

# City of Key West

1300 White Street • Key West • Florida 33040

## **CONTRACT FOR SERVICES**

THIS CONTRACT, hereinafter "Contract," made and entered into the 8<sup>TH</sup> day of AUGUST, 2018 by and between Keefe, McCullough & Co., LLP hereinafter referred to as "Contractor" and the City of Key West, Florida, a municipal corporation, 1300 White Street, Key West, Florida 33040, hereinafter referred to as "City", for and in consideration of the following terms, conditions and covenants.

### **I. PURPOSE OF CONTRACT**

City intends to enter into a contract with Contractor for provision of Independent Auditing Services by the Contractor and the payment for those services by City as set forth below.

### **II. STATEMENT OF WORK**

The Contractor shall provide Independent Auditing Services pursuant to this Contract as hereinafter provided. These services will include all labor, equipment, and materials necessary to provide Independent Auditing Services.

#### **Section 1. Scope of Service**

Contractor shall work with City staff in advising the City and the City Commission regarding Independent Auditing Services as rendered. The detailed scope of services to be performed and schedule of fees for those services is described in Exhibit A (Contractor's response to RFP #008-18 as accepted by the CITY) and Exhibit B (CITY's original Request For Proposals) incorporated herein.

### **III. CONTRACT PROVISIONS**

#### **Section 1. Period of Service**

##### **1.1 Term of Contract**

Upon award of this Contract, the effective date of this Contract shall be the date of execution of this Contract by both City and Contractor. Term of this contract shall be for an initial period of three (3) years with the option of one (1) additional two-year renewal period, upon the mutual written agreement of the parties.

#### **Section 2. Compensation and Method of Payment**

##### **2.1 Fee Schedule**

CITY will compensate Contractor for these Independent Auditing Services in accordance with Contractor's pricing schedule formalized in "Exhibit C-Price Proposal Form" to this Contract.

##### **2.2 Invoices**

Contractor shall submit invoices to the City for work accomplished and accepted by the City under this Contract. Each invoice shall be detailed and include, but not be limited to, a legible copy of the estimate approved by the City Representative, and the date work was completed and accepted by the City.

## **2.3 Payment**

Payment for services rendered is due within thirty days of receipt and approval of invoice by City. Payment is delinquent 30 days following receipt and approval of invoice by City.

## **2.4 Use of Documents**

All original documents that result from the Contractor's services pursuant to this Agreement shall be the sole property of the City.

## **Section 3. Audit**

The Contractor agrees that the City or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Agreement. The Contractor agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto which are found on the basis of audit examination not to constitute allowable costs under this Agreement. The Contractor shall refund by check payable to the City the amount of such reduction of payments. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of the project and issuance of the final certificate, whichever is sooner.

## **Section 4. Contractor Responsibility**

### **5.1 Independent Contractor**

The Contractor is an independent contractor and is not an employee or agent of the City. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the City and the Contractor, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement.

### **5.2 Contractor's Records**

As a condition precedent to Contractor filing any claim against City, Contractor shall make available to City all of Contractor's books and records (directly or indirectly related to the claim of Contractor's business) requested by City. Refusal to do so shall constitute a material breach of this contract and cause for dismissal of any litigation.

## **Section 6. Termination**

### **6.1 Termination for Convenience**

Either party upon a thirty (30) day written notice to the other party may terminate this Contract. In the event of any termination, Contractor shall be paid for all services rendered to the date of termination including all authorized reimbursable expenses.

### **6.2 Termination for Cause**

The performance of the Contract may be terminated by the City of Key West in accordance with this clause, in whole or in part, in writing, whenever the City shall determine that the contractor has failed to meet performance requirement(s) of the Contract. If the successful bidder should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should fail to provide properly skilled personnel or proper service in the sole discretion of the City, then the City can, after giving the successful proposer seven (7) days written notice, and without prejudice to any other right or remedy, terminate this Contract.

### **6.3 Performance Evaluation**

Throughout the contract period the vendor(s) performance will be monitored by City staff. If vendor performance

fails to meet the standards specified and receives an unacceptable rating, the City may without cause and without prejudice to any other right or remedy, terminate the contract whenever the City determines that such termination is in the best interest of the City. Vendor's receiving an unacceptable rating will be notified by certified mail. Contract termination shall be served by written notice by the Procurement Division.

## **Section 7. CITY's Obligations**

### **7.1 Project Manager**

The Project Manager for the City with the authority to act on the City's behalf with respect to all aspects of the Project is the Finance Director or designee.

The Project Manager for the Contractor with authority to act on the Contractor's behalf with respect to all aspects of the Project is:

William G. Benson, CPA  
Managing Partner  
6550 North Federal Highway 4<sup>th</sup> Floor  
Fort Lauderdale, Florida 33308  
954-771-0896

## **Section 8. Persons Bound by Contract**

### **8.1 Parties to the Contract**

The persons bound by this Contract are the Contractor and the City and their respective partners, successors, heirs, executors, administrators, assigns and other legal representative.

### **8.2 Assignment of Interest in Contract**

This Contract and any interest or services associated with this Contract may not be assigned, sublet or transferred to another by either party without the prior written consent of the other party. Nothing contained herein shall be construed to prevent Contractor from employing such independent Contractors, associates and subcontractors as Contractor may deem appropriate to assist in the performance of the services hereunder.

### **8.3 Other Entity Use**

The successful Contractor may be requested to convey its proposal prices, contract terms and conditions, to municipalities or other governmental agencies within the State of Florida.

### **8.4 Rights and Benefits**

Nothing herein shall be construed to give any rights or benefits arising from this Contract to anyone other than Contractor and the City.

## **Section 9. Indemnification of City**

Contractor assumes the entire responsibility and liability for all damages or injury to all persons, and to all property, caused by the Contractor or Contractor's employees, agents, consultants or sub-contractors, and Contractor shall to the fullest extent allowed by law, indemnify and hold harmless the CITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, omission, or intentional conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the contract. Specific consideration for this indemnity is \$10.00, the receipt and sufficiency of which are hereby acknowledged by Contractor.

Contractor shall obtain, maintain and pay for general liability insurance coverage to insure the provisions of this paragraph.

## **Section 10. Insurance**

### **10.1. Requirements**

Contractor shall procure and maintain insurance, in the amounts noted in Item 5.2 of the Request for Proposal and included in "Exhibit D" of this Contract, which names the Contractor, its officers, board members, employees and agents as additional insured on General Liability and Automobile Liability insurance policies. Such certificate must contain a provision for notification of the City 30 days in advance of any material change or cancellation. The City by and through its Risk Manager, reserves the right to review, modify, reject or accept any required policies of insurance, including limits coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an A.M. Best Rating of at least A: VII or better. When a self-insured retention or deductible exceeds \$5,000, the City reserves the right, but not the obligation, to review and request a copy of contractor's most recent annual report or audited financial statement. All contractors, including any independent contractors and subcontractors utilized, must comply with the insurance requirements as set forth in the documents identified and listed in "Exhibit D" attached hereto.

### **10.2 Certificate of Insurance**

Certificates of all insurance required from the Contractor shall be attached to this agreement and shall be subject to the City's approval for adequacy.

## **Section 11. Professional Standards**

All work performed by Contractor will be in accordance with the highest professional standards and in accordance with all applicable governmental regulations.

## **Section 12. Non-Appropriation**

This Contract is deemed effective only to the extent of the annual appropriations available.

## **Section 13. General Conditions**

### **13.1 Venue in Key West**

Jurisdiction a venue for any lawsuit to enforce the terms and obligations of this Contract shall lie exclusively in the County Court or the Circuit Court in and for Key West, Florida.

### **13.2 Laws of Florida**

The validity, interpretation, construction, and effect of this Contract shall be in accordance with and governed by the laws of the State of Florida.

### **13.3 Attorney's Fees and Costs**

In the event the Contractor breaches or defaults in the performance of any of the terms, covenants and conditions of this Contract, the Contractor agrees to pay all damages and costs incurred by the CITY in the enforcement of this Contract, including reasonable attorney's fees, court costs and all expenses, even if not taxable as court costs, including, without limitation, all such fees, costs and expenses incident to appeals incurred in such action or proceeding.

### **13.4 Mediation as Condition Precedent to Litigation**

Prior to the initiation of any litigation by the parties concerning this Contract, and as a condition precedent to initiating any litigation, the parties agree to first seek resolution of the dispute through non-binding mediation. Mediation

shall be initiated by any party by serving a written request for same on the other party. The parties shall, by mutual agreement, select a mediator within 15 days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the CITY shall select the mediator who, if selected solely by the CITY, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediation.

### **13.5 Contract Amendment**

Agreement extends only to those services specifically described herein. If upon the request of the City, the Contractor agrees perform additional services such as verification of data used in Official Statements, assistance with special financial projects, tax services, pension assistance and management advisory services, the City shall pay the Contractor for the performance of such additional services a schedule of compensation rates for these various types of additional work shall be included reflecting hourly rates applicable to projects which may be requested and negotiated with the City.

The City of Key West reserves the right to order, in writing, changes in the work required by GASB or other regulatory/professional entities. The contractor has the right to request an equitable price adjustment in cases where modifications to the contract under the authority of this clause result in increased costs to the contractor. This agreement may be modified upon the written and mutual consent of both parties, and approval by appropriate legal bodies in the City of Key West.

No modification, amendment or alteration in the terms or conditions contained in this Contract shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. This Contract constitutes the entire agreement between the parties, and no prior, or contemporaneous oral agreement shall be binding on either party. If either party fails to enforce a portion of all of this Contract, it shall not constitute a waiver of the same.

### **13.6 Contractual Authority**

By signing this Contract, the Contractor swears or affirms, under penalty of perjury, that this is a valid act of the Contractor, and that no later claim shall be made by the CONTRACTOR that the Contract is invalid or an *ultra vires* act, by reason of a failure to have the proper authority to execute the Contract. In the event that a court of competent jurisdiction later determines that the Contract is or would be null and void for failure of the signatory to have proper or complete authority, this Contract shall nonetheless be deemed valid under the theory of "apparent authority," or in the sole alternative of the City, shall be deemed to be the act of the signatory, as an individual, who shall be fully responsible for its complete performance.

### **13.7 Sovereign Immunity**

Nothing contained herein shall be construed or interpreted as a waiver of the sovereign immunity liability limits established under chapter 768.20 Florida Statutes as amended.

### **Section 14. Public Records**

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the office of the City Clerk as the custodian of Public Records for the City of Key West, and all the respective departments at City of Key West, City Clerk 1300 White Street, Key West, FL 33040 per F.S. 119.12.

Public Records Relating to Compliance, Request for Records; Noncompliance, & Civil Action with F.S. 119.0701 the Contractor shall:

Keep and maintain public records required by the public agency to perform the service.

Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under F.S. 119.10.

If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

- The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
- At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

A notice complies with subparagraph above, if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A contractor who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

#### **Section 15. Exhibits**

The following Exhibits are attached to and made a part of this Contract:

- "Exhibit A" - "Proposal as Submitted by Respondent and Accepted by City"
- "Exhibit B" - "Original Request for Proposal as Issued by City, including all Addenda"
- "Exhibit C" - "Price Proposal Form"
- "Exhibit D" - "Insurance and Indemnification"
- "Exhibit E" - "Engagement Letter"

IN WITNESS WHEREOF, the City has hereunto subscribed and the Contractor has signed his, its, or their names the date aforesaid.



**CITY OF KEY WEST, FLORIDA**

*Susan R. Harrison*  
**CHERYL SMITH** *Susan R. Harrison*  
**CITY CLERK - Sr. Deputy**

*J. Scholl*  
**JIM SCHOLL**  
**CITY MANAGER**

**APPROVED AS TO FORM  
AND CORRECTNESS:**

*Shawn Smith*  
**SHAWN SMITH** *Shawn Smith*  
**CITY ATTORNEY - Assistant**

**WITNESSES:**

**CONTRACTOR**

*Karl & Carl*  
**(Signature)**

**KEEFE McULLOUGH & Co, LLP**  
*William Benson*  
**(Signature)**

*James A. Davis*  
**(Signature)**

**William BENSON**  
**Printed Name**

**PARTNER**  
**Title**