

Consulting Agreement

This AGREEMENT is made and entered into this ____ day of _____, 2018, by and between the City of Key West, Florida, a municipal corporation of the State of Florida, whose address is P.O Box 1409, Key West, Florida 33041, hereafter referred to as the "CITY" and _____ CivicMoxie, LLC _____, whose address is 1 Holden St #218, Brookline MA 02445 _____, 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

Attached hereto, incorporated by reference, and more particularly described as "Exhibit A" is the City's Request for Proposals #009-18 and CONSULTANT'S proposal dated 19 June 2018 _____, and NEA Grant requirements including Attachments A, B, C and D (signed), which are attached hereto, incorporated by reference, and more particularly described as "Exhibit B." The Task Breakdown contains a list of activities corresponding to each category/series referred to herein above.

The CONSULTANT'S primary responsibilities include, but are not limited to, assisting the City with developing a Truman Waterfront Arts & Culture Master Plan that includes creative placemaking to strengthen the community and connect Key West's Historic Old Town and the waterfront park area as a community place to gather (the "Project"). Additional work may include other consulting services which the CONSULTANT is qualified to provide and which the CITY authorizes the CONSULTANT to undertake in connection with the CITY's present and planned activities in the areas identified below. The specific task goals, task activities and key project milestones, which the CONSULTANT agrees to undertake, accomplish and furnish, are set forth as follows:

1. Scope of Work

Task A Project Administration - Refining the scope, and ongoing project management.

Implement the NEA Our Town grant as described herein. Consultant will work with City Staff and all other partners listed, in soliciting the public's input and create and manage the process to create an Arts & Culture Master Plan for Truman Waterfront.

A.1 - Finalize Scope, Budget and Timeline

The consultant will, in consultation with the City's Public Art Administrator, Florida Keys Council of the Arts (FKCA), modify the timeline to include partner meetings, specific public engagement efforts, website launch, EcoArt workshop, and other milestones as needed for the project's success. Minor modifications of the scope and budget may or may not be allowed at this point.

A.2 – Stakeholder Kick Off Meeting

The consultant will organize and hold a kick off meeting with all partners and stakeholders.

A.3 – Ongoing Project Management

The Consultant will:

- The consultant will monitor work progress, budget, assign staff, oversee technical work and implement quality control.
- Provide as-needed project coordination conference calls and/or meetings between the Public Art Administrator, Partners and City Staff.
- Provide progress reports monthly to the Public Art Administrator.
- Provide invoices to the Public Art Administrator as Tasks are completed.

- Prepare all meeting agendas and materials, distributing these to the City Project Manager at least 48 hours in advance.
- Provide a project website and social media presence.
- Create and maintain a database of stakeholders and participants
- Administer stipends to Park Arts Vision Team and Cultural Partner Groups at end of project.

Deliverables:

- Updated Scope of Work and Timeline
- Project Website
- First progress report

Milestone Payment: \$10,000

Task B Implement Public Engagement and Needs Assessment Process

The intent of this Task is to gather input through public engagement, in order to assess what the community needs are and build consensus. The format and documentation of this process is important, because although focused on the Truman Waterfront Park, needs to be replicable throughout the City of Key West for other arts and cultural projects. To be statistically significant at a 90% confidence level, the Consultant needs to get input from at least 100 residents and 50 tourists. The City prefers the Consultant strive to reach the 95% confidence level, needing input from 400 residents and 200 tourists.

The Process should include, but not be limited to:

- Transparent outcomes.
- Straightforward and easily replicable steps.
- Community workshops in neighborhoods to engage residents/part-time residents
- Outreach to tourists and Keys residents that live outside City boundaries.
- Under-represented populations, including those working multiple jobs who find it difficult to attend meetings.
- Interviews with key stakeholders
- Innovative and non-traditional outreach and public involvement is also desired.

Deliverables:

- Placemaking Public Engagement and Needs Assessment Process Report
- Raw data gathered from this Task.

Milestone Payment: \$20,000

Task C EcoArt Workshop

The Consultant, in partnership with City Sustainability Coordinator, will design and host an Eco art workshop, orienting community members, officials, design professionals to a design approach addressing environmental challenges. Focus will involve both art that has a function and green infrastructure that is aesthetically pleasing. Workshop will include a 10-15 person field trip to South Florida to see concepts in real life.

Deliverables:

- Summary of EcoArt Workshop
- Participants' Review / Comments

Milestone Payment: \$12,000

Task D Truman Waterfront Park Arts & Culture Master Plan

The Arts & Culture Master Plan will summarize the engagement process and resulting community needs by target audiences. It will include overall purpose and guidance, public art selection process, partners & performance opportunities for the Amphitheater & Folk-Art Community Garden/Market, EcoArt design concepts, economic impact, overall budget and marketing plan.

Completion of the Plan will include at least one final public workshop and a presentation to a joint meeting of the Truman Waterfront Advisory Board and Art In Public Places Board.

Deliverables:

- Truman Waterfront Park Arts & Cultural Master Plan

Milestone Payment: \$30,000

Task E Public Art & Performance Demonstration Projects

The Consultant shall advise the City’s Public Art Administrator in the bidding and procurement of at least \$50,000 worth of art and cultural installations, with a completion date of March 15th, 2019.

Deliverables:

- Public Art Installations
- Ribbon Cutting and cultural demonstration for public art and NEA grant completion

Milestone Payment: \$3,000

Article 2. Compensation

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

- A. The City anticipates work to be performed through Scope of Service Tasks with payment for services on a per Task lump sum milestone payment/not-to-exceed as detailed in the below schedule. The City reserves the right to negotiate a compensation package that is fair and reasonable to the City, as determined solely by City. All costs including travel are to be included. The City will not accept any additional costs.

Task	Description	Milestone Payment
A	Project Administration	\$ 10,000
B	Public Engagement	\$ 20,000
C	EcoArt Workshop	\$ 12,000
D	Truman Waterfront Arts & Culture Master Plan	\$ 30,000
E	Public Art Performance	\$ 3,000
	TOTAL AWARD:	\$ 75,000

Article 3. Invoicing and Payment

Consultant invoices including expenses will be submitted monthly and are payable upon receipt. Invoices amounts not received within 30 days from receipt are considered past due and subject to interest.

Article 4. Obligations of the Consultant

4.1. General

A. The CONSULTANT will serve as CITY'S professional representative under this AGREEMENT, assisting the City with certain enumerated aspects of developing a Truman Waterfront Arts & Culture Master Plan (the "Project").

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 professionals 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 will maintain throughout this AGREEMENT the following insurance:

1. **Worker's Compensation** – Statutory – in compliance with the Compensation law of the State of Florida. In addition, the Consultant shall obtain Employers' Liability Insurance with limits of not less than:

- Five Hundred Thousand (\$500,000.00) Dollars Bodily Injury by Accident
- Five Hundred Thousand (\$500,000.00) Dollars Bodily Injury by Disease, Policy Limits
- Five Hundred Thousand (\$500,000.00) Dollars Bodily Injury by Disease, each employee

2. **Commercial General Liability** including but not limited to bodily injury, property damage, contractual liability, products and completed operations (without limitation) and no more restrictive than ISO form CG 20 37 (07 04) shall be in an amount acceptable to the City of Key West but not less than One Million (\$1,000,000.00) Dollars Combined Single Limit per occurrence. The coverage must include:

- Commercial Form
- Premises/Operations
- Products/Completed Operations
- Independent Consultants (if any part of the Work is to be subcontracted)
- Broad Form Property Damage
- Personal Injury

3. **Business Automobile Liability** Insurance with a minimum limit of liability of One Million (\$1,000,000.00) Dollars each occurrence covering all worked performed under this contract. This insurance shall include for bodily injury and property damage the following coverage:

- Owned automobiles
- Hired automobiles
- Non-owned automobiles
- Location of operation shall be "All Locations"

In the event Consultant does not own automobiles, Consultant agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. If private passenger automobiles are used in the business, they must be commercially insured.

4. **Professional Liability/Errors & Omissions** Insurance with minimum limits not less than One Million (\$1,000,000.00) Dollars for professional services rendered in accordance with this contract. The Consultant shall maintain such insurance for at least two (2) years from the termination of this contract and during this two (2) year period the Consultant shall use his/her best efforts to ensure that there is no change of the retroactive date on this insurance coverage. If there is a change that reduces or restricts the coverage carried during the contract, the Consultant shall notify City Risk Management within thirty (30) days of the change.

5. **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 contract. The insurance required herein and approval of the Consultant's insurance by the City of Key West shall not relieve or decrease the liability of the Consultant hereunder.

Insurance requirements itemized in this contract 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.

6. **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 of Key West at least thirty (30) days of advance notice. Additionally, the Consultant shall immediately notify the City of any cancellation of such insurance. The City of Key West reserves the right to review, at any time, coverage, form, and amount of insurance. CITY will be named as additional insured on all policies – excepting Professional Liability and Workers' Compensation – on a primary and noncontributory basis utilizing an ISO standard endorsement.

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 contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of the Consultant to take out and/or maintain any required insurance shall not relieve the Consultant from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the Consultant concerning indemnification.

4.4 **Subconsultants**

- A. The CONSULTANT may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY's Project Manager.
- B. 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.
- C. Nothing contained in the Contract Documents shall create any contractual relationship between any Subconsultant and the City. The Subconsultants shall have the same insurance requirements as the CONSULTANT.

Article 5. Obligations of the City

5.1. Authorization to Proceed

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

5.2. City-Furnished Data

Subject to the confidentiality requirements pursuant to state and federal law, including those contained in the Federal Privacy Act of 1974, 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

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

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

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

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

The duration of the Agreement shall be one year commencing from the effective date of this Agreement.

6.2. Reuse of Project Documents

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 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

All of the work product provided by the CONSULTANT to the City in furtherance of this Agreement shall become the property of the CITY.

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.
- C. CONSULTANT may terminate this Agreement for cause. Termination for cause shall be by written "Termination Notice" from CONSULTANT and delivered to CITY. CITY shall have thirty (30) days from receipt of the Termination Notice within which to cure the alleged default, or if the cure requires a period of time in excess of thirty (30) days the cure period shall be extended by mutual agreement so long as CITY has undertaken such reasonably diligent efforts to cure such default.

6.6 Suspension, Delay, or Interruption of Work

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.

6.7 Third Party Beneficiaries

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

- A. To the fullest extent permitted by law, the CONSULTANT expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents and employees (herein called the "indemnitees") from any and all liability for damages, including, if allowed by law, 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, caused in whole or in part by any act, omission, or default by CONSULTANT or its subcontractors, material men, or agents of any tier or their employees, arising out of this agreement or its performance, including any such damages caused in whole or in part by any act, omission or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the CONSULTANT or its subcontractors, material men or agents of any tier or their respective employees. CONSULTANT hereby agrees to indemnify the City of Key West and each of its parent and subsidiary companies and the directors, officers and employees of each of them (collectively, the "indemnitees"), and hold each of the indemnitees harmless, against all losses, liabilities, penalties (civil or criminal), fines and expenses (including reasonable attorneys' fees and expenses) (collectively, "Claims") to the extent resulting from the performance of CONSULTANT negligent acts, errors or omissions, or intentional acts in the performance of CONSULTANT services, or any of their respective affiliates, under this Agreement. If claims, losses, damages, and judgments are found to be caused by the joint

or concurrent negligence of the City of Key West and CONSULTANT, they shall be borne by each party in proportion to its negligence.

The indemnification obligations under this 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 work.

Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes

- B. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, CONSULTANT shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The CONSULTANT shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CITY whether performed by CONSULTANT, or by persons employed or used by CONSULTANT.
- C. In no event shall CONSULTANT, its affiliated corporations, officers, employees, or any of its subcontractors be liable for any incidental, indirect, special, punitive, economic or consequential damages, including but not limited to loss of revenue or profits, suffered or incurred by CITY or any of its agents, including other contractors engaged at the project site, as a result of this Agreement or CONSULTANT's performance or non-performance of services pursuant to this Agreement. Limitations of liability provided in this paragraph apply whether the liability is claimed to arise in contract, tort (including negligence), strict liability, or otherwise.

6.9 Limitation of Liability

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

6.10 Assignment

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

6.11 Jurisdiction

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.

6.12 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 and 5 will survive termination of this AGREEMENT for any cause.

6.13 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.

6.14 Post Contractual Restriction

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.

6.15 Attorney's Fees

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.

6.16 Record Retention

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

Article 7. Exhibit and Signatures

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

IN WITNESS WHEREOF, the parties execute below:

CITY OF KEY WEST, FLORIDA

By: _____
James K. Scholl, City Manager

ATTEST:

Cheryl Smith, City Clerk

Dated this _____ day of _____, 2018

CIVICMOXIE, LLC

By: *Susan Silberberg*, principal
Susan Silberberg, Principal

Dated this 30 day of July, 2018

Attachments:
Exhibit A – RFP #009-18
Exhibit B – Consultant's Proposal