

Agreement to Furnish Cultural Resources Services to the City of Key West

This AGREEMENT made and entered into by and between the City of Key West, a municipal corporation of the State of Florida, whose address is 1300 White Street, Key West, Florida 33040, hereafter referred to as the "CITY" and AECOM, hereafter referred to as the "CONSULTANT". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

Article 1. Scope of Services

The CITY engages CONSULTANT to perform those Services enumerated below and as described in CITY'S Request for Qualifications #18-003, as modified in City of Key West Local Agency Program Supplemental Agreement #1, which is attached hereto, incorporated by reference, and more particularly described as Exhibit "A", and CONSULTANTS' Proposal dated 8/13/2018 which is attached hereto, incorporated by reference, and more particularly described as Exhibit "B." The CONSULTANT's primary responsibilities include, but are not limited to the following:

Task 1 – Perform a Cultural Resource Level of Effort Assessment

- 1.A. Assess impact of improvements to streets and sidewalks identified in City of Key West Local Agency Program Supplemental Agreement #1 as they relate to cultural resources and develop recommendations for avoidance or mitigation as required.
- 1.B. Conduct a literature review and background research. Archaeological and historical resource documentation pertinent to the project area will be identified and reviewed to determine the types of cultural resources present, their chronological associations, locational patterning, and other relevant findings. Such documentation will include, but not be limited to, previous Cultural Resource Survey Reports, Comprehensive Plan Studies, published books and journal articles, the National Register of Historic Places, the Florida Master Site File, and any county or local site inventory. This review will also include, when possible, information gathered from other professionals in pertinent disciplines, vocational archaeologists and historians, and local residents of the project area.
- 1.C. Prepare final report and make recommendation on need for a Cultural Resource Assessment Survey.

Task 2 – Prepare a Cultural Resources Assessment Survey (if required).

If Cultural Resources Level of Effort Assessment indicates, perform a Cultural Resources Assessment Survey. The following elements will be accomplished in completing the Survey:

2.A. Prepare archeological, historical and environmental overviews of the project area(s).

2.A.1. Archaeological Overview: A summary of the area's prehistoric and historic archaeology will be prepared based on the findings of the literature review and other background research. The overview will identify the chronological, functional, and locational dimensions of the project area's archaeological record, as well as provide a basis to partition the project area into ranked zones of archaeological site occurrence potential, to analyze recovered cultural data and to evaluate the significance of archaeological sites occurring in the project area.

2.A.2. Historical Overview: an overview of the history of the project area will be prepared based on the findings of the literature review and other background research. The overview will identify the significant events, locations, structures and individuals associated with the development of the project area. Particular attention should be paid to land use patterns and the historical environment. The overview should provide a basis for evaluating the significance of both historical and architectural/historical resources occurring in the project area.

2.A.3. Environmental Overview: An overview of the project area's salient features will be prepared to include a description of the area's topography, geology, hydrology, pedology, and vegetative associations. The description should include a discussion of past and present environmental configurations in terms of relationships to the occurrence of cultural resources.

2.B. Conduct a field survey of the project area(s). The survey will use both surface and subsurface testing techniques to locate, identify, and evaluate the significance of cultural resources occurring in the project area. The intensity of field-testing will be keyed to ranked probability zones (high, medium, low) of possible cultural resource occurrence based on paleo-environmental data, the occurrence of known sites, historic development, land use patterns and other pertinent information. Subsurface testing in these ranked zones will adhere to standards set forth in the guidelines promulgated by the Florida Division of Historic Resources (see "the Historic Preservation Compliance Review Program Manual" as revised). Testing in areas of high site probability should proceed at approximately 25 meter intervals and in areas of moderate potential at approximately 50 meter intervals. Testing in low probability areas should generally proceed on a judgmental basis with at least ten percent of such areas subject to testing. Judgmental testing should also be completed in areas of high and moderate site potential as appropriate.

Subsurface tests will typically be 0.5 meters in diameter and dug to a minimum, subsurface conditions permitting, of one meter. All spoil from excavated tests should be sifted through ¼-

inch metal hardware cloth. Any cultural materials recovered from either surface or subsurface testing will be stored in plastic bags and properly labeled by its source. Any organic materials recovered in testing such as faunal and floral materials will be stabilized, if necessary, and preserved for future analysis.

In order to identify historic or archaeological resources, a reconnaissance survey of the standing structures along the project corridor shall be undertaken. As part of this effort, the CONSULTANT will inspect all structures along the project corridor in order to properly evaluate the historical or architectural significance of each property. When appropriate, informant interviews should be conducted concerning any potential cultural resources identified. In addition, any necessary primary and secondary source research will be conducted in order to supplement the background research which includes local information, materials kept by the Department of State in Tallahassee and elsewhere, and any other local, state or Federal repositories.

In the event that historic structures are encountered on a survey, each site will be properly mapped and photographed. This will include a topographic and a street map with the location of the structure(s) indicated. It should also include a sketch map showing the prominent resources on the property and black and white photographs of the sites integral features (i.e. main façade, formal entrances). Also, the estimated date of construction and architectural style should be determined. The structure's architectural-historical significance must be evaluated, when possible, and the principle personages involved in its construction identified (i.e. architect, builder, etc.). In addition, archaeological subsurface testing will be conducted using approved methods in an attempt to detect any subsurface artifacts or features associated with the historical structure.

Documentation: A Florida Master Site File form will be completed on every prehistoric or historic cultural resource identified in the assessment survey. A NRHP Determination of Eligibility (DOE) package will be completed on each prehistoric and historic cultural resource considered to be a significant resource according to criteria established by law (see Federal Register, CFR No. 18, Vol. 39, Part 111, pp. 3369-3370 and Chapter 5, Section 2 of the FDOT Cultural Resource Management Handbook). In the case of historic resources, specifically historic structures and related features, the DOE package will include a NRHP Registration Form with accompanying documentation. Maps, drawings, and photographs should be used, as appropriate, in the documentation of the cultural resources addressed in the assessment process. Field notes documenting the progress of the assessment survey should be maintained.

These notes should include the type, number of tests conducted, a brief description of artifacts or features encountered in testing, soils information, and other information pertinent to the assessment survey. All subsurface tests and areas of surface examination should be clearly marked on aerial photographs of the project area provided by FDOT. Finally, a Survey Log Sheet and survey location map should accompany the final report.

2.C. Process, analyze and catalogue recovered cultural materials (if required). Laboratory processing will consist of artifact cleaning, stabilization (if required), packaging, and storage. Laboratory analysis will consist of the morphological and functional (if possible) classification

of artifacts and if diagnostic, the establishment of their cultural/temporal affiliations. Proper and detailed documentation of artifact provenance, number, type, and description will be maintained. Artifacts will eventually be transferred to the City by the CONSULTANT pending a decision on their final disposition.

2.D. Prepare report documenting the results of the Cultural Resource Assessment. A draft report presenting the methods, findings, evaluation, and recommendations of the CRAS of the entire project will be prepared. The report is to be prepared as to conform to the standards set forth in FDOT's Project Development and Environment Manual (PD&E - Part 2, Chapter 12, as revised) as well as to the standards embodied on the Florida Division of Historical Resources "Historic Preservation Compliance Review Program Manual" (as revised). The draft report will also contain copies of the Master Site File forms and any applicable DOE forms, along with a Survey Log Sheet. Following the review of the draft document and receipt of City comments, a final report will be submitted to City within a timeframe negotiated by City and the CONSULTANT, not to exceed two (2) weeks. In addition to the final report on the project, the CONSULTANT will provide monthly status reports to City documenting the progress of the Cultural Resource Assessment. These reports will include information on survey findings, scheduling, potential problems, and other information considered pertinent.

2.E. Prepare Case Study Report. CONSULTANT will prepare a report documenting the potential effects of a transportation project on a cultural resource determined to be significant by FHWA in consultation with SHPO. The Case Study Report should be written in accordance with pertinent specifications in the FDOT PD&E Manual, Part 2, Chapter 12 (latest version), FDOT Cultural Resources Management Handbook (latest version), and in informational documents produced by the FDOT's Central Environmental Management Office (CEMO).

Task 3 – Perform Additional Relevant Services as Necessary

Additional services may include, but are not limited to, the following activities:

- 3.A. Coordinate with City Historic Architectural Review Commission.
- 3.B. Prepare Memorandum of Agreement or Memorandum of Understanding (if required). CONSULTANT will prepare a Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU) and associated documents specifying measures to be undertaken to mitigate the effects of a transportation project on a significant cultural resource.
- 3.C. Perform excavations of prehistoric or archaeological resources (if required). CONSULTANT will conduct excavations of prehistoric or historic archaeological resources to mitigate adverse effects to such resources resulting from transportation projects, in accordance with pertinent specifications in the latest version of FDOT Cultural Resources Management Handbook.
- 3.D. Complete mitigation measures for significant historical/cultural resources (if required). Document (and perform, if appropriate) mitigation measures with regard to significant historical cultural resources such as houses or buildings occurring individually or as Historic Districts.
- 3.E. Perform emergency discovery services (if required). CONSULTANT should respond

within 24 hours upon notification to the City's needs for assessment, survey, and/or mitigation in an Emergency Discovery situation. The CONSULTANT may be required to complete a field review within seven (7) calendar days of the notification or as directed by the City.

- 3.F. Provide Section 4(f) (consideration of parks, refuges, historic sites, etc.) compliance.
- 3.G. Provide Section 106 (National Historic Preservation Act) compliance.
- 3.H. Perform any other Cultural Resource Assessment service that may be requested by City.

Article 2. Compensation

As consideration for providing the services enumerated in Article 1, the CITY shall pay the CONSULTANT fees as defined as follows:

- 2.1 Payment in the total, not-to-exceed, fixed amount of \$_____ for the initial project (Task 1), paid in monthly progress installments which includes compensation for all tasks identified in the CONSULTANT' proposal (Exhibit "B"), including but not limited to CONSULTANT' travel costs (meals and lodging), transportation, fringe benefits, clerical support, salaries, general overhead costs, direct expenses, profit and all other out-of-pocket expenses.
- 2.2 The CITY agrees to remit payment to the CONSULTANT by the 10th day of the following month after receipt of invoice. The fee is inclusive of travel to and from the City of Key West and grant application production cost.
- 2.3 All fees shall be addressed to: City of Key West, Engineering Department, 1300 White Street, Key West, Florida 33040

Article 3. Invoicing and Payment

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

Article 4. Obligations of the CONSULTANTS

- 4.1. General
The CONSULTANT will serve as CITY'S professional representative under this AGREEMENT, providing cultural resources assessment services and furnishing customary services incidental thereto.
- 4.2. Standard of Care
The standard of care applicable to CONSULTANT services will be the degree of skill and diligence normally employed by cultural resources assessment and other related CONSULTANT performing the same or similar services at the time said services are performed. The CONSULTANT will perform any services not meeting this standard without additional compensation.

4.3. CONSULTANT Insurance

- A. The CONSULTANT will maintain throughout this AGREEMENT the insurance requirements found in CITY’S Request for Qualifications #010-18 (Exhibit “A”) of this AGREEMENT.
- B. 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 above provided, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of the CONSULTANT to take out and/or maintain any required insurance shall not relieve the CONSULTANT from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the CONSULTANTS concerning indemnification.

4.4 Subconsultants

The CONSULTANT may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY.

4.5 Licenses

The CONSULTANT will be required to obtain a local required license prior to performing any work for the CITY. This license will be a Business Tax Receipt.

Article 5. Obligations of the City

5.1. Authorization to Proceed

Authorization to proceed will be considered to be given upon execution of this Agreement by CITY.

5.2 City-Furnished Data

The CITY will provide to the CONSULTANT in a timely and accurate manner all data, in the CITY’S possession, necessary for the CONSULTANT to execute those scope of services stated under Article 1.

5.3. Prompt Notice

The CITY will give prompt written notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT’ services, or any defect in the work of the CONSULTANT.

Article 6. General Legal Provisions

6.1 Agreement Period

The duration of the agreement shall be two (2) years commencing from the date this Agreement was entered into, with an option by the City to extend the agreement on an

optional basis for one (1) year under the same terms and conditions for a total of three years upon mutual agreement of the parties.

6.2. Reuse of Project Document; Public Records

- A. Reports, documents and other deliverables of the CONSULTANT, whether in hard copy or in electronic form, are instruments of service for the project of the CITY. All documents provided to the City are the property of the City of Key West. Reuse, change, or alteration on another project, by the CITY or by others acting on behalf of the CITY of any such instruments of service without the written permission of the CONSULTANT will be at the CITY's sole risk. Nothing herein shall constitute a waiver of City's sovereign immunity rights, including, but not limited to, those expressed in Section 768.28, Florida Statutes.
- B. CONSULTANT has reviewed Florida Statute section 119.07 and is otherwise knowledgeable of Florida's broad public records laws. CONSULTANT understands and agrees that all records made in connection with the services provided under or related to this agreement are public records as defined by Florida Statute section 119.011(11). Such records must be maintained and made available by the CONSULTANT in accordance with the public records law provisions.

6.3 Ownership of Work Product and Inventions

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

6.4 Force Majeure

- A. The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.
- B. In the event of a delay that results in additional costs to the CONSULTANT, an appropriate increase in compensation and schedule will be authorized in writing.

6.5 Termination

- A. This agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to CONSULTANT. No further work will be performed by CONSULTANT upon receipt of this notice unless specifically authorized by the City Manager of the City of Key West.
- B. On termination, the CONSULTANT will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the AGREEMENT. The CITY will not pay for anticipatory profits.

6.6 Third Party Beneficiaries

- A. This Agreement gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third party beneficiaries. CONSULTANT' services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the AGREEMENT.

- B. All work products will be prepared for the exclusive use of CITY for specific application as described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of CONSULTANT. Any unauthorized assignment of related work product shall be void and unenforceable.

6.7 Insurance and Indemnification

A. Insurance

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

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. PROPOSER 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.

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

CONSULTANT shall provide the City of Key West with a Certificate of Insurance verifying compliance with the workman's 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 workman's compensation coverage under each policy.

PROPOSER'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.

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. PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.

CONSULTANT will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. PROPOSER will notify City of Key West immediately by telephone at (305) 809-3811 any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the CONSULTANT.

B. Indemnification

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 "indemnitees") 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, errors or omissions or intentional wrongful misconduct of the CONSULTANT, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claims by indemnitees 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.

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 PROPOSER may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the work.

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Recipient guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Recipient or any subcontractor, in connection with this Agreement. Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Recipient agrees to indemnify and hold harmless the Department, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Recipient and persons employed or utilized by the Recipient in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Recipient's sovereign immunity. Additionally, the Recipient agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

“To the fullest extent permitted by law, the Recipient's contractor/consultant shall indemnify and hold harmless the Recipient and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor or consultant and persons employed or utilized by the contractor or consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida or the Recipient's sovereign immunity.”

6.8 Limitation of Liability

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

6.9 Assignment

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

6.10 Jurisdiction and Venue

The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. Venue for any such action shall be in the state court located in Key West, Monroe County, Florida.

6.11 Severability and Survival

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

6.12 Dispute Resolution

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

Article 7. Schedules, and Signatures

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

IN WITNESS WHEREOF, the parties execute below:

Attest:

THE CITY OF KEY WEST

By: _____

James Scholl, City Manager

Date: _____

Attest:

For the CONSULTANT

By: _____

Name

Date: _____

See Attached:

Exhibit A – RFQ #18-003/LAP SA#1

Exhibit B – Consultant’s Proposal