

RESOLUTION NO. 21-032

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "PLANS REVIEW AND INSPECTION SERVICES AGREEMENT" BETWEEN THE CITY AND ALL ASPECTS INSPECTION SERVICES, LLC FOR BUILDING PERMIT PLANS REVIEW AND INSPECTION SERVICES; APPROVING ANY NECESSARY BUDGET TRANSFERS OR ADJUSTMENTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 21-010, the City Commission ranked All Aspects Inspection Services, LLC first for building permit plan review and inspection services, and authorized the City Manager to enter into contract negotiations for approval by the City Commission; and

WHEREAS, negotiations are complete, and the City Manager recommends approval of the attached Agreement.

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

Section 1: That the attached "Plans Review and Inspection Services Agreement" between the City and All Aspects Inspection Services, LLC is hereby approved.

Section 2: That any necessary budget transfers or adjustments related to this Agreement are hereby authorized.

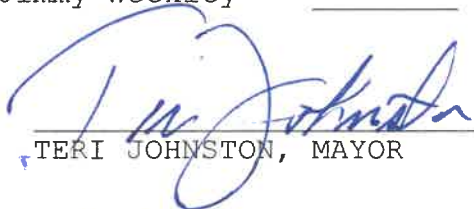
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 2nd day of March, 2021.

Authenticated by the Presiding Officer and Clerk of the Commission on 3rd day of March, 2021.

Filed with the Clerk on March, 2021.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>



TERI JOHNSTON, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK



Executive Summary

To: City Commission

From: George Wallace, Assistant City Attorney

Date: 2/8/2021

RE: Proposed Agreement for Plans Review and Inspection Services with All Aspects Inspections Services Inc.

Action:

Respectfully request the City Commission authorize the City Manager to execute, subject to the review and consent of the City Attorney, an Agreement between the City of Key West (CKW) and All Aspects Inspections Services Inc., to provide Building Permit Plan Review and Inspection Services Inc.

Background:

The Building Department averaged 8,861 annual inspections over the last 5 years. The Building Department has previously used private inspection services to ease the workload of the Building Department. Due to several extenuating factors the City continues to struggle hiring qualified inspectors within the Building Department, resulting in an inability to keep up with the current demand. The three unfilled building inspector positions has caused a backlog of permits, requiring the use of private inspectors. Formalizing the Building Permit Plan Review and Inspection process will ease the backlog, ultimately resulting in progress throughout the City for clients waiting on permits to be issued. RFP 001-21 was created to fill the void through the formal Request for Proposals process.

On November 21, 2020, the City published RFP 001-21, Building Permit Plan Review and Inspection Services, inviting groups to bid on the requested services. On December 2nd, 2020, a mandatory pre-proposal meeting was held in which three organizations attended; MT Causley, C.A.P. Government, Inc. and All Aspects Inspection Services.

At its regularly scheduled commission meeting on January 20th, 2021 the Commission approved Resolution 21-010 authorizing the City Manager to negotiate an Agreement with All Aspects Inspection Services, Inc. (All Aspects) for Plans Review and Inspections Services. Negotiations have been completed and the Agreement is presented to the Commission for its consideration with a suggestion for approval.

Financial Impact:

All Aspects and the City has negotiated the fees for Plans Review and Inspection Services as reflected on the attached schedule.

If the City Commission approves the recommendation of Staff as submitted the City will make all necessary, budget transfers to cover the costs of Inspection Services.

Recommendation:

Request the City Commission approve the negotiated contract with All Aspects for Plans Review and Inspection Services as presented for execution by the City Manager.

Rates

Plan Reviews are billed based on an hourly rate for Standard Building Plans Reviewers and Engineers for services provided Monday through Friday during regular business hours.

Inspections will be billed at \$75.00 per inspection. It is anticipated that there will typically be at least 10 inspections per day.

Fees for Additional Services: Additional services will be performed at the request of the city and include plan review services, attendance at meetings, consultations, reimbursable expenses such as copy costs, etc. Essentially any service requested by the city not directly related to an inspection and entering the results into the eTrakit system. Discussions or questions related to any particular inspection are not considered additional services.

	Hourly Rates			
	Plans Examiner	Inspector/ PM	Engineer	Principal
Plan reviews for master building permit Hourly rate.	<u>\$110.00/hr</u>		<u>\$180.00/hr</u>	
Shop Drawings (not included in the initial, second or third review for master permit)	<u>\$110.00/hr</u>		<u>\$180.00/hr</u>	
Review of revisions to the permitted Drawings	<u>\$110.00/hr</u>		<u>\$180.00/hr</u>	
Meetings	<u>\$110.00/hr</u>	<u>\$110.00/hr</u>	<u>\$180.00/hr</u>	<u>\$195.00/hr</u>
Plans Coordinator Services	<u>\$65.00 per hour</u>			
Reimbursable Expenses†	Cost plus <u>15%</u>			

†Includes copies and Fed-Ex/UPS delivery charges.

The hourly rates stated above are based on services provided Monday thru Friday during regular business hours. Although no services are anticipated to be performed on Weekends, Holidays, or overtime, any service requested after 5 pm, Monday thru Friday, will be charged at 1.5 times the standard rate. Services

requested on a weekend or holiday will be charged 1.5 times the standard rate.

A Cancelled inspection shall not be billable.

Single trade inspections shall be billed as one inspection and may include multiple items such as plumbing shower pans, plumbing pressure tests and similar same trade inspections.

PLANS REVIEW AND INSPECTION SERVICES AGREEMENT

OWNER: City of Key West
1300 White Street, Key West, Fl.

DATE: March 5, 2021

ALL ASPECTS INSPECTIONS SERVICES, LLC (CONTRACTOR) operates in accordance with the State of Florida Alternative Plans Review and Inspection Program, as described in Florida Statutes 553.791 and shall provide building permit plans review and inspection services for the City of Key West, Fl. These services will be performed as an extension of the Building Department Staff and will coordinate directly with the Building Official and Assistant City Manager. The Building Official is the Authority Having Jurisdiction (AHJ) and CONTRACTOR will be providing a supporting role.

Plans Review Services

As and when requested by the City, CONTRACTOR will review plans as required by the Florida Building Code, typically performed by City of Key West Building Department personnel. Plan review would be limited to structural, building, mechanical, electrical, fuel gas, accessibility and plumbing disciplines. Each discipline will be reviewed by a plans examiner or engineer licensed by the State of Florida. State of Florida registered structural engineers, certified by the State of Florida will review structural plans.

CONTRACTOR will review the project documents for compliance with applicable Florida building codes. Plan review comments, if any, shall be communicated to the client through the City eTrakit system. Upon completion and approval of the project documents, CONTRACTOR will provide signed and sealed Plan Compliance Affidavits for all disciplines to the City certifying the documents have been reviewed for Florida Building Code compliance.

Proposed Commercial and Residential Plans Review Services:

- Architectural Plans Review/ADA
- Structural Plans Review
- Mechanical, Electrical and Plumbing Plans Review
- Shop Drawing and NOA review (must be included in the initial, second or third reviews)

Plans Review Procedures and Requirements:

- Plan review shall be provided on an expedited basis.
- Electronic signed and sealed plans, NOA's, calculations, and all other supporting documents in PDF format shall be supplied to CONTRACTOR to initiate the plan review process.
- Upon approval of all disciplines, CONTRACTOR will provide signed and sealed Plan Compliance Affidavits for those disciplines
- Fire plan review must be processed through the Fire Department.
- Plans review will be conducted/completed within the time frames described on Exhibit B attached hereto unless there is a mutually agreed deviation.

Inspection Services

CONTRACTOR will perform inspections required by the Florida Building Code, typically performed by the City of Key West Building Department personnel with State of Florida licensed inspectors or Engineers. Inspections will be performed on an "as requested" basis through the City's eTrakit system.

Inspections will be performed upon issuance of the required permits by the City of Key West Building Official. Required revisions and shop drawings will be reviewed and approved by the City and available on the job site.

Proposed Inspection Services:

- Building Inspections (i.e. drywall, insulation, framing, fire penetration, window, door buck, final)
- Roofing Inspections (i.e. insulation, in-progress, and final for membrane, additional inspections may be required depending on the roof type)
- Mechanical Inspections (i.e. rough, final, ductwork (if required))
- Electrical Inspections (i.e. rough, low voltage, underground, final)
- Plumbing Inspections (i.e. rough and final)

Inspection Procedures and Requirements:

- The City and the CONTRACTOR shall mutually establish a time limitation the day prior to inspection by which the CONTRACTOR shall receive inspection requests from the eTrakit system.
- Inspection results will be entered directly into the eTrakit system by CONTRACTOR staff.
- Threshold Inspections are not included in the scope of this Agreement.
- Inspections and results will be conducted /reported within the turn around times set forth on Exhibit B unless there is a mutually agreed deviation.

Terms and Conditions

- Invoices will be submitted on the 1st of each month and paid within 30 days of receipt.
- The General Contractor of record will be responsible for meeting all of the requirements of the most current Edition of The Florida Building Code as well as complying with all of the guidelines and restrictions of local regulations and ordinances.
- All Contractors including subcontractors shall carry and submit upon request all local and state licenses and copies of Insurance.
- The Contractor, including subcontractors, will be responsible for maintaining a current state license, competency card, and insurance throughout the duration of project.
- Inspections cannot be performed for any trade if license or insurance is expired or voided.
- All services not specifically indicated in the scope of services will be considered Additional Services and will be billed at \$110.00 per hour for inspectors and plan reviewers, and \$180.00 per hour for Engineers.

Indemnification

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 CONTRACTOR, its Subcontractors or persons employed or utilized by them in the performance of the Contract.

Insurance

INSURANCE REQUIREMENTS

1.0 GENERAL INSURANCE REQUIREMENTS:

- 1.01 During the Term of the Agreement, the Contractor shall provide, pay for, and maintain with insurance companies satisfactory to the City of Key West, Florida ("City"), the types of insurance described herein.
- 1.02 All insurance shall be from responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Monroe County, Florida, and shall be construed in accordance with the laws of the State of Florida.
- 1.03 The City shall be specifically included as an additional insured on the Contractor's Liability policies with the exception of the Contractor's Professional Liability policies (if required) and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision). The City's additional insured status should be extended to all Completed Operations coverages.
- 1.04 The Contractor shall deliver to the City, prior to commencing work/activities under the Agreement, properly executed "Certificate(s) of Insurance" setting forth the insurance coverage and limits required herein. The Certificates must be signed by the authorized representative of the insurance company(s) shown on the Certificate of Insurance. In addition, certified, true, and exact copies of the insurance policies required herein shall be provided to the City, on a timely basis, if requested by the City.
- 1.05 If the Contractor fails to provide or maintain the insurance coverages required in this Agreement at any time during the Term of the Agreement and if the Contractor refuses or otherwise neglects to deliver the required Certificate(s) of Insurance signed by the authorized representative of the insurance company(s) to the City, the City may, at the City's sole discretion, terminate or suspend this Agreement and seize the amount of Contractor's performance bond, letter of credit, or other security acceptable to the City.
- 1.06 The Contractor shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the City requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit, the Contractor shall promptly authorize and have delivered such statement to the City.
- 1.07 The Contractor authorizes the City and/or its insurance consultant to confirm all information furnished to the City, as to its compliance with its Bonds and Insurance Requirements, with the Contractor's insurance agents, brokers, surety, and insurance carriers.

- 1.08 All insurance coverage of the Contractor shall be primary to any insurance or self-insurance program carried by the City. The City's insurance or self-insurance programs or coverage shall not be contributory with any insurance required of the Contractor in this Agreement.
- 1.09 The acceptance of delivery to the City of any Certificate of Insurance evidencing the insurance coverage and limits required in the Agreement does not constitute approval or agreement by the City that the insurance requirements in the Agreement have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Agreement requirements.
- 1.10 No work/activity under this Agreement shall commence or continue unless and until the required Certificate(s) of Insurance are in effect and the written Notice to Proceed is issued by the City.
- 1.11 The insurance coverage and limits required of the Contractor under this Agreement are designed to meet the minimum requirements of the City. They are not designed as a recommended insurance program for the Contractor. The Contractor alone shall be responsible for the sufficiency of its own insurance program. Should the Contractor have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.
- 1.12 During the Term of this Agreement, the City and its agents and contractors may continue to engage in necessary business activities during the operations of the Contractor. No personal property owned by City used in connection with these business activities shall be considered by the Contractor's insurance company as being in the care, custody, or control of the Contractor.
- 1.13 Should any of the required insurances specified in this Agreement provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, the Contractor shall be responsible for all deductibles and self-insured retentions.
- 1.14 All of the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.
- 1.15 All policies of insurance required herein shall require that the insurer give the City thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Agreement, except for the application of the Aggregate Limits Provisions.
- 1.16 Renewal Certificate(s) of Insurance shall be provided to the City at least twenty (20) days prior to expiration of current coverage so that there shall be no termination of the Agreement due to lack of proof of the insurance coverage required of the Contractor.

1.17 If the Contractor utilizes contractors or sub-contractors to perform any operations or activities governed by this Agreement, the Contractor will ensure all contractors and sub-contractors to maintain the same types and amounts of insurance required of the Contractor. In addition, the Contractor will ensure that the contractor and sub-contractor insurances comply with all the Insurance Requirements specified for the Contractor contained within this Agreement. The Contractor shall obtain Certificates of Insurance comparable to those required of the Contractor from all contractors and sub-contractors. Such Certificates of Insurances shall be presented to the City upon request. Contractor's obligation to ensure that all contractor's and sub-contractor's insurance as provided herein shall not exculpate Contractor from the direct primary responsibility Contractor has to the City hereunder. The City will look directly to Contractor for any such liability hereunder and shall not be obligated to seek recovery from any contractor or subcontract or under such contractor's or sub-contractor's insurance coverages.

2.0 SPECIFIC INSURANCE COVERAGES AND LIMITS:

2.01 All requirements in this Insurance Section shall be complied with in full by the Contractor unless excused from compliance in writing by the City.

2.02 The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the City.

Workers' Compensation and Employers' Liability Insurance shall be maintained in force during the Term of this Agreement for all employees engaged in this work under this Agreement, in accordance with the laws of the State of Florida. The minimum acceptable limits shall be:

Workers' Compensation	Florida Statutory Requirements
Employer's Liability	\$1,000,000.00 Limit Each Accident
	\$1,000,000.00 Limit Disease Aggregate
	\$1,000,000.00 Limit Disease Each Employee

If the Contractor has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*, the Contractor will be required to issue a formal letter (on the Contractor's letterhead) stating that it has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*. This exception does **not** apply to firms engaged in construction activities.

Commercial General Liability Insurance shall be maintained by the Contractor on a Full Occurrence Form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, and Products & Completed Operations Coverage. The limits of such coverage shall not be less than:

Bodily Injury & Property Damage Liability \$1,000,000.00
Combined Single Limit each Occurrence and Aggregate

Completed Operations Liability Coverage shall be maintained by the Contractor for a period of not less than four (4) years following expiration or termination of this Agreement.

The use of an Excess, Umbrella and/or Bumbershoot policy shall be acceptable if the level of protection provided by the Excess, Umbrella and/or Bumbershoot policy is equal to or more comprehensive than the Primary Commercial General Liability policy.

Business Automobile Liability Insurance shall be maintained by the Contractor as to ownership, maintenance, use, loading and unloading of all owned, non-owned, leased, or hired vehicles with limits of such coverage of not less than:

Bodily Injury Limit Each Accident \$1,000,000.00
Property Damage Liability Limit Each Accident \$1,000,000.00

or

Bodily Injury & Property Damage Liability \$1,000,000.00 Combined Single Limit Each Accident

If the Contractor does not own any vehicles, this requirement can be satisfied by having the Contractor's Commercial General Liability policy endorsed with "Non-Owned and Hired Automobile" Liability coverage.

Professional Liability Insurance shall be maintained by the Contractor which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the Contractor arising out of activities governed by this Agreement. The minimum acceptable limits of liability shall be \$1,000,000 per Occurrence and \$2,000,000 Annual Aggregate. If the policy is structured on a "Claims Made" basis, the policy must contain a "Retroactive Date" of no later than the commencement date of the Agreement and will have an extended reporting period of four (4) years following expiration or termination of the Agreement.

FEMA

1. The terms and conditions contained in attached Exhibit "A", FEMA requirements, are incorporated herein for those inspections required for city projects generated by damages resulting from storms or other calamities resulting in a declaration of emergency by the governor of the State of Florida.

Rates

Plan Reviews are billed based on an hourly rate for Standard Building Plans Reviewers and Engineers for services provided Monday through Friday during regular business hours.

Inspections will be billed at \$75.00 per inspection. It is anticipated that there will typically be at least 10 inspections per day.

Fees for Additional Services: Additional services will be performed at the request of the city and include plan review services, attendance at meetings, consultations, reimbursable expenses such as copy costs, etc. Essentially any service requested by the city not directly related to an inspection and entering the results into the eTrakit system. Discussions or questions related to any particular inspection are not considered additional services.

	Hourly Rates			
	Plans Examiner	Inspector/ PM	Engineer	Principal
Plan reviews for master building permit Hourly rate.	<u>\$110.00/hr</u>		<u>\$180.00/hr</u>	
Shop Drawings (not included in the initial, second or third review for master permit)	<u>\$110.00/hr</u>		<u>\$180.00/hr</u>	
Review of revisions to the permitted Drawings	<u>\$110.00/hr</u>		<u>\$180.00/hr</u>	
Meetings	<u>\$110.00/hr</u>	<u>\$110.00/hr</u>	<u>\$180.00/hr</u>	<u>\$195.00/hr</u>
Plans Coordinator Services	<u>\$65.00</u> per hour			
Reimbursable Expenses†	Cost plus <u>15%</u>			

†Includes copies and Fed-Ex/UPS delivery charges.

The hourly rates stated above are based on services provided Monday thru Friday during regular business hours. Although no services are anticipated to be performed on Weekends, Holidays, or overtime, any service requested after 5 pm, Monday thru Friday, will be charged at 1.5 times the standard rate. Services requested on a weekend or holiday will be charged 1.5 times the standard rate.

A Cancelled inspection shall not be billable.

Single trade inspections shall be billed as one inspection and may include multiple items such as plumbing shower pans, plumbing pressure tests and similar same trade inspections.

Term

This Agreement shall be for a term of three (3) years with up to three (1) one -year options to renew at the discretion of the City. City may terminate the Agreement at any time.

Acceptance

The parties have read the foregoing, understand the agreement completely and scope of work, and willingly enter into this agreement which will become effective on the date signed below by the CITY.

WAIVER OF BREACH AND MATERIALITY

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.

2. CITY and 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.

COMPLIANCE WITH LAWS

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. In addition, at the time each service is executed, any revisions to applicable federal state, and local laws, codes, ordinances, rules and regulations shall apply.

SEVERABILITY

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONTRACTOR elects to terminate this Agreement.

JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CITY and 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.

PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in pages 1 through 6 of this Agreement shall prevail and be given effect.

APPLICABLE LAW AND VENUE

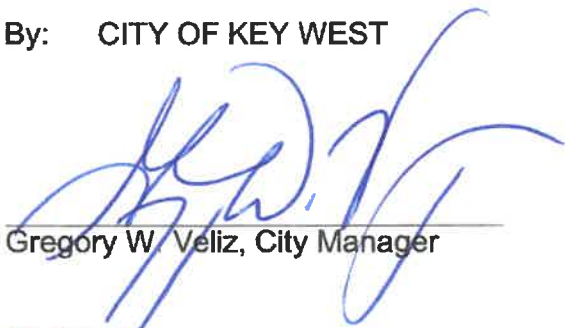
The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any claims related to it. The venue for mediation, arbitration or any other legal proceeding shall be Monroe County, Florida. Trial by Jury is waived by the parties.

COUNTERPARTS

This Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original.

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

By: CITY OF KEY WEST



Gregory W. Veliz, City Manager

By: ALL ASPECTS
INSPECTION SERVICES, LLC,
as Contractor



Name: JAMES C. REYNOLDS, LLC
Title: MANAGING PARTNER

ATTEST:

ATTEST:

Witness: _____

Date: _____



Cheryl Smith, City Clerk
Date: 3-5-2021

PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in pages 1 through 6 of this Agreement shall prevail and be given effect.

APPLICABLE LAW AND VENUE

The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any claims related to it. The venue for mediation, arbitration or any other legal proceeding shall be Monroe County, Florida. Trial by Jury is waived by the parties.

COUNTERPARTS

This Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original.

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

By: CITY OF KEY WEST


Gregory W. Veliz, City Manager

By: ALL ASPECTS
INSPECTION SERVICES, LLC,
as Contractor


Name: JAMES C. REYNOLDS, LLC
Title: MANAGING PARTNER

ATTEST:


Cheryl Smith, City Clerk

Date: 3-5-2021

ATTEST:


Witness: Mia Santos, Office Manager

Date: 3/15/21



Exhibit A

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.

- (1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
 - (2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:
- “During the performance of this contract, the contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.”** However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

- a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:

Current as of 1-9-17

- (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
- (2) The contract requires the approval of FEMA, regardless of amount.
- (3) The contract is for federally-required audit services.
- (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; *PDAT Supplement*, Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See *PDAT Supplement*, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
- b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

Current as of 1-9-17

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags:
“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

Current as of 1-9-17

will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract

EXHIBIT B

1) PLAN REVIEW SERVICES

a) General requirements

- i) All plan reviews that return a result other than "APPROVED" shall consist of a specific written description of deficiency(s) that reference Code section citations where applicable.
- ii) Disputes between the contract plans examiner and applicant shall be referred to the Building Official for examination upon the Contractor's request. Time to resolve disputes shall not be considered in the turn-around time of a plan review.

b) Plan review maximum turn-around time as per the below table:

PLAN REVIEW SERVICES

MAXIMUM REVIEW TURN-AROUND TIMES

Review type	Working Days*
Residential plan review maximum turn-around time	
Simple trade* permits	2
Complex trade permits	5
Remodel/renovation	5
Addition	5
Demolition	2
New Const	8
Commercial Plan Review maximum turn-around time	
Simple trade permits	2
Complex trade permits	5
Remodel/renovation	10
Addition	10
Demolition	5
New Const ≤ 5,000 SF up to two stories	10
New Const > 5,000 SF or > two stories	15
Re-check plan after initial review	
Residential – 2 working days	2
Commercial – 5 working days	5

* Working days exclude weekends and holidays.

** Trades include: Mechanical, Electrical, Plumbing, Fuel Gas, Roofing, Pool, Fire Sprinklers or Suppression.

2) INSPECTION SERVICES

a) General requirements

- i) Contractor shall not edit or alter any record other than to record the result of assigned inspections and to upload documentation and comments related to inspections assigned to the Contractor.
- ii) Contractor shall not create or add inspections to permit records.
- iii) Contractor shall not assign any inspections to staff or principals of the Contractor other than those already assigned by City staff to the Contractor.
- iv) Inspections with a result of CANCELLED shall not be invoiced. A reason for cancellation shall be recorded in the record.

- v) Inspections with a result of NO ACCESS WP, shall include a photo of the property front with the street number visible if possible.

- b) SCHEDULING of inspections
 - i) CONTRACTOR shall retrieve inspection assignments for each scheduled workday no later than 7:00am. Any scheduling conflicts must be reported to the City as soon as possible and in no case, later than 8:30am on the scheduled day.
 - (1) Note that next-day inspection requests are currently received and scheduled until 8:00 pm the day prior to the inspection. Any request received after 8:00pm will be scheduled for the second workday after the request is received. This may be subject to change by mutual agreement between the parties.

- c) PERFORMANCE of inspections
 - i) Results of inspections shall be posted to TRAKiT on the same day the inspection is performed.
 - ii) The inspector will provide a written description of deficiencies for any inspection that is not approved. This description should be in the REMARKS or NOTES section of the inspection result in TRAKiT.

RESOLUTION NO. 21-010

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, RANKING RESPONSES TO REQUEST FOR PROPOSALS (RFP) NO. 001-21 FOR BUILDING PERMIT PLAN REVIEW AND INSPECTION SERVICES; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A CONTRACT AND PRESENT IT TO THE CITY COMMISSION FOR FINAL APPROVAL, WITH ALL ASPECTS INSPECTION SERVICES, LLC, UPON ADVICE AND CONSENT OF THE CITY ATTORNEY; AUTHORIZING BUDGET TRANSFERS AND ADJUSTMENTS, IF NECESSARY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City issued a request for Proposals for Building Permit Plan Review and Inspection Services, as set forth in RFP No. 001-21; and

WHEREAS, on December 21, 2020, the City Clerk opened three proposals, two of which were deemed responsive, and at a public meeting on December 28, 2020, a committee comprised of City staff reviewed the responses to the RFP.

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

Section 1: That the responses to RFP No. 001-21 for Building Permit Plan Review and Inspection Services are ranked by the City Commission as follows:

- (1) All Aspects, Inc.
- (2) C.A.P. Government, Inc.

Section 2: That the City Manager is authorized to negotiate a contract with All Aspects, Inc., in substantial conformance with documents in the RFP response and incorporating performance standards, and to present it to the City Commission for final approval.

Section 3: That \$235,648.00 may be transferred from Building Department unfilled and budgeted positions to account 001-2401-524.31 to fund private inspection services. Any necessary budget transfers or adjustments are hereby authorized.

Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 20th day of January, 2021.

Authenticated by the Presiding Officer and Clerk of the Commission on 10th day of February, 2021.

Filed with the Clerk on February 10, 2021.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>



TERI JOHNSTON, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK