

CITY OF KEY WEST

AGREEMENT TO PREPARE AMENDMENTS TO  
THE LAND DEVELOPMENT REGULATIONS OF  
THE CITY OF KEY WEST

\_\_\_\_\_, 2015

Planning Consultants:  
Calvin, Giordano & Associates, Inc.

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# Agreement to Prepare Amendments to the Land Development Regulations of the City of Key West

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This AGREEMENT made and entered into by and between the City of Key West, a municipal corporation of the State of Florida, whose mailing address is P.O. Box 1409, Key West, Florida 33041, hereafter referred to as the "CITY" and Calvin, Giordano & Associates, Inc., a Florida corporation, whose address is 1800 Eller Drive, Suite 600, Fort Lauderdale, Florida, 33316, hereafter referred to as the "CONSULTANT". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

## Article 1. Scope of Services

The CONSULTANT'S primary responsibilities include, but are not limited to, the preparation of specific portions of the City's Land Development Regulations as part of a major revision to the Code of Ordinances. The Consultant will work closely with designated planning staff to amend the existing regulations. The proposed changes shall be consistent with and facilitate the development of other existing and in progress master plans such as the Strategic Plan, Climate Action Plan, Open Space and Recreation Master Plan and Comprehensive Plan. The work will include public participation efforts with the goal of allowing the public to contribute to the LDR drafting process prior to presentation at required public hearings. Public participation efforts shall be held in the evenings and weekends to maximize public input. The CONSULTANT will perform the services in accordance with CONSULTANT'S September 9, 2014, Response to City of Key West RFP #004-14, which Response is attached hereto and incorporated by reference.

The specific services and deliverables, which the CONSULTANT agrees to furnish, are set forth as follows:

1. Amend the Land Development Regulations to be consistent with and implement the Comprehensive Plan including a small number Zoning Map Amendments. City is currently updating portions of the Comprehensive Plan with a new Historic Preservation Element, Port Facilities Element in addition to a new Element for Climate Change.
2. Resolve inconsistent definitions, terms, standards and processes within the Land Development Regulations and other portions of the Code of Ordinances. This will also include the codification of zoning practices implemented through administrative interpretations.
3. Incorporation of new standards, programs, processes and methods to facilitate sustainable community and neighborhood growth throughout the City and accomplish the above including:
  - Revisions to existing Workforce Housing Ordinance including: incentive programs; inclusionary housing programs for redevelopment; and income stratification schemes.
  - Incentive program for creating and/or maintaining market rate rental housing.

- Climate Adaptation – Implement Climate Adaptation SeaGrant given to the City including outline for a Post Disaster Recovery Plan.
- Green Building Standards for redevelopment of existing residential and existing and new commercial structures.
- Urban Design Guidelines/ Zoning Regulations including opportunities for form based development regulations in mixed use and commercial zoning districts.
- Updates to the Landscape Architectural standards compatible with proposed new urban design guidelines described above.
- Update Signage requirements outside the Historic District compatible with proposed new urban design guidelines described above.
- Adopt Complete Streets Ordinance that includes traffic calming design guidelines and other design regulations that reduce vehicular/bike/pedestrian conflicts.
- Revise parking generation standards and parking mitigation strategies such as Transportation Demand Management programs.

### **Deliverables**

- A. Complete any additional data and analysis necessary to accomplish the LDR amendments specified above.
- B. Conduct integrated public workshops and focus group meetings at key stages in the process. Up to five (5) public meetings are expected.
- C. Draft revisions to the LDR's in Ordinance form including appropriate graphic illustrations when such may serve to explain the desired effect of the regulations.
- D. Present draft documents to the Planning Board and City Commission for a first reading.
- E. Amend documents based upon Board and public input.
- F. Present final documents in ordinance form for adoption.

### **Article 2. Compensation**

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

- 2.1 Lump sum payment in the total amount of \$143,700.00, which includes compensation for all the CONSULTANT'S salaries, general overhead costs, direct expenses, and profit.
  - A. The lump sum is based on immediate authorization to proceed and timely completion of the PROJECT. If the PROJECT timing deviates from the assumed schedule for causes beyond CONSULTANT'S control, CONSULTANT and/or the CITY reserves the right to request renegotiation of those portions of the lump sum affected by the time change.
  - B. In the event of a change of scope, an appropriate decrease or increase in compensation will be authorized in writing.

- C. Monthly invoicing will be based on an estimate of the percent complete at the end of the preceding month.
- D. The CONSULTANT shall submit wage rates and other actual unit costs supporting the compensation. The CONSULTANT shall submit a Truth in Negotiation Certificate stating that all data supporting the compensation is accurate, complete, and current at the time of contracting.

**Article 3. Invoicing and Payment**

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

**Article 4. Obligations of the Consultant**

4.1. General

- A. The CONSULTANT will serve as CITY’S professional representative under this AGREEMENT, preparing the City’s amendments to its Land Development Regulations.

4.2. Standard of Care

- A. The standard of care applicable to CONSULTANT’S services will be the degree of skill and diligence normally employed by planners and engineers and other related consultants performing the same or similar services at the time said services are performed. The CONSULTANT will perform any services not meeting this standard without additional compensation.

4.3 CONSULTANT’S Insurance

The CONSULTANT shall keep in full force and effect at all times during the effective period of this AGREEMENT and any resulting agreement and durations identified within, and at its own cost and expense the following insurance with insurance companies authorized in the State of Florida, with an A.M. Best rating of A or higher and shall provide evidence of such insurance to the CITY. The policies or certificates shall provide thirty (30) days prior to cancellation notices of same shall be given to the CITY by registered mail, for all of the required insurance policies stated below. All notices shall name the Consultant and identify the contract number. The CITY, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees are to be named as “Additional Insureds” as their interests may appear on all policies. All policies are to include a “Waiver of Subrogation” in favor of the City of Key West. Notwithstanding any other provision of the AGREEMENT, the CONSULTANT shall provide the minimum limits of liability insurance coverage as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate (Per Project)
	\$2,000,000	Products Aggregate

	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$ 300,000	Fire Damage/Legal
Professional Liability	\$1,000,000	Per Claim / Aggregate
Additional Umbrella Liability	\$2,000,000	Occurrence / Aggregate

CONSULTANT shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as an additional insured on all policies-excepting Professional Liability-on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11185) or its equivalent, (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of City of Key West on all policies. CONSULTANT will maintain the Professional Liability, General Liability, and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the additional insured endorsement until at least 3 years beyond completion and delivery of the work contracted herein.

Notwithstanding any other provision of the AGREEMENT, the CONSULTANT shall maintain complete workers' compensation coverage for each and every employee, principal, officer, representative, or agent of the CONSULTANT who is performing any labor, services, or material under the Contract. Further, CONSULTANT shall additionally maintain the following minimum limits of coverage:

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

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

PROFESSIONAL CONSULTANT's insurance policies shall be endorsed to give 30 days written notice to the CITY in the event of cancellation or material change, using form CG 02 24, or its equivalent.

Certificates of Insurance submitted to the CITY 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.

The CONSULTANT shall maintain limits no less than those stated below:

**1. Scope of Insurance and Special Hazards**

The insurance requirement contained in the foregoing Paragraphs are a minimum to provide adequate protection for the CONSULTANT, respectively, against damage claims which may arise from operations under this contract, whether such operation be by the insured or by anyone directly or indirectly employed by the insured and, also against any of the special hazards which may be encountered in the entity's operation under this AGREEMENT. The insurance required herein and approval of the CONSULTANT's insurance by the CITY shall not relieve or decrease the liability of the CONSULTANT hereunder.

Insurance requirements itemized in this AGREEMENT and required of the CONSULTANT shall be provided on behalf of all sub-contractors to cover their operations performed under this contract. The CONSULTANT shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to sub-contractors.

**2. Certificates of Insurance**

Certificates of Insurance shall be filed and maintained throughout the life of any resulting Agreement with the City of Key West, P.O. Box 1409, Key West, FL 33041-1409, evidencing the minimum limits of the insurance cited above prior to commencement of work. All insurance certificates shall be received by City Clerk and Department of Risk Management before CONSULTANT will be allowed to commence or continue work (all insurance carriers must have their corresponding AM Best carrier ID listed on the COI). All policies shall provide that they may not be terminated or modified without the insurer providing the CITY at least thirty (30) days of advance notice. Additionally, the CONSULTANT shall immediately notify the CITY of any cancellation of such insurance. The CITY reserves the right to review, at any time, coverage, form, and amount of insurance.

In addition, it is understood if at any time any of the policies required by CITY shall become unsatisfactory to the CITY as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the CITY, the CONSULTANT shall obtain a new policy, submit the same to the CITY for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of the CONSULTANT to furnish, deliver and maintain such insurance as above provided, the AGREEMENT at the election of the CITY may be declared suspended, discontinued or terminated. Further, failure of the CONSULTANT to take out and/or maintain any required insurance shall not relieve the CONSULTANT from any

liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the CONSULTANT concerning indemnification.

#### 4.4 Subconsultants

A. With the exception of those subconsultants listed in paragraph 4.4(B) below, the CONSULTANT may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY.

B. The list of Subconsultants to be utilized by CONSULTANT is as follows:

1. RBC Solutions, Inc.

The CONSULTANT shall obtain written approval from the City prior to changing or adding to the list of Subconsultants.

C. The CONSULTANT is as fully responsible to the owner for the acts and omissions of his Subconsultants and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.

D. Nothing contained in the AGREEMENT shall create any contractual relationship between any Subconsultant and the City. The Subconsultants shall have the same insurance requirements as the CONSULTANT.

#### 4.5 Licenses

A. The CONSULTANT will be required to obtain a local required license prior to performing any work for the CITY. This license will be a Business Tax Receipt at a cost not to exceed \$98.70.

### **Article 5. Obligations of the City**

#### 5.1. Authorization to Proceed

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

#### 5.2. City-Furnished Data

A. The CITY will provide to the CONSULTANT all data in the CITY'S possession relating to the CONSULTANT's services on the PROJECT including, but not limited to, information on any pre-existing reports. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

#### 5.3. Access to Facilities and Property

A. The CITY will make its facilities accessible to CONSULTANT as required for CONSULTANT's performance of its services and will provide labor and safety equipment as required by CONSULTANT for such access. CITY will be responsible for all acts of CITY'S personnel.

- 5.4. Timely Review
  - A. The CITY will examine the CONSULTANT's studies, reports, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner.
- 5.5. Prompt Notice
  - A. The CITY will give prompt written notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect in the work of the CONSULTANT.
- 5.6. Litigation Assistance
  - A. The Scope of Services does not include costs of CONSULTANT for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CITY. All such services required or requested of CONSULTANT by CITY, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed in a separate agreement.

## **Article 6. General Legal Provisions**

- 6.1. Agreement Period
  - A. The duration of the AGREEMENT shall be 16 months, commencing from the effective date of this AGREEMENT.
- 6.2. Reuse of Project Documents
  - A. Reports, documents and other deliverables of the CONSULTANT, whether in hard copy or in electronic form, are instruments of service for the project of the CITY. All documents shall be made available on re-writable CD and are the property of the City of Key West. Reuse, change, or alteration on another project, by the CITY or by others acting on behalf of the CITY of any such instruments of service without the written permission of the CONSULTANT will be at the CITY's sole risk. Nothing herein shall constitute a waiver of City's sovereign immunity rights, including, but not limited to, those expressed in Section 768.28, Florida Statutes.
- 6.3. Ownership of Work Product and Inventions
  - A. All of the work product of CONSULTANT in executing a Project under this contract shall become the property of the CITY. The City may use the deliverables solely for the purpose for which they were intended.
- 6.4. Force Majeure
  - A. The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.
  - B. In the event of a delay that results in additional costs to the CONSULTANT, an appropriate increase in compensation and schedule will be authorized in writing.



## 6.5 Termination

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

## 6.6 Suspension, Delay, or Interruption of Work

- A. The CITY may suspend, delay, or interrupt the services of the CONSULTANT for the convenience of the CITY. In the event of such suspension, delay, or interruption, or any other act or neglect of CITY or CITY's subcontractors, CITY will pay CONSULTANT for work performed to date. An equitable adjustment in the PROJECT'S schedule and CONSULTANT'S compensation will be made as agreed to by both parties.
- B. In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

## 6.7 Third Party Beneficiaries

- A. This Agreement gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third party beneficiaries. CONSULTANT'S services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the Project. All work products will be prepared for the exclusive use of CITY for specific application as described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of CONSULTANT. Any unauthorized assignment of related work product shall be void and unenforceable.

## 6.8 Indemnification

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

The indemnification obligations under the AGREEMENT shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the CONSULTANT or of any third party to whom CONSULTANT may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the work.

6.9 Assignment

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

6.10 Jurisdiction

- A. The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

6.11 Severability and Survival

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

6.12 Dispute Resolution

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

6.13 Post Contractual Restriction

- A. This Agreement is contingent upon the execution of Post Contractual Restrictions by Consultant, those subconsultants referred to in Article 4.4(B) above, and those subconsultants approved by the City pursuant to Article 4.4(A) above restricting those persons and entities, as well as the employees of those persons and entities, from representing themselves or clients before the City Commission of the City Key West, the City's agents, boards, and committees on all planning related matters during the period of performance of this Agreement and for the period of one year following final approval of the Evaluation and Appraisal Report Amendments to the Comprehensive Plan. The Post Contractual Restrictions shall be executed simultaneously with this Agreement and shall be in a form acceptable to City.

6.14 Attorney's Fees

A. In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

**Article 7. Schedules, and Signatures**

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

IN WITNESS WHEREOF, the parties execute below:

THE CITY OF KEY WEST, FLORIDA

By: \_\_\_\_\_

Jim Scholl, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Cheri Smith, City Clerk

CALVIN, GIORDANO & ASSOCIATES, INC.

By:  \_\_\_\_\_

Dennis J. Giordano, President

Date: 2/12/15