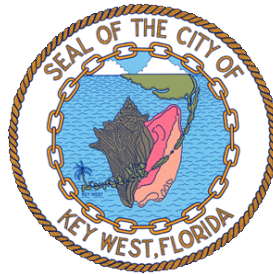


---

**REQUEST FOR PROPOSALS**

**City of Key West  
Insurance Broker Services – Property/Casualty  
and Workers Compensation**

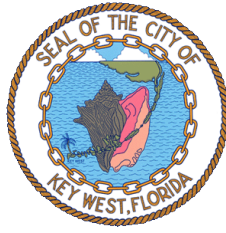
**City of Key West RFP # 005-17**



**Mayor: CRAIG CATES**

**Commissioners:  
VICE MAYOR CLAYTON LOPEZ  
SAM KAUFMAN  
MARGARET ROMERO  
BILLY WARDLOW  
JIMMY WEEKLEY  
RICHARD PAYNE**

*Prepared By: City of  
Key West Finance  
Department*



**SUBJECT:** CITY OF KEY WEST  
REQUEST FOR PROPOSALS #005-17  
CITY OF KEY WEST INSURANCE  
BROKER SERVICES

**ISSUE DATE:** March 28, 2017

**MAIL OR DELIVER RESPONSES  
TO:**

City Clerk  
City of Key West  
1300 White Street, City Hall  
Key West, Florida 33040

**CLARIFICATION SUBMITTAL  
DEADLINE:** April 14, 2017 NO LATER THAN noon.

**RESPONSES DEADLINE DATE:** April 26, 2017 NO LATER THAN 3pm

## CONTENTS

<b>I.</b>	<b>Introduction</b> .....	Page 4
	A. Summary.....	Page 4
	B. Assumptions.....	Page 4
	C. About the City of Key West.....	Page 4
	D. Scope of Work.....	Page 5
	E. Minimum Qualification.....	Page 6
	F. City’s Representatives.....	Page 8
<b>II.</b>	<b>RFP Process</b> .....	Page 8
	A. Schedule of Events.....	Page 8
	B. Proposal Submission and Deadline.....	Page 8
	C. Interim Inquiries and Responses: Interpretation or Correction of RFP...	Page 9
<b>III.</b>	<b>General Requirements and Instructions</b> .....	Page 10
	A. Examination of Documents.....	Page 10
	B. Proposer’s Representations in the Response.....	Page 10
	C. Withdrawal, Cancellation, or Modification of a Proposal.....	Page 10
	D. Proposal Preparation Expenses.....	Page 11
	E. Insurance.....	Page 11
	F. Proposer’s Indemnification of the City.....	Page 11
<b>IV.</b>	<b>Proposal Content</b> .....	Page 11
	A. Qualifications.....	Page 11
	B. Fees.....	Page 12
	C. Identifying Proprietary Information; Public Records Act.....	Page 12
	D. Proposal Signature(s).....	Page 13
<b>V.</b>	<b>Method of Selection</b> .....	Page 14
	A. Basis for Award and Evaluation Criteria.....	Page 14
	B. Selecting the Firm.....	Page 15
	C. City’s Reservation Rights.....	Page 15
<b>VI.</b>	<b>Award of Contract</b> .....	Page 16
<b>VII.</b>	<b>Insurance Requirements</b> .....	Page 17
	<b>EXHIBIT I – City’s Insurance Schedule</b> .....	Page 18
	<b>EXHIBIT II – Sample Contract</b> .....	Page 20
	<b>EXHIBIT III – Anti-Kickback Affidavit</b> .....	Page 40

**EXHIBIT IV – Sworn Statement Pursuant to Section 287.133(3)(A) Florida Statutes on Public Entity Crimes..... Page 41**

**EXHIBIT V – Equal Benefits for Domestic Partners Affidavit..... Page 44**

**EXHIBIT VI – Cone of Silence Affidavit..... Page 45**

**EXHIBIT VII – General Insurance Requirements..... Page 49**

**EXHIBIT VIII – Local Vendor Certification Form..... Page 53**

## **I. Introduction**

### **A. Summary**

The City of Key West (“City”) is soliciting proposals to contract with a qualified insurance brokerage firm (“Firm”) on a Fee Basis to provide the City with services and duties customarily and usually performed by an insurance brokerage firm including servicing, underwriting, marketing, and placement of various lines of insurance and provide assistance to the City in the administration of its self-insured programs.

The City requires a well-managed and financially sound Firm with demonstrated skills and technical abilities, as well as high levels of customer service and satisfaction, to fulfill the requirements outlined in this RFP.

### **B. Assumptions / Definitions**

The following assumptions and definitions were used in preparing this RFP, and should be adopted by the Firm:

- The term **RFP** refers to this Request for Proposals and all its attachments, including any materials from the City and relevant third parties.
- The term **Proposal** refers to the materials submitted by the Firm in response to this RFP.
- The term **Proposer** refers to the Firm.
- This RFP is based on the best available information. Information not in this document, and not said to be forthcoming, should be assumed to be unavailable.
- Departure from the standards outlined in this RFP must be communicated via written notice to the City.

### **C. About the City of Key West**

The City has an area of 4.2 square miles and has a population of over 25,000 residents, making it the largest city in the Florida Keys. Key West is a full-service city that delivers police and fire protection services, maintains and improves streets and related structures, maintains several parks, provides several community services, and operates a transit system.

The City maintains various insured and self-funded insurance programs which are listed below:

- Excess General Liability
- Fire and Allied Property Insurance
- Automobile Liability & Physical Damage
- Excess Workers' Compensation
- Employment Practices
- Errors and omissions (Public Officials Liability)
- Primary Flood (NFIP)
- Crime
- Cyber Liability
- MOLL
- Wharfingers
- Vessel Pollution
- Tank Storage Liability
- Statutory AD&D
- Hull
- Special Event Insurance Program

The City is self-insured for the general liability and workers' compensation programs. SIR amounts can be viewed on Exhibit I 'City's Insurance Schedule'.

Specific information regarding the coverage limits, policy deductibles, and Self-Insurance Retention amounts are contained in EXHIBIT I – ("City's Insurance Policies").

For the purposes of this RFP, the City is seeking to select a single broker for all lines of insurance.

## **D. Scope of Work**

### **1. TERM OF SERVICES AND CONTRACT**

The Services described in this RFP and in the proposed Contract are for a period of three (3) years. There will be two (2) one-year options to renew, at the City's discretion. A proposed contract is contained in EXHIBIT II – ("Sample Contract"). The City will retain the right to terminate the agreement at its sole discretion.

### **2. PROGRAM ADMINISTRATION**

Program administration shall include, but is not limited to, the following:

1. Act as an independent insurance advisor to the City and proactively provide ongoing, unbiased, professional advice and recommendations that benefit the City.

2. Proactively provide ongoing review and analysis of the City’s insurance programs and identification of risk transfer and risk financing options.
3. Be familiar with the major exposures of the City.
4. Be familiar with the coverage provided by all relevant insurance policies and documents issued to the City.
5. Assure that insurance policies are competitively marketed and placed in a timely manner, without lapses in coverage periods, with reputable and financially responsible insurers.
6. Ensure that insurers are licensed to conduct business in the State of Florida.
7. Provide service for the insurance policies placed for the City including processing all changes and endorsements and verifying the accuracy of invoices within a reasonable time.
8. Provide the City, as early as possible, information regarding rate and coverage changes, downgrades in the financial status of insurance carriers, market developments, or other significant problems that could affect the City’s insurance coverage.
9. Upon request by the City, but at least once a year, provide a comprehensive report that reviews all the City’s insurance programs.
10. Be available to answer questions or obtain answers from underwriters for policy coverage questions.
11. Be available by phone and/or to meet with City staff and designated representatives as reasonably requested.
12. Provide consultation service and written reports as normally expected of a professional broker to a large client.
13. Provide assistance with claims and insurance applications as requested by the City.
14. Assist in analyzing loss exposures from existing and new operations, and determine the appropriate risk management alternatives, including types, availability, costs and extent of coverage that should be considered.
15. Fully cooperate with representatives of the City and the City’s insurance consultant on all insurance related issues.

The successful Proposer must directly provide all services described in this document, and must appoint one of its employees as the key contact for approval by the City.

**E. Minimum Qualifications and Expectations of the City**

A Proposer must have:

1. A current license issued by the Florida Department of Insurance.
2. Have not had their brokerage license revoked by the Florida Department of Insurance.
3. A minimum of five (5) years expertise and experience providing commercial insurance policies to municipalities similar in size.
4. The ability to place all lines of coverage currently being purchased by the City, that may be appropriate for the City, or that may be recommended by the broker.

5. No conflicts of interest in representing the City's interests.
4. Have the ability to directly access Domestic Insurers, Lloyds of London and other foreign insurers with limited need of wholesalers and intermediaries.
5. Ability to meet with City officials on an as need basis.
6. Along with the City's independent insurance consultant (if appropriate), assist the City in the identification and evaluation of exposures to risk and develop recommendations for the most appropriate and cost effective method of responding to these exposures.
7. Coordinate the marketing and underwriting process and prepare insurance specifications and applications for all insurance policies purchased by the City.
8. Design and recommend marketing approaches and alternatives to traditional insurance to respond to exposures to risk that have been identified by the City and the City's independent insurance consultant or the selected broker.
9. At the conclusion of the marketing and underwriting process, prepare a detailed analysis of each proposal received.
10. In conjunction with the City's insurers, prepare manuscripted insurance policies and endorsements to respond to the unique needs of the City.
11. Review each policy purchased by the City and prepare a detailed written analysis of the major features of each policy with special attention given to all changes from the previous year's policies.
12. Assist the City in the coordination of all claims with its insurers and act as the City's advocate on all claim matters.
13. In conjunction with the City's independent insurance consultant, review the City's losses on a perpetual basis for any trends or patterns and develop loss control and safety recommendations to reduce the claims generated from the trends and patterns
14. Make available to the City or its representatives accurate underwriting data and schedules that can be used when and if the City seeks competitive bids for its insurance.
15. Provide miscellaneous insurance and risk management services to the City on an "as needed" basis.
16. Provide other non-placement services by the brokerage firm, such as loss prevention and safety. Work proactively with the City's Risk Management Department, their independent insurance consultant, and insurance carriers in developing protocols to minimize the potential for costly accidents.

It is anticipated that the incumbent Broker(s) will continue to service all existing policies until they expire. The selected Broker(s) will negotiate the renewal of the policies and assume their administration upon renewal. The selected Broker will also be expected to assist the City with the administration of any claims and/or other insurance issues that may be carried over from the incumbent Broker.



**F. City’s Representatives**

Todd Stoughton, Risk Manager within the City Finance Department, is the Project Manager in charge of this RFP. The executive in charge of the process is Mark Finigan, Finance Director.

**II. RFP PROCESS**

**A. Schedule of Events**

The following events will take place during the RFP process (see further explanations below):

Activity	Date(s)
Issue Date	3/28/17
Deadline for Proposers to submit requests for additional information/clarifications	4/14/17
Proposal Due Date	3:00pm EST on 4/26/17
Review of Proposals	4/26/17 – 5/10/17
Evaluation Committee Meeting	3:00pm EST on 5/11/17
City Commission approval	6/6/17
Implementation Date of Agreement	6/13/17

**B. Proposal Submission and Deadline**

The distribution of the RFP in no way represents the City’s acceptance of a Firm’s qualifications, reputation, or ability to perform the Services.

The City must receive the Proposal ***on or before 3:00 p.m., April 26, 2017***. ***A Proposal received after this date and time will be considered non-responsive and the City will return the Proposal, unopened.*** Please recognize that Express Mail Services may not guarantee timely delivery of the proposals. Proposers are solely responsible for ensuring their proposals are delivered by 3:00pm EST on April 26<sup>th</sup>. No requests for extensions beyond established timeline will be honored.

A Proposal must be in writing, and must be delivered by mail or in person. ***Oral, telephonic, facsimile, telegraphic, or electronically transmitted Proposals are invalid and the City will not accept or consider them.***

Proposer must submit in a sealed, clearly labeled envelope (or box):

- Five (5) printed Proposal documents [one (1) original and four (4) copies]; and
- One compact disc or thumb drive containing a PDF file (compatible with Adobe Reader or Acrobat) of the Proposal.

The Proposal must be clearly marked “**CITY OF KEY WEST INSURANCE BROKER SERVICES**” and addressed to:

City Clerk  
City of Key West  
1300 White Street, City Hall  
Key West, Florida 33040

### **C. Interim Inquiries and Responses; Interpretation or Correction of RFP**

If a Proposer has any question about this RFP, the proposed Contract, or the scope of work— or if a Proposer finds any error, inconsistency, or ambiguity in the RFP, or the proposed Contract, or both— the Proposer must submit a written “Request for Additional Information/ Clarification” in accordance with the time line schedule displayed above. All request must be submitted to Todd Stoughton at the address above. While email request will be honored Proposers are solely responsible for ensuring their requests are completely received by the specified date and time reflected above. The City assumes no responsibility for misdirected or improper receipt of the requests. (Email Contact: [tstoughton@cityofkeywest-fl.gov](mailto:tstoughton@cityofkeywest-fl.gov))

The City will post an addendum, if applicable, on Demandstar with responses (to the best of their ability) to all questions asked.

### **III. General Requirements and Instructions**

#### **A. Examination of Documents**

Before submitting an RFP Response, a Firm must thoroughly examine the RFP, make all necessary investigations and inquiries, and understand the Services that the City requires.

#### **B. Proposer’s Representations in the Response**

By submitting a Proposal, a Proposer represents that:

1. The RFP is sufficient in scope and detail to indicate and convey reasonable understanding of all requirements, terms, and conditions for performance of the work required in this project;
2. The Proposer has exercised all necessary due diligence in making investigations and inquiries, examining documents, and inspecting City sites and facilities;
3. The Proposer is fully familiar with— and has fully considered— all facts, conditions, circumstances, and matters that may affect, in any way, the Proposer’s services or costs;
4. The Proposal is an irrevocable offer for a period of at least ninety (90) calendar days following City’s opening of all Proposals; and
5. The Proposer is, and will be, in compliance with the RFP’s requirements, terms, and conditions.

#### **C. Withdrawal, Cancellation, or Modification of a Proposal**

**Before** the Proposal Deadline, a Proposer may withdraw and then modify a Proposal, by giving written notice, signed by the Proposer. A withdrawal request must be addressed as follows and delivered to:

City Clerk  
City of Key West  
1300 White Street, City Hall  
Key West, Florida 33040

For a withdrawal to become effective, the City Clerk must receive the Proposer’s request for withdrawal and receipt of their revised Proposal before the Proposal Deadline. The City Clerk will not accept or consider a Proposer’s verbal request for modification or withdrawal of a Proposal.

If a Proposer withdraws its Proposal, the withdrawal will not prejudice the Proposer’s right to submit a new Proposal, if the new Proposal is submitted: (a) in accordance with the RFP’s requirements, and (b) before the Proposal Deadline.

#### **D. Proposal Preparation Expenses**

Expenses for developing the RFP response are entirely the responsibility of the Proposer and are not chargeable to the City in any manner. The City is not liable for any pre-contractual expenses, which are defined as expenses incurred by Proposer in:

- Preparing its Proposal in response to this RFP.
- Negotiating with the City any matter related to the Proposal.
- Any other expense incurred by Proposer prior to the date of award of the Contract for this RFP.

#### **E. Insurance**

Specific insurance requirements are noted in EXHIBIT VII (“General Insurance Requirements”), and evidence of the insurance coverages will need to be in place before the start of the work. The City will require certificates of insurance and additional insured endorsements when the successful Firm submits a signed Contract to the City. A Firm does not need to submit proof of insurance to submit a Proposal, but must be prepared to meet all City insurance requirements (with no additional cost to the City), if the Firm is awarded a Contract.

#### **F. Proposer’s Indemnification of the City**

At its sole expense, Proposer agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees, and representatives from and against all liability, suits, actions, proceedings, judgments, claims, demands, liens, losses, damages, costs, and expenses (including attorneys’ fees, litigation, arbitration, mediation, appeal expenses) associated with this RFP or the services being requested by the City.

### **IV. PROPOSAL CONTENT**

#### **A. Qualifications**

The Proposal should establish that the Proposer possesses the competence, experience, expertise, skill, equipment, personnel, financial wherewithal, and other resources necessary to perform the Services in a professional, ethical, dependable, and competent manner.

In addition, the Proposal shall specifically address each of the following items:

1. Provide information on the history and organizational structure of your Firm including the year established, ownership, and principal officers.

2. Identify and describe pertinent experience of the Firm, including servicing other public sector accounts, if any. Provide the percentage of your Firm’s current clients that are public entities.
3. Provide the names of the brokers and account representatives to perform the work of the City and a brief statement as to why each agent/broker is qualified to provide the services requested. Identify areas of expertise for each employee; include resume, citing experience and references, including licenses, designations/affiliations, and any other pertinent qualifications.
4. Provide three references from other public sector clients (preferably clients in Florida) for which your Firm has conducted business for the past three consecutive years.
5. Describe the approach the Proposer will take in satisfying all the requested activities identified in the Scope of Work section of the RFP.
6. Describe how the Firm plans on analyzing the City’s existing coverages and evaluating whether the coverages adequately protect against losses.
7. Cite major complaints, claims, or lawsuits (if any) pending against the Firm that would be considered material to the firm’s financial status or, ability to perform requested services.
8. Discuss any additional services the Firm normally offers in conjunction with providing the lines of insurance that are referenced in the RFP.

## **B. Fees**

The City is seeking proposals based on an annual flat fee basis. This will require the proposer to negotiate all premiums on a “net of commission” basis. If the selected Broker or any affiliated company receives any commissions associated with the placement of the City’s insurance, such commissions shall be remitted to the City upon request.

## **C. Identifying Proprietary Information; Public Records Act**

A Proposer must identify and list all copyrighted material, trade secrets, or other proprietary information (“protectable documents”) that the Proposer included in its Proposal which Proposer believes should be exempt from disclosure under Florida’s Public Records Act, Florida Statute Chapter 119, et seq.

By listing the documents, the Proposer agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees, and representatives from and against any action, claim, lawsuit, or proceeding, including costs and expenses, arising out of or connected with the City’s refusal to disclose the protectable documents to any party making a request for those items.

***The City will treat any Proposer, who fails to identify documents that the Proposer believes should be exempt from disclosure, as having waived its right to an exemption from disclosure, as the Public Records Act provides.***

All Proposals and other material submitted become the property of the City and may be returned only at the City's option. The City reserves the right to use any ideas presented in any response to the RFP. Selection or rejection of the Proposal does not affect this right.

#### **D. Proposal Signature(s)**

The person or persons legally authorized to bind the Proposer to the RFP must sign the Proposal in ink. The individuals signing the Proposal must represent that they are authorized to bind the Proposer's legal entity.

- A corporation must execute the Proposal by its duly authorized officer(s) in accordance with its corporate bylaws.
- A partnership must execute the Proposal by all its partners. After each signature, each partner must list a residential address or the Firm's address, either of which must include the state, zip code, and telephone number.
- If the Proposer is a joint venture consisting of a combination of any of the above entities, each entity in the joint venture must sign the Proposal.
- An individual signing a Proposal as an agent of another or others must attach to the Proposal evidence of that person's legal authority to sign on behalf of another or others.

## V. Method of Selection

All Proposals received on time will be opened on April 26th, 2017. Proposals will first be reviewed to ensure compliance with the terms of this RFP. Non-compliant or non-responsive Proposals may be rejected. The City will then evaluate the Proposals in accordance with the criteria listed below.

### A. Basis for Award and Evaluation Criteria

Evaluation of a Proposal will be based on a competitive selection process. The qualification and experience of the proposing broker and key personnel, approach the broker will take in providing the services being requested, and the proposed fee will be considered in the selection process. The City reserves the right to award the contract not necessarily to a Proposer with the lowest cost proposal, but to a Proposer who will provide the best overall match to the RFP requirements and who will best serve the City’s interests. Proposals received by City will be reviewed by the evaluation committee, evaluated, and ranked based upon the following criteria. Final award will be made by the City Commission.

<p><b>QUALIFICATIONS AND EXPERIENCE OF THE PROPOSING BROKER</b></p> <p>Brokers ability to directly negotiate with potential insurers and the Broker’s need to utilize wholesale brokers or intermediaries</p> <p>Demonstrated expertise in providing broker services for public entities located in Florida</p> <p>Demonstrated expertise in providing broker services for entities with expensive marine exposures</p>	<p>25%</p>
<p><b>QUALIFICATIONS AND EXPERIENCE OF KEY PERSONNEL</b></p> <p>Qualifications, experience, ability and skill of the Broker’s key staff members who will provide the services being requested by the City</p> <p>Qualifications, and experience of the key personal with governmental entities and organizations with heavy marine exposures</p>	<p>15%</p>
<p><b>APPROACH THE BROKER WILL TAKE IN PROVIDING THE SERVICES BEING REQUESTED BY THE CITY</b></p>	<p>30%</p>
<p><b>PROPOSED FEE</b></p>	<p>30%</p>

*The City may investigate the qualifications of any Firm under consideration, require confirmation of information furnished by the Firm, and require additional information or evidence of qualifications to provide the Services described in this RFP.*

## **B. Selecting the Firm**

An Evaluation Committee comprised of City representatives will rate and rank, in a publicly noticed meeting, each proposal. The 3 highest rated proposals will be recommended to the City Commission for consideration with the evaluation committee's highest ranked evaluation proposal recommended for award. The City Commission reserves the right to select the evaluation committee's recommendation, or choose a different proposal at their pleasure.

A recommendation will be made to the City Manager, who in turn will make a recommendation to the City Commission, which may select a Proposer.

*The City Commission must approve an award of a Contract to the successful Proposer and no rights or obligations begin under an award until the approval is secured and a Contract has been duly signed by all parties.*

Once selected, the successful Proposer must enter into a written Agreement with the City within fourteen (14) calendar days following Proposer's receiving the City's Notice of Award.

## **C. City's Reservation of Rights**

This RFP and the proposal evaluation process do not:

- Obligate the City to accept or select any Proposal;
- Constitute an agreement by the City that it will actually enter into any contract with any Proposer.

When it best serves the City's interests, the City may do any one or more of the following:

- Reject any Proposal or all Proposals at its sole discretion.
- Extend the deadline for accepting Proposals.
- Accelerate the pace of the RFP process if only one or a handful of Proposals are received.
- Waive any or all information, defects, irregularities, or informalities in a Proposal.
- Accept amendments to Proposals after the Proposal Deadline.
- Amend, revise, or change the RFP's evaluation or selection criteria.
- Cancel, withdraw, amend, revise, change, or negotiate the terms of this RFP, the proposed Contract, or both.
- Reissue a Request for Proposals.
- Conduct oral interviews.
- Visit Firm's facilities or business.
- Examine financial records of Firm to the extent necessary to ensure financial stability.
- Make a partial award.
- Negotiate with one or more Firms.
- Award contracts to one or more Firms.
- Require a best and final offer from one or more Firms.
- Contract directly – without an RFP or bid for the insurance brokerage services.



## VI. Award of Contract

Within ninety (90) calendar days after the City opens all Proposals, if the City Commission selects a Proposal, the City will give the selected Proposer a “Notice of Intent to Award Contract” that will specify the “start date” for performing the Contract’s services.

Once selected, the successful Proposer must enter into a written Agreement with the City within fourteen (14) calendar days following Proposer’s receiving the City’s “Notice of Intent to Award Contract.” The RFP, or any part of it, and the Proposer’s responses, will be incorporated into and made a part of the Contract. ***A copy of the proposed Contract is provided as EXHIBIT II.***

Before any services can commence, the selected Proposer will be required to execute the Contract, which is ***a standard form of agreement***. To facilitate the project’s smooth and timely implementation, Proposers responding to this RFP shall review all the terms and conditions of the Contract, including, but not limited to, provisions relating to insurance, indemnity, and termination.

The City’s policy is that the Contract be accepted as is. By submitting a Proposal to the City in response to this RFP, each Proposer is deemed to have provided its approval to the Contract, accepting it without qualification. If a Proposer seeks limited modification of the Contract, the Proposer must identify the proposed changes in the Proposal.

***However, changes or qualifications to the Contract may be weighed in the evaluation of the Proposal and may cause rejection of the proposal as non-responsive, in City’s sole determination.***

The City reserves the right to further negotiate the terms and conditions of the Contract. The Proposer whom the City Commission selects must cooperate with the City in good faith to negotiate, sign, and deliver the final Contract. The City will draft the Contract and may require the selected Proposer to participate in one or more Contract negotiation conferences to discuss possible:

- Revisions to the Contract’s service-related terms, conditions, requirements, specifications, or minimum performance standards, other than the insurance and the indemnity provisions; and
- Additions to the Contract, by the parties’ mutual agreement, or as a City Ordinance or Resolution, the City’s Charter or Municipal Code, or any other law may require.

At any time, and for any reason, if contract negotiations with the selected Proposer fail to progress to the City’s reasonable satisfaction, the City reserves the right to not only end negotiations with the selected Proposer, but also cancel the award and reject the Proposal. At its discretion, the City may then: reopen the proposal process; choose from among the remaining, if any, qualified proposers; reissue the RFP; negotiate directly with any Firm for services; or choose not to contract for services.

Within fourteen (14) calendar days after the City issues the Notice of Intent to Award Contract,

---

or within any extension that the City may allow, the selected Proposer must submit to the City all

of the following items:

- Three (3) originals of the Contract, properly signed by the Proposer.
- Insurance certificates and additional insured endorsements that fully conform to the Contract's requirements.

After the City receives the signed Contracts and insurance documents, the City Attorney's office will review the Contract. Additionally, the City Attorney's office or the City's Risk Manager will review the required insurance. If the selected Proposer has not changed any terms of the Contract, and if the insurance conforms to the Contract's requirements, the City will sign the Contract and return an original of the Contract to the Proposer.

## **VII. Insurance Requirements**

The selected broker will be expected to comply with all insurance provisions identified in Exhibit VII.

**EXHIBIT I – City’s Insurance Policies**  
Policy Period 10/01/2016 to 09/30/2017

Coverage As Bound 2016-17				
LINE OF	LIMIT	DEDUCTIBLE/SIR	PREMIUM as bound	POLICY
<b>PACKAGE POLICY - EFFECTIVE 10/1/16-17</b>				
<b>Public Risk Management of Florida</b>				
<b>Property:</b>				
		Deductible		
Excess Limit of Coverage for each occurrence All coverage under section I	\$ 98,655,295			
Named Storm - Member Shared Limit	\$ 85,000,000	5.00%		
Flood	\$ 50,000,000	\$25,000 Except Flood Zones A &/or V, XS maximum NFIP limits available whether purchased or not		
Earthquake	\$ 50,000,000			
Combined Business Interruption, Rental Income, and Tax Interruption, Tuition Extra Expense	\$ 100,000,000			
Miscellaneous Unnamed Locations	\$ 50,000,000			
Automatic Acquisition	\$ 25,000,000			
Unscheduled Landscaping, Tees, Sand Traps, Greens and Athletic Fields	\$ 25,000,000			
Scheduled Landscaping, Tees, Sand Traps, Greens and Athletic Fields	\$ 1,000,000			
Unintentional Errors & Omissions	\$ 5,000,000			
Course of Construction	\$ 25,000,000			
Money and Securities	\$ 50,000,000			
Unscheduled Fine Arts	\$ 2,500,000			
Accidental Contamination- Per Occurrence	\$ 2,500,000			
Accidental Contamination- Aggregate	\$ 250,000			
Unscheduled Tunnels, Bridges, Dams, Catwalks, Roadways, Highways, Streets, Sidewalks, Culverts, Street Lights and Traffic Signals	\$ 500,000			
Increased Cost of Construction	\$ 25,000,000			
Transit	\$ 25,000,000			
Unscheduled animals	\$ 2,500,000			
Unscheduled animals- Per Animal	\$ 50,000			
Unscheduled Watercraft: up to 27 Feet	\$ 2,500,000			
Scheduled Watercraft: up to 27 Feet	Included			
Off Premises Services Interruption	\$ 25,000,000			
Contingent Business Interruption	\$ 5,000,000			
Earthquake Shock for Licensed Vehicles, Unlicensed Vehicles, Contractors Equipment and Fine Arts combined	\$ 5,000,000			
Flood for Licensed Vehicles, Unlicensed Vehicles, Contractors Equipment and Fine Arts combined	\$ 5,000,000			
Claim Preparation Expenses	\$ 1,000,000			
Expediting Expenses	\$ 50,000,000			
Furs, Jewelry, Precious Metals and Precious Stones	\$ 500,000			
Personal Property outside the U.S.A.	\$ 1,000,000			
Employees Tools	\$ 50,000			
Extended Period of Indemnity	180 Days			
Automobile Physical Damage over-the-road coverage	\$ 10,000,000			
Automobile Physical Damage (on and off premises)	Included			
All Other Perils - Except as Noted:		\$ 25,000		
		<b>Sub-Total</b>	<b>330,989</b>	
<b>Crime:</b>				
		Deductible		
Employee Dishonesty	\$ 1,000,000	\$ 1,000		
Forgery or Alteration	\$ 1,000,000	\$ 1,000		
Monies & Securities	\$ 1,000,000	\$ 1,000		
		<b>Sub-Total</b>	<b>Inclu</b>	
<b>General Liability:</b>				
		SIR		
General Liability:		\$ 100,000		
Each Occurrence	\$ 1,000,000			
Personal/Advertising Injury	\$ 1,000,000			
Employee Benefits Liability - Each Claim	\$ 1,000,000			
Employee Benefits Liability - Aggregate	\$ 3,000,000			
Law Enforcement Liability	\$ 1,000,000			
Subsidence- Annual Aggregate	\$ 10,000,000			
Medical Payments	Excluded			
		<b>Sub-Total</b>	<b>247,325</b>	
<b>Automobile:</b>				
		SIR		
Automobile:	\$ 1,000,000	\$ 100,000		
Uninsured Motorists	All Members Reject			
Physical Damage	Refer to Property Policy			
Personal Injury Protection	Statutory			
		<b>Sub-Total</b>	<b>Inclu</b>	
<b>Public Officials Liability:</b>				
		SIR		
Public Officials Liability: Per Claim	\$ 1,000,000	\$ 100,000		
Public Officials Liability: Aggregate	\$ 3,000,000			
"Bert J. Harris, Jr., Private Property Rights Protection Act"- Each Claim & EEOC Administrative Hearings - Per Claim	\$ 300,000			
EEOC Administrative Hearings- Aggregate	\$ 1,750			
Inverse Condemnation - Per Claim & Aggregate	\$ 175,000			
Sexual Misconduct- Per Claim/ Per Members	\$ 100,000			
Sexual Misconduct- Annual Aggregate	\$ 1,000,000			
Both Public Officials Liability & Employment Practices Liability is subject to a per member combined Aggregate of \$3,000,000		\$ 3,000,000		
		<b>Sub-Total</b>	<b>Inclu</b>	

**EXHIBIT I – City’s Insurance Policies**  
Policy Period 10/01/2016 to 09/30/2017

Coverage As Bound 2016-17				
LINE OF COVERAGE	LIMIT	DEDUCTIBLE/SIR	PREMIUM as bound 10/1/2016	POLICY NUMBER
<b>Excess Work Comp: PRM</b>				
Statutory Limits Workers' Compensation Employers' Liability	\$ 3,000,000	\$ 325,000		
Loss Fund- Annual Aggregate	\$ 2,000,000			
		<b>Sub-Total</b>	<b>\$ 235,643</b>	
<b>Cyber Liability: PRM</b>				
Media Liability, Security Breach Liability & Expense, Public Relations Expense, Replacement/Restoration of Electronic Data, Cyber Extortion Threats, Business Income/Extra Expense		Deductible \$ 25,000		
Limits:				
Per Member	\$ 1,000,000			
Per Pool Aggregate	\$ 5,000,000			
		<b>Sub-Total</b>	<b>Included</b>	
<b>Boiler &amp; Machinery: PRM (Travelers)</b>				
Limit Per Accident	\$ 50,000,000	\$10,000 Transformer KVA & over/\$1,000 All Other Objects	\$ 9,914	M5JBME18751M435TIL 16
<b>TOTAL PRM PACKAGE</b>			<b>\$ 823,870</b>	
<b>Pollution &amp; Remediation Legal Liability - Indian Harbor Insurance Co. 11/1/2014-2017</b>				
Each Pollution Condition		\$ 100,000		
Limit of Liability- Each Pollution Condition	\$ 1,000,000			
Aggregate Limit	\$ 3,000,000			
Disaster Response Expense - Each Pollution Condition & Aggregate	\$ 500,000			
<b>Florida Financial Responsibility for Tanks - Florida AST Tanks Only:</b>				
Loss or Remediation Expense - Each Pollution Condition	\$ 1,000,000			
Loss or Remediation Expense - Aggregate	\$ 1,000,000			
Legal Expense - Each Pollution Condition	\$ 250,000			
Legal Expense - Aggregate	\$ 250,000			
Loss, Remediation Expense or Legal Expense - Aggregate	\$ 1,250,000			
<b>3 Year Prepaid + Mid-Term Endorsements</b>		<b>Sub-Total</b>	<b>\$ 14,106</b>	PEC003611401
<b>Ancillary Policies</b>				
Outer Mole Lease Marine Liability -10/1 Great American	\$4,000,000 xs \$1,000,000	XS of Underlying	\$ 10,000	OMH144150603
MOLL- Great American -10/1	\$ 1,000,000	\$ 2,500	\$ 26,286	OMH144191305
Wharfingers - Great American -10/1	\$ 2,000,000	\$ 10,000	\$ 18,500	OMH144191405
Hull - Great American-10/1	\$ 886,949	\$5,000 AOP/5% Wind	\$ 10,555	OMH144191505
Vessel Pollution - Great American -10/1	\$1,000,000/\$1,000,000	\$ -	\$ 4,275	OMH144191605
Tank Storage Liab - Commerce & Industry -10/1	\$1,000,000/\$10,000,000	\$ 25,000	\$ 4,381	004808661
Statutory AD&D - AIG -10/1		Statutory \$ -	\$ 5,568	SRG9138108B
<b>Subtotal, Ancillary Policies</b>			<b>\$ 79,565</b>	
<b>Primary Flood - Underwriters at Lloyd's of London</b>				
Material Damage & Time Element - Ultimate Net Loss Any One Year - Aggregate	\$ 1,500,000	\$ 25,000		09115104643302
<b>Subtotal, Primary Flood</b>		<b>Sub-Total</b>	<b>\$ 150,000</b>	
<b>Total Cost of Insurance as Bound 2015-16</b>			<b>\$ 1,067,541</b>	

## EXHIBIT II – Sample Contract

The proposed Contract is set forth below. ***THIS IS A DRAFT VERSION OF THE CONTRACT.*** The City reserves the right to revise this proposed Contract, including its service-related terms, conditions, requirements, specifications, or minimum performance standards. ***THE FINAL VERSION MAY CONTAIN NEW OR DIFFERENT TERMS.***

### PROFESSIONAL SERVICES AGREEMENT

FOR

### INSURANCE BROKER SERVICES

BETWEEN THE CITY OF KEY WEST

AND

\_\_\_\_\_

**THIS AGREEMENT** (“Agreement”), effective \_\_\_\_\_, 20\_\_ (“Effective Date”), is between the City of Key West (“CITY”), a municipal corporation, and \_\_\_\_\_ (“FIRM”), a [(Name of State) corporation/ partnership/ limited partnership/ limited liability company/ a sole proprietor/ an individual] (collectively, “PARTIES” or individually, “PARTY”).

### RECITALS

A. CITY is a public entity organized and existing under its Charter and the State of Florida’s Constitution.

B. CITY desires to hire a qualified and experienced FIRM to provide the CITY with services and duties customarily and usually performed by an insurance brokerage firm including servicing, underwriting, marketing, and placement of various lines of insurance.

D. On \_\_\_\_\_, 2017, CITY issued a “Request for Proposals” for Insurance Broker Services (“RFP”)— which is attached as “Exhibit A” and is fully incorporated into this Agreement by this reference— describing CITY’s need for broker services, and setting forth qualifications, conditions, and requirements for those services.

E. On \_\_\_\_\_, 2017, FIRM submitted a Proposal (“FIRM’s Proposal”), which is attached as “Exhibit B” and is fully incorporated into this Agreement by this reference.

F. On \_\_\_\_\_, 2017, the Key West City Commission (“City Commission”) approved a resolution — which is attached as “Exhibit C” and is fully incorporated into this Agreement by this reference— accepting FIRM’s Proposal and awarding FIRM the right to perform broker services on CITY’s behalf, subject to the terms and conditions of this Agreement.

G. On \_\_\_\_\_, 2017, CITY mailed FIRM a “Notice of Intent to Award,” which is attached as “Exhibit D” and is fully incorporated into this Agreement by this reference.

H. FIRM represents that FIRM is, and will continue to be for this Agreement’s duration, a [(Name of State) corporation in good standing/ partnership/ limited partnership/ limited liability company/ a sole proprietorship/ an individual.] **[ADD, IF APPLICABLE: (which) (who) employs persons who are duly registered or licensed to practice in the State of Florida.]**

I. FIRM possesses the competence, experience, expertise, skill, facilities, equipment, personnel, financial wherewithal, and other resources necessary to perform this Agreement’s tasks in a professional and competent manner.

J. FIRM desires to furnish and perform professional services for CITY, on the terms and conditions described in this Agreement. FIRM has the legal authority to provide, engage in, and carry out the professional services set forth in this Agreement.

## **AGREEMENT**

**THEREFORE**, CITY engages FIRM’s services, and in consideration of the PARTIES’ mutual promises, the PARTIES agree as follows:

### **1.0 INCORPORATION OF RECITALS**

1.1. The Recitals constitute the factual basis upon which CITY and FIRM have entered into this Agreement. CITY and FIRM acknowledge the Recitals’ accuracy and, therefore, incorporate them into this Agreement.

### **2.0 TERM**

#### **2.1. Initial Term**

2.1.1 This Agreement is for a period of three (3) years (“**initial term**”), beginning on the date both parties execute the contract, unless:

- (a) Either PARTY, at any time, elects to end this Agreement for any reason, by giving the other PARTY written notice at least sixty days

before the intended termination date; or,

- (b) The agreement is terminated sooner according to the terms elsewhere in this document.

2.2. **Renewal Term**

2.2.1 Before the initial term’s ending date, CITY will have the option of renewing this Agreement, two (2) additional times – once in 2020, and another in 2021 – with each renewal for a period of one year (“renewal term”). Exercise of the renewal option will be at the City Commission’s discretion. Upon renewal, the Agreement may be subject to new and or additional terms and conditions. Otherwise, without further notice, this Agreement terminates on the initial ending date specified in Paragraph 2.1.1.

**3.0 SERVICES**

3.1. **Scope of Work.** FIRM shall provide CITY with professional brokerage services (“the Services”), in accordance with the Scope of Work, which is attached as “Exhibit E” to this Agreement and is incorporated into it by this reference.

3.2. **Written Authorization.** FIRM shall not make changes in the Scope of Work or perform any additional work, without first obtaining written authorization from CITY. If FIRM provides additional work or services without written authorization, or if FIRM exceeds the Maximum Cost in Paragraph 7.4 of this Agreement, FIRM proceeds at Firm’s own risk and without payment.

3.3. **Professional Standard of Care.** During this Agreement’s Term:

(A) FIRM and its Subconsultants, subcontractors, employees, personnel, and agents (collectively, “FIRM PARTIES”) shall perform all of the Services in this Agreement in an expeditious and professional manner, using professionals properly licensed and duly qualified to perform the Services.

(1) Shall be:

- (a) Competent, qualified, and experienced to provide the Services that this Agreement requires; and
- (b) Meet all applicable qualifications, certifications, registration, and licensing requirements established by (federal, state, county, local, CITY) laws, rules, regulations, orders, and procedures.

(B) FIRM PARTIES shall perform the work described in this Agreement in accordance with generally accepted professional practices and principles, and in a

---

manner consistent with the level of care and skill ordinarily exercised under similar

(C) conditions by members of FIRM PARTIES' profession currently practicing in Florida.

(D) By performing the Services, FIRM PARTIES represent and certify that their work conforms to: the requirements of this Agreement; all applicable (federal, state, county, local, CITY) laws, rules, regulations, orders, and procedures; and the professional standard of care in Florida.

(E) FIRM PARTIES are responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation: site conditions; existing facilities and equipment; risk exposures, applicable (federal, state, county, local, CITY) laws, rules, regulations, orders, and procedures; and all other contingencies or design considerations. Data, calculations, opinions, reports, investigations, or any other information or documents that CITY provides relating to site, local, or other conditions are not warranted or guaranteed, either expressly or implied, by CITY.

(F) When the Scope of Work requires or permits CITY's review, approval, conditional approval, or disapproval, FIRM acknowledges that CITY's review, approval, conditional approval, or disapproval:

- (1) Is solely for the purposes of administering this Agreement and determining whether FIRM is entitled to payment for its Services;
- (2) Is not to be construed as a waiver of any breach, or acceptance by CITY, of any responsibility— professional or otherwise— for the Services or FIRM's work;
- (3) Does not relieve FIRM of the responsibility for complying with the standard of performance or professional care; or laws, regulations, or industry standards; and
- (4) Does not relieve FIRM from liability for damages arising out of FIRM's: negligent acts, errors, or omissions; recklessness; willful misconduct; or noncompliance with industry standards.

(G) Without additional compensation to FIRM and at no cost to CITY, FIRM shall correct or revise all errors, mistakes, or deficiencies in its work or the Services.



#### **4.0 TIME FOR PERFORMANCE**

4.1. FIRM shall perform and complete the Services in a manner required to perform the essential requirements of this contract by \_\_\_\_\_ [DATE] .

#### **5.0 PERSONNEL**

5.1. **Key Personnel.** FIRM's project team shall work under the direction of the following key personnel \_\_\_\_\_ [IDENTIFY FIRM's KEY PERSONNEL AND TITLE] . FIRM shall minimize changes to its key personnel. CITY may request key personnel changes, and CITY may review and approve key personnel changes proposed by FIRM. CITY will not unreasonably withhold approval of key personnel assignments and changes.

5.2. **Use of Agents or Assistants.** With CITY's prior written approval, FIRM may employ, engage, or retain the services of persons or entities ("Subconsultants") that FIRM may deem proper to aid or assist in the proper performance of FIRM's duties. CITY is an intended beneficiary of all work that the Subconsultants perform for purposes of establishing a duty of care between the Subconsultants and CITY. FIRM is as responsible for the performance of its Subconsultants as it would be if it had rendered the Services itself. All costs of the tasks performed or the expenses incurred by the Subconsultants are chargeable directly to FIRM. Nothing in this Agreement constitutes or creates a contractual relationship between CITY and anyone other than FIRM.

#### **5.3. Independent Contractor.**

(A) FIRM understands and acknowledges that FIRM is an independent contractor, **not** an employee, partner, agent, or principal of CITY. This Agreement does **not** create a partnership, joint venture, association, or employer-employee relationship between the PARTIES. At its own expense, FIRM is responsible for providing compensation; employment benefits; disability, unemployment, and other insurance; workers' compensation; training; permits and licenses; and office space for FIRM and for FIRM's employees and Subconsultants. FIRM has, and shall retain, the right to exercise full control over the employment, direction, compensation, and discharge of all persons whom FIRM uses in performing the Services under this Agreement. FIRM shall

provide the Services in FIRM's own manner and method, except as this Agreement specifies. FIRM shall treat a provision in this Agreement that may appear either to give CITY the right to direct FIRM as to the details of doing the work, or to exercise a measure of control over the work, as giving FIRM direction only as to the work's end result.

(B) FIRM shall indemnify, defend (including FIRM's providing and paying for legal counsel for CITY), and hold harmless CITY for any obligation; claim;

---

suit; demand for tax or retirement contribution, including any contribution or payment to the Public Employees Retirement System (PERS); social security; salary or wages; overtime, penalty, or interest payment; or workers' compensation payment that CITY may be required to make on behalf of FIRM, an employee of FIRM, or any employee of FIRM construed to be an employee of CITY, for the work done under this Agreement.

5.4. **Non-Discrimination in Employment.** FIRM shall **not** discriminate against any employee or person who is subject to this Agreement because of race, color, religion, religious belief, national origin, ancestry, citizenship, age, sex, sexual orientation, marital status, pregnancy, parenthood, medical condition, or physical or mental disability.

5.5. **Disability Access Laws.** FIRM represents and certifies that the Services that FIRM performs under this Agreement fully conform to all applicable disability access and design laws, regulations, and standards— including, but not limited to, the Americans with Disabilities Act (42 U.S.C. Sections 12101 *et seq.*) and Title 24 of the Florida Code of Regulations— when the Scope of Work requires or calls for compliance with those laws, regulations, or standards.

5.6. **Prevailing Wage Laws.** Services by persons deemed to be employees of FIRM possibly may be subject to prevailing wages under Florida General Regulations Chapter 448. FIRM's sole responsibility is to comply with those requirements, should they apply. If a dispute based upon the prevailing wage laws occurs, FIRM, at its expense, shall indemnify, defend (including FIRM's providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, wages, costs, or expenses pertaining to the prevailing wage laws.

5.7. **Workers' Compensation.** FIRM understands and acknowledges that all persons furnishing services to CITY under this Agreement are, for the purpose of workers' compensation liability, employees solely of FIRM and not of CITY. In performing the Services or the work under this Agreement, FIRM is liable for providing workers' compensation benefits to FIRM's employees, or anyone whom FIRM directly or indirectly hires, employs, or uses. CITY is **not** responsible for any claims at law or in equity caused by FIRM's failure to comply with this Paragraph.

## **6.0 FACILITIES**

6.1. FIRM shall provide all facilities necessary to fully perform and complete the Services. If FIRM needs to use a CITY facility, FIRM shall meet and confer with CITY before FIRM begins the work that this Agreement requires, the PARTIES shall agree to any costs chargeable to FIRM, and in an amendment to this Agreement, the PARTIES shall describe the facility's terms of use and its charges.

6.2. FIRM shall pay for any damage to CITY property, facilities, structures, or streets arising out of FIRM’s use, occupation, operation, or activities in, upon, under, or over any portion of them.

**7.0 PAYMENT**

7.1. CITY’s payment to FIRM will be based upon FIRM’s Fee Schedule, which is attached as “Exhibit F” to this Agreement and is incorporated into it by this reference. Except as itemized in the Fee Schedule, FIRM shall pay for all expenses, including reimbursable or out-of-pocket expenses, that FIRM incurs in performing the Services. The Fee Schedule will remain in effect for the Agreement’s Term.

7.2. **Fee.** CITY shall pay for the Services in the installment amounts and at the intervals listed in the Fee Schedule (“Exhibit F”), the TOTAL amount of which is not to exceed \_\_\_\_\_dollars

7.3. If CITY requires additional work not included in this Agreement, FIRM and CITY shall negotiate the additional work, mutually agree on the amount of additional compensation, and memorialize the terms in either a separate written contract or an amendment to this Agreement.

7.4. **Maximum Cost.** FIRM expressly acknowledges that the total cost to complete all Services under this Agreement must not exceed \_\_\_\_\_dollars (\$\_\_\_\_\_) (“Maximum Cost”).

7.5. **Taxes.** FIRM shall pay all applicable (federal, state, county, local, CITY) excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon FIRM’s services under this Agreement.

7.6. **Invoices.** FIRM shall submit an original, itemized invoice to CITY for approval, before receiving compensation. FIRM shall submit the invoice at no more than monthly intervals. All invoices must include a summary of total costs, description of the Services performed, a brief itemization of costs associated with each task or phase, and the total phase or project costs to date.

**8.0 Non-Appropriation Provision**

8.1. Specified Period. Unless otherwise provided by law, an agreement for services may be entered into for any period of time deemed to be in the best interest of the City, provided the term of the agreement and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the initial fiscal period of the agreement. Payment and performance obligations for succeeding fiscal periods

shall be subject to the annual appropriation by City Commission.

8.2. **Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the agreement shall be cancelled and the contractor shall be entitled to reimbursement for the reasonable value of any work performed to the date of cancellation.

## **9.0 DATA, RECORDS, PROPRIETARY RIGHTS**

9.1. **Copies of Data.** FIRM shall provide CITY with copies or originals of all data that FIRM generates, uses, collects, or stores in relation to all work associated with this Agreement. Data that FIRM generates, uses, collects, stores, or provides must be in a form acceptable to, and agreed upon by, CITY.

### **9.2. Ownership and Use.**

(A) Unless CITY states otherwise in writing, each document—including, but not limited to, each report, draft, record, drawing, or specification (collectively, “work product”)—that FIRM prepares, reproduces, or causes its preparation or reproduction for this Agreement is CITY’s exclusive property.

(B) FIRM acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work. FIRM makes no representation of the work product’s application to, or suitability for use in, circumstances not contemplated by the Scope of Work.

### **9.3. Intellectual Property.**

(A) If FIRM uses or incorporates patented, trademarked, or copyrighted work, ideas, or products—in whole or in part—into FIRM’s work product, FIRM represents that:

- (1) FIRM holds the patent, trademark, or copyright to the work, idea, or product; or
- (2) FIRM is licensed to use the patented, trademarked, or copyrighted work, idea, or product.

(B) Unless CITY states otherwise in writing, all proprietary rights or intellectual property rights, including copyrights, that arise from creation of the work under this Agreement vest in CITY. FIRM waives and relinquishes all claims to proprietary rights and intellectual property rights, including copyrights, in favor of CITY.

(C) FIRM shall indemnify, defend (including FIRM’s providing and

---

paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, royalties, fines, penalties, costs, or expenses arising out of or alleging any infringement or misappropriation of a patent, copyright, trade secret, trade name, trademark, or other intellectual property right or proprietary right.

9.4. **Confidentiality.** FIRM shall not use any information that it obtains from performing the Services for any purpose other than for fulfillment of FIRM’s Scope of Work. Without CITY’s prior written authorization, FIRM shall **not** disclose or publish— or authorize, permit, or allow others to disclose or publish— data, drawings, designs, specifications, reports, or other information relating to the Services or the work that CITY assigns to FIRM or to which FIRM has access.

9.5. **Public Records Act.**

(A) FIRM acknowledges that this Agreement is a public record. This Agreement, its Exhibits, and all documents produced under this Agreement are subject to the Florida Public Records Act (Chapter 119 – Public Records), including its exemptions.

(B) If CITY receives a Public Records Act request, CITY will immediately notify FIRM. FIRM shall identify— within the time period CITY specifies— all records, or portions of them, that FIRM believes are exempt from production under the Public Records Act.

(C) If FIRM claims a privilege against public disclosure or otherwise objects to the records’ disclosure, then:

- (1) FIRM may seek protection from disclosure by timely applying for relief in a court of competent jurisdiction; or
- (2) CITY may either decline to produce the requested information, or redact portions of the documents and produce the redacted records.

(D) If FIRM fails to identify one or more protectable documents, or if FIRM fails to respond to CITY within the time period that CITY sets, in CITY’s sole discretion, and without its being in breach of this Agreement or its incurring liability to FIRM, CITY may produce the records— in whole, in part, or redacted— or may decline to produce them.

(E) FIRM shall indemnify, defend (including FIRM’s providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, costs, or expenses arising out of or alleging CITY’s refusal to publicly disclose one or more records that FIRM identifies as protectable, or asserts is protectable.

---

**10.0 CONFLICT OF INTEREST**

10.1. **Conflict of Interest.** FIRM represents and certifies that:

(A) FIRM’s personnel are **not** currently officers, agents, employees, representatives, or elected officials of CITY;

(B) FIRM will **not** employ or hire a CITY officer, agent, employee, representative, or elected official during this Agreement’s Term;

(C) CITY’s officers, agents, employees, representatives, and elected officials do **not**, and will **not**, have any direct or indirect financial interest in this Agreement; and

(D) During this Agreement’s Term, FIRM will promptly inform CITY about an existing or potential conflict of interest that may arise as a result of any change in circumstances.

**11.0 INSURANCE**

11.1. When FIRM signs and delivers this Agreement to CITY, and during this Agreement’s Term, FIRM shall furnish CITY with insurance forms that fully meet the requirements of— and contain provisions entirely consistent with— all of the “Insurance Requirements,” which are attached as “Exhibit G” (G-1 through G-6) to this Agreement and are incorporated into it by this reference.

11.2. This Agreement’s insurance provisions:

(A) Are separate and independent from the indemnification and defense provisions in Article 12 of the Agreement; and

(B) Do **not** limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 12 of the Agreement.

**12.0 INDEMNITY**

12.1. To the maximum extent permitted by law— including, but not limited to, Florida Statute 768.28 — FIRM, its employees, agents, SubFirms, and persons whom FIRM employs or hires (individually and collectively, “FIRM INDEMNITOR”) shall indemnify, defend, and hold harmless CITY, its officers, agents, employees, and

representatives (individually and collectively, “CITY INDEMNITEE”) from and against a “**liability**” [as defined in Subparagraph (A) below], or an “**expense**” [as defined in Subparagraph (B) below], or both, that arise out of, pertain to, or relate to an act, error, or omission of a FIRM INDEMNITOR:

(A) “**Liability**” means claims, suits, actions, causes of action, proceedings, judgments, decrees, awards, settlements, liens, losses, damages, injuries, or liability of any kind, whether the **liability** is:

- (1) Actual or alleged;
- (2) In contract or in tort; or
- (3) For bodily injury (including accidental death), personal injury, advertising injury, or property damage.

(B) “**Expense**” means fees, costs, sums, penalties, fines, charges, or expenses of any kind, including, but not limited to:

- (1) Attorney’s fees;
- (2) Costs of an investigation, litigation, arbitration, mediation, administrative or regulatory proceeding, or appeal;
- (3) Fees of an accountant, expert witness, Firm, or other professional; or
- (4) Pre or post: judgment interest or settlement interest.

12.2. Under this Statute, FIRM INDEMNITOR’s defense and indemnification obligations:

(A) Apply to a **liability**, or an **expense**, or both, that arise out of, pertain to, or relate to the actual or alleged passive negligence of a CITY INDEMNITEE; but

(B) Do not apply to a **liability**, or an **expense**, or both, that arise out of, pertain to, or relate to the sole active negligence or willful misconduct of a CITY INDEMNITEE.

12.3. To the extent that FIRM INDEMNITOR’s insurance policy provides an upfront defense to CITY, FIRM INDEMNITOR’s obligation to defend a CITY INDEMNITEE under this Article:

(A) Means that FIRM INDEMNITOR shall provide and pay for legal counsel, acceptable to CITY, for the CITY INDEMNITEE;

(B) Occurs when a claim, suit, complaint, pleading, or action against a CITY INDEMNITEE arises out of, pertains to, relates to, or asserts an act, error, or omission of FIRM INDEMNITOR; and

(C) Arises regardless of whether a claim, suit, complaint, pleading, or

---

action specifically names or identifies FIRM INDEMNITOR.

12.4. Paragraph 12.3 does not limit or extinguish FIRM INDEMNITOR's obligation to reimburse a CITY INDEMNITEE for the costs of defending the CITY INDEMNITEE against a **liability**, or an **expense**, or both. A CITY INDEMNITEE's right to recover defense costs and attorney's fees under this Article does not require, and is not contingent upon, the CITY INDEMNITEE's first:

(A) Requesting that FIRM INDEMNITOR provide a defense to the CITY INDEMNITEE; or

(B) Obtaining FIRM INDEMNITOR's consent to the CITY INDEMNITEE's tender of defense.

12.5. If FIRM subcontracts all or any portion of the Services under this Agreement, FIRM shall provide CITY with a written agreement from each Subconsultant, who must indemnify, defend, and hold harmless CITY INDEMNITEE under the terms in this Article.

12.6. FIRM INDEMNITOR's obligation to indemnify, defend, and hold harmless CITY will remain in effect and will be binding upon FIRM INDEMNITOR whether the **liability**, or the **expense**, or both, accrues— or is discovered— before or after this Agreement's expiration, cancellation, or termination.

12.7. Except for Paragraph 12.3, this Article's indemnification and defense provisions are separate and independent from the insurance provisions in Article 11. In addition, the indemnification and defense provisions in this Article:

(A) Are neither limited to nor capped at the coverage amounts specified under the insurance provisions in Article 11; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the insurance provisions in Article 11.

### **13.0 DEFAULT, REMEDIES, AND TERMINATION**

13.1. **Default.** Default under this Agreement occurs upon any one or more of the following events:

(A) FIRM refuses or fails— whether partially, fully, temporarily, or otherwise— to:



- (1) Provide, obtain, or maintain enough properly trained personnel, or licensed personnel, or both, to perform the Services that this Agreement requires;
- (2) Pay for, obtain, maintain, or renew the insurance policies or coverages that this Agreement requires;
- (3) Comply with indemnification, defense, or hold harmless provisions that this Agreement requires; or

(B) FIRM, or its personnel, or both— whether partially, fully, temporarily, or otherwise:

- (1) Disregards or violates a law, ordinance, rule, procedure, regulation, directive, or order;
- (2) Refuses or fails to pay for, obtain, maintain, or renew requisite licenses;
- (3) Refuses or fails to observe, perform, or fulfill a covenant, condition, obligation, term, or provision of this Agreement;
- (4) Commits an unlawful, false, fraudulent, dishonest, deceptive, or dangerous act while performing the Services under this Agreement; or

(C) FIRM:

- (1) Or another party for or on behalf of FIRM: institutes proceedings under any bankruptcy, reorganization, receivership or other insolvency; or assigns or transfers assets to its creditors;
- (2) Delegates— whether in whole, in part, temporarily, or otherwise— its duties or obligations under this Agreement, without notifying CITY, or without CITY’s written authorization;
- (3) Assigns, transfers, pledges, hypothecates, grants, or encumbers— whether in whole, in part, temporarily, or otherwise— this Agreement or any interest in it, without notifying CITY, or without CITY’s written authorization;
- (4) Or one of its partners, directors, officers, or general managers, or a person who exercises managerial authority

---

on FIRM's behalf, is convicted under state or federal law, during this Agreement's Term, of embezzlement, theft, fraud, forgery, bribery, deceptive or unlawful business practices, perjury, falsifying or destroying records or evidence, receiving stolen property, or other offense indicating a lack of business integrity or business honesty; or

(D) Any other justifiable cause or reason, as reasonably determined by the City Manager, or a designee.

13.2. **Notice of Default.** If CITY deems that FIRM is in Default, or that FIRM has failed in any other respect to satisfactorily perform the Services specified in this Agreement, CITY may give written notice to FIRM specifying the Default(s) that FIRM shall remedy within five (5) days after receiving the notice. The Notice of Default will set forth one or more bases for any dissatisfaction and may suggest corrective measures.

13.3. **Remedies upon Default.** Within five (5) days after receiving CITY's Notice of Default, if FIRM refuses or fails to remedy the Default(s), or if FIRM does **not** commence steps to remedy the Default(s) to CITY's reasonable satisfaction, CITY may exercise any one or more of the following remedies:

(A) CITY may, in whole or in part and for any length of time, immediately suspend this Agreement until such time as FIRM has corrected the Default;

(B) CITY may provide for the Services either through its own forces or from another Firm, and may withhold any money due (or may become owing to) FIRM for a task related to the claimed Default;

(C) CITY may withhold all moneys, or a sum of money, due FIRM under this Agreement, which in CITY's sole determination, are sufficient to secure FIRM's performance of its duties and obligations under this Agreement;

(D) CITY may immediately terminate the Agreement;

(E) CITY may exercise any legal remedy, or equitable remedy, or both, including, but not limited to, filing and action in court:

(1) Seeking FIRM's specific performance of all or any part of this Agreement; or

- (2) Recovering damages for FIRM’s Default, breach, or violation of this Agreement; or

(F) CITY may pursue any other available, lawful right, remedy, or action.

13.4. **Termination for Convenience.** Independent of the remedies provided in Paragraph 13.3, CITY may elect to terminate this Agreement at any time upon thirty (30) days’ prior written notice. Upon termination, FIRM shall receive compensation only for that work which FIRM had satisfactorily completed to the termination date. CITY shall not pay FIRM for de-mobilization, takedown, disengagement, wind-down, or other costs incurred arising out of this Agreement’s termination.

#### **14.0 GENERAL PROVISIONS**

14.1. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the PARTIES. This Agreement supersedes all prior and contemporaneous communications, negotiations, understandings, promises and agreements, either oral or written. Neither FIRM nor CITY has made any promises or representations, other than those contained in this Agreement or those implied by law. The PARTIES may modify this Agreement, or any part of it, by a written amendment with CITY’s and FIRM’s signature.

14.2. **Interpretation.** This Agreement is the product of negotiation and compromise by both PARTIES. Every provision in this Agreement must be interpreted as though the PARTIES equally participated in its drafting. Therefore, if this Agreement’s language is uncertain, the Agreement must **not** be construed against the PARTY causing the uncertainty to exist. In interpreting this Agreement and resolving any ambiguities, this Agreement will take precedence over any cover page or attachments. If a conflict occurs between a provision in this Agreement and a provision in an attachment, the following order of precedence applies, with the terms and conditions in the document higher on the list governing over those lower on the list:

- (1) The Agreement.
- (2) Exhibit G
- (3) Exhibit E.
- (4) Exhibit F.
- (5) Exhibit A.
- (6) Exhibit B.
- (7) Exhibit C.
- (8) Exhibit D.

14.3. **Headings.** All headings or captions in this Agreement are for convenience and reference only. They are **not** intended to define or limit the scope of any term, condition, or provision.

14.4. **Governing Law.** Florida’s laws govern this Agreement’s construction and interpretation. Unless this Agreement provides otherwise, any reference to laws, ordinances, rules, or regulations include their later amendments, modifications, and successor legislation.

14.5. **Waiver of Breach.** If a PARTY waives the other PARTY’s breach of a term in this Agreement, that waiver is **not** treated as waiving a later breach of the term and does **not** prevent the PARTY from later enforcing that term, or any other term. A waiver of a term is valid only if it is in writing and signed by the PARTY waiving it. This Agreement’s duties and obligations:

(A) Are cumulative (rather than alternative) and are in addition to (rather than a limitation on) any option, right, power, remedy, or privilege; and

(B) Are **not** exhausted by a PARTY’s exercise of any one of them.

14.6. **Attorney’s Fees.** If CITY or FIRM brings an action at law or in equity to enforce or interpret one or more provisions of this Agreement, the “prevailing party” is entitled to “reasonable attorney’s fees” in addition to any other relief to which the prevailing party may be entitled. A “prevailing party” has the same meaning as that term is defined in Florida Statute Chapter 57 Section 105. “Reasonable attorney’s fees” of the City Attorney’s office means the fees regularly charged by private attorneys who:

(A) Practice in a law firm located in Key West Florida; and

(B) Have an equivalent number of years of professional experience in the subject matter area of the law for which the City Attorney’s services were rendered.

14.7. **Further Assurances.** Upon CITY’s request at any time, FIRM shall promptly:

(A) Take further necessary action; and

(B) Sign, acknowledge, and deliver all additional documents as may be reasonable, necessary, or appropriate to carry out this Agreement’s intent, purpose, and terms.

14.8. **Assignment.**

(A) This Agreement does **not** give any rights or benefits to anyone, other than to CITY and FIRM. All duties, obligations, and responsibilities under this Agreement are for the sole and exclusive benefit of CITY and FIRM, and are **not** for the benefit of another person, entity, or organization. Without CITY’s prior written authorization, FIRM shall **not** do any one or more of the following:

- (1) Assign or transfer a right or interest— whether in whole, in part, temporarily, or otherwise— in this Agreement; or
- (2) Delegate a duty or obligation owed— whether in whole, in part, temporarily, or otherwise— under this Agreement.

(B) Any actual or attempted assignment of rights or delegation of duties by FIRM, without CITY’s prior written authorization, is wholly void and totally ineffective for all purposes; and does **not** postpone, delay, alter, extinguish, or terminate FIRM’s duties, obligations, or responsibilities under this Agreement.

(C) If CITY consents to an assignment of rights, or a delegation of duties, or both, FIRM’s assignee or legal representative shall agree in writing to personally assume, perform, and to be bound unconditionally by the covenants, obligations, terms, and conditions in this Agreement.

14.9. **Successors and Assigns.** Subject to the provisions in Paragraph 14.8, this Agreement is binding on the heirs, executors, administrators, successors, and assigns of the respective PARTIES.

14.10. **Time is of the Essence.**

(A) Except when this Agreement states otherwise, time is of the essence in this Agreement. FIRM acknowledges that this Agreement’s time limits and deadlines are reasonable for FIRM’s performing the Services under this Agreement.

(B) Unless this Agreement specifies otherwise, any reference to “day” or “days” means calendar and not business days. If the last day for giving notice or performing an act under this Agreement falls on a weekend, or a legal holiday, the period is extended to and including the next day that CITY is open for business. A reference to the time of day refers to local time for Key West, Florida.

14.11. **Recycled Paper.** FIRM shall endeavor to submit all reports, correspondence, and documents related to this Agreement on recycled paper.

14.12. **Notices.**

(A) The PARTIES shall submit in writing all notices and correspondence that this Agreement requires or permits, and shall deliver the notices and correspondence to the places set forth below. The PARTIES may give notice by:

- (1) Personal delivery;

- (2) U.S. mail, first class postage prepaid;
- (3) “Certified” U.S. mail, postage prepaid, return receipt requested; or
- (4) Facsimile.

(B) All written notices or correspondence sent in the described manner will be presumed “given” to a PARTY on whichever date occurs earliest:

- (1) The date of personal delivery;
- (2) The third (3rd) business day following deposit in the U.S. mail, when sent by “first class” mail;
- (3) The date on which the PARTY or its agent either signed the return receipt or refused to accept delivery, as noted on the return receipt or other U.S. Postal Service form, when sent by “certified” mail; or
- (4) The date of transmission, when sent by facsimile.

(C) At any time, by providing written notice to the other PARTY, CITY or FIRM may change the place, or facsimile number, for giving notice.

CITY: City of Key West Florida  
 1300 White Street  
 Key West, FL 33040  
 Attn: Todd Stoughton  
 Risk Management

Tel. No. (305) 809-3811  
 Fax. No. (305) 809-3988

FIRM:

\_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Tel. \_\_\_\_\_ No. \_\_\_\_\_  
 \_\_\_\_\_ Fax. No. \_\_\_\_\_

14.13. **Survival.** This Paragraph and the obligations set forth in Paragraphs 5.4, 5.6, 5.7, 5.8, 7.5, 8.1, 9.1, 9.2, 9.3, 9.4, 9.5, 11.1, 11.2, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 13.3, 14.5, 14.6, 14.7, 14.8, 14.9, and 14.12 survive this Agreement’s expiration, cancellation, or termination.

14.14. **Severability.** The invalidity, in whole or in part, of any term of this Agreement will not affect this Agreement’s remaining terms.

14.15. **Counterparts.** This Agreement may be executed in counterparts, each of which is an original, but all of which constitutes one and the same document. The PARTIES shall sign a sufficient number of counterparts, so that each PARTY will receive a fully executed original of this Agreement.

14.16. **Representations – Authority.** The PARTIES represent that:

(A) They have read this Agreement, fully understand its contents, and have received a copy of it;

(B) Through their duly authorized representative, they are authorized to sign this Agreement, and they are bound by its terms; and

(C) They have executed this Agreement on the date opposite their signature.

Executed at Key West, Florida.

**CITY OF KEY WEST:**

By\_

Date: \_\_, 20\_\_\_\_\_

Shawn D. Smith

City Attorney

**FIRM:**

By\_

Date: \_\_, 20\_\_\_\_\_ (Name)

\_\_\_\_\_  
(Title) \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

**EXHIBIT LIST**

“Exhibit A”: ( pages)	CITY’s Request for Proposals
“Exhibit B”: ( pages)	FIRM’s Proposal
“Exhibit C”: ( pages)	City Commission Approval
“Exhibit D”: ( pages)	Notice of Intent to Award Contract
“Exhibit E”: ( pages)	Scope of Work
“Exhibit F”: ( pages)	Fee Schedule
“Exhibit G”: ( pages)	Insurance Requirements

---



**EXHIBIT III**

**ANTI-KICKBACK AFFIDAVIT**

STATE OF FLORIDA

SS:

COUNTY OF MONROE

I the undersigned hereby duly sworn, depose and say that no portion of the sum herein response will be paid to any employee of the City of Key West as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

BY:

sworn and prescribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016

NOTARY PUBLIC, State of Florida

My commission expires:

**EXHIBIT IV**

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(A)**  
**FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS,

1. This sworn statement is submitted to \_\_\_\_\_

by

\_\_\_\_\_

(print individual's name and title)

For

\_\_\_\_\_

(print name of entity submitting sworn statement)

whose business address is \_\_\_\_\_

and (if applicable) its Federal Employer Identification Number (FEIN) is

\_\_\_\_\_

(if the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement):

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
  
3. I understand that "conviction" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 01, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

*City of Key West*

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
  - a. A predecessor or successor of a person convicted of a public entity crime: or
  - b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members and agent who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment of income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
  
5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statute means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
  
6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement (indicate which statement applies).

Neither the entity submitting this sworn statement, or any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July, 1989.

\_\_\_\_\_The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 01, 1989.

\_\_\_\_\_The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 01, 1989.

However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the

entity submitting this sworn statement on the convicted vendor list (attach a copy of the final order).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH ONE (1) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR THE CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(DATE)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority  
\_\_\_\_\_ who, after first being sworn by me,  
(name of individual)  
affixed his/her signature in the space provided above on this  
\_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_ NOTARY PUBLIC

My commission expires:

**EXHIBIT V**

**EQUAL BENEFITS FOR DOMESTIC PARTNERS AFFIDAVIT**

STATE OF \_\_\_\_\_ )

: SS

COUNTY OF \_\_\_\_\_ )

I, the undersigned hereby duly sworn, depose and say that the firm of \_\_\_\_\_

\_\_\_\_\_ provides benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses, per City of Key West Code of Ordinances Sec. 2-799.

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

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

NOTARY PUBLIC, State of \_\_\_\_\_ at Large

My Commission Expires:

**EXHIBIT VI**

**CONE OF SILENCE AFFIDAVIT**

**Pursuant to City of Key West Code of Ordinances Section 2-773 (attached below)**

STATE OF \_\_\_\_\_)  
: SS  
COUNTY OF \_\_\_\_\_)

I the undersigned hereby duly sworn depose and say that all owner(s), partners, officers, directors, employees and agents representing the firm of \_\_\_\_\_ have read and understand the limitations and procedures regarding communications concerning City of Key West issued competitive solicitations pursuant to City of Key West Ordinance Section 2-773 Cone of Silence (attached).

Sworn and subscribed before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, State of \_\_\_\_\_ at Large

My Commission Expires: \_\_\_\_\_

**Sec. 2-773. Cone of Silence.**

- (a) *Definitions.* For purposes of this section, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:
- (1) *Competitive solicitation* means a formal process by the City of Key West relating to the acquisition of goods or services, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. Competitive solicitation shall include request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), invitation to bid ("ITB") or any other advertised solicitation.
  - (2) *Cone of silence* means a period of time during which there is a prohibition on communication regarding a particular competitive solicitation.
  - (3) *Evaluation or selection committee* means a group of persons appointed or designated by the city to evaluate, rank, select, or make a recommendation regarding a vendor or the vendor's response to the competitive solicitation. A member of such a committee shall be deemed a city official for the purposes of subsection (c) below.
  - (4) *Vendor* means a person or entity that has entered into or that desires to enter into a contract with the City of Key West or that seeks an award from the city to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a competitive solicitation for compensation or other consideration.
  - (5) *Vendor's representative* means an owner, individual, employee, partner, officer, or member of the board of directors of a vendor, or a consultant, lobbyist, or actual or potential subcontractor or sub-consultant who acts at the behest of a vendor in communicating regarding a competitive solicitation.
- (b) *Prohibited communications.* A cone of silence shall be in effect during the course of a competitive solicitation and prohibit:
- (1) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the city's administrative staff including, but not limited to, the city manager and his or her staff;
  - (2) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the mayor, city commissioners, or their respective staff;
  - (3) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and any member of a city evaluation and/or selection committee therefore; and
  - (4) Any communication regarding a particular competitive solicitation between the mayor, city commissioners, or their respective staff, and a member of a city evaluation and/or selection committee therefore.

- (c) *Permitted communications.* Notwithstanding the foregoing, nothing contained herein shall prohibit:
- (1) Communication between members of the public who are not vendors or a vendor's representative and any city employee, official or member of the city commission;
  - (2) Communications in writing at any time with any city employee, official or member of the city commission, unless specifically prohibited by the applicable competitive solicitation.
    - (A) However, any written communication must be filed with the city clerk. Any city employee, official or member of the city commission receiving or making any written communication must immediately file it with the city clerk.
    - (B) The city clerk shall include all written communication as part of the agenda item when publishing information related to a particular competitive solicitation;
  - (3) Oral communications at duly noticed pre-bid conferences;
  - (4) Oral presentations before publicly noticed evaluation and/or selection committees;
  - (5) Contract discussions during any duly noticed public meeting;
  - (6) Public presentations made to the city commission or advisory body thereof during any duly noticed public meeting;
  - (7) Contract negotiations with city staff following the award of a competitive solicitation by the city commission; or
  - (8) Purchases exempt from the competitive process pursuant to [section 2-797](#) of these Code of Ordinances;
- (d) *Procedure.*
- (1) The cone of silence shall be imposed upon each competitive solicitation at the time of public notice of such solicitation as provided by [section 2-826](#) of this Code. Public notice of the cone of silence shall be included in the notice of the competitive solicitation. The city manager shall issue a written notice of the release of each competitive solicitation to the affected departments, with a copy thereof to each commission member, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.
  - (2) The cone of silence shall terminate at the time the city commission or other authorized body makes final award or gives final approval of a contract, rejects all bids or responses to the competitive solicitation, or takes other action which ends the competitive solicitation.
  - (3) Any city employee, official or member of the city commission that is approached concerning a competitive solicitation while the cone of silence is in effect shall notify such individual of the prohibitions contained in this section. While the cone of silence is in effect, any city employee, official or



member of the city commission who is the recipient of any oral communication by a potential vendor or vendor's representative in violation of this section shall create a written record of the event. The record shall indicate the date of such communication, the persons with whom such communication occurred, and a general summation of the communication.

(e) *Violations/penalties and procedures.*

- (1) A sworn complaint alleging a violation of this ordinance may be filed with the city attorney's office. In each such instance, an initial investigation shall be performed to determine the existence of a violation. If a violation is found to exist, the penalties and process shall be as provided in section 1-15 of this Code.
- (2) In addition to the penalties described herein and otherwise provided by law, a violation of this ordinance shall render the competitive solicitation void at the discretion of the city commission.
- (3) Any person who violates a provision of this section shall be prohibited from serving on a City of Key West advisory board, evaluation and/or selection committee.
- (4) In addition to any other penalty provided by law, violation of any provision of this ordinance by a City of Key West employee shall subject said employee to disciplinary action up to and including dismissal.
- (5) If a vendor is determined to have violated the provisions of this section on two more occasions it shall constitute evidence under City Code section 2-834 that the vendor is not properly qualified to carry out the obligations or to complete the work contemplated by any new competitive solicitation. The city's purchasing agent shall also commence any available debarment from city work proceeding that may be available upon a finding of two or more violations by a vendor of this section. (*Ord. No. 13-11, § 1, 6-18-2013*)

## **EXHIBIT VII**

### **GENERAL INSURANCE REQUIREMENTS:**

- 1.01 During the term of the Contract, the Broker shall provide, pay for, and maintain with insurance companies satisfactory to the City of Key West (the City), the types of insurance described herein.
- 1.02 All insurance 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.
- 1.03 The City shall be specifically included as an additional insured on the Broker's Commercial General Liability, Umbrella Liability and Business Automobile Liability policies and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision).
- 1.04 The Broker shall deliver to the City, prior to the City issuing the Notice to Proceed, properly executed "Certificate(s) of Insurance", setting forth the insurance coverage and limits required herein. The Certificates must be personally, manually 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 the City, on a timely basis, if requested by the City.
- 1.05 If the Broker fails to provide or maintain the insurance coverages required in this Contract at any time during the term of the Contract and if the Broker refuses or otherwise neglects to deliver the required Certificate(s) of Insurance personally and manually signed by the authorized representative of the insurance company(s) to the City, the City may, at the City's sole discretion, (a) terminate or suspend this Contract.
- 1.06 The Broker 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 Broker shall promptly authorize and have delivered such statement to the City.
- 1.07 The Broker authorizes the City and/or its insurance consultant to confirm all information furnished to the City, as to its compliance with its Bonds and Insurance Requirements, with the Broker's insurance agents, brokers, surety, and insurance carriers.
- 1.08 All insurance coverage of the Broker 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 Broker in this Contract.
- 1.09 The acceptance of delivery to the City of any Certificate of Insurance evidencing the insurance coverage and limits required in the Contract does not constitute approval or agreement by the City that the insurance requirements in the Contract have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Contract requirements.
- 1.10 No work or occupancy of the premises shall commence or continue at the site unless and until the required Certificate(s) of Insurance are in effect and the written Notice to Proceed is issued

***INSURANCE BROKER – Property/Casualty  
and Workers Compensation***

***City of Key West***

to the Broker by the City.

- 1.11 The insurance coverage and limits required of the Broker under this Contract are designed to meet the minimum requirements of the City. They are not designed as a recommended insurance program for the Broker. The Broker alone shall be responsible for the sufficiency of its own insurance program. Should the Broker have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, it should seek professional assistance.
- 1.12 Should any of the required insurances specified in this Contract provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, and the insurance company providing the coverage will not agree in writing to pay the deductible or retention including the costs of defense as provided for in its policy without consideration of the deductible or retention in the settlement of insured claims, then the Broker agrees, if required by the City, to provide, pay for, and maintain a surety bond acceptable to the City from an insurance company acceptable to the City (or a standby irrevocable Letter of Credit acceptable to the City) in the amount of the deductible or retention, guaranteeing payment of the deductible or retention. Said guarantee is to continue for four (4) years following termination of this contract.
- 1.13 All the required insurance coverage shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.
- 1.14 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 Contract, except for the application of the Aggregate Limits Provisions. Such notice shall be delivered by certified or registered mail and shall be given to:

Todd Stoughton  
Risk Management  
City of Key West  
1300 White Street  
Key West, Florida 33040
- 1.15 Renewal Certificate(s) of Insurance shall be provided to the City at least twenty (20) days prior to expiration of current coverage so that there shall be no interruption in the work due to lack of proof of the insurance coverage required of the Broker in this Contract.
- 1.16 If the Broker utilizes contractors or sub-contractors to perform any work governed by this agreement, the Broker will ensure all contractors and sub-contractors maintain the same types and amounts of insurance required of the Broker. In addition, the Broker will ensure that the contractors and sub-contractors insurances comply with all the Insurance Requirements specified for the Broker contained within this agreement. The Broker shall obtain Certificates of Insurance comparable to those required of the Broker from all contractors and sub-contractors. Such Certificates of Insurances shall be presented to the City upon request. Broker's obligation to ensure that all contractors and sub-contractors insurance as provided herein shall not exculpate Broker from the direct primary responsibility Broker has to the City hereunder. TPA may look directly to Broker for any such liability hereunder and shall not be obligated to seek recovery from any contractor or sub-contractor or under such contractor's or sub-contractor's insurance coverages.

**2.0 SPECIFIC INSURANCE COVERAGES AND LIMITS:**

2.01 All requirements in this Insurance Section shall be complied with in full by the Broker unless excused from compliance in writing by the City.

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.

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

Workers' Compensation	Florida Statutory Requirements
Employer's Liability	\$1,000,000.00 Limit Each Accident
	\$1,000,000.00 Limit Disease Aggregate
	\$1,000,000.00 Limit Disease Each Employee

2.02.02 **Commercial General Liability Insurance** shall be maintained by the Broker on the Full Occurrence Form. Coverage shall include but not be limited to Premises and Operations, Personal Injury, Contractual for this Contract, Independent Contractors and Products & Completed Operations Coverage. Limits of coverage shall not be less than:

Bodily Injury & Property Damage Liability	\$1,000,000.00 Combined Single Limit each Occurrence and aggregate.
---	---

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

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

Bodily Injury	\$1,000,000.00 Limit Each Accident
Property Damage Liability	\$1,000,000.00 Limit Each Accident

or

Bodily Injury & Property Damage Liability	\$1,000,000.00 Combined Single Limit Each Accident
---	--

**If the firm does not own any automobiles this provision can be satisfied by having the firm's commercial general liability policy endorsed with "non-owned and hired" automobile liability coverage.**

2.02.04 Professional **Liability Insurance** shall be maintained by the Broker, insuring its legal liability arising out of the performance of the professional services governed by this Contract. Such insurance shall have a limit of not less than \$2,000,000 each occurrence and aggregate. The Broker must continue this coverage for a period of not less than four (4) years after completion of its services to the City.

**EXHIBIT VIII**

**LOCAL VENDOR CERTIFICATION PURSUANT TO CKW ORDINANCE 09-22 SECTION 2-798**

The undersigned, as a duly authorized representative of the vendor listed herein, certifies to the best of his/her knowledge and belief, that the vendor meets the definition of a “Local Business.” For purposes of this section, “local business” shall mean a business which:

- a. *Principle address as registered with the FL Department of State located within 30 miles of the boundaries of the city, listed with the chief licensing official as having a business tax receipt with its principle address within 30 miles of the boundaries of the city for at least one year immediately prior to the issuance of the solicitation.*
- b. *Maintains a workforce of at least 50 percent of its employees from the city or within 30 miles of its boundaries.*
- c. Having paid all current license taxes and any other fees due the city at least 24 hours prior to the publication of the call for bids or request for proposals.
  - o Not a local vendor pursuant to Ordinance 09-22 Section 2-798
  - o Qualifies as a local vendor pursuant to Ordinance 09-22 Section 2-798

If you qualify, please complete the following in support of the self-certification & submit copies of your County and City business licenses. Failure to provide the information requested will result in denial of certification as a local business.

Business Name

Phone:

Current Local Address:  
(P.O Box numbers may not be used to establish status)

Fax:

Length of time at this address

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
By \_\_\_\_\_, of \_\_\_\_\_  
(Name of officer or agent, title of officer or agent)      Name of corporation acknowledging)  
or has produced \_\_\_\_\_ as identification  
(type of identification)

\_\_\_\_\_  
Signature of Notary

Return Completed form with  
Supporting documents to:  
City of Key West Purchasing

\_\_\_\_\_  
Print, Type or Stamp Name of Notary

\_\_\_\_\_  
Title or Rank