

CITY OF KEY WEST

MASTER AGREEMENT TO FURNISH
CITY OF KEY WEST CARRYING CAPACITY
TRAFFIC STUDY

October, 2010

Carrying Capacity Traffic Study Consultants:

Calvin, Giordano & Associates

Master Agreement to Furnish A Carrying Capacity Traffic Study to the City of Key West

This AGREEMENT made and entered into by and between the City of Key West, a municipal corporation of the State of Florida, whose address is 525 Angela Street, Key West, Florida 33040, hereafter referred to as the "CITY" and Calvin, Giordano & Associates., a corporation authorized to do business in the State of Florida, whose address is 1800 Eller Drive, Suite 600, Fort Lauderdale, FL 33316, hereafter referred to as the "CONSULTANT". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

Article 1. Scope of Services

The CONSULTANT'S primary responsibilities include, but are not limited to, providing Carrying Capacity Traffic Study. Additional work may include other consulting services which the CONSULTANT is qualified to provide and which the CITY authorizes the CONSULTANT to undertake in connection with the CITY'S present and planned activities in the areas identified below. The specific services, which the CONSULTANT agrees to furnish, are set forth as follows:

- 1.1 The Study will assess the capacity of City streets and related transportation infrastructure. This study will address specialized vehicles and their impacts to roadways and adjacent land uses, including impacts associated with mobility, noise, and air quality. The study will address volume of vehicles, circulation, conflicts between vehicular and non-vehicular traffic, and methods for reducing impacts of traffic in residential neighborhoods. The results of the study will be used in determining the capacity of roadways and form the basis for future regulation and monitoring for a 10 year planning period, beginning in 2010.

CONSULTANT shall provide the above-mentioned Scope of Services as tasked by the CITY for the projects specifically identified in RFQ No. 10-009, RFQ submission/proposal, and any other tasks as assigned under this scope. The terms that the CONSULTANT agrees to follow are set forth as follows:

- 1.2 The specific services to be provided by the CONSULTANT and the compensation for such services will be as mutually agreed to in separate Task Orders to this AGREEMENT. Each Task Order when fully executed shall become a supplement to and a part of this AGREEMENT.
- 1.3 Unless otherwise indicated in a Task Order, execution of a Task Order by the CITY shall constitute authorization for the CONSULTANT to proceed with the services enumerated in the Task Order. Each Task Order will be supported by appropriate cost and pricing data and such other documentation as required by the CITY.
- 1.4 Task Orders shall be numbered consecutively. Each Task Order shall include a description of the scope of services, 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.

- 1.5 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 will be made through an amendment to the Task Order.
- 1.6 A task order may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to CONSULTANT. No further work will be performed by CONSULTANT upon receipt of this notice unless specifically authorized by the Utilities Manager of the City of Key West.

On termination, the CONSULTANT will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the Task Order. The CITY will not pay for anticipatory profits.
- 1.7 The CONSULTANT will provide ADDITIONAL SERVICES mutually agreed to and authorized by the CITY in writing but not specifically described and authorized by a Task Order.
- 1.8 The CITY engages CONSULTANT to perform those Services described in the CITY'S March 5, 2010 Request for Qualification #10-009 and the Calvin, Giordano & Associates submittal, dated April 16, 2010.

Article 2. Compensation

As consideration for providing the services enumerated in Article 1 and supplemental Task Orders, the CITY shall pay the CONSULTANT fees as defined in each Task Order.

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

- 2.1 Lump sum payment, which includes compensation for all the CONSULTANT'S salaries, general overhead costs, direct expenses, and profit.
 - A. The lump sum is based on immediate authorization to proceed and timely completion of the PROJECT. If the PROJECT timing deviates from the assumed schedule for causes beyond CONSULTANT'S control, CONSULTANT and/or the CITY reserves the right to request renegotiation of those portions of the lump sum affected by the time change.
 - B. In the event of a change of scope, an appropriate decrease or increase in compensation will be authorized in writing.
 - C. Monthly invoicing will be based on an estimate of the percent complete at the end of the preceding month.
 - D. 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.
- 2.2 Cost Reimbursable-Per Diem (Time and Expenses)
 - A. Hourly Per Diem Rates are provided in CONSULTANT'S Task Order Per Diem Rates are those hourly rates charged for work performed on the PROJECT 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 fiscal year adjustments and There shall be no rate increases will this Agreement .

- B. A budgetary amount will be established for each Task Order. This budgetary amount shall not be exceeded unless prior written approval is provided by the CITY. CONSULTANT will 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.
- C. 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.
- D. 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.
- E. The CITY shall pay for reimbursable expenses invoiced at the actual cost of expenditures incurred by the CONSULTANT. Direct expenses are those necessary costs and charges incurred for the PROJECT including, but not limited to: 1) the costs of express courier charges, mail, supplies and field equipment incurred directly for the PROJECT, printing and reproduction of drawings, documents, and other material, , and subcontracts and other outside services; and 2) CONSULTANT'S standard project charges for computing services, special health and safety requirements of OSHA and telecommunication services; and 3) the costs of travel, including the use of CONSULTANT'S vehicles, subsistence, lodging and related expenses of personnel while traveling in connection with the PROJECT in accordance with CITY policy and Florida Statute FS 112.061. Required Documentation: All requests for travel reimbursement must provide enough detail to clearly indicate the reason (s) for travel, date (s) of travel, exact time (s) of travel, and mode (s) of travel. If travel is by privately owned vehicle, exact mileage traveled with odometer readings must be submitted. All receipts for which reimbursement is requested are subject to Florida Statute rates applicable at the time of travel. CONSULTANT is obligated to minimize all expenses incurred in the execution of this AGREEMENT and subsequent Task Orders. There shall be no markup on expenses reimbursed under this agreement.
- F. All reimbursement requested must be supported by a receipt except where a receipt could not be obtained such as an unattended toll booth or parking meters. In those situations where receipts cannot be obtained, reimbursement requested must be supported by documents that show dates, parking meter numbers and locations, toll booth locations, and signature of employee. Travel, in connection with the work and for convenience of CONSULTANT (to make use of talent not located in Monroe County), shall be included in CONSULTANT's Task Order. Travel requested by CITY'S AUTHORIZED REPRESENTATIVE and travel associated with permitting and grants, as required by state and federal agencies, will be reimbursed in accordance with this section.

- G. Transportation by passenger vehicles supplied by CONSULTANT in connection with the work will be reimbursed in accordance with Florida Statute 112.061. Required Documentation: Mileage log stating point of departure, point of destination, and odometer reading for both.

Article 3. Invoicing and Payment

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

Article 4. Obligations of the Consultant

4.1. General

- A. The CONSULTANT will serve as CITY'S professional representative under this AGREEMENT, providing the Carrying Capacity Traffic Study.

4.2. Standard of Care

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

4.3. Opinions of Cost, Financial Considerations, and Schedules

- A. In providing opinions of construction cost, financial analyses, economic feasibility projections, and schedules for design projects, the CONSULTANT has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect an ultimate PROJECT cost or schedule. Therefore, the CONSULTANT makes no warranty that the CITY'S actual PROJECT costs, financial aspects, economic feasibility or schedules will not vary from the CONSULTANT'S opinions, analyses, projections, or estimates.
- B. If CITY wishes greater assurance as to any element of PROJECT cost, feasibility, or schedule, CITY will employ an independent cost estimator, contractor, or other appropriate advisor.

4.4 CONSULTANT'S Insurance

- A. The CONSULTANT will maintain throughout this AGREEMENT the following insurance:
 - 1. Worker's Compensation - statutory - in compliance with the compensation law of the State of Florida. The coverage must include Employer's Liability with a limit of One Million (\$1,000,000) Dollars each accident.
 - 2. Commercial General Liability insurance with a minimum limit of liability per occurrence of one million (\$1,000,000) dollars with an annual aggregate of no less than two million (\$2,000,000) dollars. Evidence of any and all pending

claims which may exhaust the aggregate may be requested. The City of Key West must be named as an Additional Insured. This insurance shall include for bodily injury and property damage the following coverage:

- Commercial Form
 - Premises/Operations
 - Products/Completed Operations
 - Independent Consultants (if any part of the Work is to be subcontracted)
 - Broad Form Property Damage
 - Personal Injury
3. Business Automobile Liability insurance with a minimum limit of liability per occurrence of one million (\$1,000,000) dollars combined single limit with no annual aggregate. The City of Key West must be named as an Additional Insured. This insurance shall include for bodily injury and property damage the following coverage:
 - Owned automobiles
 - Hired automobiles
 - Non-owned automobiles
 - Location of operation shall be "All Locations"
 4. Excess/Umbrella Liability shall have a minimum limit of two million (\$2,000,000) dollars per occurrence with an annual aggregate of two million (\$2,000,000) dollars. This coverage is to be following form and include the Commercial General Liability and Automobile Liability policies. If Consultant's insurance is a Claims Made policy, it must include coverage and/or extend reporting period to a minimum of two years following the completion of work performed under the contract.
 5. Professional Liability/Errors & Omissions insurance with a minimum limit of one million (\$1,000,000) dollars.
 6. The insurance required under paragraphs 1, 2, 3, 4, and 5 hereof is a minimum to provide adequate protection for the CONSULTANT, respectively, against damage claims which may arise from operations under this contract, whether such operation be by the insured or by anyone directly or indirectly employed by the insured and, also against any of the special hazards which may be encountered in the entity's operation under this contract. The insurance required herein and approval of the Consultant's insurance by the City of Key West shall not relieve or decrease the liability of the Consultant hereunder.
 7. The insurance required under paragraphs 1, 2, 3, 4 and 5 hereof shall contain a "Waiver of Subrogation" provision whereas the Consultant insurer waives any claim against the City of Key West.
 8. Certificates of Insurance shall be filed and maintained throughout the life of this Contract with the City Clerk evidencing the minimum limits of insurance cited above. All policies shall provide they may not be terminated or

modified without insurer providing the City of Key West at least thirty (30) days of advance notice. Additionally, the Consultant shall immediately notify the City of any cancellation of such insurance.

In addition, it is understood if at any time any of the policies required by City shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the City, the Consultant shall obtain a new policy, submit the same to the City for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of the Consultant to furnish, deliver and maintain such insurance as above provided, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of the Consultant to take out and/or maintain any required insurance shall not relieve the Consultant from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the Consultant concerning indemnification.

4.5 Subconsultants

- A. The CONSULTANT may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY.
- B. The CONSULTANT may use Subconsultants to provide solid waste consulting services to the City. The list of Subconsultants along with their hourly rates will be included in the City's contract with the Consultant. The CONSULTANT shall obtain written approval from the City prior to changing or adding to the list of Subconsultants and their hourly rates listed in the contract.
- C. The CONSULTANT is as fully responsible to the owner for the acts and omissions of his Subconsultant and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.
- D. Nothing contained in the Contract Documents shall create any contractual relationship between any Subconsultant and the City. The Subconsultant shall have the same insurance requirements as the CONSULTANT.

4.6 Licenses

- A. The CONSULTANT will be required to obtain a local required license prior to performing any work for the CITY. This license will be a Business Tax Receipt at a cost not to exceed \$98.70.

4.7 Piggybacking

- A. The CONSULTANT shall extend the terms and conditions of its contract with the City to other interested governmental entities. The City shall approve the piggybacking of this contract to another party.

Article 5. Obligations of the City

- 5.1. Authorization to Proceed
 - A. Authorization to proceed will be considered to be given upon execution of each Task Order by the CITY.
- 5.2. City-Furnished Data
 - A. The CITY will provide to the CONSULTANT all data in the CITY'S possession relating to the CONSULTANT's services on the PROJECT including, but not limited to, information on any pre-existing reports. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.
- 5.3. Access to Facilities and Property
 - A. The CITY will make its facilities accessible to CONSULTANT as required for CONSULTANT's performance of its services and will provide labor and safety equipment as required by CONSULTANT for such access. CITY will be responsible for all acts of CITY'S personnel.
- 5.4. Timely Review
 - A. The CITY will examine the CONSULTANT's studies, reports, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner.
- 5.5. Prompt Notice
 - A. The CITY will give prompt written notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect in the work of the CONSULTANT.
- 5.6. Litigation Assistance
 - A. The Scope of Services does not include costs of CONSULTANT for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CITY. All such services required or requested of CONSULTANT by CITY, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed in a separate Task Order, and payment for such services shall be in accordance with Article 3, unless and until there is a finding by a court or arbitrator that CONSULTANT's sole negligence caused CITY's damage.

Article 6. General Legal Provisions

- 6.1 Agreement Period
 - A. The duration of the agreement shall be one (1) year commencing from the date this Agreement was entered into, with an option, maintained by the CITY, to renew the contract for one (1) additional year.

6.2. Reuse of Project Documents

A. Reports, documents and other deliverables of the CONSULTANT, whether in hard copy or in electronic form, are instruments of service for the project of the CITY. All documents shall be made available on re-writable CD and 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.

6.3 Ownership of Work Product and Inventions

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

6.4 Force Majeure

A. The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.

B. In the event of a delay that results in additional costs to the CONSULTANT, an appropriate increase in compensation and schedule will be authorized in writing.

6.5 Termination

A. This agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to CONSULTANT. No further work will be performed by CONSULTANT upon receipt of this notice unless specifically authorized by the General Services Department Director of the City of Key West.

B. On termination, the CONSULTANT will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the AGREEMENT. The CITY will not pay for anticipatory profits.

6.6 Suspension, Delay, or Interruption of Work

A. The CITY may suspend, delay, or interrupt the services of the CONSULTANT for the convenience of the CITY. In the event of such suspension, delay, or interruption, or any other act or neglect of CITY or CITY's subcontractors, CITY will pay CONSULTANT for work performed to date. An equitable adjustment in the PROJECT'S schedule and CONSULTANT'S compensation will be made as agreed to by both parties.

B. In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

6.7 Third Party Beneficiaries

A. This Agreement gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third party beneficiaries. CONSULTANT'S services

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

6.8 Indemnification

- A. Consultant agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any act or omission of the Consultant, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. The Consultant agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent.

Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes

- B. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, CONSULTANT shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The CONSULTANT shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CITY whether performed by CONSULTANT, or by persons employed or used by CONSULTANT.
- C. In no event shall CONSULTANT, its affiliated corporations, officers, employees, or any of its subcontractors be liable for any incidental, indirect, special, punitive, economic or consequential damages, including but not limited to loss of revenue or profits, suffered or incurred by CITY or any of its agents, including other contractors engaged at the project site, as a result of this Agreement or CONSULTANT's performance or non-performance of services pursuant to this Agreement. Limitations of liability provided in this paragraph apply whether the

liability is claimed to arise in contract, tort (including negligence), strict liability, or otherwise.

6.9 Limitation of Liability

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

6.10 Assignment

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

6.11 Jurisdiction

- A. The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

6.12 Severability and Survival

- A. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- B. ARTICLES 4, 5, and 6 will survive termination of this AGREEMENT for any cause.

6.13 Dispute Resolution

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

Article 7. Schedules, and Signatures

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

IN WITNESS WHEREOF, the parties execute below:

For the CITY, _____

Dated this _____ day of _____, 2010.

By: _____
Name Title

Attest: _____
Name Title

For the CONSULTANT,

Dated this _____ day of _____, 2010.

By: _____
Name Title