each policy.
- 7.9.5 Certificates of Insurance submitted to the City of Key West will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required, if necessary. PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.
- 7.9.6 CONSULTANT will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. CONSULTANT will notify City of Key West immediately by telephone at (305) 809-3812 any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the CONSULTANT.
- 7.9.7 It shall be the responsibility of the CONSULTANT to ensure that all subcontractors comply with the same insurance requirements as is required of CONSULTANT.
- 7.9.8 In addition, it is understood if at any time any of the policies required by the City shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the City, the CONSULTANT shall obtain a new policy, submit the same to the City for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of the CONSULTANT to furnish, deliver and maintain such insurance as required above, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of the CONSULTANT to take out and/or maintain any required insurance shall not relieve the CONSULTANT from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the CONSULTANT concerning indemnification.

**7.10 REPRESENTATIVE OF CITY AND CONSULTANT**

- 7.10.1 The parties recognize that questions in the day-to-day conduct of the Task Order will 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 Section. For the present, the parties designate the following as the respective places for giving of notice:

**FOR CITY OF KEY WEST:**

City of Key West  
Department: Utilities  
P.O. BOX 1409  
Key West, FL 33041

**FOR CONSULTANT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7.13 TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Agreement by CONTRACTOR 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 section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### **7.15 INDEPENDENT CONTRACTOR**

CONSULTANT is an independent contractor under this Agreement. The 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.

#### **7.16 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, 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.

#### **7.17 CONFLICTS**

7.17.1 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.

- 7.17.2 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.
- 7.17.3 In the event CONSULTANT is permitted to use subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to prohibit such subcontractors from having any conflicts as within the meaning of this section and shall so notify them in writing.

## **7.18 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.

## **7.19 WAIVER OF BREACH AND MATERIALITY**

- 7.19.1 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.
- 7.19.2 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.

## **7.20 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.

## **7.21 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.

#### **7.22 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.

#### **7.23 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.

#### **7.24 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.

#### **7.25 INCORPORATION BY REFERENCE**

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

Exhibit A – Consultant Hourly Rates

Exhibit B – 2 CFR Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

#### **7.26 COUNTERPARTS**

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

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

CITY OF KEY WEST, FLORIDA

CONSULTANT

By:

By:

\_\_\_\_\_  
Albert P. Childress, City Manager

\_\_\_\_\_

\_\_\_\_\_  
Print Name, Title

\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_

ATTEST:

ATTEST:

By:

By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Attorney for Owner

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## **Exhibit B**

### 2 CFR Appendix II to Part 200

#### Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

**(A)** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**(B)** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

**(C)** Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**(D)** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**(E)** Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the

employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**(F) Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended -** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**(H) Debarment and Suspension (Executive Orders 12549 and 12689) –** A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) -** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**(J) See § 200.323.**

**(K) See § 200.216.**

**(L) See § 200.322.**