

RESOLUTION NO. 20-029

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "INTERLOCAL AGREEMENT FOR ENGINEERING DESIGN, PERMITTING AND CONSTRUCTION SERVICES FOR OLD TOWN ROADWAY IMPROVEMENTS PHASE 1" BETWEEN MONROE COUNTY AND THE CITY OF KEY WEST; AUTHORIZING ANY NECESSARY BUDGET ADJUSTMENTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, certain portions of Duval and Whitehead Streets are Monroe County maintained roads within Key West city limits, while the City of Key West is responsible for sidewalks, curb ramps, traffic control and utilities operated within this right of way; and

WHEREAS, the City and County want to coordinate work to minimize traffic impacts and share costs, and accordingly, staff recommends approval of an Interlocal Agreement, which would allow the County to reimburse the City for additional design and construction costs for certain portions (see 'AREA 2 Attachment A' attached) of "Old Town Road Improvements Phase 1"; and

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

Section 1: That the attached "Interlocal Agreement
for Engineering Design, Permitting and Construction Services
for Old Town Road Improvements Phase 1" between Monroe County
and the City of Key West is hereby approved.

Section 2: That funds for design and survey services
will be from Account No. 102-4102-541-6300, Project Code
II41021902, in a total amount of \$124,61.00, with the county
to reimburse the City \$49,917.51 for their portion of the
project, and any necessary budget adjustments are hereby
authorized. (Permitting and construction services costs will
be determined and reimbursed in part by the County at a later
date as necessary.)

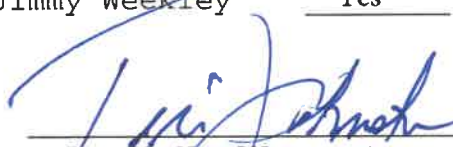
Section 3: That this Resolution shall go into effect
immediately upon its passage and adoption and authentication
by the signature of the Presiding Officer and the Clerk of
the Commission.

Passed and adopted by the City Commission at a meeting held this 5th day of February, 2020.


Authenticated by the Presiding Officer and Clerk of the Commission on 6th day of February, 2020.

Filed with the Clerk on February 6, 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

Date: January 22, 2020

To: Greg Veliz, City Manager

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

Cc: Mark Finigan, Finance Director
Steve McAlearney, Engineering Director
Kelly Crowe, P.E., City Engineer

Subject: Interlocal Agreement with Monroe County for Old Town Roadway Improvements

Action Statement

Authorize City Manager to approve an Interlocal Agreement (ILA) with Monroe County (MCO) for design and construction of Old Town roadway improvements and to approve any necessary budget transfers.

Background

Front, Whitehead, and Duval Streets are scheduled for pavement rehabilitation in FY 19/20. Additionally, the Florida Keys Aqueduct Authority (FKAA) has requirements to upgrade infrastructure on Front and Whitehead Streets. City staff is coordinating repairs with FKAA on Front and Whitehead, and coordinating with MCO, who is jointly responsible for portions of Whitehead and Duval. By coordinating the work, impacts to the public will be minimized and cuts to new streets and sidewalks will be avoided. Scope of work will include required Americans with Disabilities Act (ADA) improvements to crosswalks, sidewalks, and curb ramps, repair of failed utility trenches, and replacement of deteriorated asphalt.

Staff has worked with County staff in identifying cost sharing responsibilities for the design phase as follows.

Total Contracted Engineering and Survey Cost	
<i>County Cost</i>	<i>\$49,917.51</i>
<i>City Cost</i>	<i>\$74,643.49</i>
<i>Total Contract Price</i>	<i>\$124,561.00</i>

Construction Estimates

<i>Estimated Cost to County</i>	<i>\$400,000</i>
<i>Estimated Cost to City</i>	<i>\$2,100,000</i>
<i>Total Construction Estimate</i>	<i>\$2,500,000</i>

Purpose and Justification

In December 2019, the City Commission approved a Task Order with CH2M Hill, Inc. to design repaving of the City maintained portions of Duval, Whitehead, and Front Streets. The project is planned based on the results of the City's Pavement Management Report which showed conditions of the pavement on these three roads to be among the lowest in the City. MCO is interested in entering into a cost sharing agreement with the City to repave their portions of Duval and Whitehead in conjunction with the City's work.

This project supports the Key West Strategic Plan Infrastructure Goal #1: *A transportation system which is aesthetically attractive, functional, efficient, safer and environmentally sensitive.*

Financial Issues

Design will be funded from account #102-4102-541-6300 (Internal Improvements/Streets), Project Code II41021902. Upon approval, staff will issue a Notice to Proceed to the consultant to begin design and survey services in the total amount of \$124,561.00. The ILA stipulates that the county will reimburse the city \$49,917.51 to account for their portion of the work.

Construction related costs will be reimbursed during the construction phase and will be based on actual pay quantities for the MCO's scope items. Construction is anticipated to begin in late summer of 2020.

Recommendation

Staff recommends authorizing City Manager approval of Interlocal Agreement with Monroe County for Old Town Roadway Improvements and approving any necessary budget transfers.



Kevin Madok, CPA

Clerk of the Circuit Court & Comptroller – Monroe County, Florida

DATE: March 5, 2020
TO: Judith Clarke, PE, Director
Engineering/Roads & Bridges
ATTN: Nicole Tyman/Tyler Jackson
FROM: Pamela G. Hancock *Pgh* D.C.
SUBJECT: February 19th BOCC Meeting

Attached is an electronic copy of the following item for your handling:

C18 Interlocal Agreement with the City of Key West to provide funds for engineering design, permitting, and construction inspection services in the amount of \$49,917.51 to include the County sections of Duval and Whitehead Streets in the City's Old Town Road Improvements Project Phase I.

Should you have any questions, please feel free to contact me at (305) 292-3550.

cc: County Attorney
Finance
File

KEY WEST
500 Whitehead Street
Key West, Florida 33040
305-294-4641

MARATHON
3117 Overseas Highway
Marathon, Florida 33050
305-289-6027

PLANTATION KEY
88820 Overseas Highway
Plantation Key, Florida 33070
305-852-7145

PK/ROTH BUILDING
50 High Point Road
Plantation Key, Florida 33070
305-852-7145

**INTERLOCAL AGREEMENT
FOR ENGINEERING DESIGN, PERMITTING AND CONSTRUCTION SERVICES
FOR OLD TOWN ROAD IMPROVEMENTS PHASE 1**

THIS INTERLOCAL AGREEMENT is made and entered into as of this 19th day of February 2020, between the City of Key West, a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter the CITY), and Monroe County, a political subdivision of the State of Florida, (hereinafter the COUNTY).

WHEREAS, portions of Duval and Whitehead Streets are COUNTY maintained roads within the municipal limits of the CITY, and

WHEREAS, in accordance with Florida Statutes, the COUNTY is responsible for the maintenance of the roadway from curb face to curb face and associated drainage of the road and the CITY is responsible for the maintenance of physical improvements within the right of way including but not limited to sidewalks, traffic control devices and utilities operated by the CITY, and

WHEREAS, the CITY is currently seeking a contract for the engineering design and permitting phase of the Old Town Roadway Improvements: Phase 1 (Project) with CH2M Hill, Inc. (Consultant) and survey by Avirom and Associates, Inc, (Surveyor) and the COUNTY has requested Roadway improvements to be added to the CITY's Consultant task order as outlined in "Attachment A" and Surveyor contract "Attachment B"; and

WHEREAS, the COUNTY will be responsible for reimbursing the CITY for the costs of the additional Consultant design as defined in AREA 2 of the Consultant's task order in "Attachment A", additional survey costs as defined in Area 2 of the Surveyor's task order in "Attachment B", and the portion of the construction costs associated with the COUNTY scope of work to be determined during the CITY's construction bid phase of the project;

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. The Work will be performed in accordance with COUNTY and Florida Department of Transportation (FDOT) standards.
2. The COUNTY will reimburse the CITY for the COUNTY'S portion of the scope of work as defined by AREA 2 of the Consultant's Task Order in Attachment A and Attachment B. The CITY will submit a request for reimbursement to the COUNTY and will include

copies of all Consultant pay applications, evidence of payment to the Consultant by the CITY.

- a COUNTY's portion of the Area 2 Scope of Work reimbursable to CITY
 - i **\$26,368.01** for Design and Engineering Services
 - ii **\$12,100.00** for Geotechnical sampling
 - iii **\$11,449.50** for half of Survey services
 - b Total of reimbursable expenses COUNTY agrees to pay CITY **\$49,917.51** for Area 2 design and survey.
3. In the construction phase of the project, the COUNTY will reimburse the CITY for 100% of the cost associated with the COUNTY scope of work as detailed in the contractors' schedule of values and unit costs that are directly applicable to that work. The COUNTY will also pay a percentage share of the mobilization and maintenance of traffic costs that is proportional to the COUNTY's direct pay items of the total cost of construction, which will be itemized in the schedule of values. The COUNTY will also pay change orders related to the COUNTY'S scope of work requested and approved by the COUNTY and CITY.
4. The CITY will make requests for reimbursements to the COUNTY based upon the Consultant's invoices and construction contractor's pay applications. The CITY will include copies of all contractor pay applications, evidence of payment to the construction contractor and all subcontractors (if applicable) by the CITY and written confirmation from the CITY's Inspector that the work represented by the CITY's reimbursement request has been completed in accordance with the construction plans. The CITY will provide monthly billings from the contractor to the COUNTY for comment and approval. COUNTY will have 7 calendar days to provide written comment or approval. Upon payment to the contractor by the CITY, the CITY will invoice COUNTY for reimbursement of the COUNTY'S portion of the work. It is understood and agreed to by COUNTY and CITY that reimbursement for the completed work outlined above will be payable to the CITY within thirty (30) calendar days of receipt by the COUNTY of final invoicing by the CITY. Reimbursement to the CITY will be made with reference to the specific project "Old Town Roadway Improvements: Phase 1" and project account number being reimbursed.
5. The contracts for construction will be between the CITY and its Consultant (CH2M Hill) and Contractor (to be determined); the COUNTY may monitor the work but is not a party to the contract.
6. This Interlocal Agreement in no way relieves the CITY from its obligation to maintain any of the items for which it is responsible, nor does this alter the COUNTY's liability and responsibility regarding maintenance of the roadway from curb face to curb face and

associated drainage of the road. This Agreement shall not alter the CITY or COUNTY'S maintenance responsibilities as proscribed by law.

7. This Interlocal Agreement shall become effective immediately upon execution. It is anticipated that the Project completion will be reached in 2021.
8. In the event of any failure of compliance by either party hereto with any of its material obligations to the other party as provided herein, such action shall constitute a default under this Agreement.
9. Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a "Default Notice") shall state in reasonable detail the actions the defaulting party must take to cure the same. The defaulting party shall cure any such default within 30 days following the date of the Default Notice.
10. Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect the cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences the cure within the applicable cure period and thereafter diligently pursues the cure to completion of performance.
11. In the event the defaulting party fails to affect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon written Notice to the defaulting party, to terminate this Agreement.
12. If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.
13. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the COUNTY and CITY do hereby agree to defend, indemnify and hold the other, its officers, agents or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorney's fees, costs, and expenses at both the trial and appellate levels) arising from the acts of omissions of the respective party or any third party vendor contracted by the respective party in connection with this Agreement.

Requirements of the CITY: The CITY will provide the contract with consultant, construction drawings, front end documents, construction contract and technical specifications, and provide

bid documents for the project. CITY will prepare, advertise, and execute contract documents for construction. CITY will host design review and construction Kickoff and construction progress meetings between contractor and stakeholders.

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CITY and the COUNTY in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the COUNTY or CITY be required to contain any provision for waiver.

14. Notices

All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to COUNTY: Roman Gastesi, Jr.
County Administrator
Monroe County Historic Gato Bldg.
1100 Simonton Street
Key West, Florida 33040

With a copy to: Christine Limbert- Barrows
Assistant County Attorney
P.O. Box 1026
Key West, Florida 33041-1026

If to CITY: Gregory W. Veliz
City Manager
City of Key West
P.O. Box 1409
Key West, Florida 33041

With a copy to: Shawn Smith, Esq.
City Attorney
City of Key West
P.O. Box 1409
Key West, Florida

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail,

return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

15. Attorney's Fees and Waiver of Jury Trial.

In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both trial and appellate levels.

In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

16. Adjudication of disputes or Disagreements

COUNTY and CITY agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

17. Cooperation

In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, COUNTY and CITY agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. COUNTY and CITY specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

18. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

19. Entire Agreement/Modification/Amendment.

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

20. No Assignability.

This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

21. Severability.

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

22. Independent Contractor.

The COUNTY and its employees, volunteers, agents, vendors and subcontractors shall be and remain independent contractors and not agents or employees of the CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

23. Waiver.

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

24. Funding.

The parties agree that the COUNTY's responsibility under this Agreement is to primarily to provide funding relating to the COUNTY's scope of work.

25. Survival of Provisions.

Any terms or conditions of 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.

26. Counterparts.

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

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.



KEVIN MADOK, Clerk

By: Camely Starnick

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

By: [Signature]
Mayor/Chairperson

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
Christine Limbert-Barrows
CHRISTINE LIMBERT-BARROWS
ASSISTANT COUNTY ATTORNEY
DATE: 3/2/20

CITY OF KEY WEST, FLORIDA



By: [Signature]
Mayor

[Signature]

FILED FOR RECORD
2020 MAR -5 AM 8:55
U.S. CIR. CL.
MONROE COUNTY, FLA.

ATTACHMENT

A

ATTACHMENT
A

TASK ORDER 1-20 ENGINEERING

ENGINEERING SERVICES FOR DESIGN OF PAVEMENT AND RIGHT OF WAY IMPROVEMENTS TO WHITEHEAD, DUVAL AND FRONT STREETS

This TASK ORDER 1-20 ENG is issued under the terms and conditions of the AGREEMENT TO FURNISH GENERAL ENGINEERING SERVICES TO THE CITY OF KEY WEST ("AGREEMENT") between the City of Key West ("CITY") and CH2M HILL, Engineers, Inc. ("CONSULTANT") dated November 3, 2017 which is incorporated herein by this reference.

A. SCOPE OF SERVICES

Specific services which the CONSULTANT agrees to furnish are summarized on the attached statement entitled TASK ORDER 1-20 ENG "SCOPE OF SERVICES." The "Scope of Services" defines the work effort anticipated for the Task Order.

This Task Order, when executed, shall be incorporated in and shall become an integral part of the November 3, 2017, Master Agreement.

B. TIME OF COMPLETION

Work under this Task Order will begin immediately following acceptance and completed expeditiously subject to coordination with the City of Key West staff.

C. COMPENSATION

Compensation for the labor portions of TASK ORDER 1-20 ENG, Tasks A will be on a lump sum fee basis as stipulated in Article 2, Paragraph 2.1 of the AGREEMENT. Compensation for subconsultants and all expenses will be on a Cost Reimbursable-Per Diem basis as stipulated in Article 2, Paragraph 2.2 of the AGREEMENT. The estimated compensation is shown on the attached statement entitled TASK ORDER 1-20 ENG COMPENSATION.

D. ACCEPTANCE

By signature, the parties each accept the provisions of this TASK ORDER 1-20 ENG and authorize the CONSULTANT to proceed at the direction of the CITY's representative in accordance with the "SCOPE OF SERVICES." Start date for this project will be no later than two (2) days after execution of this authorization.

For CH2M HILL, INC.

By: _____

Sirpa H. Hall, P.E.
Senior Business Vice President

Sean McCoy, P.E.
Key West Project Manager

For CITY OF KEY WEST

By: _____

Greg Venz
City Manager

Dated the 5th day of December, 2019

ATTEST: Melinda Stewart

TASK ORDER 1-20 ENGINEERING

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For CH2M HILL, INC.


For CITY OF KEY WEST

By:  12/16/19

By: _____

Sirpa H. Hall, P.E.
Senior Business Vice President

Greg Veliz
City Manager


Sean McCoy, P.E.
Key West Project Manager

Dated the _____ day of _____, 2019

ATTEST: _____

TASK ORDER 1-20 ENGINEERING

ENGINEERING SERVICES FOR DESIGN OF PAVEMENT AND RIGHT OF WAY IMPROVEMENTS TO WHITEHEAD, DUVAL & FRONT STREETS

SCOPE OF SERVICES

Project Description

Using the Pavement Assessment document completed August 2019, the City of Key West (CITY) is taking a systematic approach to roadway and right of way improvements. The City has tasked Jacobs (CONSULTANT) with developing design documents for constructing improvements to City Owned segments of Whitehead Street, between and including the intersections of Eaton and Front Streets; Front Street, between and including the intersection of Whitehead to 400 ft east of Simonton St; and Duval Street, between and including the intersections of Eaton and Wall Streets. These City Owned Segments will be referred to as Area 1 and are shown in the attached Exhibit 1.

The City will be coordinating with Monroe County to improve County owned segments of Whitehead from Eaton St. to and including the intersection of Fleming St., as well as Duval St. from Eaton St. to and including the intersection of Truman Ave. These County owned segments will be referred to as Area 2 and are shown in the attached Exhibit 2.

Areas 1 and 2 are delineated only to show design cost estimates. The project will be designed and bid as a single package.

Road and Right of Way Improvements for segments of roadway in both areas will include:

- Pavement Design – full mill & pave, itemizing & correcting any trench failures
- Pavement Marking – will match limits of mill & pave and replace existing crosswalks
- Signing – recommend if existing panels should be replaced, and identify proposed signs, if any
- Pedestrian Facilities:
 - Curb Ramps – upgrade existing crosswalks to ADA compliance within existing Right of Way
 - Sidewalks and Driveways -
- Drainage improvements – the CITY has identified ponding along Front Street between Duval and Simonton. The CONSULTANT will analyze existing Line and Grade, and adjust design Line and Grade, where available, to minimize ponding.

Additionally, the Florida Keys Aqueduct Authority (FKAA) has agreed to coordinate and construct their planned replacement of the water system pipelines within the proposed project road sections, as part of this project. Design of the waterline replacement will be produced by FKAA, and their design documents will be appended as a separate component set into a single bid package for bidding and construction.

Purpose

The CITY has requested that the CONSULTANT provide engineering services for the design of roadway improvements to lengths of Whitehead Street, Front Street, and Duval Street (see Exhibits 1 and 2). This Task Order describes the CONSULTANT's Scope of Services.

Specific activities to be performed by the CONSULTANT under this Task Order include:

- Roadway pavement cores, Lime rock Bearing Ratio (LBR) testing, and laboratory analysis to determine resilient modulus, existing pavement layers and pavement condition.
- Preparation of one (1) Bid Ready Document package. Note: Separation of the construction plans into multiple packages will be considered an additional service.

Specific activities to be provided by the CITY include:

- Full width Right of Way Survey, to develop existing topography, and map existing utilities
- Coordination of consultants' product delivery schedule (FKAA and Jacobs (formerly CH2M))
- Stakeholder coordination not related to roadway design or design related activities.

Specific design activities to be provided by the Florida Keys Aqueduct Authority (FKAA), include:

- Production of bid ready documents for the replacement of water system conveyance piping, valves, and other appurtenances as required. Documents shall include design drawings, and technical specifications that are Bid Ready.
- Milestone submittals, and attendance at milestone review meetings as described below.
- No environmental permits are anticipated for this project. If the scope of drainage improvements requires more extensive impacts then permit applications and applicable fees for all waterline related work will be provided by the CITY

Specific activities to be provided by the County include:

- Reviews of design milestone documents occurring concurrently with City review periods (10 days)
- Attendance at milestone review meetings

Scope of Services

The following tasks describe the activities to be performed and the work products to be prepared by the CONSULTANT.

Task A – Design

This task details the activities related to the Roadway Improvements design. During this task, the CONSULTANT will provide the following:

- Project Kick-off Meeting
 - Attended in person by CONSULTANT's Project AND Design Managers. Assumed two (2) days. As part of this task, CONSULTANT's Project and Design managers will walk the alignments with City Staff, including City Arborist.
- Subconsultants
 - Pavement cores and LBR testing is proposed to be obtained and analyzed by Nutting Engineer's Inc. The proposal attached as Exhibit 2 includes work for 26 pavement cores, 4 LBR tests, laboratory analysis, Maintenance of Traffic (MOT), and development of a findings report.

- Documentation of Design Criteria & Standards:
 - Florida Greenbook (FDOT Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways), Americans With Disabilities Act (ADA) Standards for Accessible Design, Manual on Uniform Traffic Control Devices (FHWA's MUTCD)
 - City of Key West Transportation / Roadway Standard Details
 - 25 mph Design Speed is desired; minimum 20 mph Design Speed based on 2017 Speed Study
 - Traffic Data for Pavement Design will be extrapolated from 2017 Speed Study.
 - FDOT Standard Plans for Road and Bridge Construction 2019/20.
- Project limits of Milling & Resurfacing (M & R):
 - M & R limits to include existing striped pedestrian crossings on side streets (approx. 15 ft. from each mainline edge of travel)
 - No improvements to brick pavement adjacent to or within the project limits, additionally CITY preference is to minimize disruptions to existing brick
- Pavement Design:
 - The following pavement designs are anticipated:
 - Whitehead Street – ~1-2 inch milling & resurfacing
 - Includes 70 feet of asphalt near intersection of Whitehead/Front
 - Same design for both City and County maintained limits
 - Front Street – ~1-2 inch milling & resurfacing
 - Front Street – Full reconstruction due to apparent failing base between Duval and Simonton, limits TBD. Duval Street south (County-maintained) - ~1-2 inch milling & resurfacing
 - Includes 90 feet of asphalt on adjacent Wall Street
 - Duval Street north (City-maintained) - ~1-2 inch milling & resurfacing
 - Includes 90 feet of asphalt on adjacent Wall Street
 - Includes 90 of concrete pavement near brick parking area
 - Pavement Details:
 - anticipate that during milling operation the contractor will disturb brick base and simple rehabilitation alternatives should be provided
 - detail for Trench Restoration, based on Survey & Geotech investigation
- Signing & Pavement Marking:
 - Identify existing signs to be replaced based on loss of reflectivity and/or compliance with MUTCD
 - Consideration to revise Caroline/Whitehead from existing one-way stop to three-way stop with new post-mounted signs
 - Crosswalks –

- Any special crosswalk details will be provided by the CITY and/or COUNTY (example: Duval/Petronia contains existing rainbow paint in crosswalk)
 - Existing crosswalks that cannot be upgraded to ADA criteria due to constraints such as existing drainage inlets, will be identified at the 60% submittal.
 - Other new post-mounted signs as needed
- Sidewalk and Curb Ramps:
 - Intersecting projects propose curb ramp upgrades which may not be reflected in survey and improvements by others will need to be reflected in plans
 - Coordinate meeting with Planning, Urban Forester, and Historic Architectural Review Commission (HARC) to identify concerns and requirements, as well as tree roots that may need trimming to prevent sidewalk vertical displacement. Assumed to occur same day as design Kick-off meeting.
 - Preference is to hold back of sidewalk elevations
 - Special Details will be provided for non-standard curb ramps (where applicable)
 - Curb, sidewalk and ramp tie-in elevations for standard curb ramps will be presented in table format
 - Non-compliant curb ramps and driveways that cannot be corrected within existing R/W will be identified at the 60% submittal
- Driveways:
 - Coordinate driveway access with Conch Tour Train on Front Street
 - Special details may be required near Front/Simonton for grading existing driveways to ADA compliance
- Temporary Traffic Control:
 - Provide plan notes to contractor and basic phasing typicals with references to FDOT Standard Plans
 - FCAA will provide Traffic Control details for pipeline work
- Utility Coordination:
 - Identify potential conflicts with utilities through survey and as-built information, and provide information to Contractor
 - Agencies anticipated: CITY sewer/solid waste/stormwater, Florida Keys Aqueduct Authority (FCAA), Keys Energy Services
- Landscaping:
 - Preserve existing landscaping locations provided they do not interfere with current ADA requirements and standard Line of Sight requirements. Non-compliant landscaping will be identified at the 60% submittal.
 - Coordinate meeting with Planning, Urban Forester, and HARC representative(s) to identify design requirements as well as tree roots that may need cutting to prevent sidewalk popping
- *Exclusions to scope:*

- *No signalization upgrades or adjustments to timing;*
- *No lighting analyses or upgrades;*
- *No changes to on-street parking;*
- *No drainage modeling;*
- *No 3D deliverables.*

Deliverables

The deliverables for the Roadway Improvements Design will include:

- Topography and features developed from the Survey provided by CITY and relevant to design will be included in the design drawing package.
- Kickoff meeting Agenda and Minutes (Submitted Digitally, .pdf)
- Site Visit observations, and any direction received from City Staff will be compiled into a Site Visit TM Draft. Following City Staff review for correctness, this TM will be issued as Final, and will become part of the design criteria.
- 60/90 percent design documents, submitted digitally for City Staff review (see Assumptions below for anticipated drawing list)
 - 60% Submittal will include Construction Plans and also:
 - Design Documentation – includes Project Design Criteria, Pavement Design Recommendations, AutoTURN exhibits at signalized intersections using WB-40 Design Vehicle
 - Geotechnical Findings Report (by others)
 - Engineer’s Class V Estimate of Construction Costs.
 - Draft Technical Specifications
 - 90% Submittal will include Construction Plans and also:
 - Engineer’s Class III Estimate of Construction Costs.
 - Specifications
- Review meetings at each milestone will be held with City Staff and the CONSULTANT's Project Manager, with design staff attending by phone as needed.
 - Budget has been included to allow CONSULTANTS' Design Manager to attend Kick-off, (16 hours + Travel expenses) See COMPENSATION.
 - Additional Budget for a one-day Site visit by CONSULTANTS' Design Manager has been included (16 hours + Travel expenses). This visit shall occur at the direction of the CITY.
- Bid Ready Documents shall include:
 - Digital CADD files
 - Contract Specifications with Half size drawings for upload to Demand Star (Digital .pdf)

- Pavement Core(s) laboratory analysis report shall be included in the Technical Specifications as an Appendix
- Full Size Drawings (Digital .pdf)
- 3 (three) Half Size Signed and Sealed drawing sets for City Permitting (if required)

Assumptions

The scope and fee for this Task Order are based on the following assumptions:

- Whitehead Front and Duval Streets, including both City and County owned segments will be Designed, Bid and Constructed under one construction contract. The Bid form will be coordinated with FKAA and Monroe County to delineate stakeholder responsibility. Appropriate notes will be added to drawings.
- Design of both County and City road segments will be based on the codes and standards listed under Documentation of Design Criteria & Standards as bulleted under Task A – Design.
- The following drawings are assumed to be included in the bid package, and are the basis for the labor compensation estimate:
 - 77 Total
 - assumes separate sheets for Signing & Pavement Marking
 - 1 Key Sheet
 - 1 Signature Sheet
 - 2 Summary of Pay Items
 - 1 Drainage Map show basin boundaries
 - 4 Typical Section includes paving details
 - 1 Project Layout
 - 2 Project Control from Survey
 - 15 Roadway Plan
 - 1 Special Profile on Front street
 - 2 Back-of-Sidewalk Profile - only where curb is needed at ROW line
 - 17 Intersection Layout/Detail - assumes all curb ramps need detail
 - 2 Roadway Soil Survey from Geotech
 - 1 Stormwater Pollution Prevention Plan
 - 2 Temporary Traffic Control Plans
 - 2 Utility Adjustments
 - 15 Signing and Pavement Marking Plans
 - 4 SPM – key sheet, EOR, Quantities, special details
 - 4 Summary of Quantities
- The kickoff meeting is assumed to take place in Key West with two (2) CONSULTANT's staff attending. Other staff may attend via conference call. Subsequent review meetings will be attended in person by one (1) CONSULTANT's Staff, with others attending via conference call as required.
- The design will be based on the federal, state, and local codes and standards in effect at the start of the project. Any changes in these codes may necessitate a change in scope.

- The CONSULTANT's master specifications will be used as the basis for all technical sections in Divisions 1 through 49. The CONSULTANT's master specifications incorporating CITY requirements will be used for General Conditions, Supplemental Conditions, and other front-end documents. *(Except as noted below.)
- *Technical Specifications for the complete construction of waterline replacement including piping and mechanical appurtenances, bedding and pipe zone, material and compaction requirements shall be provided by FKAA.
- Design drawings and Bid Specifications provided by FKAA are assumed to be complete and Bid ready. No labor has been budgeted for review of design by others.
- Legal, easement, or plat surveys are not included in the scope of work. If additional property is required it shall be the responsibility of the City to obtain.
- Federal, State, County, and City Permitting efforts (if needed) are not included in this Task Order.

Obligations of the CITY

To assist meeting schedule and budget estimates contained in this proposal, the CITY will provide the following:

- Retain Professional Land Surveyor to provide Topographic and Surface Feature survey. Provide Data in RAW format to CONSULTANT
- Prompt review and comment on all deliverables (within 10 working days of receipt).
- Access to any required facilities.
- Provide recent contractor bids to be used for unit costs
- Attendance of key personnel at meeting as requested.
- Preparation of permit applications, and Payment of all fees (if required).
- Stakeholder coordination: assist with scheduling, review periods, and other design related coordination efforts.

Additional Services

The CONSULTANT will, as directed, provide additional services that are related to the project but not included within this Scope of Services. These and other services can be provided, if desired by the CITY, as an amendment to the Task Order. Work will begin for the Additional Services after receipt of a written notice to proceed from the CITY. Additional services may include the following:

- Permitting assistance
- Drainage Modeling and analysis
- Design of subsurface drainage improvements
- Bid Phase Services
- Construction Phase Services
- Other related work as requested.

Compensation

The estimated compensation for TASK ORDER 1-20 ENG, has been separated into two Areas. Area 1 being City owned streets, and Area 2 being County owned Streets (shown in exhibits 1 and 2 respectively). Total project costs are shown below. Detailed compensation tables for the labor portion for each area are included in Attachment A, entitled TASK ORDER 1-20 ENG, COMPENSATION.

Area 1 City Controlled Street Segments Design Costs	\$123,100
Area 2 County Controlled Street Segments Design Costs	\$89,962
Geotechnical Costs (Areas 1 and 2)	\$30,250
TO 1-20 Total	\$243,312

Completion Dates

The estimated time of completion for TASK ORDER 1-20 ENG is shown in the following table.

Task	Proposed Dates
Notice to Proceed	November 14 th , 2019
Conduct kickoff meeting	Week of November 25 th , 2019
Mobilize Geotechnical Subconsultants	November 21 st 2019
60% Design	January 20 th , 2020
90% Design	February 24 th , 2020
FKAA bid documents	March 16 th , 2020
Bid Documents	March 20 th , 2020

ATTACHMENT A
TASK ORDER 1-20 ENG, COMPENSATION

Task Order 1-20 AREA 1 Whitehead, Front and Duval Streets Roadway Improvements										
Title	Engineer 6	Engineer 5	Engineer 5	Engineer 4	Technician 5	Tech 3	Technician 6	Spec Processor	Clerical / Office	Subtask Labor Total
Rate	\$210.82	\$192.95	\$192.95	\$168.76	\$121.50	\$94.09	\$133.40	\$94.56	\$76.29	
A.1 - Design										
Kickoff Meeting			8	8		4			4	\$3,559.04
Project Site Visit - with Arborist			8	8						\$2,877.76
Data Collection/Organization Design Criteria & Standards Adjacent City Projects in Design				12	2	8				\$2,996.84
Typical Sections Three mainlines (3) + 2 sidestreets (2)				4		8				\$1,419.76
Pavement Design Report Details for crown restoration Details to minimize brick impacts Details for Trench failure Rehabilitation +1 Update			2	32		12		4		\$7,189.56
Roadway Design Analysis & Documentation - Design decisions (email correspondence), Intersection analysis (Line of Sight, AutoTurn), sidewalk ADA compliance, Driveways Xsects				32	8	16				\$7,813.76
Profile Analysis at Front St flooding				12		8				
Signing & Pavement Marking Analysis				20			8			\$4,402.40
Engineer's Estimate & Specifications + 2 updates (100) + Finals		20		16	4	12		8		\$8,819
60% Plan Production: Sidewalk Improvement Details - **8 Intersections @ 4 crossings = 32 locations Signing & Pavement Marking Details - Includes new Stop condition at Carolina/Whitehead			3	64	8	80	24		4	\$23,257
Mid-Project Site Visit + Monthly Supervision			20	16						\$6,527
60% Client Review Meeting			4	4						\$1,439
90% Plan Production			2	40	4	60	12	16	4	\$16,446
90% Client Review Meeting			4	4						\$1,439
Coordination with PKAA Plan Production / Utility Information / Specification Cross-Coordination			8	4	8					\$3,183
Final Plans (Bid Documents)			2	40		30	6	8	4	\$11,661
Peer Review - Internal QC	10		12	16		6				\$7,656
Hours Subtotal	10	20	73	332	34	244	50	36	16	815
Cost Subtotal	\$2,108	\$3,859	\$14,086	\$55,364	\$4,131	\$22,958	\$6,670	\$3,044	\$1,220	\$113,441
A.2 - Third Party Data Collection										
Develop and manage scopes for sub performance			12	8					8	\$4,259
Subconsultant fees										\$0
Hours Subtotal	0	0	12	8	0	0	0	0	8	28
Cost Subtotal	\$0	\$0	\$2,316	\$1,334	\$0	\$0	\$0	\$0	\$610	\$4,259
Total Hours by Per Diem Rate	18	20	85	340	84	244	58	36	24	
Total Fee Estimate by Per Diem Rate	\$2,108	\$3,859	\$16,402	\$56,698	\$4,131	\$22,958	\$6,670	\$3,044	\$1,830	
TO Total Labor										\$117,700.04
Expense Travel										\$5,000.00
Expense Repro/Ship										\$400.00
TO 8-18 Contract Total										\$123,100.04

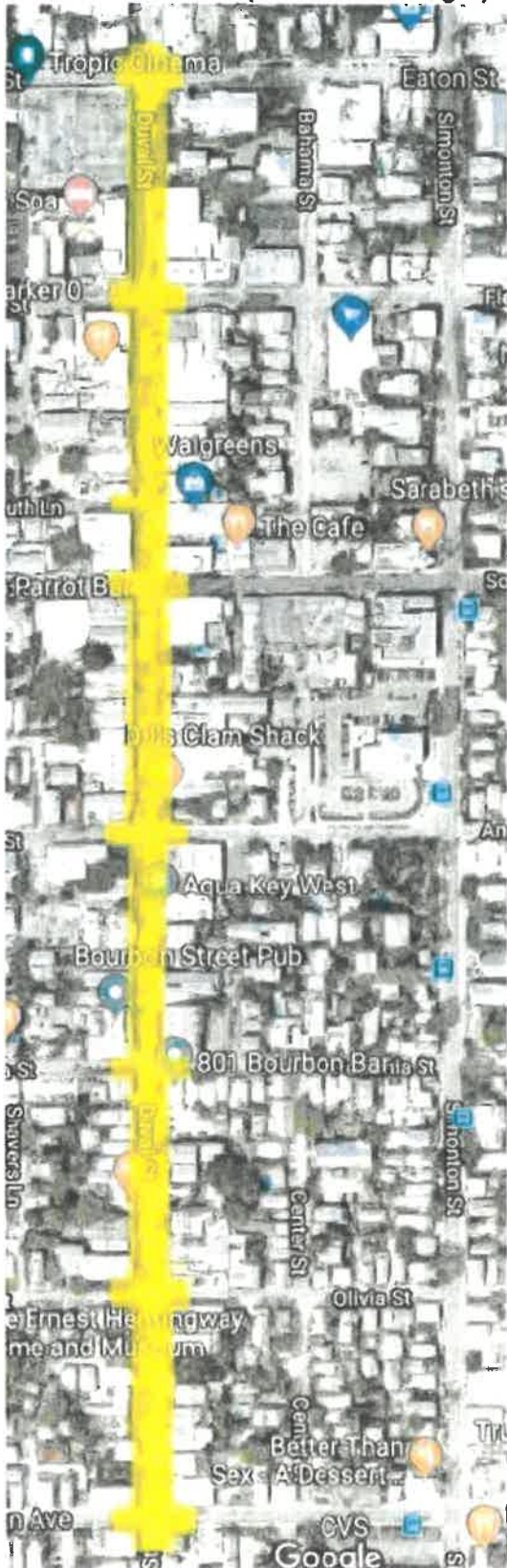
Task Order 1-20 AREA 2 Segments Whitehead and Duval Streets Roadway Improvements											
Title	Engineer 6	Engineer 5	Engineer 5	Engineer 4	Technician 5	Tech 3	Technician 6	Spec Processor	Clerical / Office	Subtask Labor Total	
Rate	\$210.82	\$192.96	\$192.96	\$166.76	\$121.50	\$94.09	\$133.40	\$94.56	\$76.23		
A.1 - Design											
Project Site Visit			4	4						\$1,439	
Data Collection/ Organization Adjacent COUNTY Projects in Design				4	0	4				\$1,043	
Typical Sections Two mainlines (2)				1		3				\$449	
Pavement Design Report Details for resurfacing +1 Update			2	20		8		4		\$4,812	
Roadway Design Analysis & Documentation - Design decisions (email correspondence), Intersection analysis (Line of Sight, AutoTurn), sidewalk ADA compliance, Driveways Xsects				20	8	16				\$5,813	
Profile Analysis - N/A				0		0				\$0	
Signing & Pavement Marking Analysis				16			8			\$3,735	
Engineer's Estimate & Specifications + 2 updates (100) + Finals		20		16	4	12		2		\$8,312	
60% Plan Production: Sidewalk Improvement Details - ~9 Intersections @ 4 crossings = 36 locations Signing & Pavement Marking Details - includes special crosswalk detail coordination			3	64	8	80	20		4	\$22,724	
Mid-Project Site Visit + Monthly Supervision			10	8						\$3,264	
60% Respond to County Review Comments			2	8						\$1,720	
90% Plan Production			2	40	4	60	10	2	4	\$14,996	
90% Respond to County Review Comments			2	8						\$1,720	
Final Plans (Bid Documents)			2	40		30	4	2	4	\$10,887	
Peer Review - Internal QC	10		8	8		4				\$5,362	
Hours Subtotal	10	20	35	257	24	217	42	10	12	627	
Cost Subtotal	\$2,108	\$3,859	\$6,754	\$42,857	\$2,916	\$20,418	\$5,603	\$846	\$915	\$86,275	
A.2 - Third Party Data Collection											
Develop and manage scopes for sub performance			12	4					4	\$3,287	
Subconsultant fees										\$0	
Hours Subtotal	0	0	12	4	0	0	0	0	4	20	
Cost Subtotal	\$0	\$0	\$2,316	\$667	\$0	\$0	\$0	\$0	\$305	\$3,287	
Total Hours by Per Diem Rate	10		47	261	24	217	42	10	16		
Total Fee Estimate by Per Diem Rate	\$2,108	\$0	\$9,069	\$43,524	\$2,916	\$20,418	\$5,683	\$846	\$1,220		

TO Total Labor \$89,562
 TO Expenses \$400
TO 1-20 COUNTY Total \$89,962

Exhibit 1
Project Limits – City Owned Streets

Exhibit 2
Project Limits – County Owned Streets

Exhibit 2 – AREA 2: County owned Road Segments
Duval (Eaton St. – Truman Ave)
Whitehead (Eaton St. – Fleming St)



RESOLUTION NO. 17-207

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING STAFF RANKING AND AWARDING CONTRACTS ON A TASK ORDER BASIS TO NINE BIDDERS IN RESPONSE TO REQUEST FOR QUALIFICATIONS NO. 17-002 FOR GENERAL ENGINEERING SERVICES; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City issued a Request for Qualifications for engineering firms capable of providing general engineering services; and

WHEREAS, fourteen firms responded, and at a public meeting on June 16, 2017, a committee comprised of City staff members reviewed the responses, and determined eight full-service firms to be particularly qualified, and one firm to be local, timely and cost-effective for structural engineering services, and recommended that the City engage each one on a Task Order basis;

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

Section 1: That the responses for general and utility engineering consulting services are hereby ranked by staff, and approved by the City Commission as follows:

- (1) Stantec
- (2) CH2M Hill
- (3) Keith & Schnars
- (4) AMEC Foster Wheeler
- (5) EAC Consulting
- (6) T.Y. Lin International
- (7) Black & Veatch Corporation
- (8) Perez Engineering & Development
- (9) Artibus Design, LLC (for structural engineering only)

Section 2: That the City Manager is hereby authorized to negotiate and execute contracts with each of the companies in order of ranking, upon advice and consent of the City Attorney, for a term not to exceed three (3) years, with an option for one-two-year extension.

Section 3: Specific task orders issued pursuant to the contracts shall comply with the City's procurement guidelines.

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 15 day of August, 2017.

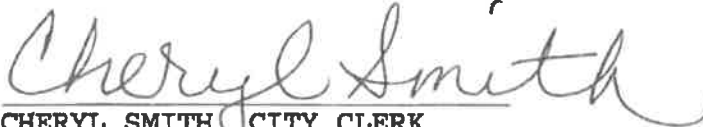
Authenticated by the Presiding Officer and Clerk of the Commission on 16 day of August, 2017.

Filed with the Clerk on August 16, 2017.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Absent</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Absent</u>


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

AGREEMENT

between

CITY OF KEY WEST

and

CH2M HILL ENGINEERS, INC.

for

GENERAL ENGINEERING SERVICES

KEY WEST, FLORIDA

This is an Agreement between: CITY OF KEY WEST, its successors and assigns, hereinafter referred to as "CITY," and ___ CH2M HILL ENGINEERS, INC. ___, a corporation organized under the laws of the State of DELAWARE, 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 17-002 General Engineering Services, CONSULTANT's Response to RFQ dated ___ April 19, 2017 ___, 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. **CONSULTANT:** The engineering firm selected to perform the services pursuant to this Agreement.
- 1.4. **Contract Administrator:** The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5. **Contractor:** The person, firm, corporation or other entity that enters into an agreement with CITY to perform the construction work for the Task Order.
- 1.6. **CITY:** City of Key West.
- 1.7. **Task Order:** A detailed description of a particular service or services to be performed by CONSULTANT under this Agreement.

ARTICLE 2

PREAMBLE

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

- 2.1. The CONSULTANT is not entitled to receive, and the CITY is not obligated to pay, any fees or expenses in excess of the amount budgeted for 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. 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 17-002 incorporated by reference and made a part hereof and the Response to the Request for Qualifications from Consultant dated April 19, 2017 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:
 - 3.1.1. Civil Engineering Services
 - 3.1.2. Utility Engineering Services
 - 3.1.3. Solid Waste Engineering Services
 - 3.1.4. Coastal Engineering Services
 - 3.1.5. Structural Engineering Services
 - 3.1.6. Marine Engineering Services
- 3.2. CONSULTANT's services shall include comprehensive full-scale engineering, design, surveying, permit preparation, preparing contract specifications, preparing bid and proposal documents and assisting the City with technical review and ranking of the same to attain qualified contractors for work, environmental assessments, construction

administration and owner project representation services relating to operation, new construction, permit modification, construction improvements, rehabilitation and or retrofits, and any other lawful professional Engineering services that the CONSULTANT is qualified to provide and 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 Task Order 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 separate Task Orders to this AGREEMENT. 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 CONSULTANT'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 CONSULTANT. CONSULTANT shall perform no further work upon receipt of this notice unless specifically authorized by the City Manager of the City of Key West. On termination, the CONSULTANT shall be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the Task Order. The CITY shall not pay for anticipatory profits. 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 CONSULTANT shall begin services under any Task Order when authorized by a Purchase Order issued by the CITY and delivered to CONSULTANT.
- 3.5. The CITY and CONSULTANT may negotiate additional scopes of services, compensation, time of performance and other related matters for each Task Order as allowed by this Agreement. If CITY and CONSULTANT cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY and procure services from another source.
- 3.6. 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.
- 3.7. CONSULTANT 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 CONSULTANT or any sub-consultant, CONSULTANT shall present options for their use or implementation.
- 3.8. 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.
- 3.9. 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 a period of three (3) years from the effective date of the Agreement with the option of one (1) 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. CONSULTANT 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.

- 4.2. CONSULTANT 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 CONSULTANT to proceed to a subsequent Task Order, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit any deliverables/documents for the Contract Administrator's review.
- 4.3. In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Task Order, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, CITY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CONSULTANT to notify CITY within 10 days in writing whenever a delay in approval by a governmental agency, including CITY, is anticipated or experienced, and to inform the Contract Administrator of all facts and details related to the delay.
- 4.4. In the event the Contractor fails to substantially complete the Task Order 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 Task Order 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 the TASK ORDER 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 TASK ORDER 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 first year of the contract (CONSULTANT AND Sub-consultants): See attached Exhibit A
 - 5.1.2.3. CONSULTANT and Sub-consultants allowed annual wage adjustment 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 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 Task Order shall be charged at actual cost, and shall be limited to the following:
 - 5.2.1.2. Identifiable transportation expenses in connection with the Task Order, 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 Holiday Inn, 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. Unit costs must be specified on the Task Order.
 - 5.2.1.6. Identifiable testing costs approved by Contract Administrator. Unit costs must be specified on the Task Order.
 - 5.2.1.7. All permit fees paid to regulatory agencies for approvals directly attributable to the Task Order. 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. These amounts shall not increase each fiscal year to the CITY by more than the Consumer Price Index Urban U.S. City Average All Items U.S. Department of Labor Bureau of Labor Statistics. 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 that are identified by the specific Task Order number if applicable 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 that are identified by the specific Task Order number on a monthly basis in a timely manner for all personnel hours and reimbursable expenses attributable to the Task Order. 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 a Task Order number or other identifier that clearly indicates the expense is identifiable to the Task Order. 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 TASK ORDER or any Task Order.

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 in order to perform the Task Order, 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: CH2M HILL ENGINEERS, INC.
PO Box 201869
DALLAS, TX 75320-1869

ARTICLE 6

CITY'S RESPONSIBILITIES

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

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 Task Order, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by CONSULTANT in connection with this Agreement, whether in hard copy or electronic form, shall become the property of CITY, whether the Task Order for which they are made is completed or not. If applicable, CITY may withhold any payments then due to CONSULTANT until CONSULTANT complies with the provisions of this Article. CONSULTANT is not responsible for damages caused by the unauthorized re-use by others of any of the materials for another Task Order.

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 Task Order. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Task Order.
- 7.3.2. CONSULTANT shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, 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 currently approved is as follows:

- a. AVIROM & ASSOCIATES, INC.
- b. NOTING ENGINEERS OF FLORIDA, INC.
- c. ~~_____~~
- d. ~~_____~~
- e. ~~_____~~
- f. ~~_____~~

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 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 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
Additional Umbrella Liability	\$2,000,000	Occurrence / 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

- 7.9.4. If the work is being done on or near a navigable waterway, CONSULTANT's workers compensation policy shall be endorsed to provide USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage if specified by the City of Key West. CONSULTANT shall provide the City of Key West with a Certificate of Insurance verifying compliance with the workers' compensation coverage as set forth herein and shall provide as often as required by the City of Key West such certification which shall also show the insurance company, policy number, effective and expiration date, and the limits of workers compensation coverage under each policy.
- 7.9.5. 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 Task Order will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Task Order shall be addressed.

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

7.11. ALL PRIOR AGREEMENTS SUPERSEDED

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

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

7.12. NOTICES

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

SEAN M COY
23069 BONITO LN
CURTIS KEY, FL
33042

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 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. 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 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 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

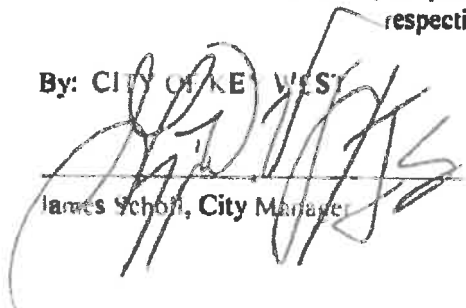
The attached exhibits are incorporated into and made a part of this Agreement:


Exhibit A - CONSULTANT/Sub-consultants' Hourly Rates

7.27. COUNTERPARTS

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

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

By: CITY OF KEY WEST

James Schoff, City Manager

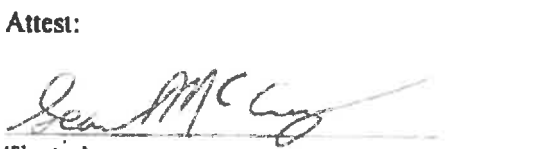
By: CONSULTANT

(Signature)
Sirpa H Hall
(Print Name and Title)

3rd day of NOVEMBER, 2017

25th day of October, 2017




James L. Smith, City Clerk

Attest:

(Signature)
Sean McCoy Project Manager
(Print Name and Title)

3 day of Nov, 2017

25 day of October, 2017



EXHIBIT "A"

**Per Diem Rates (\$/hr) for Master Agreement to Furnish Engineering Services to
The City of Key West**

Employer Category	FY18	FY19	FY20
Professionals			
Engineers, Architects, Planners, Economists, Scientists, Hydrologists, Hydrogeologists, Geologists			
Engineer 8	\$234.64	\$241.68	\$248.93
Engineer 7	\$216.68	\$223.18	\$229.88
Engineer 6	\$198.72	\$204.68	\$210.82
Engineer 5	\$181.88	\$187.34	\$192.96
Engineer 4	\$157.18	\$161.90	\$166.76
Engineer 3	\$134.72	\$138.76	\$142.92
Engineer 2	\$117.88	\$121.42	\$125.06
Engineer 1	\$99.92	\$102.92	\$106.01
Planner 1	\$81.96	\$84.42	\$86.95
Technicians			
Drafters, Graphic Artists, Computer, Surveyors, Cartographics, Construction Inspectors			
Technician 6	\$125.74	\$129.51	\$133.40
Technician 5	\$114.52	\$117.98	\$121.50
Technician 4	\$102.17	\$105.24	\$108.40
Technician 3	\$88.69	\$91.35	\$94.09
Technician 2	\$72.98	\$75.17	\$77.43
Technician 1	\$62.87	\$64.76	\$66.70
Office Support			
Specification Processor	\$79.71	\$82.10	\$84.56
Clerical/ Office Support	\$71.85	\$74.01	\$76.23
*Labor rates escalation at 3% per year			
Note (1): Rates applicable October 1 through September 30 for each year	10/1/17-9/30/18	10/1/18-9/30/19	10/1/19-9/30/20



Florida Board of Professional Engineers
 2639 North Monroe Street, Suite B-112
 Tallahassee, FL 32303-5268

CH2M Hill Engineers, Inc.
9191 S. JAMAICA STREET
ATTN: SALLY HILL
ENGLEWOOD, CO 80112

Each licensee is solely responsible for notifying the Florida Board of Professional Engineers in writing the licensee's current address.

Name changes require legal documentation showing name change. An original, a certified copy, or a duplicate of an original or certified copy of a document which shows the legal name change will be accepted unless there is a question about the authenticity of the document raised on its face, or because the genuineness of the document is uncertain, or because of another matter related to the application.

At least 90 days prior to the expiration date shown on this license, a notice of renewal will be sent to your last known address. If you have not yet received your notice 60 days prior to the expiration date, please call (850) 521-0500, or write, Florida Board of Professional Engineers, 2639 North Monroe Street, Suite B-112, Tallahassee, FL 32303-5268 or e-mail: board@fbpe.org. Our website address is <http://www.fbpe.org>.

State of Florida

Board of Professional Engineers

Attests that
CH2M Hill Engineers, Inc.



Is authorized under the provisions of Section 471.011, Florida Statutes, to offer engineering services to the public through a Professional Engineer, duly licensed under Chapter 471, Florida Statutes.

Expiration: 2/28/2019
Audit No: 228201902457 R

CA Lic. No:
21501



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/26/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 1225 17TH STREET, SUITE 1300 DENVER, CO 80202-5534		CONTACT NAME: _____ PHONE: _____ FAX: _____ (A/C, No, Ext): _____ (A/C, No): _____ E-MAIL: _____ ADDRESS: _____	
15114 -12345-5EX2P-17-18	074191	BK	INSURER(S) AFFORDING COVERAGE INSURER A: Greenwich Insurance Company 22322 INSURER B: National Fire & Marine Insurance Co 20079 INSURER C: XL Specialty Insurance Company 37885 INSURER D: Zurich American Insurance Co 16535 INSURER E: _____ INSURER F: _____
INSURED CH2M HILL ENGINEERS, INC. 3150 SW 38 AVENUE, SUITE 700 MIAMI, FL 33148			

COVERAGES **CERTIFICATE NUMBER:** SEA-003512608-01 **REVISION NUMBER:** 8

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATION MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/LTR	TYPE OF INSURANCE	ADDL/SUBR	POLICY NUMBER	POLICY EFF	POLICY EXP	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$500,000 SIR GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: _____	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	RGE500025506	05/01/2017	05/01/2018	EACH OCCURRENCE \$ 1,500,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,500,000 MED EXP (Any one person) \$ _____ PERSONAL & ADV INJURY \$ 1,500,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	RAD500025416	05/01/2017	05/01/2018	COVERED DRIVERS' ETRM (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE DED _____ RETENTION \$ _____		42UMC30247602	05/01/2017	05/01/2018	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	RWD500025206 (ACC)	05/01/2017	05/01/2018	<input checked="" type="checkbox"/> STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	PROFESSIONAL LIABILITY*		EOC382962116	05/01/2017	05/01/2018	Each Claim & Aggregate \$2,000,000 Each Policy Period

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Client Contract No.: 693030
City of Key West is included as an additional insured on the General Liability and Automobile Liability policies as required by written contract or agreement. Coverage provided by the above General Liability and Auto policies shall be primary and non-contributory and is limited to the liability resulting from the named insured's ownership and/or operations. General Liability, Auto Liability and Workers' Compensation policies include a Waiver of Subrogation. THE ABOVE WORKERS COMPENSATION POLICY INCLUDES A LONGSHORE AND HARBOR WORKERS COMPENSATION ACT COVERAGE ENDORSEMENT

CERTIFICATE HOLDER City of Key West Attn: Jim Schell 1300 White St. Key West, FL 33040	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. David Wilkins
---	--

ATTACHMENT
B

CITY OF KEY WEST TASK ORDER

DUVAL, WHITEHEAD, AND FRONT STREETS SURVEY
In coordination with

AVIROM AND ASSOCIATES
50 SW 2nd Ave Suite 102
Boca Raton, FL 33432

Scope of Services

This Task Order shall become a supplement to and part of the Architectural Services Agreement dated May 14, 2018 between *City of Key West*(City) and *Avirom and Associates*(Consultant). The following services are hereby agreed to as a part of this task order. Boundary and topographic surveys of City and County maintained portions of Duval, Whitehead and Front Streets North of Truman avenue. Surveys will include 25 foot elevation grid, cross sections every 100 feet of road, locations of visible utilities including surface features such as trees, lights, poles, signs as described in attached proposals for Area 1 and Area 2 dated November 12, 2019. Deliverables are to include complete electronic files in AutoCAD and Adobe PDF formats, as well as two hard copy prints.

Compensation

Professional fees for this Task Order will be as provided in the Agreement will be paid in a lump sum amount and are not to exceed \$ 57,243.00, no reimbursable expenses included in this task order.

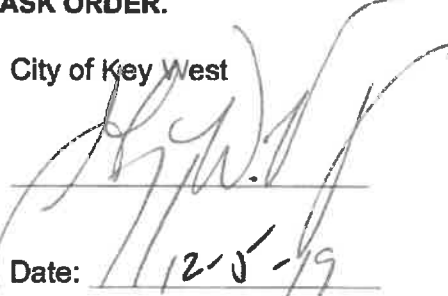
Acceptance

By signature each party accepts the terms of this **TASK ORDER**.

CONSULTANT

City of Key West

By: _____



Date: _____

Date: 12-5-19

CITY OF KEY WEST TASK ORDER

DUVAL, WHITEHEAD, AND FRONT STREETS SURVEY
In coordination with

AVIROM AND ASSOCIATES
50 SW 2nd Ave Suite 102
Boca Raton, FL 33432

Scope of Services

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Compensation


Professional fees for this Task Order will be as provided in the Agreement will be paid in a lump sum amount and are not to exceed \$ 57,243.00, no reimbursable expenses included in this task order.

Acceptance

By signature each party accepts the terms of this **TASK ORDER**.

CONSULTANT

City of Key West

By: 
Keith M. Chee-A-Tow, P.L.S.

Date: 12/06/2019

Date: _____



Digitally signed by Keith M.
Chee-A-Tow
Date: 2019.12.06 16:48:42 -05'00'



AVIROM & ASSOCIATES, INC.
SURVEYING & MAPPING

November 12, 2019

Via E-Mail: JYongue@CityofKeyWest-FL.gov

Mr. Johnnie Yongue, P.E.
Project Manager
City of Key West
1300 White Street,
Key West, FL 33040

Re. *Front Street, Whitehead Street and Duval Street Repaving – Area 1
Surveying Services (Revised 1)*

We shall perform a topographic survey of existing conditions at Area 1 in accord with the Statement of Work you provided.

Limits Area 1:

The bandwidth of the route shall be the full right-of-way width of all streets and shall extend for 30 feet beyond the right-of-way in all directions at each street intersections as delineated within the attached Exhibits incorporated herein for reference.

- a. A 50-foot wide section of Duval Street - Eaton Street to 160 feet past Wall Street (approximately 1,600 linear feet) as delineated in yellow shown on Exhibit A.
- b. A 50-foot wide section of Whitehead Street - Eaton Street to Front Street (approximately 1,200 linear feet) as delineated in yellow shown on Exhibit B.
- c. A 50-foot wide section of Front Street - Whitehead Street to the A and B Lobster House sign (approximately 1,500 linear feet) as delineated in magenta shown on Exhibit C.

Topographic Survey:

Obtain sufficient elevations to define the existing topography in detail, and to generate 1' contours, including significant grade changes in elevations.

The spot elevations will be obtained on a 25-foot grid with a bandwidth of the full right-of-way of the streets, extending 30-feet beyond the right-of-way in each direction at all intersections.

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(305) 294-7770 WWW.AVIROMSURVEY.COM

Cross-sections shall be performed at every 100-foot to capture centerline grade, edge of pavement grades, sidewalk grades, high/low points with intermediate grades obtained at all grade breaks and driveways.

The elevations shall be referenced to the National Geodetic Vertical Datum of 1929 (NGVD 29) and horizontally referenced to the North American Datum of 1983 (NAD 83-2011) Epoch 2010.00 and tied to the National Geodetic Survey benchmark network. Additionally, we shall establish benchmarks along the route at a maximum of 1,000' or line of sight to utilize for future construction. We shall calculate and place the vertical conversion factor from NGVD 29 to the North American Vertical Datum of 1988 (NAVD 88) on the face of the map.

We shall locate all above ground improvements including, but not limited to pavement, ramps, driveways, buildings, steps, gates, edge of curb, top of curb, flow line of curb, edge of pavement, centerline of pavement, back of walk, face of walk, parking pay stations and above ground evidence of utility.

We will obtain rim elevations of sewer and drainage structures where possible. Utility locations will include fire hydrants, water valves, meter boxes, vaults and electrical outlets, power poles and overhead wires. We will locate wells, main irrigation valves, but will not locate individual sprinkler heads.

There is no provision for the excavation, probing or location of underground utilities structures or improvements. Utilities shall be located to the extent that they are above ground and visible. This proposal does not include obtaining inverts, material, direction of flow or the contracting of an underground utility locating service to locate the subsurface utilities.

The survey data will be reported to the nearest 0.05 feet for horizontal locations and for the vertical component, 0.1 feet spot elevations on ground shots and 0.03' spot elevations on paving or hard surfaces, with all work performed in accordance with the Standards of Practice as defined in Chapter 5J -17, Florida Administrative Code. The work shall also comply with the additional standards as specified in Item 1.4 Standards of the Statement of Work.

We shall establish a baseline of survey along the centerline of the right-of-way, referenced horizontally to the North American Datum of 1983 (NAD 83-2011) Epoch 2010.00.

We shall research the Monroe County Property Appraiser's database to delineate the current ownership lines within our survey. We will graphically delineate right-of-way lines and lot lines from information obtained by this firm from recorded plats and/ or right -of-way maps, readily available from the Public Records of Monroe County at the time of the survey. This information will be spatially placed within the digital file of the topographic survey, based on recovered monumentation to depict the lines relative to the topographic locations. This is not a boundary survey and the information should not be relied upon as such. There is no provision to perform boundary surveys or surveys to resolve conflicts, ownerships or occupation issues relative to the recorded instruments. It is strongly recommended that if the design is contingent on accurate

boundary placement and especially prior to construction, a boundary survey should be performed to establish the lines. We will not be responsible for the misuse of the topographic survey for purposes it was not intended.

Tree Survey:

We will locate all indigenous and protected specimen trees having a 4" and larger caliper diameter at breast height, with the tree species listed to the best of knowledge and ability of the surveyor (without the benefit of a botanist or landscape architect). It is the responsibility of the end user to verify the identity of the species.

The location of shrubbery and landscaping is not included in this proposal. Large, bunched groups of trees shall be located as clusters with a count and diameter listed. We will not locate exotic or non-native species.

Deliverables:

1. Provide two (2) signed and sealed certified hard copies of the topographic survey.
2. Digital PDF file, ASCII comma delimited file of the points and an AutoCAD 2018 or lower format file of the above survey.
3. The delivery format shall be as specified under Item 1.10 Data Delivery Format of the Statement of Work.

Clarifications:

- This proposal is based on one mobilization by our crew from Boca Raton to accomplish the project.
- Requirements to the survey requested by governmental agencies that are more stringent than Standards of Practice as set forth in Chapter 5J-17 FAC pursuant to Section 472 Florida Statutes will be an additional expense.
- This proposal is based on the site being free and clear of storm debris. We will not move obstacles that impede obtaining the survey data, or if field conditions are considered hazardous to the safety of our crews.

Timeframe:

After receipt of an executed contract we can mobilize to the site within one (1) week. We can phase the project and begin submittals within four (4) weeks after mobilization, with an anticipated completion of the entire project within eight (8) weeks. Mobilization is dependent on the availability of accommodations for our field crew.

Fee:

The itemized fee to provide the above surveying services shall be lump sum:

1. Duval Street – Area 1	\$13,470.00 lump sum
2. Whitehead Street – Area 1	\$ 8,900.00 lump sum
3. Front Street	\$11,974.00 lump sum
TOTAL \$34,344.00 lump sum	

Thank you for the opportunity to submit this proposal. Should you have any questions, please contact me accordingly.

Respectfully,



Keith M. Chee-A-Tow, P.L.S.
Project Surveyor

Documents\Proposals\Keys\City of Key West\Key West Streets\Duval Front Whitehead\NP_Duval_Front_Whitehead_Area 1_Rev1.docx

EXHIBIT A



EXHIBIT B

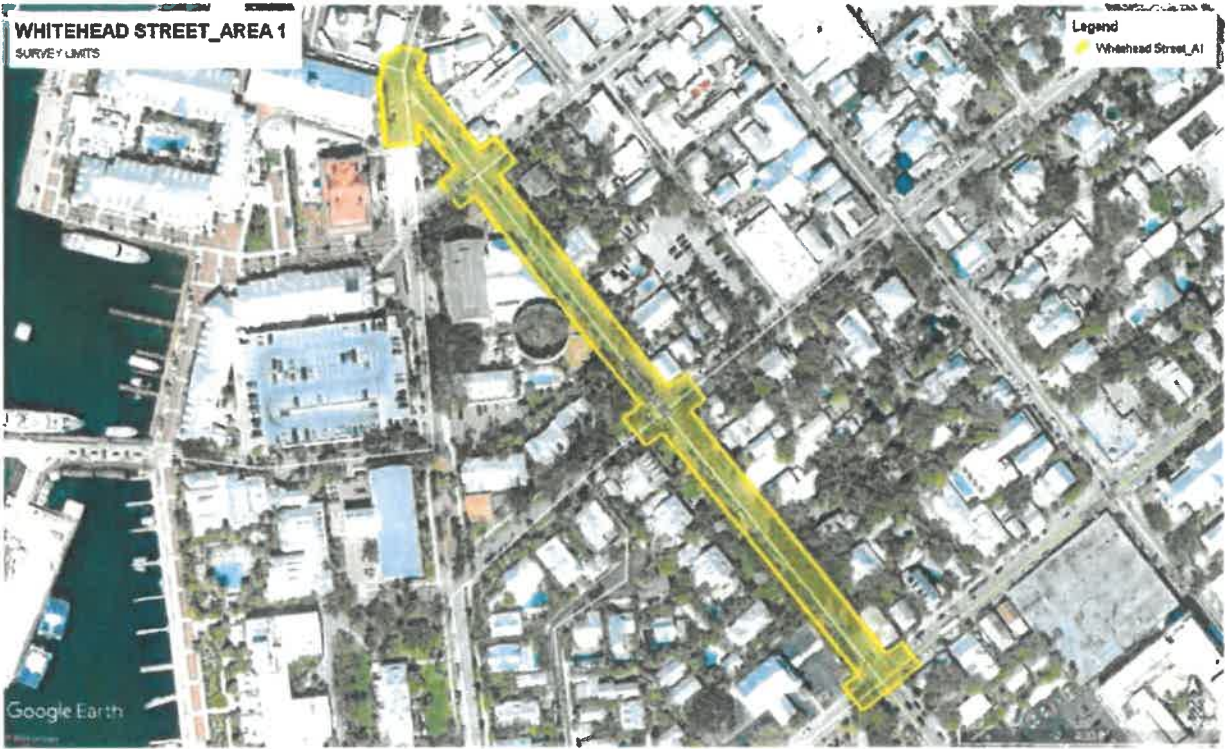


EXHIBIT C





AVIROM & ASSOCIATES, INC.
SURVEYING & MAPPING

November 12, 2019

Via E-Mail: JYongue@CityofKeyWest-FL.gov

Mr. Johnnie Yongue, P.E.
Project Manager
City of Key West
1300 White Street,
Key West, FL 33040

Re. *Whitehead Street and Duval Street Repaving_Area 2
Surveying Services (Revised 1)*

We shall perform a topographic survey of existing conditions at Area 2 in accord with the Statement of Work you provided.

Limits Area 2:

The bandwidth of the route shall be the full right-of-way width of all streets and shall extend for 30 feet beyond the right-of-way in all directions at each street intersections as delineated within the attached Exhibits incorporated herein for reference.

- a. A 50-foot wide section of Duval Street from Eaton Street to Truman Avenue (approximately 2,559 linear feet) as delineated in magenta shown on Exhibit A.
- b. A 50-foot wide section of Whitehead Street from Eaton Street to Fleming Street (approximately 420 linear feet) as delineated in magenta shown on Exhibit B.

Topographic Survey:

Obtain sufficient elevations to define the existing topography in detail, and to generate 1' contours, including significant grade changes in elevations.

The spot elevations will be obtained on a 25-foot grid with a bandwidth of the full right-of-way of the streets, extending 30-feet beyond the right-of-way in each direction at all intersections.

Cross-sections shall be performed at every 100-foot to capture centerline grade, edge of pavement grades, sidewalk grades, high/low points with intermediate grades obtained at all grade breaks and driveways.

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[305] 294-7770 WWW.AVIROMSURVEY.COM

The elevations shall be referenced to the National Geodetic Vertical Datum of 1929 (NGVD 29) and horizontally referenced to the North American Datum of 1983 (NAD 83-2011) Epoch 2010.00 and tied to the National Geodetic Survey benchmark network. Additionally, we shall establish benchmarks along the route at a maximum of 1,000' or line of sight to utilize for future construction. We shall calculate and place the vertical conversion factor from NGVD 29 to the North American Vertical Datum of 1988 (NAVD 88) on the face of the map.

We shall locate all above ground improvements including, but not limited to pavement, ramps, driveways, buildings, steps, gates, edge of curb, top of curb, flow line of curb, edge of pavement, centerline of pavement, back of walk, face of walk, parking pay stations and above ground evidence of utility.

We will obtain rim elevations of sewer and drainage structures where possible. Utility locations will include fire hydrants, water valves, meter boxes, vaults and electrical outlets, power poles and overhead wires. We will locate wells, main irrigation valves, but will not locate individual sprinkler heads.

There is no provision for the excavation, probing or location of underground utilities structures or improvements. Utilities shall be located to the extent that they are above ground and visible. This proposal does not include obtaining inverts, material, direction of flow or the contracting of an underground utility locating service to locate the subsurface utilities.

The survey data will be reported to the nearest 0.05 feet for horizontal locations and for the vertical component, 0.1 feet spot elevations on ground shots and 0.03' spot elevations on paving or hard surfaces, with all work performed in accordance with the Standards of Practice as defined in Chapter 5J -17, Florida Administrative Code. The work shall also comply with the additional standards as specified in Item 1.4 Standards of the Statement of Work.

We shall establish a baseline of survey along the centerline of the right-of-way, referenced horizontally to the North American Datum of 1983 (NAD 83-2011) Epoch 2010.00.

We shall research the Monroe County Property Appraiser's database to delineate the current ownership lines within our survey. We will graphically delineate right-of-way lines and lot lines from information obtained by this firm from recorded plats and/ or right -of-way maps, readily available from the Public Records of Monroe County at the time of the survey. This information will be spatially placed within the digital file of the topographic survey, based on recovered monumentation to depict the lines relative to the topographic locations. This is not a boundary survey and the information should not be relied upon as such. There is no provision to perform boundary surveys or surveys to resolve conflicts, ownerships or occupation issues relative to the recorded instruments. It is strongly recommended that if the design is contingent on accurate boundary placement and especially prior to construction, a boundary survey should be performed to establish the lines. We will not be responsible for the misuse of the topographic survey for purposes it was not intended.

Tree Survey:

We will locate all indigenous and protected specimen trees having a 4" and larger caliper diameter at breast height, with the tree species listed to the best of knowledge and ability of the surveyor (without the benefit of a botanist or landscape architect). It is the responsibility of the end user to verify the identity of the species.

The location of shrubbery and landscaping is not included in this proposal. Large, bunched groups of trees shall be located as clusters with a count and diameter listed. We will not locate exotic or non-native species.

Deliverables:

1. Provide two (2) signed and sealed certified hard copies of the topographic survey.
2. Digital PDF file, ASCII comma delimited file of the points and an AutoCAD 2018 or lower format file of the above survey.
3. The delivery format shall be as specified under Item 1.10 Data Delivery Format of the Statement of Work.

Clarifications:

- This proposal is based on one mobilization by our crew from Boca Raton to accomplish the project.
- Requirements to the survey requested by governmental agencies that are more stringent than Standards of Practice as set forth in Chapter 5J-17 FAC pursuant to Section 472 Florida Statutes will be an additional expense.
- This proposal is based on the site being free and clear of storm debris. We will not move obstacles that impede obtaining the survey data, or if field conditions are considered hazardous to the safety of our crews.

Timeframe:

After receipt of an executed contract we can mobilize to the site within one (1) week. We can phase the project and begin submittals within four (4) weeks after mobilization, with an anticipated completion of the entire project within eight (8) weeks. Mobilization is dependent on the availability of accommodations for our field crew.

Fee:

The itemized fee to provide the above surveying services shall be lump sum:

- | | | |
|------------------------------------|----------------------|----------------------|
| 1. Duval Street – Area 2 | \$19,457.00 lump sum | |
| 2. Whitehead Street – Area 2 | \$ 3,442.00 lump sum | |
| TOTAL | | \$22,899.00 lump sum |

Thank you for the opportunity to submit this proposal. Should you have any questions, please contact me accordingly.

Respectfully,



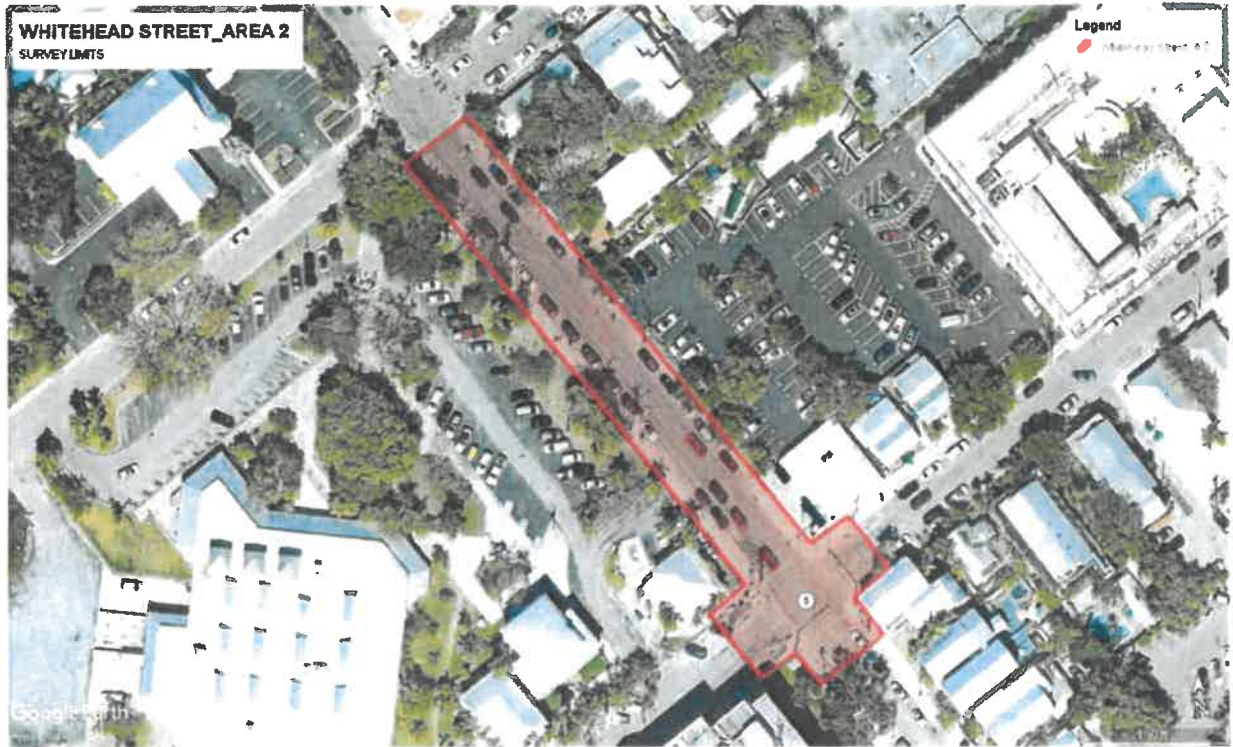
Keith M. Chee-A-Tow, P.L.S.
Project Surveyor

Documents\Proposals\Keys\City of Key West\Key West Streets\Duval Front Whitehead\P_Duval_Whitehead_Area 2_Rev2.docx

EXHIBIT A



EXHIBIT B



RESOLUTION NO. 18-144

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE STAFF RANKING FOR PROFESSIONAL SURVEYING SERVICES IN RESPONSE TO REQUEST FOR QUALIFICATIONS (RFQ) NO. 18-002; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE CONTRACTS ON A TASK ORDER BASIS WITH THE THREE TOP-RANKED FIRMS UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City issued RFQ 18-002 for firms capable of providing professional surveying services; and

WHEREAS, at a publicly advertised meeting on April 20, 2018, a ranking committee composed of city staff ranked the nine (9) responses to the RFQ for Professional Surveying Services, and determined that four (4) firms are particularly qualified, and recommended that the City engage each one on a Task Order basis.

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

Section 1: That the top responses for professional surveying services are hereby ranked by staff, and approved by the City Commission as follows:

- (1) Florida Keys Land Surveying, LLC
- (2) Avirom & Associates
- (3) Mathews Consulting, A Baxter & Woodman Company
- (4) Manuel G. Vera & Associates

Section 2: That the City Manager is hereby authorized to negotiate and execute contracts on a task-order basis with each of the four top-ranked companies, upon advice and consent of the City Attorney.

Section 3: Specific task orders issued pursuant to the contracts shall comply with the City's procurement guidelines.

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 1st day of May, 2018.

Authenticated by the Presiding Officer and Clerk of the
Commission on 2nd day of May, 2018.

Filed with the Clerk on May 2, 2018.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

AGREEMENT

between

CITY OF KEY WEST

and

AVIROM & ASSOCIATES

for

PROFESSIONAL SURVEYING SERVICES

KEY WEST, FLORIDA

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

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

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

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

- 1.1. **Agreement:** This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CITY's RFQ 18-002, CONSULTANT's Response to RFQ dated March 27, 2018, addenda, 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. **CONSULTANT:** The Landscape Architectural firm selected to perform the services pursuant to this Agreement.
- 1.4. **Contract Administrator:** The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator, provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5. **Contractor:** The person, firm, corporation or other entity that enters into an agreement with CITY to perform the construction work for the Task Order.
- 1.6. **CITY:** City of Key West.
- 1.7. **Task Order:** A detailed description of a particular service or services to be performed by CONSULTANT under this Agreement.

ARTICLE 2

PREAMBLE

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

- 2.1. The CONSULTANT is not entitled to receive, and the CITY is not obligated to pay, any fees or expenses in excess of the amount budgeted for 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. 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 18-002 incorporated by reference and made a part hereof and the Response to the Request for Qualifications from Consultant dated March 27, 2018 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:
 - 3.1.1. Professional Surveying Services
- 3.2. CONSULTANT's services shall include:
 - Boundary/Property surveys and analysis
 - Topographic, easement, roadway and right-of-way surveys
 - Preparation of easement or right-of-way exhibits
 - Property line staking
 - Construction layout survey and staking
 - Review of right-of-way and easement documents for developments
 - Legal descriptions
 - Monument placement
 - Flood plain, FEMA, beach surveying/mapping
 - GIS/AutoCAD map and data base creation

- Underground/aboveground utilities identification and mapping
- Ground Penetrating Radar (subcontractor acceptable)
- Cut and fill calculations
- As-built/record drawing survey and preparation
- Aerial photography (drone/aerial subcontractor acceptable)
- Title searches

and any other lawful professional Engineering 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 Task Order 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 separate Task Orders to this AGREEMENT. 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 CONSULTANT'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 CONSULTANT. CONSULTANT shall perform no further work upon receipt of this notice unless specifically authorized by the City Manager of the City of Key West. On termination, the CONSULTANT shall be paid for all

authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the Task Order. The CITY shall not pay for anticipatory profits. 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 CONSULTANT shall begin services under any Task Order when authorized by a Purchase Order issued by the CITY and delivered to CONSULTANT.
- 3.5. The CITY and CONSULTANT may negotiate additional scopes of services, compensation, time of performance and other related matters for each Task Order as allowed by this Agreement. If CITY and CONSULTANT cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY and procure services from another source.
- 3.6. 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.
- 3.7. CONSULTANT 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 CONSULTANT or any sub-consultant, CONSULTANT shall present options for their use or implementation.
- 3.8. 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.
- 3.9. 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 a period of three (3) years from the effective date of the Agreement with the option of one (1) 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. CONSULTANT 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.
- 4.2. CONSULTANT 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 CONSULTANT to proceed to a subsequent Task Order, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit any deliverables/documents for the Contract Administrator's review.
- 4.3. In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Task Order, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, CITY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CONSULTANT to notify CITY within 10 days in writing whenever a delay in approval by a governmental agency, including CITY, is anticipated or experienced, and to inform the Contract Administrator of all facts and details related to the delay.
- 4.4. In the event the Contractor fails to substantially complete the Task Order 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 Task Order 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 the TASK ORDER 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 TASK ORDER 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 first year of the contract (CONSULTANT AND Sub-consultants): See attached Exhibit A
 - 5.1.2.3. CONSULTANT and Sub-consultants allowed annual wage adjustment 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 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 Task Order shall be charged at actual cost, and shall be limited to the following:
- 5.2.1.2. Identifiable transportation expenses in connection with the Task Order, 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 Holiday Inn, 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. Unit costs must be specified on the Task Order.
- 5.2.1.6. Identifiable testing costs approved by Contract Administrator. Unit costs must be specified on the Task Order.
- 5.2.1.7. All permit fees paid to regulatory agencies for approvals directly attributable to the Task Order. 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. These amounts shall not increase each fiscal year to the CITY by more than the Consumer Price Index Urban U.S. City Average All Items U.S. Department of Labor Bureau of Labor Statistics. 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 that are identified by the specific Task Order number if applicable 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 that are identified by the specific Task Order number on a monthly basis in a timely manner for all personnel hours and reimbursable expenses attributable to the Task Order. 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 a Task Order number or other identifier that clearly indicates the expense is identifiable to the Task Order. 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 TASK ORDER or any Task Order.

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 in order to perform the Task Order, 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: Avirom & Associates, Inc.
50 SW 2nd Avenue, Suite 102
Boca Raton, FL 33432

ARTICLE 6

CITY'S RESPONSIBILITIES

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

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 Task Order, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by CONSULTANT in connection with this Agreement, whether in hard copy or electronic form, shall become the property of CITY, whether the Task Order for which they are made is completed or not. If applicable, CITY may withhold any payments then due to CONSULTANT until CONSULTANT complies with the provisions of this Article. CONSULTANT is not responsible for damages caused by the unauthorized re-use by others of any of the materials for another Task Order.

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 Task Order. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Task Order.

7.3.2. CONSULTANT shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, 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 cannot be lawfully or appropriately used as a basis for service delivery. CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, gender identity or expression, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

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

7.5. PUBLIC ENTITY CRIMES ACT

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

7.5.2. In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any 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 currently approved is as follows:

- a. _____
- b. _____
- c. _____
- d. _____

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 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 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	\$1,000,000	Per Claim / Aggregate
Additional Umbrella Liability	\$2,000,000	Occurrence / 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 worker's 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

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

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

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

7.11. ALL PRIOR AGREEMENTS SUPERSEDED

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

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

7.12. NOTICES

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

Address: 50 SW 2nd Avenue, Suite 102

Boca Raton, FL 33432

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 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. 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 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 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

7.27. COUNTERPARTS

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

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

By: CITY OF KEY WEST

J. Scholl
James Scholl, City Manager

By: CONSULTANT
Michael D. Avrom

(Signature)
Michael D. Avrom, President
(Print Name and Title)

14 day of MAY, 2018

14 day of May, 2018



J. Smith Janice China
City Clerk

Attest:
(Signature)
Janice China
(Print Name and Title)

14 day of May, 2018

14 day of May, 2018

Exhibit A
Hourly Fee Schedule
Company Name: Avirom & Associates
Date: May 14, 2018

<u>Position Title</u>	<u>Hourly Rate</u>
Principal	150.00
Professional Land Surveyor	110.00
Survey Field Crew	135.00
GPS Crew	150.00
CADD Technician	90.00

