

REQUEST FOR QUALIFICATIONS

CITY PLANNING SERVICES

City of Key West RFQ # 22-009



MAYOR: TERI JOHNSTON

COMMISSIONERS:

**MARY LOU HOOVER
CLAYTON LOPEZ
JIMMY WEEKLEY**

**SAM KAUFMAN
BILLY WARDLOW
GREG DAVILA**



SUBJECT: CITY OF KEY WEST
REQUEST FOR QUALIFICATIONS # 22-009
CITY PLANNING SERVICES

ISSUE DATE: 09/9/2022

**MAIL OR DELIVER RESPONSES
TO:**

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

**CLARIFICATION SUBMITTAL
DEADLINE:** 10/02/2022 noon local time

RESPONSES DEADLINE DATE: 10/12/2022 3pm local time

For information concerning this Request for Qualifications, please contact Donna Phillips, Planning Projects Coordinator, only in writing and requests for information must be received at least ten (10) days prior to the date fixed for opening of responses to the RFQ. The contact email address is donna.phillips@cityofkeywest-fl.gov.

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**CITY OF KEY WEST RFQ # 22-009
CITY PLANNING SERVICES**

A. GENERAL

A.1 Purpose

The City of Key West requires the services of qualified firms to provide Professional City Planning Services. These services may include but are not limited to development plan review, current planning functions including Land Development Regulation text amendments, and other related services as assigned. The City intends to retain one or more qualified firms to provide these services for a period of three years with an additional two-year option. Completion of the scope of services may extend beyond the agreement's three-year term, but no minimum amount of service or compensation will be assured to the retained firm(s). The selected planner(s) will be required to abide by all applicable federal, state and local laws and ordinances.

Any proposal received after the response deadline will not be considered. Upon selection of the most qualified firm(s) and approval by the City commission, the City will negotiate a contract with the selected firm(s). If the selected firm(s) does not execute the contract with the City within sixty (60) days after award, the City reserves the right to award the contract to the next most qualified firm. A respondent may not withdraw their response before the expiration of sixty (60) days from the date of response opening. A respondent may withdraw their response after that date only if they provide written notification prior to the approval of selection by the City Commission. The City of Key West reserves the right to reject any or all of the Responses submitted.

A.2 Scope of Services

Development Review/Current Planning Functions:

- Process 25%- 100% of the City's variance, easement, conditional use permit and major and minor development plan applications within a timeframe to be determined by the City Planner. Associated duties would include but not be limited to: completeness review, correspondence with applicants, review per Land Development Regulation criteria, timely staff report preparation pursuant to Code criteria and verbally (virtually) present applications to, and attend meetings of, the Development Review Committee, Planning Board, and City Commission.
- Review transportation studies submitted by applicants associated with development plans (transportation planning services) within a timeframe to be determined by the City Planner.

Long range planning/policy functions:

- Review, provide expertise regarding best practices, and finalize draft text amendments to the City’s Land Development Regulations and Official Zoning Map as requested within a timeframe to be determined by the City Planner. Services may include public input such as workshops with property owners, construction industry representatives, elected officials.

Other day-to-day Planning Department tasks as assigned or directed.

Historic Architectural Plan Review functions:

- Review applications for compliance with codified Historic Architectural Design Guidelines for work within the Key West Historic District for administrative approvals of Certificates of Appropriateness or for presentation to the Historic Architectural Review Commission (HARC). Verbally present agenda items at HARC meetings. Other duties as assigned.

These essential job functions are not to be construed as a complete statement of all duties to be performed. Consultant may be required to perform other job-related duties as required.

All Services shall be performed and completed in compliance with the Florida Law, Florida Building Code and the City of Key West Charter and Code of Ordinances and all other applicable codes and standards governing the Services.

A.3 Qualifications

The City is in need of planners and architects with historic preservation training for current planning/development review services and architectural plan review services. Respondents should clearly identify in their responses other municipalities or clients for which they have successfully provided these services. Respondents must demonstrate a track record of efficient high quality work and appropriate depth of understanding related to municipal and state land planning laws, historic preservation standards, and procedures. Planning professional and architectural resumes should also demonstrate customer service and public speaking skills.

A.4 Qualifications Criteria These additional qualification criteria will also be considered:

- Qualifications and capacity of assigned and identified key staff to accomplish work.
- Ability to perform the services expeditiously at the request of the CITY. History of responsive technical support people and Task Order manager and professional planning and architectural historic preservation staff.
- Ability to coordinate required services with in-house staff
- Past work experience and references.

B. Selection Process & Scope of Work

B.1 Selection Process*

The following steps will be followed in the selection process:

1. City of Key West management and staff will review each response that is submitted and determine which ones are considered responsive to the RFQ.
2. The City staff tasked with the review of the responses to the RFQ will rank the responses in a publicly advertised meeting using the enclosed selection criteria matrix.
3. The ranking and selection of the firms will be presented to City Commission for approval.
4. The City Commission reserves the right to accept the recommendation of the evaluation team or approve an alternative ranking and selection. Any award shall be made by the City Commission and subject to execution of an agreement in form and substance approved by the City Attorney.
5. City Commission will authorize the City Manager to negotiate a contract with the highest ranked firm or firms subject to agreement of the City Attorney. The City Manager shall negotiate an agreement with the selected firm(s) at compensation that the City Manager, in his/her sole discretion, determines is fair, competitive, and reasonable. If the City Manager is unable to negotiate a satisfactory contract with one or more of the highest ranked firms, the City Manager will terminate negotiations and then negotiate with one or more of the lower-ranked firms and so on in order of preference if needed.
6. If the City chooses to award to more than one firm, the City Manager will negotiate a contract with each selected firm subject to agreement of the City Attorney. The City Manager shall negotiate an agreement with the selected firm(s) at compensation that the City Manager, in his/her sole discretion, determines is fair, competitive, and reasonable. If the City Manager is unable to negotiate a satisfactory contract with a selected firm, the City Manager will terminate negotiations.

* The City reserves the right to award one or more contract(s) to the Consultant(s) who will best serve the interests of the City and whose Responses are considered by the City to be the most qualified. Notwithstanding, the City may, at its sole discretion, reject all responses and cancel this solicitation. The City reserves the right to accept or reject any or all Responses, based upon its deliberations and opinions. In making such determination, the City reserves the right to investigate the financial capability, integrity, experience, quality of performance, and/or past performance of each Consultant, including officers, principals, senior management and supervisors as well as the staff identified in the Response. The City also reserves the right to waive minor variations or irregularities in the Responses.

B.2 Selection Criteria Matrix

Name: REQUEST FOR QUALIFICATIONS FOR CITY PLANNING AND ARCHITECTURAL HISTORIC PRESERVATION SERVICES

Number: RFQ # 22-009

Firm Name _____

Date _____

| SELECTION CRITERIA | WEIGHT | SCORE | WEIGHTED SCORE (WEIGHT X SCORE) |
|---|---------------|--------------|--|
| Professional qualifications and references of the key professional staff identified to accomplish work; planning, historic preservation architects, and transportation planner. | 25 | | |
| Overall client references for the firm | 25 | | |
| Ability to perform the services expeditiously with attention to detail. | 25 | | |
| Demonstrated capacity to complete required services through coordination with in-house staff | 10 | | |
| Availability of technical support people and assigned Task Order manager through references | 10 | | |
| Capacity to participate in on-site meetings if requested | 5 | | |
| Total Points | 100 | | |
| | | | |

C. SUBMISSION DETAILS

C.1 Response Information

The City requires the Proposer to submit a concise response clearly addressing all the requirements outlined in this RFQ. Responses must include, at a minimum, the following sections in the order indicated.

1. *Cover letter* – No more than one page
2. *Information page* – Include project name, name of vendor (prime) submitting the response, contact information for the person who will act as project manager and contact information for the person who has authority to make representations for the firm, including name, title, address, telephone and fax numbers and email addresses.
3. *Organization chart* – Show principal planner, key personnel, areas of responsibility and location of personnel.
4. *Company information* – Background information about the vendor and each subcontractor and the services each provides.
5. *Methodology and approach* – Descriptions which enable the City to assess the proposer's capability to perform requested services in a structured and efficient manner.
6. *Personnel* – Resumes of the principals(s) assigned to the project and individual key staff personnel, and/or subcontractors available to support the proposed efforts.
7. *Qualifications* – Description of relevant experience for the firm and each subcontractor connected with providing similar project work. Experience of team members working successfully together on other similar projects should be included.
8. *Representative city planning and historic preservation plan review experience and client references* – Submit descriptions of similar assignments which were conducted by the PLANNING CONTRACTOR, including other agency/client's contact name and telephone number.
9. *Sworn statements and affidavits* – The PLANNING CONTRACTOR shall have signed and returned all forms attached herein as Exhibit A (Anti-Kickback, Public Entity Crimes, Equal Benefits for Domestic Partners, Etc.).

Total proposal length (not including required forms) will not exceed 20 double-sided (40 single) pages.

C.2 Submission Details:

1. **Submit to:**

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

2. **Due Date:** October 12, 2022. NO LATER THAN 3 PM LOCAL TIME

3. **Identification of Responses:**

Responses shall be submitted in a sealed envelope, clearly marked on the outside “City Planning Services, **RFQ # 22-009**” addressed and delivered to the City Clerk at the address and by the date and time noted above.

C.3 Number of Copies:

Applicants shall submit (5) printed copies and (2) two flash drives, each with a single PDF file of the complete qualifications submittal. PDF shall be named “*Firm Name* RFQ #22-009.”

C.4 Response Preparation Costs:

Response preparation costs are the applicant’s total responsibility.

C.5 Authorized Signature:

The initial response must contain the signature of a duly authorized officer or agent of the proposer’s company empowered with the right to bind the respondent to the RFQ. The respondent must provide evidence of the authority of the officer or agent to bind the respondent.

C.6 Property of the City:

All responses and related materials provided to the City related to this RFQ will become the property of the City of Key West.

C.7 License Requirements:

The selected respondent will also be required to obtain and maintain a City of Key West Business Tax Receipt for the duration of the work.

C.8 Requests For Information:

All requests for information should be only in writing and emailed to Donna Phillips at donna.phillips@cityofkeywest-fl.gov and requests for information must be received at least ten (10) days prior to the date fixed for the opening of responses to the RFQ. Any and all such interpretations and any supplemental instructions will be in the form of written addendum to the RFQ. If City issues an addendum, the Respondent has sole responsibility to receive any such addendum or any interpretations shall not relieve such Respondent from any obligation under his response as submitted. All addenda so issued shall become a part of the Contract document.

C.9 Insurance /Indemnification:

Per Paragraph 7 in Appendix A (Sample Contract)

C.10 Cone of Silence:

Pursuant to Section 2-773 of the City of Key West Code of Ordinances, as amended, a “Cone of Silence” shall be in effect during the course of a competitive solicitation. Cone of Silence Affidavit, attached hereto under Exhibit A.

C.11 Response Evaluation:

The vendor’s history and experience in performing similar work, clear understanding of the scope of work and related objectives, qualifications and experience of assigned personnel, and availability of key personnel, facilities and equipment will be the principal basis for evaluation. See Submitter Ranking Form, attached hereto as Exhibit B.

Exhibit A

Affidavits

ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA

SS:

COUNTY OF MONROE

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

BY: _____

sworn and prescribed before me this _____ day of _____, 2022

NOTARY PUBLIC, State of Florida

My commission expires:

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

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

1. This sworn statement is submitted for _____
(print individual's name and title)

by _____
(print name of entity submitting sworn statement)

whose business address is _____

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

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

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "conviction" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 01, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

a. A predecessor or successor of a person convicted of a public entity crime: or

b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners,

shareholders, employees, members and agent who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment of income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statute means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement (indicate which statement applies).

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

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

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 01, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (attach a copy of the final order).

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

(SIGNATURE)

(DATE)

STATE OF _____

COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority
_____ who, after first being sworn by me,
(name of individual)
affixed his/her signature in the space provided above on this
_____ day of _____, 2022

_____ NOTARY PUBLIC

My commission expires:

EQUAL BENEFITS FOR DOMESTIC PARTNERS AFFIDAVIT

STATE OF _____)

: SS

COUNTY OF _____)

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

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

By: _____

Sworn and subscribed before me this _____ day of _____ 20_____.

NOTARY PUBLIC, State of _____ at Large

My Commission Expires:

Sec. 2-773. Cone of Silence.

(a) *Definitions.* For purposes of this section, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- (1) *Competitive solicitation* means a formal process by the City of Key West relating to the acquisition of goods or services, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. Competitive solicitation shall include request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), invitation to bid ("ITB") or any other advertised solicitation.
- (2) *Cone of silence* means a period of time during which there is a prohibition on communication regarding a particular competitive solicitation.
- (3) *Evaluation or selection committee* means a group of persons appointed or designated by the city to evaluate, rank, select, or make a recommendation regarding a vendor or the vendor's response to the competitive solicitation. A member of such a committee shall be deemed a city official for the purposes of subsection (c) below.
- (4) *Vendor* means a person or entity that has entered into or that desires to enter into a contract with the City of Key West or that seeks an award from the city to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a competitive solicitation for compensation or other consideration.
- (5) *Vendor's representative* means an owner, individual, employee, partner, officer, or member of the board of directors of a vendor, or a planner, lobbyist, or actual or potential subcontractor or sub-consultant who acts at the behest of a vendor in communicating regarding a competitive solicitation.

(b) *Prohibited communications.* A cone of silence shall be in effect during the course of a competitive solicitation and prohibit:

- (1) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the city's administrative staff including, but not limited to, the city manager and his or her staff;
- (2) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the mayor, city commissioners, or their respective staff;
- (3) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and any member of a city evaluation and/or selection committee therefore; and
- (4) Any communication regarding a particular competitive solicitation between the mayor, city commissioners, or their respective staff, and a member of a city evaluation and/or selection committee therefore.

(c) *Permitted communications.* Notwithstanding the foregoing, nothing contained herein shall prohibit:

- (1) Communication between members of the public who are not vendors or a vendor's

- representative and any city employee, official or member of the city commission;
- (2) Communications in writing at any time with any city employee, official or member of the city commission, unless specifically prohibited by the applicable competitive solicitation.
 - (A) However, any written communication must be filed with the city clerk.

Any city employee, official or member of the city commission receiving or making any written communication must immediately file it with the city clerk.
 - (B) The city clerk shall include all written communication as part of the agenda item when publishing information related to a particular competitive solicitation;
 - (3) Oral communications at duly noticed pre-bid conferences;
 - (4) Oral presentations before publicly noticed evaluation and/or selection committees;
 - (5) Contract discussions during any duly noticed public meeting;
 - (6) Public presentations made to the city commission or advisory body thereof during any duly noticed public meeting;
 - (7) Contract negotiations with city staff following the award of a competitive solicitation by the city commission; or
 - (8) Purchases exempt from the competitive process pursuant to [section 2-797](#) of these Code of Ordinances;
- (d) *Procedure.*
- (1) The cone of silence shall be imposed upon each competitive solicitation at the time of public notice of such solicitation as provided by [section 2-826](#) of this Code. Public notice of the cone of silence shall be included in the notice of the competitive solicitation. The city manager shall issue a written notice of the release of each competitive solicitation to the affected departments, with a copy thereof to each commission member, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.
 - (2) The cone of silence shall terminate at the time the city commission or other authorized body makes final award or gives final approval of a contract, rejects all bids or responses to the competitive solicitation or takes other action which ends the competitive solicitation.
 - (3) Any city employee, official or member of the city commission that is approached concerning a competitive solicitation while the cone of silence is in effect shall notify such individual of the prohibitions contained in this section. While the cone of silence is in effect, any city employee, official or member of the city commission who is the recipient of any oral communication by a potential vendor or vendor's representative in violation of this section shall create a written record of the event. The record shall indicate the date of such communication, the persons with whom such communication occurred, and a general summation of the communication.
- (e) *Violations/penalties and procedures.*
- (1) A sworn complaint alleging a violation of this ordinance may be filed with the city attorney's office. In each such instance, an initial investigation shall be performed to determine the existence of a violation. If a violation

is found to exist, the penalties and process shall be as provided in section 1-15 of this Code.

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

**LOCAL VENDOR CERTIFICATION PURSUANT TO CITY OF KEY WEST
ORDINANCE 09-22**

SECTION 2-798

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

- a) Principle address as registered with the FL Department of State located within 30 miles of the boundaries of the city, listed with the chief licensing official as having a business tax receipt with its principle address within 30 miles of the boundaries of the city for at least one (1) year immediately prior to the issuance of the solicitation;

- b) Maintains a workforce of at least 50 percent of its employees from the city or within 30 miles of its boundaries; and

- c) Having paid all current license taxes and any other fees due the city at least 24 hours prior to the publication of the call for bids or request for proposals.
 - Not a local vendor pursuant to Ordinance 09-22 Section 2-798
 - Qualifies as a local vendor pursuant to Ordinance 09-22 Section 2-798

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

Business Name: _____ Phone: _____ Current

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

Length of time at this address:

Signature of Authorized Representative

Date

NOTARY

STATE OF ___ COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _ _____, 20 ____.

By ____, of ____ (Name of officer or agent, title of officer or agent) Name of corporation
acknowledging)

or has produced _____ as identification.

Signature of Notary

Print, Type or Stamp Name of Notary

Title or Rank

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

CITY OF KEY WEST INDEMNIFICATION FORM

PROPOSER agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all its Departments, Agencies, Boards, Commissions, officers, City’s Planner, agents, servants and employees, including volunteers, from and against any and all claims, debts, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any act or omission of the PROPOSER, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all its Departments, Agencies, Boards, Commissions, officers, agents, servants and employees. The PROPOSER agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. The City of Key West does not waive any of its sovereign immunity rights, including but not limited to, those expressed in Section 768.28, Florida Statutes.

These indemnifications shall survive the term of this agreement. In the event that any action or proceeding is brought against the City of Key West by reason of such claim or demand, PROPOSER shall, upon written notice from the City of Key West, resist and defend such action or proceeding by counsel satisfactory to the City of Key West.

The indemnification provided above shall obligate PROPOSER to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City of Key West’s option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the City of Key West whether performed by PROPOSER, or persons employed or utilized by PROPOSER.

The PROPOSER’s obligation under this provision shall not be limited in any way by the agreed upon Contract Price as shown in this agreement, or the PROPOSER’s limit of or lack of sufficient insurance protection.

COMPANY SEAL

PROPOSER:

Address

Signature

Print Name

Date

Title

NOTARY FOR THE PROPOSER

STATE OF ___

COUNTY OF _

The foregoing instrument was acknowledged before me this ____day of _ ____, 20___. By___, of _____ (Name of officer or agent, title of officer or agent) Name of corporation acknowledging)

or has produced _____ as identification.

Signature of Notary

Return Completed form with Print, Type or Stamp Name of Notary

Supporting documents to: City of Key West Purchasing

Title or Rank

**VENDOR CERTIFICATION REGARDING
SCRUTINIZED COMPANIES LISTS**

| |
|--|
| Respondent Vendor Name: _____ |
| Vendor FEIN: _____ |
| Vendor's Authorized Representative Name and Title: _____ |
| Address: _____ |
| City: _____ State: _____ Zip: _____ |
| Phone Number: _____ |
| Email Address: _____ |

SECTION 287.135(2)(A), FLORIDA STATUTES, PROHIBITS A COMPANY FROM BIDDING ON, SUBMITTING A PROPOSAL FOR, OR ENTERING INTO OR RENEWING A CONTRACT FOR GOODS OR SERVICES OF ANY AMOUNT IF, AT THE TIME OF CONTRACTING OR RENEWAL, THE COMPANY IS ON THE SCRUTINIZED COMPANIES THAT BOYCOTT ISRAEL LIST, CREATED PURSUANT TO SECTION 215.4725, FLORIDA STATUTES, OR IS ENGAGED IN A BOYCOTT OF ISRAEL. SECTION 287.135(2)(B), FLORIDA STATUTES, FURTHER PROHIBITS A COMPANY FROM BIDDING ON, SUBMITTING A PROPOSAL FOR, OR ENTERING INTO OR RENEWING A CONTRACT FOR GOODS OR SERVICES OVER ONE MILLION DOLLARS (\$1,000,000) IF, AT THE TIME OF CONTRACTING OR RENEWAL, THE COMPANY IS ON EITHER THE SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR THE SCRUTINIZED COMPANIES WITH ACTIVITIES IN THE IRAN PETROLEUM ENERGY SECTOR LIST, BOTH CREATED PURSUANT TO SECTION 215.473, FLORIDA STATUTES, OR THE COMPANY IS ENGAGED IN BUSINESS OPERATIONS IN CUBA OR SYRIA.

AS THE PERSON AUTHORIZED TO SIGN ON BEHALF OF RESPONDENT, I HEREBY CERTIFY THAT THE COMPANY IDENTIFIED ABOVE IN THE SECTION ENTITLED "RESPONDENT VENDOR NAME" IS NOT LISTED ON EITHER THE SCRUTINIZED COMPANIES THAT BOYCOTT ISRAEL LIST, SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR THE SCRUTINIZED COMPANIES WITH ACTIVITIES IN THE IRAN PETROLEUM ENERGY SECTOR LIST I UNDERSTAND THAT PURSUANT TO SECTION 287.135, FLORIDA STATUTES, THE SUBMISSION OF A FALSE CERTIFICATION MAY SUBJECT SUCH COMPANY TO CIVIL PENALTIES, ATTORNEY'S FEES, AND/OR COSTS AND TERMINATION OF THE CONTRACT AT THE OPTION OF THE AWARDING GOVERNMENTAL ENTITY.

| |
|--|
| CERTIFIED BY: _____, <i>PRINT NAME</i> <i>PRINT TITLE</i> |
| WHO IS AUTHORIZED TO SIGN ON BEHALF OF THE ABOVE REFERENCED COMPANY. |
| Authorized Signature: _____. |

Exhibit B

Submitter Ranking Form

Name: REQUEST FOR QUALIFICATIONS FOR CITY PLANNING SERVICES

Number: RFQ # 22-009

Firm Name _____

Date _____

| SELECTION CRITERIA | WEIGHT | SCORE | WEIGHTED SCORE (WEIGHT X SCORE) |
|---|---------------|--------------|---|
| Professional qualifications and references of the key professional staff identified to accomplish work; planning, historic preservation architects, and transportation planner. | 25 | | |
| Overall client references for the firm | 25 | | |
| Ability to perform the services expeditiously with attention to detail. | 25 | | |
| Demonstrated capacity to complete required services through coordination with in-house staff | 10 | | |
| Availability of technical support people and assigned Task Order manager through references | 10 | | |
| Capacity to participate in on-site meetings if requested | 5 | | |
| Total Points | 100 | | |

APPENDIX A
SAMPLE CONTRACT
(subject to negotiation)

**THE FOLLOWING AGREEMENT IS A
DRAFT AGREEMENT AND SHOULD
NOT BE FILLED OUT AS PART OF THE
SUBMISSION PACKAGE. FINAL
AGREEMENT WILL BE IN
SUBSTANTIAL CONFORMANCE WITH
THE ATTACHED**

AGREEMENT

between

CITY OF KEY WEST

and

for

CITY PLANNING SERVICES

KEY WEST, FLORIDA

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

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

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

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

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

ARTICLE 2

PREAMBLE

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

- 2.1. The PLANNING CONTRACTOR is not entitled to receive, and the CITY is not obligated to pay, any fees or expenses in excess of the amount budgeted for Task Orders authorized under this Agreement in each fiscal year (October 1-September 30) by CITY. The budgeted amount may only be modified per City Ordinance(s).

- 2.2. Negotiations pertaining to the services to be performed by PLANNING CONTRACTOR were undertaken between PLANNING CONTRACTOR and staff selected by the Commission, and this Agreement incorporates the results of such negotiations.

ARTICLE 3

SCOPE OF SERVICES AND STANDARD OF CARE

- 3.1.** PLANNING CONTRACTOR's services may include but are not limited to the following in regard to the Agreement:
- 3.1.1. Development review/current planning functions
 - 3.1.2. Long range planning/policy functions
 - 3.1.3. Transportation planning services
 - 3.1.4. Historic architectural plan review and analysis function
 - 3.1.5. Other day to day Planning Department functions as assigned
- 3.2.** PLANNING CONTRACTOR's services shall include functions described in paragraph 3.1., and any other lawful professional Planning services that the PLANNING CONTRACTOR is qualified to provide, and that the CITY authorizes the PLANNING CONTRACTOR to undertake in connection with this Agreement. PLANNING CONTRACTOR shall provide all necessary, incidental and related activities and services as required.
- 3.3.** PLANNING CONTRACTOR and CITY acknowledge that the Scope of Services does not delineate every detail and minor work task required to be performed by PLANNING CONTRACTOR to complete any particular task order. If, during the course of the performance of the services included in this Agreement, PLANNING CONTRACTOR determines that work should be performed to complete the Task Order which is, in the PLANNING CONTRACTOR's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, PLANNING CONTRACTOR shall notify Contract Administrator in writing in a timely manner and seek approval of the CITY before proceeding with the work. If PLANNING CONTRACTOR proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work. Performance of work by PLANNING CONTRACTOR outside the originally anticipated level of effort without prior written CITY approval or modification of Task Order is at PLANNING CONTRACTOR's sole risk.
- 3.4.** The specific services to be provided by the PLANNING CONTRACTOR and the compensation for such services shall be as mutually agreed to in separate Task Orders to this AGREEMENT and in accordance with the Proposal attached hereto as AGREEMENT Exhibit A or in accordance with the rate/fee scheduled attached hereto as AGREEMENT Exhibit B. Each Task Order when fully executed shall become a supplement to and a part of this AGREEMENT.
- 3.4.1. Each Task Order shall be supported by appropriate cost and pricing data and such other documentation as required by the CITY.
 - 3.4.2. Task Orders shall be numbered consecutively as specified by CITY. Each Task Order shall include a description of the scope of services and specified deliverables, time of completion, total estimated costs of services, and method of compensation. Additional information shall be provided to the CITY if required. Amended Task Orders shall include substantially the same information and be submitted to the CITY for approval.
 - 3.4.3. The CITY may make or approve changes within the general Scope of Services in any Task

Order. If such changes affect the PLANNING CONTRACTOR's cost of or time required for performance of the services, an equitable adjustment shall be made through an amendment to the Task Order.

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

ARTICLE 4

TERM OF AGREEMENT; TIME FOR PERFORMANCE; CONTRACTOR DAMAGES;

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

- 4.1.** PLANNING CONTRACTOR shall perform the services described in each Task Order within the time periods specified. Each such time period shall commence from the date of the purchase order issued for such services. Any amendment to such time period must be agreed to by CITY in writing.
- 4.2.** PLANNING CONTRACTOR must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent Task Order. Prior to granting approval for PLANNING CONTRACTOR to proceed to a subsequent Task Order, the Contract Administrator may, at his or her sole option, require PLANNING CONTRACTOR to submit any deliverables/documents for the Contract Administrator's review.
- 4.3.** In the event PLANNING CONTRACTOR is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Task Order, and such delays are not the fault of PLANNING CONTRACTOR, or because of delays which were caused by factors outside the control of PLANNING CONTRACTOR, CITY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of PLANNING CONTRACTOR to notify CITY within 10 days in writing whenever a delay in approval by a governmental agency, including CITY, is anticipated or experienced, and to inform the Contract Administrator of all facts and details related to the delay.

ARTICLE 5

COMPENSATION AND METHOD OF PAYMENT

5.1. AMOUNT AND METHOD OF COMPENSATION

The types of compensation methods, which shall be used to pay for the PLANNING CONTRACTOR's services, are limited to the following, subject to this agreement:

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

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

5.1.1.2. Each major task or project the CITY wishes CONSULTANT to perform will be defined in a Task Order which shall include, but not be limited to, a description of the scope of services, time of completion, type of professional involved (hourly wage) and the total estimated hours required to complete the tasking.

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

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

5.1.1.5. The PLANNING CONTRACTOR shall submit wage rates and other actual unit costs supporting the compensation. The CITY shall pay the PLANNING CONTRACTOR on an hourly basis in accordance with the agreed upon hourly rates. The PLANNING CONTRACTOR shall submit a Truth in Negotiation Certificate stating that all data supporting the compensation is accurate, complete, and current at the time of contracting.

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

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

5.1.2.2. Hourly rates for the contract (PLANNING CONTRACTOR AND Sub-consultants): See attached Exhibit C.

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

5.1.2.4. A budgetary amount will be established for each Task Order. This budgetary amount shall not be exceeded unless written approval is provided by the CITY. PLANNING CONTRACTOR shall make reasonable efforts to complete the work within the budget and will keep CITY informed of progress toward that end so that the budget or work effort can be adjusted if found necessary.

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

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

5.2. REIMBURSABLE EXPENSES

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

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

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

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

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

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

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

prior to incurring such expenses.

5.3. METHOD OF BILLING

5.3.1. Lump Sum Compensation by Task Order

PLANNING CONTRACTOR shall submit Task Order billings identifying type of work completed on a monthly basis in a timely manner. These Task Order billings shall identify the nature of the work performed, identifying the specific task or project, and the estimated percent of work accomplished. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, PLANNING CONTRACTOR shall provide backup for past and current invoices that record hours, personnel, and expense costs on a task basis, so that total hours and costs by task may be determined.

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

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

5.4. METHOD OF PAYMENT

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

5.4.2 Payment will be made to PLANNING CONTRACTOR at:

Address: _____

ARTICLE 6

CITY 'S RESPONSIBILITIES

6.1. CITY shall assist PLANNING CONTRACTOR by placing at PLANNING CONTRACTOR’s disposal all information CITY has available pertinent to the Task Order including previous reports and any other data relative to the Task Order.

6.2. CITY shall arrange for access to, and make all provisions for, PLANNING CONTRACTOR to enter upon public and private property as required for PLANNING CONTRACTOR to perform its services.

6.3. CITY shall review the PLANNING CONTRACTOR itemized deliverables/documents identified in the Task Orders and respond in writing with any comment within the time set forth in the Task Order or within a reasonable time.

6.4. CITY shall give prompt written notice to PLANNING CONTRACTOR whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of PLANNING CONTRACTOR services or any defect in the work of any Contract.

ARTICLE 7

MISCELLANEOUS

7.1. OWNERSHIP OF DOCUMENTS

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

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

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

7.2. TERMINATION

- 7.2.1. This Agreement may be terminated with or without cause by CITY at any time.
- 7.2.2. Notice of termination shall be provided in accordance with paragraph 7.12 NOTICES of this Agreement.
- 7.2.3. In the event this Agreement is terminated, PLANNING CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 7.1 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, PLANNING CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment of profit for services that have not been performed.

7.3. AUDIT RIGHT AND RETENTION OF RECORDS

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

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

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

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

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

7.5. PUBLIC ENTITY CRIMES ACT

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

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

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

7.6. SUB-CONSULTANTS

PLANNING CONTRACTOR may use the sub-consultants identified in the proposal that was a material part of the selection of PLANNING CONTRACTOR to provide the services under this Agreement. The CITY reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and to inspect all facilities of any sub-consultants in order to make determination as to the capability of the sub-consultant to perform properly under this Contract. The CITY’s acceptance of a sub-consultant shall not be unreasonably withheld. PLANNING CONTRACTOR shall obtain written approval of Contract Administrator prior to changing or adding to the list of sub- consultants. The list of sub-consultants submitted and currently approved is as follows:

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

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

7.7. ASSIGNMENT AND PERFORMANCE

- 7.7.1. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and PLANNING CONTRACTOR shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 7.6.
- 7.7.2. PLANNING CONTRACTOR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY’s satisfaction for the agreed compensation.
- 7.7.3. PLANNING CONTRACTOR shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of PLANNING CONTRACTOR’s performance and all interim and final product(s) provided to or on behalf of CITY shall be in accordance with the standard of care set forth in Paragraph 3.6.
- 7.7.4. PLANNING CONTRACTOR shall not change or replace overall project manager identified in the PLANNING CONTRACTOR’s response to the RFQ without the Contract Administrator’s prior written approval.

7.8. INDEMNIFICATION OF CITY

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

7.8.2. The indemnification obligations under the Contract shall not be restricted in any

way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the PLANNING CONTRACTOR under workers’ compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the PLANNING CONTRACTOR or of any third party to whom PLANNING CONTRACTOR may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the Work.

7.9. INSURANCE

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

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

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

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

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

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

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

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

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

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

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

7.10. REPRESENTATIVE OF CITY AND PLANNING CONTRACTOR

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

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

7.11. ALL PRIOR AGREEMENTS SUPERSEDED

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

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

7.12. NOTICES

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

If to Planning Contractor:

If to City:

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

With copies to:

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

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

7.13. TRUTH-IN-NEGOTIATION CERTIFICATE

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

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

7.14. INTERPRETATION

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

7.15. PLANNING CONTRACTOR'S STAFF

- 7.15.1. PLANNING CONTRACTOR shall provide the key staff identified in their proposal for Task Order as long as such key staffs are in PLANNING CONTRACTOR's employment. Key Staff as referenced in this agreement shall mean a Project Manager, a Principal Planner, a Senior Planner, other junior Planners, Architects, and Transportation Planners, if requested.
- 7.15.2. PLANNING CONTRACTOR shall obtain prior written approval of Contract Administrator (the Planning Department Director) prior to changing key staff. PLANNING CONTRACTOR shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator shall be reasonable in evaluating key staff qualifications.
- 7.15.3. Contract Administrator may request removal of any of PLANNING CONTRACTOR's staff at his or her discretion.
- 7.15.4. The CITY reserves the right to approve the members of the Key Staff and the roles they will undertake in the assignment.

- 7.15.5. Each assignment issued under this Agreement by the CITY to the PLANNING CONTRACTOR, the PLANNING CONTRACTOR will at the CITY's request, disclose the role, qualifications and hourly rate of each individual working on the assignment.
- 7.15.6. The CITY reserves the right to require replacement of any of the members of the Consulting Team. Any proposed addition or change of members of the Consulting Team initiated by the PLANNING CONTRACTOR must obtain the CITY Representative's prior written approval.
- 7.15.7. In the event of the death, incapacity or termination of employment of any member of the Consulting Team before Completion of the Services, the PLANNING CONTRACTOR shall at its own expense and as soon as reasonably practicable arrange to substitute or replace the individual member concerned subject to section 7.15.
- 7.15.8. The PLANNING CONTRACTOR shall ensure that the substitute or replacement is no less qualified in terms of relevant experience and qualifications than the outgoing individual and is available at the relevant time to act as such replacement or substitute. The PLANNING CONTRACTOR shall without delay forward curriculum vitae of the proposed substitute or replacement to the CITY. The deployment of such substitute or replacement shall be subject to the CITY's consent.
- 7.15.9. The PLANNING CONTRACTOR shall solely be responsible for all direct, indirect and consequential costs or losses that may arise from the substitution or replacement of members of the Consulting Team.

7.16. INDEPENDENT CONTRACTOR

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

7.17. THIRD PARTY BENEFICIARIES

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

7.18. CONFLICTS

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

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

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

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

7.19. CONTINGENCY FEE

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

7.20. WAIVER OF BREACH AND MATERIALITY

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

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

7.21. COMPLIANCE WITH LAWS

PLANNING CONTRACTOR shall comply with federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement applicable at the time the scope of services was drafted for this agreement and shall obtain all required permits from all jurisdictional agencies to perform the services under this Agreement at its own expense. In addition, at the time each Task Order is executed, any revisions to applicable federal state, and local laws, codes, ordinances, rules and regulations shall apply.

7.22. SEVERABILITY

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

7.23. JOINT PREPARATION

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

7.24. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit or addenda attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 of this Agreement shall prevail and be given effect.

7.25. APPLICABLE LAW AND VENUE

The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any claims related to it. The venue for mediation, litigation or any other legal proceeding shall be Monroe County, Florida, Lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

7.26. INCORPORATION BY REFERENCE

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

7.27. SURVIVAL OF PROVISIONS.

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

7.28 COUNTERPARTS

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

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

By: CITY OF KEY WEST

By: PLANNING CONTRACTOR

Patti McLauchlin, City Manager

(Signature)

(Print Name and Title)

____ day of _____, 20__

____ day of _____, 20__

Attest:

Attest:

Cheryl Smith, City Clerk

(Signature)

(Print Name and Title)

____ day of _____, 20__

____ day of _____, 20__

Exhibit C

Hourly Fee Schedule

Company Name: _____

Date: _____

Position Title

Hourly Rate
