

**AGREEMENT**

**between**

**CITY OF KEY WEST**

**and**

**STANTEC CONSULTING SERVICES, INC.**

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**for**

**CITY PLANNING SERVICES**

**KEY WEST, FLORIDA**

This is an Agreement between: CITY OF KEY WEST, its successors and assigns, hereinafter referred to as "CITY," and Stantec Consulting Services, Inc., a corporation organized under the laws of the State of New York, its successors and assigns, hereinafter referred to as "PLANNING CONTRACTOR".

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

## **ARTICLE 1**

### **DEFINITIONS AND IDENTIFICATIONS**

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

- 1.1. Agreement:** This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CITY's RFQ #22-009, PLANNING CONTRACTOR's Response to RFQ dated October 11, 2022, Exhibits, Task Orders, and supplemental documents that are by this provision expressly incorporated herein by reference.
- 1.2. Commissioners:** Members of the City Commission with all legislative powers of the CITY vested therein.
- 1.3. PLANNING CONTRACTOR:** The firm selected to perform the services pursuant to this Agreement.
- 1.4. Contract Administrator:** The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5. CITY:** City of Key West.
- 1.6. Task Order:** A detailed description of a particular service or services to be performed by PLANNING CONTRACTOR under this Agreement.

## **ARTICLE 2**

### **PREAMBLE**

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

- 2.1. The PLANNING CONTRACTOR is not entitled to receive, and the CITY is not obligated to pay, any fees or expenses in excess of the amount budgeted for Task Orders authorized under this Agreement in each fiscal year (October 1-September 30) by CITY. The budgeted amount may only be modified per City Ordinance(s).
  
- 2.2. Negotiations pertaining to the services to be performed by PLANNING CONTRACTOR were undertaken between PLANNING CONTRACTOR 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. PLANNING CONTRACTOR's services may include but are not limited to the following in regard to the Agreement:
  - 3.1.1. Development review/current planning functions
  - 3.1.2. Long range planning/policy functions
  - 3.1.3. Transportation planning services
  - 3.1.4. Historic architectural plan review and analysis function
  - 3.1.5. Other day to day Planning Department functions as assigned
  
- 3.2. PLANNING CONTRACTOR's services shall include functions described in paragraph 3.1., and any other lawful professional Planning services that the PLANNING CONTRACTOR is qualified to provide, and that the CITY authorizes the PLANNING CONTRACTOR to undertake in connection with this Agreement. PLANNING CONTRACTOR shall provide all necessary, incidental and related activities and services as required.
  
- 3.3. PLANNING CONTRACTOR and CITY acknowledge that the Scope of Services does not delineate every detail and minor work task required to be performed by PLANNING CONTRACTOR to complete any particular task order. If, during the course of the performance of the services included in this Agreement, PLANNING CONTRACTOR determines that work should be performed to complete the Task Order which is, in the PLANNING CONTRACTOR's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, PLANNING CONTRACTOR shall notify Contract Administrator in writing in a timely manner and seek approval of the CITY before proceeding with the work. If PLANNING CONTRACTOR 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 PLANNING CONTRACTOR outside the originally anticipated level of effort without prior written CITY approval or modification of Task Order is at PLANNING CONTRACTOR's sole risk.
  
- 3.4. The specific services to be provided by the PLANNING CONTRACTOR and the compensation for such services shall be as mutually agreed to in separate Task Orders to this AGREEMENT and in accordance with the Proposal attached hereto as AGREEMENT Exhibit A or in accordance with the rate/fee scheduled attached hereto as AGREEMENT Exhibit B. Each Task Order when fully executed shall become a supplement to and a part of this AGREEMENT.
  - 3.4.1. Each Task Order shall be supported by appropriate cost and pricing data and such other documentation as required by the CITY.
  - 3.4.2. Task Orders shall be numbered consecutively as specified by CITY. Each Task Order shall include a description of the scope of services and specified deliverables, time of completion, total estimated costs of services, and method of compensation. Additional information shall be provided to the CITY if required. Amended Task Orders shall include substantially the same information and be submitted to the CITY for approval.

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

## ARTICLE 4

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

The term of this Agreement shall be for a period of three (3) years from the effective date of the Agreement with the option of a two (2) year renewal. The Agreement will be in effect upon execution by both parties. The Agreement may be renewed at the discretion of the CITY.

- 4.1. PLANNING CONTRACTOR shall perform the services described in each Task Order within the time periods specified. Each such time period shall commence from the date of the purchase order issued for such services. Any amendment to such time period must be agreed to by CITY in writing.
- 4.2. PLANNING CONTRACTOR must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent Task Order. Prior to granting approval for PLANNING CONTRACTOR to proceed to a subsequent Task Order, the Contract Administrator may, at his or her sole option, require PLANNING CONTRACTOR to submit any deliverables/documents for the Contract Administrator's review.
- 4.3. In the event PLANNING CONTRACTOR is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Task Order, and such delays are not the fault of PLANNING CONTRACTOR, or because of delays which were caused by factors outside the control of PLANNING CONTRACTOR, 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 PLANNING CONTRACTOR 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.

## 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 PLANNING CONTRACTOR's services, are limited to the following, subject to this agreement:

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

5.1.1.1. If Work timing deviates from the assumed schedule for causes beyond PLANNING CONTRACTOR's control, PLANNING CONTRACTOR and/or the CITY reserves the right to request renegotiation of those portions of the lump sum affected by the time change.

5.1.1.2. Each major task or project the CITY wishes CONSULTANT to perform will be defined in a Task Order which shall include, but not be limited to, a description of the scope of services, time of completion, type of professional involved (hourly wage) and the total estimated hours required to complete the tasking. Unless authorized by the City, the total hours invoiced for a specific task or project shall not exceed the initially approved task order amount.

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

5.1.1.4. Monthly invoicing will be based on actual hours of work completed at the end of the preceding month.

5.1.1.5. The PLANNING CONTRACTOR shall submit wage rates and other actual unit costs supporting the compensation. The CITY shall pay the PLANNING CONTRACTOR on an hourly basis in accordance with the agreed upon hourly rates. The PLANNING CONTRACTOR 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 PLANNING CONTRACTOR'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 (PLANNING CONTRACTOR AND Sub-consultants): See attached Exhibit ~~C~~ **B**.

5.1.2.3. PLANNING CONTRACTOR and Sub-consultants allowed annual wage adjustment on the Agreement effective anniversary dates shall not exceed the Data Resource Institute (DRI) forecast of wage and price escalation (the U.S. Bureau of Labor Statistics [BLS] Employment Cost Index [ECI] for Private Industry)

5.1.2.4. A budgetary amount will be established for each Task Order. This budgetary amount shall not be exceeded unless written approval is provided by the CITY. PLANNING CONTRACTOR 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. PLANNING CONTRACTOR is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is CITY obligated to pay PLANNING CONTRACTOR beyond these limits.

5.1.2.6. When any budget has been increased, PLANNING CONTRACTOR'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 increased.

## **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 PLANNING CONTRACTOR'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 PLANNING CONTRACTOR to deliver services set forth in this Agreement.

5.2.1.6 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.

5.2.1.7 It is acknowledged and agreed to by PLANNING CONTRACTOR 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 PLANNING CONTRACTOR for direct, non-salary expenses. If CITY or Contract Administrator requests PLANNING CONTRACTOR to incur expenses not contemplated in the amount for Reimbursable Expenses, PLANNING CONTRACTOR 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.

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

#### **5.3.1. Lump Sum Compensation by Task Order**

PLANNING CONTRACTOR shall submit Task Order billings identifying type of work completed on a monthly basis in a timely manner. These Task Order billings shall identify the nature of the work performed, identifying the specific task or project, and the estimated 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, PLANNING CONTRACTOR shall provide backup for past and current invoices that record hours, personnel, and expense costs on a task basis, so that total hours and costs by task may be determined. Unless authorized by the City, the total hours invoiced for a specific task or project shall not exceed the initially approved task order amount.

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

PLANNING CONTRACTOR 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 PLANNING CONTRACTOR is not acceptable except for meals and travel expenses. Appropriate PLANNING CONTRACTOR's cost accounting forms with a summary of charges must document internal expenses by category. When requested, PLANNING CONTRACTOR 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.

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

- 5.4.1 CITY shall pay PLANNING CONTRACTOR within forty-five (45) calendar days from receipt of PLANNING CONTRACTOR's proper invoice with documentation as provided above.
- 5.4.2 Payment will be made to PLANNING CONTRACTOR at:

Address: Stantec Consulting Services, Inc.  
13980 Collections Center Drive  
Chicago, IL 60693  
United States, Federal Tax ID: 11-2167170

#### **ARTICLE 6**

##### **CITY'S RESPONSIBILITIES**

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

## ARTICLE 7

### MISCELLANEOUS

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

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

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

**PLANNING CONTRACTOR'S failure or refusal to comply with the provisions of this Article shall result in the immediate termination of this Agreement by the CITY.**

#### **7.2. TERMINATION**

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

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

7.2.3. In the event this Agreement is terminated, PLANNING CONTRACTOR 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, PLANNING CONTRACTOR 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 PLANNING CONTRACTOR that are related to any Task Order. PLANNING CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Task Order.
  
- 7.3.2. PLANNING CONTRACTOR 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 PLANNING CONTRACTOR's records, PLANNING CONTRACTOR shall comply with all requirements thereof; however, PLANNING CONTRACTOR 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. PLANNING CONTRACTOR 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. PLANNING CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity or expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor that cannot be lawfully or appropriately used as a basis for service delivery. PLANNING CONTRACTOR shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, gender identity or expression, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeships), and accessibility.
- 7.4.3. PLANNING CONTRACTOR 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. PLANNING CONTRACTOR 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, planner 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 planner 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, PLANNING CONTRACTOR 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 PLANNING CONTRACTOR has been placed on the convicted vendor list.
- 7.5.3. PLANNING CONTRACTOR 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**

PLANNING CONTRACTOR may use the sub-consultants identified in the proposal that was a material part of the selection of PLANNING CONTRACTOR 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. PLANNING CONTRACTOR 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 currently approved is as follows:

- a. Shulman + Associates
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

Hourly rates for such said Sub-consultants are as on attached Addendum A. The PLANNING CONTRACTOR shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the services provided.

**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 PLANNING CONTRACTOR shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 7.6.
- 7.7.2. PLANNING CONTRACTOR 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. PLANNING CONTRACTOR shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of PLANNING CONTRACTOR'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. PLANNING CONTRACTOR shall not change or replace overall project manager identified in the PLANNING CONTRACTOR'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 PLANNING CONTRACTOR 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 PLANNING CONTRACTOR, 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 PLANNING CONTRACTOR's insurance or \$1 million per occurrence, whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any.

7.8.2. The indemnification obligations under the 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 PLANNING CONTRACTOR 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 PLANNING CONTRACTOR or of any third party to whom PLANNING CONTRACTOR 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. PLANNING CONTRACTOR 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 PLANNING CONTRACTOR 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. PLANNING CONTRACTOR 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 and Workers' Compensation—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. PLANNING CONTRACTOR will maintain the Professional Liability insurance 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 PLANNING CONTRACTOR shall maintain complete worker's compensation coverage for each and every employee, principal, officer, representative, or agent of the PLANNING CONTRACTOR who is performing any labor, services, or material under the Contract. Further, PLANNING CONTRACTOR 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

7.9.4. If the work is being done on or near a navigable waterway, PLANNING CONTRACTOR's workers compensation policy shall be endorsed to provide USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage if specified by the City of Key West. PLANNING CONTRACTOR shall provide the City of Key West with a Certificate of Insurance verifying compliance with the workers' compensation coverage as set forth herein and shall provide as often as required by the City of Key West such certification which shall also show the insurance company, policy number, effective and expiration date, and the limits of worker's compensation coverage under each policy.

7.9.5. PLANNING CONTRACTOR'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. PLANNING CONTRACTOR will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. PLANNING CONTRACTOR 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 PLANNING CONTRACTOR.

- 7.9.8. It shall be the responsibility of the PLANNING CONTRACTOR to ensure that all sub-consultants/subcontractors comply with the same insurance requirements as is required of PLANNING CONTRACTOR.
- 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 PLANNING CONTRACTOR 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 PLANNING CONTRACTOR 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 PLANNING CONTRACTOR to take out and/or maintain any required insurance shall not relieve the PLANNING CONTRACTOR from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the PLANNING CONTRACTOR concerning indemnification.

#### **7.10. REPRESENTATIVE OF CITY AND PLANNING CONTRACTOR**

- 7.10.1. The parties recognize that questions in the day-to-day conduct of the Task Order will arise. The Contract Administrator, is the PLANNING DEPARTMENT DIRECTOR or City Manager's designee if the Director is absent. Upon PLANNING CONTRACTOR's request, the Contract Administrator shall advise PLANNING CONTRACTOR in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Task Order shall be addressed.
- 7.10.2. PLANNING CONTRACTOR shall inform the Contract Administrator in writing of PLANNING CONTRACTOR's representative to whom matters involving the conduct of the Task Order shall be addressed.

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

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

## 7.12. NOTICES

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

If to Planning Contractor:

If to City:

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

With copies to:

City Attorney  
P.O. Box 1409  
Key West, Florida 33041

AND

Contract Administrator (Planning Director)  
P.O. Box 1409  
Key West, Florida 33041

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

Signature of this Agreement by PLANNING CONTRACTOR shall act as the execution of a truth-in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of

contracting. The original contract price for any Task Order and any additions thereto shall be adjusted to exclude any significant sums, by which CITY determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

### **7.14. INTERPRETATION**

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence or 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. PLANNING CONTRACTOR'S STAFF**

7.15.1. PLANNING CONTRACTOR shall provide the key staff identified in their proposal for Task Order as long as such key staffs are in PLANNING CONTRACTOR's employment. Key Staff as referenced in this agreement shall mean a Project Manager, a Principal Planner, a Senior Planner, other junior Planners, Architects, and Transportation Planners, if requested.

7.15.2. PLANNING CONTRACTOR shall obtain prior written approval of Contract Administrator (the Planning Department Director) prior to changing key staff. PLANNING CONTRACTOR 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. Contract Administrator may request removal of any of PLANNING CONTRACTOR's staff at his or her discretion.

7.15.4. The CITY reserves the right to approve the members of the Key Staff and the roles they will undertake in the assignment.

- 7.15.5. Each assignment issued under this Agreement by the CITY to the PLANNING CONTRACTOR, the PLANNING CONTRACTOR 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 PLANNING CONTRACTOR 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 PLANNING CONTRACTOR shall at its own expense and as soon as reasonably practicable arrange to substitute or replace the individual member concerned subject to section 7.15.
- 7.15.8. The PLANNING CONTRACTOR 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 PLANNING CONTRACTOR 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 PLANNING CONTRACTOR 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**

PLANNING CONTRACTOR is an independent contractor under this Agreement. Services provided by PLANNING CONTRACTOR shall be subject to the supervision of PLANNING CONTRACTOR. In providing the services, PLANNING CONTRACTOR 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 PLANNING CONTRACTOR 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 PLANNING CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with PLANNING CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Agreement.

7.18.2. PLANNING CONTRACTOR 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 addition to the above and to avoid any conflict of interest of any appearance thereof, PLANNING CONTRACTOR shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.) or anyone doing business with the CITY.

7.18.4. In the event PLANNING CONTRACTOR is permitted to use sub-consultants to perform any services required by this Agreement, PLANNING CONTRACTOR 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**

PLANNING CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for PLANNING CONTRACTOR, 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 PLANNING CONTRACTOR, 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 PLANNING CONTRACTOR 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**

PLANNING CONTRACTOR 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 and shall obtain all required permits from all jurisdictional agencies to perform the services under this Agreement at its own expense. In addition, at the time each Task Order is executed, any revisions to applicable federal state, and local laws, codes, ordinances, rules and regulations shall apply.

#### **7.22. SEVERABILITY**

In the event this Agreement or a portion or a term of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable to the fullest extent permitted by law unless CITY or PLANNING CONTRACTOR elects to terminate this Agreement.

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

Preparation of this Agreement has been a joint effort of CITY and PLANNING CONTRACTOR 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 or addenda 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, litigation or any other legal proceeding shall be Monroe County, Florida, Lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

#### **7.26. INCORPORATION BY REFERENCE**

The attached exhibits are incorporated into and made a part of this Agreement: **Exhibit A the PLANNING CONTRACTOR's response**, Exhibit B is PLANNING CONTRACTOR's Hourly Rates, Exhibit C is RFQ 22-009.

**7.27. SURVIVAL OF PROVISIONS.**

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

**7.28 COUNTERPARTS**

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

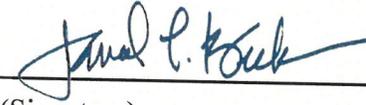
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

By: CITY OF KEY WEST

  
\_\_\_\_\_  
Patti McLaughlin, City Manager

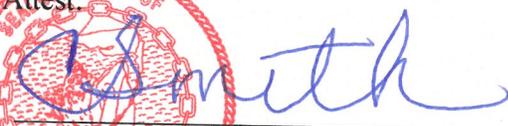
19 day of Jan, 2023

By: PLANNING CONTRACTOR

  
\_\_\_\_\_  
(Signature)  
Jared Beck, Senior Associate  
\_\_\_\_\_  
(Print Name and Title)

18 day of January, 2023

Attest:

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

19 day of Jan, 2023

Attest:

  
\_\_\_\_\_  
(Signature)  
Ramon Castella - Vice President  
\_\_\_\_\_  
(Print Name and Title)

18th day of January, 2023