

RESOLUTION NO. 20-160

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, RATIFYING AN EMERGENCY PROCUREMENT APPROVED BY THE CITY MANAGER ON APRIL 23, 2020, AS PROVIDED FOR UNDER SECTION 2-797(2) AND 2-845 OF THE CODE OF ORDINANCES, APPROVING THE ATTACHED "SECOND AMENDMENT TO TASK ORDER FOR THE DESIGN OF FREDERICK DOUGLASS GYM EXPANSION BETWEEN THE CITY AND K2M DESIGN, INC." FOR ADDITIONAL TASKS FOR THE FREDERICK DOUGLASS GYM EXTENSION PROJECT IN AN AMOUNT NOT TO EXCEED \$29,160.00; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS ON BEHALF OF THE CITY OF KEY WEST, UPON CONSENT OF THE CITY ATTORNEY; AUTHORIZING ANY NECESSARY BUDGET AMENDMENTS AND TRANSFERS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution 19-150, the City Commission authorized the City Manager to negotiate and execute a contract with the highest-ranked proposer, K2M Design, Inc., for architectural services for the Frederick Douglass Gym Extension project; and

WHEREAS, in Resolution 19-224 a Contract with K2M Design, Inc. was approved; and

WHEREAS, in Resolution 20-028 a "First Amendment to Task Order" was approved, for additional work by K2M Design; and

WHEREAS, after additional workshops and meetings with the Bahama Village Redevelopment Advisory Committee, and community organizations including the SOS Foundation, City staff recommends

ratification of the attached Second Amendment to Task Order, which provides for additional amendments and improvements to the design task order; and

WHEREAS, in response to the COVID-19 threat, the City declared a State of Local Emergency on March 15, 2020 in accordance with F.S. 252.38 and CKW Resolution 2007-182. The City most recently extended the State of Local Emergency 2020-05; and

WHEREAS, the March 23 Commission meeting was cancelled, and future meeting dates became unclear due to the Covid-19 State of Emergency, so to prevent construction delays and accompanying cost increases that would cause economic harm the City and its citizens, City staff recommended the City Manager approve an Emergency Procurement to authorize the necessary Change Order; and

WHEREAS, the City Manager acted without delay, using emergency powers authorized under Section 2-797(2) and 2-845 of the City's Code of Ordinances, to authorize and procure the necessary change order to continue design work on the Douglass Gym

WHEREAS, Section 2-797(2) of the City's Code of Ordinances requires the City Commission to ratify such emergency purchases at its next scheduled meeting.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached "Second Amendment to Task Order for Design of Frederick Douglass Gym Expansion between City of Key West and K2M Design" signed by the City Manager on April 23, 2020, as provided for under Section 2-797(2) and 2-845 of the Code of Ordinances, in an amount not to exceed \$29,160.00 is hereby ratified.

Section 2: That the City Manager or his designee is hereby authorized to execute any necessary documents, in conformance with terms and conditions contained in the Second Amendment to Task Order attached hereto, upon the advice and consent of the City Attorney.

Section 3: That this second amendment to contract will be funded from Bahama Village CRA Fund 601/Capital Improvements account number #601-5502-555-6200 (BV55021701), adjusting the contract amount from \$278,168.00 to \$307,328.00, and any necessary budget adjustments are hereby authorized.

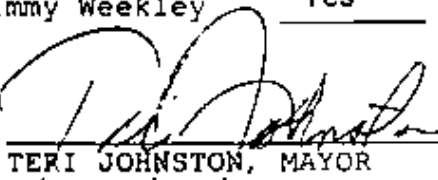
Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 19th day of August, 2020.

Authenticated by the Presiding Officer and Clerk of the Commission on 20th day of August, 2020.

Filed with the Clerk on August 20, 2020.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
TERI JOHNSTON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST  
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

## EXECUTIVE SUMMARY

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**Date:** May 5, 2020

**To:** Gregory W. Veliz, City Manager

**From:** Johnnie Yongue, P.E., Project Manager

**Cc:** Mark Finigan, Finance Director  
Steve McAlearney, Engineering Director

**Subject:** Ratification of Second Amendment to contract with K2M Design, Inc. for Design of Frederick Douglass Gym Expansion

### **Action Statement**

Ratification of Second Amendment to the contract with K2M Design Inc. for the design of the Frederick Douglass Gym Expansion. The Amendment was signed by the City Manager in accordance with purchasing exemption under Sec. 2-797 (2) Emergency Procurement. The Second Amendment to Contract with K2M Design, Inc., in the amount of \$29,160.00, alters design of the Frederick Douglass Gym Expansion to relocate the proposed kitchen to the first floor to improve effectiveness for culinary instruction and meal service programs.

### **Background**

Per City Code Section 2-797(2), City Manager may approve emergency procurement in times of threat to public health and welfare, with ratification by City Commission at the next regularly scheduled meeting.

On March 9, 2020, Governor Ron Desantis enacted Executive Order Number 20-52 declaring a public health emergency in the State of Florida. On March 15, 2020, the City of Key West declared a local state of emergency in directive 2020-01, which has been extended weekly since. In order to continue design with an uncertain date of the next Commission meeting, a purchasing exemption was appropriate.

Per Resolution 19-224, K2M Design, Inc., was awarded a contract to design the Frederick Douglass Gym Expansion. Following several presentations and public workshops, additional uses were identified by the Bahama Village Redevelopment Advisory Committee, with recommendations incorporated into the scope of work via Amendment 1, approved by Resolution 20-028.

Subsequent meetings with the SOS Foundation produced recommended changes to the design which include moving the kitchen to the first floor to better accommodate culinary instruction and meal service programs. Other suggested changes include the addition of a three-compartment sink, additional space and electric for ice machine, commercial freezers, refrigerators and warming racks.

**Purpose and Justification**

Expansion of the Frederick Douglass Gym is aligned with Infrastructure Goals 2, 3, and 5 in the 2011 Strategic Plan, which commit the City to provide parks and recreation areas distributed throughout the community which are appropriately staffed and equipped to provide safe, healthy, and constructive recreational opportunities for children, youth, and adults.

**Financial Issues**

This Amendment is in the amount of \$29,160.00. The current contract price is \$278,168.00, the revised contract amount including the Second Amendment will be \$307,328.00. Design is funded from account #601-5502-555-6200 Project Code BV55021701.

**Recommendation**

Staff recommends ratification of Emergency Procurement per Sec. 2-797 (2) to approve the Second Amendment for the Frederick Douglass Gym Expansion with K2M Design, Inc. in the amount of \$29,160.00.



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 859-3700

## PURCHASING EXEMPTION

**Date:** April 22, 2020

**To:** Greg Veliz, City Manager

**From:** Johnnie Yongue P.E., Project Manager

**CC:** Patti McLauchlin, Assistant City Manager  
Mark Finigan, Finance Director  
Steve McAlearney, Director of Engineering

**Subject:** Second Amendment to contract with K2M Design, Inc. for Design of Frederick Douglass Gym Expansion - Emergency Procurement

### Action Statement

Approve purchasing exemption under Sec. 2-797 (2) Emergency Procurement, for Second Amendment to the contract with K2M Design, Inc. in the amount of \$29,160.00, alters design of the Frederick Douglass Gym Expansion to relocate the proposed kitchen to the first floor to improve effectiveness for culinary instruction and meal service programs.

### Background

Per City Code Section 2-797(2), City Manager may approve emergency procurement in times of threat to public health and welfare, with ratification by City Commission at the next regularly scheduled meeting.

On March 9, 2020, Governor Ron Desantis enacted Executive Order Number 20-52 declaring a public health emergency in the State of Florida. On March 15, 2020, the City of Key West declared a local state of emergency in directive 2020-01, which has been extended weekly since. In order to continue design with an uncertain date of the next Commission meeting, a purchasing exemption was appropriate.

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Subsequent meetings with the SOS Foundation produced recommended changes to the design which include moving the kitchen to the first floor to better accommodate culinary instruction and meal service programs. Other suggested changes include the addition of a three-compartment sink, additional space and electric for ice machine, commercial freezers, refrigerators and warming racks.

**Purpose and Justification**

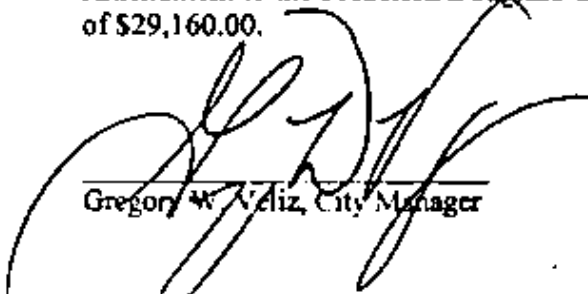
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**Recommendation**

Staff recommends approval of Emergency Procurement per Sec. 2-797 (2) for the Second Amendment to the Frederick Douglass Gym Expansion with K2M Design, Inc. in the amount of \$29,160.00.

  
\_\_\_\_\_  
Gregory W. Veliz, City Manager

4.27.20  
Date



**SECOND AMENDMENT TO TASK ORDER FOR  
DESIGN OF FREDERICK DOUGLASS GYM EXPANSION BETWEEN  
CITY OF KEY WEST AND K2M DESIGN**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of March 2020, by and between the City of Key West (the "City"), a municipal corporation organized and existing under the laws of the State of Florida, and K2M Design, Inc. (the "Consultant"), a Florida corporation.

**WITNESSETH:**

WHEREAS, the City and Consultant entered into an Agreement for Design of Frederick Douglass Gym Expansion dated August 7, 2019, (the "Agreement") for the total sum of \$236,093.00; and

WHEREAS, on February 24, 2020 the City passed resolution 20-028 to approve First amendment in the amount of \$42,075 which revised the design to include additional programs at the request of Bahama Village Redevelopment Advisory Committee, and

WHEREAS, Numerous the SOS Kitchen has provided recommended changes which make the kitchen and main hall more available for use a potential meal site; and

WHEREAS, Consultant has proposed a total cost of \$29,160 to accommodate for the revised design scope of work;

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the Consultant and the City agree that they shall comply with and be bound by all of the terms of this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

The project known as "Frederick Douglass Gym Expansion" shall be amended to relocate the proposed kitchen space on the first floor.

Except as modified herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to the Agreement on the date first written above.

ATTEST:

\_\_\_\_\_  
Cheryl Smith, City Clerk

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

CITY OF KEY WEST, FLORIDA

By: \_\_\_\_\_  
Greg Veliz, City Manager

K2M Design, Inc.

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



City of Key West  
 1300 White Street  
 Key West, FL 33040  
 Attn: Johnnie Yongue

March 5, 2020

Re: Frederick Douglass Gym Extension – Contract Amendment Number Two (Project No. 19095)

Dear Mr. Yongue,

This letter is Amendment Number 2 to the Agreement ("Agreement") between K2M Design, Inc. ("Architect / Engineer") and City of Key West ("Client") for the performance of services in connection with Frederick Douglass Gym Extension ("Project"). The purpose of this letter is to request additional funds for the schematic design and design development phase drawings associated with relocating the kitchen and storage room from the second floor to the first floor and the computer lab from the first floor to the second floor. This Amendment is effective as of the date of this letter. All other terms and conditions of the Agreement not previously amended or specifically modified by this Amendment remain in effect.

Services include:

- Architectural Schematic Design floor plan showing the relocation of the kitchen, storage room, and computer lab based on pre-determined design criteria provided by the City of Key West.
- Design Development phase drawings for the modified floor plan per approved schematic. Design Development shall include architectural, mechanical, electrical, plumbing, and interior design drawings.
- (1) Client meeting for review of Schematic Design requirements for (1) hour.
- (1) Client meeting for review of Schematic Design drawing set for (2) hours.
- (1) Client meeting for review of Design Development drawing set for (2) hours.

Note: Client to provide written approval of modifications prior to the start of each design phase.

A fixed fee of TWENTY-NINE THOUSAND ONE HUNDRED SIXTY DOLLARS (\$29,160.00) is requested to complete these services. Design Phase Services will be completed within 40 days of execution.

	Schematic Design		49.0	\$ 126.73	\$ 6,210.00
Activity	Discipline	Role	Hours	Rate	Subtotal
Design Phase Kickoff Meeting	Architecture	Architect III	1.0	\$ 140.00	\$ 140.00
	Architecture	Designer II	1.0	\$ 110.00	\$ 110.00
Client Review Meeting	Architecture	Architect III	2.0	\$ 140.00	\$ 280.00
Schematic Design Drawings	Architecture	Designer II	24.0	\$ 110.00	\$ 2,640.00
Schematic Design Coordination	Architecture	Architect III	5.0	\$ 140.00	\$ 700.00
QA/QC	Architecture	Senior Project Manager III	4.0	\$ 165.00	\$ 660.00
Client Submittal	Architecture	Architect III	2.0	\$ 140.00	\$ 280.00

BUILDING RELATIONSHIPS BASED ON TRUST AND RESULTS.

K2MDESIGN.COM  
 PROF. REG. AA26001059  
 CA No: 30945

305.292.7722 • 1150 Virginia Street • Key West, FL 33040  
 305.289.7980 • 3000 Overseas Highway • Marathon, FL 33050  
 305.307.5842 • 95360 Overseas Highway, Ste 9 • Key Largo, FL 33037

Presentation / Review Meeting	Architecture	Architect III	2.0	\$ 140.00	\$ 280.00
Schematic Design Refinement and Reissue	Architecture	Architect III	8.0	\$ 140.00	\$ 1,120.00
	<b>Design Development</b>		<b>151.0</b>	<b>\$ 132.88</b>	<b>\$ 20,065.00</b>
<b>Activity</b>	<b>Discipline</b>	<b>Role</b>	<b>Hours</b>	<b>Rate</b>	<b>Subtotal</b>
Design Phase Kickoff Meeting	Architecture	Project Manager	1.0	\$ 140.00	\$ 140.00
	M/P Engineering	Principal	1.0	\$ 225.00	\$ 225.00
Design Development Drawings	Architecture	Designer II	32.0	\$ 110.00	\$ 3,520.00
	Interior Design	Designer II	6.0	\$ 105.00	\$ 630.00
	M/P Engineering	Engineer II	50.0	\$ 125.00	\$ 6,250.00
	Electrical Engineering	Engineer III	22.0	\$ 170.00	\$ 3,740.00
	Structural Engineering	Engineer III	14.0	\$ 125.00	\$ 1,750.00
Design Development Refinement	Architecture	Architect III	12.0	\$ 140.00	\$ 1,680.00
QA/QC	Architecture	Senior Project Manager III	4.0	\$ 165.00	\$ 660.00
	Electrical Engineering	Senior Engineer	2.0	\$ 170.00	\$ 340.00
	M/P Engineering	Senior Engineer	3.0	\$ 170.00	\$ 510.00
	Structural Engineering	Senior Engineer	2.0	\$ 170.00	\$ 340.00
Presentation / Review Meeting	Architecture	Architect III	2.0	\$ 140.00	\$ 280.00
	<b>Project Management</b>		<b>22.0</b>	<b>\$ 131.14</b>	<b>\$ 2,885.00</b>
<b>Activity</b>	<b>Discipline</b>	<b>Role</b>	<b>Hours</b>	<b>Rate</b>	<b>Subtotal</b>
Design Coordination	Architecture	Architect III	12.0	\$ 140.00	\$ 1,680.00
Scheduling	Architecture	Architect III	4.0	\$ 140.00	\$ 560.00
Engineering Coordination	Architecture	Architect III	3.0	\$ 140.00	\$ 420.00
Internal Project Management	Admin	Administration	3.0	\$ 75.00	\$ 225.00

BUILDING RELATIONSHIPS BASED ON TRUST AND RESULTS.

If the terms of this Amendment meet with your approval, please indicate by signing and returning one copy of this letter to us. If you have any questions, please do not hesitate to call. Thank you.

Very Truly Yours,



Scott C. Maloney, AIA, NCARB, LEED AP  
President

Authorization:

Client Name

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature (signer represents that she or he is legally  
authorized to sign on behalf of client)

BUILDING RELATIONSHIPS BASED ON TRUST AND RESULTS.

**AGREEMENT**

**between**

**CITY OF KEY WEST**

**and**

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**ARCHITECTURAL SERVICES:**

**FREDERICK DOUGLASS GYM EXTENSION RENOVATIONS**

**KEY WEST, FLORIDA**

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

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

## **ARTICLE 1**

### **DEFINITIONS AND IDENTIFICATIONS**

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

- 1.1. **Agreement:** This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CITY's RFQ 19-001 Architectural Services for the Frederick Douglass Gym Extension Renovations, CONSULTANT's Response to RFQ dated \_\_\_\_\_, 2019, exhibits, Works, and supplemental documents that are by this provision expressly incorporated herein by reference.
- 1.2. **Commissioners:** Members of the City Commission with all legislative powers of the CITY vested therein.
- 1.3. **CONSULTANT:** The architect selected to perform the services pursuant to this Agreement.
- 1.4. **Contract Administrator:** The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5. **Contractor:** The person, firm, corporation or other entity that enters into an agreement with CITY to perform the construction work for the Work.
- 1.6. **CITY:** City of Key West.

## **ARTICLE 2**

### **PREAMBLE**

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

- 2.1. The CONSULTANT is not entitled to receive, and the CITY is not obligated to pay, any fees or expenses in excess of the amount budgeted for Works authorized under this Agreement in each fiscal year (October 1-

September 30) by CITY. The budgeted amount may only be modified per City Ordinance(s).

- 2.2. The CITY has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform the services hereunder based on the Request for Qualifications 17-001 incorporated by reference and made a part hereof and the Response to the Request for Qualifications from Consultant dated \_\_\_\_\_, 20\_\_, incorporated by reference and made part of.
- 2.3. Negotiations pertaining to the services to be performed by CONSULTANT were undertaken between CONSULTANT and staff selected by the Commission, and this Agreement incorporates the results of such negotiations.

### **ARTICLE 3**

#### **SCOPE OF SERVICES AND STANDARD OF CARE**

- 3.1. CONSULTANT's services may include but are not limited to the following in regard to the Agreement:

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

- 3.2. CONSULTANT's services shall include Architectural design services, including, but not limited to, building and structure design, general site design, consulting for facilities planning, surveying, permitting, preliminary and ongoing cost estimating, auto CAD services, on-site construction services, and any other lawful professional Architectural services that the CONSULTANT is qualified to provide and that the CITY authorizes the CONSULTANT to undertake in connection with this Agreement. CONSULTANT shall provide all necessary, incidental and related activities and services as required.
- 3.3. CONSULTANT and CITY acknowledge that the Scope of Services does not delineate every detail and minor work task required to be performed by CONSULTANT to complete any particular task order. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Task Order which is, in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator in writing in a timely manner before proceeding with the Work. If CONSULTANT proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written CITY approval or modification of Work is at CONSULTANT's sole risk.
- 3.4. The specific services to be provided by the CONSULTANT and the compensation for such services shall be as mutually agreed to in this AGREEMENT.
- 3.5. The CITY may make or approve changes within the general Scope of Services. If such changes affect the CONSULTANT'S cost of or time required for performance of the services, an equitable adjustment shall be made.
- 3.6. The CONSULTANT shall begin services when authorized by a Purchase Order issued by the CITY and delivered to CONSULTANT.

- 3.7. The CITY and CONSULTANT may negotiate additional scopes of services, compensation, time of performance and other related matters as allowed by this Agreement. If CITY and CONSULTANT cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY and procure services from another source.
- 3.8. CONSULTANT shall perform the professional services under this Agreement at the level customary for competent and prudent professionals in CONSULTANT'S field performing such services at the time and place where the services are provided. In the event CONSULTANT does not comply with this standard, and omissions or errors are made by CONSULTANT, CONSULTANT will correct such work that contains errors or omissions and reimburse CITY through compensation for damages.
- 3.9. CONSULTANT is required to perform the Work consistent with current applicable Federal, State and City laws, codes and regulations that pertain to the Work. Where changes to any laws, codes or regulations affecting work have an effective date or are anticipated to be effective at a future date, or if knowledge of anticipated changes is available to CONSULTANT or any sub-consultant, CONSULTANT shall present options for their use or implementation.
- 3.10. Construction Responsibility - Notwithstanding anything in this Agreement, CONSULTANT shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety measures, precautions and programs including enforcement of Federal and State safety requirements, in connection with construction work performed by CITY's construction contractors.
- 3.11. Estimates - Since CONSULTANT has no control over local conditions, the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, CONSULTANT does not guarantee the accuracy of any opinions of probable construction cost as compared to construction contractor's bids or the actual cost to the CITY.

#### **ARTICLE 4**

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

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

- 4.1. CONSULTANT shall perform the services described in this Agreement within the time periods specified.
- 4.2. In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Work, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, CITY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CONSULTANT to notify CITY within 10 days in writing whenever a delay in approval by a governmental agency, including CITY, is anticipated or experienced, and to inform the Contract Administrator of all facts and details related to the delay.
- 4.4. In the event the Contractor fails to substantially complete the Work on or before the substantial completion date specified in its agreement with CITY or if Contractor is granted an extension of time beyond said substantial completion date, and CONSULTANT's services are extended beyond the substantial completion date, through no fault of CONSULTANT, CONSULTANT shall be compensated in accordance with Article



5 for all services rendered by CONSULTANT beyond the substantial completion date.

- 4.5. In the event Contractor fails to substantially complete the Work on or before the substantial completion date specified in its agreement with CITY, and the failure to substantially complete is caused in whole or in part by a negligent act, error or omission of CONSULTANT, then CONSULTANT shall pay to CITY its proportional share of any claim or damages to Contractor or CITY arising out of the delay. This provision shall not affect the rights and obligations of either party as set forth in Paragraph 7.8, INDEMNIFICATION OF CITY.

## ARTICLE 5

### COMPENSATION AND METHOD OF PAYMENT

#### 5.1. AMOUNT AND METHOD OF COMPENSATION

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

5.1.1. Lump sum payment/Not-to-Exceed, which includes compensation for all the CONSULTANT'S salaries, general overhead costs, direct expenses, and profit.

5.1.1.1. If Work timing deviates from the assumed schedule for causes beyond CONSULTANT's control, CONSULTANT and/or the CITY reserves the right to request renegotiation of those portions of the lump sum affected by the time change. During construction contract administration, if tasked, it is agreed by both parties that whether construction is completed earlier or later, that a proportional part of the compensation will be adjusted and either given to CONSULTANT for additional work or deleted from the amount owed CONSULTANT for less time required.

5.1.1.2. In the event of a change of scope, CITY shall authorize in writing an appropriate decrease or increase in compensation.

5.1.1.3. Monthly invoicing will be based on an estimate of the percent of work completed at the end of the preceding month.

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

5.1.2. Cost Reimbursable-Per Diem (Time and Expenses)

5.1.2.1. Per diem rates are those hourly or daily rates charged for work performed on the WORK by CONSULTANT's employees of the indicated classifications and include all salaries, overheads, and profit, but do not include allowances for Direct Expenses. These rates are subject to annual adjustments based on the Consumer Price Index Urban U.S. City Average All Items U.S. Department of Labor Bureau of Labor Statistics.

5.1.2.2. Hourly rates for the contract (CONSULTANT AND Sub-consultants):  
See attached Exhibit A.

5.1.2.3. A Not-to-Exceed budgetary amount will be established for the Work. This budgetary amount shall not be exceeded unless prior written approval is provided by the CITY. CONSULTANT shall make

reasonable efforts to complete the Work within the budget and will keep CITY informed of progress toward that end so that the budget or work effort can be adjusted if found necessary.

5.1.2.5. CONSULTANT is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is CITY obligated to pay CONSULTANT beyond these limits.

5.1.2.6. When any budget has been increased, CONSULTANT's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.

## **5.2. REIMBURSABLE EXPENSES**

5.2.1.1. Direct non-salary expenses, entitled Reimbursable Expenses, directly attributable to the Work shall be charged at actual cost, and shall be limited to the following:

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

5.2.1.3. Identifiable per diem, meals and lodgings, taxi fares, automobile rental, and miscellaneous travel-connected expenses for CONSULTANT's personnel subject to the limitations of Section 112.061 Florida Statutes. Meals for class C travel inside the City of Key West will not be reimbursed. Lodging will be reimbursed only for room rates equivalent to Hampton Inn or Best Western located within the City of Key West city limits.

5.2.1.4. Identifiable communication expenses approved by Contract Administrator, long distance telephone, courier and express mail utilized to render the services required by this Agreement.

5.2.1.5. Cost of printing, reproduction or photography that is required by or of CONSULTANT to deliver services set forth in this Agreement.

5.2.1.6. Identifiable testing costs approved by Contract Administrator.

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

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

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

## **5.3. METHOD OF BILLING**

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

CONSULTANT shall submit billings identifying type of work completed on a monthly basis in a timely

manner. These billings shall identify the nature of the work performed and the estimated percent of work accomplished. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, CONSULTANT shall provide backup for past and current invoices that record hours, personnel, and expense costs on a task basis, so that total hours and costs by task may be determined.

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

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

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

**5.4. METHOD OF PAYMENT**

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

5.4.2. In the event CONSULTANT has utilized a Sub-consultant to perform the Work, CONSULTANT will be required to provide documentation that Sub-consultant and Sub-consultants of Sub-consultants have been paid prior to payment being made to CONSULTANT.

5.4.3. Payment will be made to CONSULTANT at:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **ARTICLE 6**

### **CITY'S RESPONSIBILITIES**

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

## **ARTICLE 7**

### **MISCELLANEOUS**

#### **7.1. OWNERSHIP OF DOCUMENTS**

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

#### **7.2. TERMINATION**

7.2.1. This Agreement may be terminated with or without cause by CITY at any time.

7.2.2. Notice of termination shall be provided in accordance with paragraph 7.12 NOTICES of this Agreement.

7.2.3. In the event this Agreement is terminated, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 7.1 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment of profit for services that have not been performed.

#### **7.3. AUDIT RIGHT AND RETENTION OF RECORDS**

7.3.1. CITY shall have the right to audit the books, records, and accounts of CONSULTANT that are related to any Work. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to

record complete and correct entries related to the Work.

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

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

7.4.1. CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

7.4.2. CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity or expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor that can not be lawfully or appropriately used as a basis for service delivery. CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, gender identity or expression, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

7.4.3. Consultant shall comply with City Ordinance Sec. 2-799 Requirements for City Contractors to Provide Equal Benefits for Domestic Partners

#### **7.5. PUBLIC ENTITY CRIMES ACT**

7.5.1. CONSULTANT represents that the execution of this Agreement shall not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in being barred from CITY's competitive procurement activities.

7.5.2. In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any sub-consultant, has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

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

## 7.6. SUB-CONSULTANTS

CONSULTANT may use the sub-consultants identified in the proposal that was a material part of the selection of CONSULTANT to provide the services under this Agreement. The CITY reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and to inspect all facilities of any sub-consultants in order to make determination as to the capability of the sub-consultant to perform properly under this Contract. The CITY's acceptance of a sub-consultant shall not be unreasonably withheld. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or adding to the list of sub-consultants. The list of sub-consultants submitted and hourly rates for such said Sub-consultants are as on attached Exhibit A.

## 7.7. ASSIGNMENT AND PERFORMANCE

7.7.1. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 7.6.

7.7.2. CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

7.7.3. CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of CITY shall be in accordance with the standard of care set forth in Paragraph 3.6.

7.7.4. CONSULTANT shall not change or replace overall project manager identified in the CONSULTANT's response to the RFQ without the Contract Administrator's prior written approval.

## 7.8. INDEMNIFICATION OF CITY

7.8.1. To the fullest extent permitted by law, the CONSULTANT expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents, and employees (herein called the "indemnities") from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claims by indemnities for indemnification shall be limited to the amount of CONSULTANT's insurance or \$1 million per occurrence, whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the RFQ documents, if any.

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

**7.9. INSURANCE**

7.9.1. CONSULTANT is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for workers' compensation, public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the CONSULTANT shall provide the minimum limits of liability insurance coverage as follows:

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

7.9.2. CONSULTANT shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as an additional insured on all policies— excepting Professional Liability—on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of City of Key West on all policies. CONSULTANT will maintain the Professional Liability, General Liability, and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the additional insured endorsement until at least 3 years beyond completion and delivery of the work contracted herein.

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

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

7.9.5. CONSULTANT's insurance policies shall be endorsed to give 30 days written notice to the City of Key West in the event of cancellation or material change, using form CG 02 24, or its equivalent.

7.9.6. Certificates of Insurance submitted to the City of Key West will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary. PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.

7.9.7. CONSULTANT will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. CONSULTANT will notify City of Key West immediately by telephone at (305) 809-3964 any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the CONSULTANT.

7.9.8. It shall be the responsibility of the Consultant to ensure that all sub-consultants/subcontractors comply with the same insurance requirements as is required of Consultant.

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

#### **7.10. REPRESENTATIVE OF CITY AND CONSULTANT**

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

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

#### **7.11. ALL PRIOR AGREEMENTS SUPERSEDED**

7.11.1. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document and the exhibits attached. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

7.11.2. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

#### **7.12. NOTICES**

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by



written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR CITY OF KEY WEST:

City of Key West  
1300 White Street  
Key West, FL 33040

FOR CONSULTANT:

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7.13. TRUTH-IN-NEGOTIATION CERTIFICATE**

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

**7.14. INTERPRETATION**

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

**7.15. CONSULTANT'S STAFF**

7.15.1. CONSULTANT shall provide the key staff identified in their proposal for Task Order as long as such key staffs are in CONSULTANT's employment.

7.15.2. CONSULTANT shall obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator shall be reasonable in evaluating key staff qualifications.

7.15.3. If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract

Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.

7.15.4. The CITY reserves the right to approve the members of the Consulting Team and the roles they will undertake in the assignment. The CITY's acceptance of a team member shall not be unreasonably withheld.

7.15.5. Each assignment issued under this Agreement by the CITY to the Consultant, the Consultant will at the CITY's request, disclose the role, qualifications and hourly rate of each individual working on the assignment.

7.15.6. The CITY reserves the right to require replacement of any of the members of the Consulting Team. Any proposed addition or change of members of the Consulting Team initiated by the Consultant must obtain the CITY Representative's prior written approval.

7.15.7. In the event of the death, incapacity or termination of employment of any member of the Consulting Team before Completion of the Services, the Consultant shall at its own expense and as soon as reasonably practicable arrange to substitute or replace the individual member concerned.

7.15.8. The Consultant shall ensure that the substitute or replacement is no less qualified in terms of relevant experience and qualifications than the outgoing individual and is available at the relevant time to act as such replacement or substitute. The Consultant shall without delay forward curriculum vitae of the proposed substitute or replacement to the CITY. The deployment of such substitute or replacement shall be subject to the CITY's consent.

7.15.9. The Consultant shall solely be responsible for all direct, indirect and consequential costs or losses that may arise from the substitution or replacement of members of the Consulting Team.

#### 7.16. INDEPENDENT CONTRACTOR

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

#### 7.17. THIRD PARTY BENEFICIARIES

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

#### 7.18. CONFLICTS

7.18.1. Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

7.18.2. CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding.

The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

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

#### **7.19. CONTINGENCY FEE**

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

#### **7.20. WAIVER OF BREACH AND MATERIALITY**

7.20.1. Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

7.20.2. CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

#### **7.21. COMPLIANCE WITH LAWS**

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

#### **7.22. SEVERABILITY**

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

#### **7.23. JOINT PREPARATION**

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

#### **7.24. PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement,

requirement, or provision contained in Articles 1 through 7 of this Agreement shall prevail and be given effect.

**7.25. APPLICABLE LAW AND VENUE**

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

**7.26. INCORPORATION BY REFERENCE**

The attached exhibits are incorporated into and made a part of this Agreement: *Exhibit A - CONSULTANT/Sub-consultants' Hourly Rates; Exhibit B - RFQ #19-002; Exhibit C - Consultants Proposal*

**7.27. COUNTERPARTS**

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

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

By: CITY OF KEY WEST

*J. Scholl*  
James Scholl, City Manager

By: CONSULTANT

*[Signature]*  
(Signature)

JOSEPH MOORE, Director K2M Design  
(Print Name and Title)

9 day of AUGUST 2019

7 day of Aug 2019



*Cheryl Smith*  
Cheryl Smith, City Clerk

Attest:

*[Signature]*  
(Signature)

L. Fred Havel, Sr. construction Mgr  
(Print Name and Title)

9 day of August 2019

7 day of Aug 2019