

CONTRACT DOCUMENTS FOR:



RFP # 16-004 COLLECTION SERVICES CITY OF KEY WEST

DECEMBER 2015

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CITY OF KEY WEST

KEY WEST, FLORIDA

DOCUMENTS

for

COLLECTION SERVICES
CITY OF KEY WEST

KEY WEST, FLORIDA

DECEMBER 20, 2015

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PART 1

GENERAL PROPOSAL

REQUIREMENTS

REQUEST FOR PROPOSAL

Sealed bids for the City of Key West Agency (CITY) RFP #16-004 COLLECTION SERVICES CITY OF KEY WEST, addressed to the City of Key West, will be received at the Office of the City Clerk, 3126 Flagler St., Key West Florida, 33040 until 3:00 pm on January 20, 2016 and then will be publicly opened and read. Any bids received after the time and date specified will not be considered.

Please submit one (1) original and one (1) flash drive with one single PDF file of the sections entitled “Proposal Requirements” and “Contract Forms”. Proposal package is to be enclosed in a sealed envelope, clearly marked on the outside “PROPOSAL FOR COLLECTION SERVICES CITY OF KEY WEST” addressed and delivered to the City Clerk at the address noted above.

The CITY is seeking proposals from collection professionals with the ability to undertake the collection of EMS billing and parking fines as well and other obligations which may be due the CITY. Successful applicants will demonstrate experience in EMS medical billing collections and parking collections. They will be able to provide a variety of collection techniques to obtain the amounts due.

Proposals can be for EMS Collections, Parking Collections or BOTH. The CITY reserves the right to make a single or multiple award based on the proposals received.

The full Request for Proposal may be obtained from Demand Star by Onvia. Please contact Demand Star at www.demandstar.com or call 1-800-711-1712 or www.cityofkeywest-fl.gov

The Proposer will be required to furnish documentation with his proposal showing that he is in compliance with any and all licensing requirements of the State.

The Proposer shall furnish documentation showing that he is in compliance with the licensing requirements of the provisions of Chapter 66 Section 87 of the Code of Ordinances of the City of Key West; within 10 days the following the Notice of Award and must demonstrate that he holds at a minimum, the following licenses & certificates;

A. City of Key West Business Tax License Receipt

Compliance with these provisions is required before the Firm can enter into the agreement contained in the Contract Documents.

All insurance contracts and certificates of insurance shall be either executed by or countersigned by a licensed resident agent of the Surety or Insurance Company having his place of business in the State of Florida, and in all ways complying with the insurance laws of the State of Florida. Further, the said Surety or Insurance Company shall be duly licensed and qualified to do business in the State of Florida.

For information concerning the proposed work please contact Michael Turner, Collections Manager by email at mturner@cityofkeywest-fl.gov. Verbal communications, per the City's "Cone of Silence" ordinance are not allowed.

As stated above at the time of the proposal submittal the Proposer must provide satisfactory documentation of State Licenses. The Proposer shall furnish documentation showing that he is in compliance with the licensing requirements of County, and City licenses as would be required within ten days of the award. The successful Proposer must also be able to satisfy the City Attorney as to such insurance coverage and legal requirements as may be demanded by the Proposal in question. The CITY may reject proposal for any and/or all of the following reasons: (1) for budgetary reasons, (2) if the proposer misstates or conceals a material fact in its bid, (3) if the proposal does not strictly conform to the law or is non-responsive to the proposal requirements, (4) if the proposal is conditional, (5) if a change of circumstances occurs making the purpose of the proposal unnecessary to the CITY. The CITY may also waive any minor formalities or irregularities in any proposal or (6) if such rejection is in the best interest of the CITY.

INSTRUCTIONS TO PROPOSER

1. CONTRACT DOCUMENTS

A. FORMAT

The Contract Documents are divided into parts, divisions, and sections for convenient organization and reference. Generally, there has been no attempt to divide the sections into work performed.

B. DOCUMENT INTERPRETATION

The separate sections contained within these Contract Documents are intended to be mutually cooperative and to provide all details reasonably required for the execution of the proposed work.

Should there be any doubt as to the meaning or intent of said Contract Documents, the Proposer should request of the Collections Manager, in writing (at least 10 calendar days prior to proposal opening) an interpretation thereof. Any interpretation or change in said Contract Documents will be made only in writing in the form of Addenda to the documents which will be furnished to all registered holders of Contract Documents. Proposers shall submit with their Proposals, or indicate receipt of, all Addenda. The CITY will not be responsible for any other explanation or interpretations of said Documents.

2. SCOPE OF SERVICES

A general description of the work to be done is contained in the Scope of Services section.

3. REQUIRED QUALIFICATIONS

The prospective Proposers must meet the statutorily prescribed requirements before award of Contract by the CITY. Proposers must hold or obtain all licenses and/or certificates as required by the State and Local Statutes in order to bid and perform the work specified herein. Additionally all proposers must meet the minimum qualifications as described in Required Qualifications section.

4. PROPOSERS UNDERSTANDING

Each Proposer must inform himself of the conditions relating to the execution of the work and make himself thoroughly familiar with all the Contract Documents. Failure to do so will not relieve the successful Proposer of his obligation to enter into a Contract and complete the contemplated work in strict accordance with the Contract Documents.

Each Proposer shall inform himself of, and the Proposer awarded a Contract shall comply with, federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, permits, fees, and similar subjects.

5. PREPARATION OF PROPOSAL

A. GENERAL

All blank spaces in the PROPOSAL form must be filled in, as required, preferably in BLACK ink. No changes shall be made in the phraseology of the forms.

Any PROPOSAL shall be deemed informal which contains omissions, erasures, alterations, or additions of any kind, or prices uncalled for, or in which any of the prices are obviously unbalanced, or which in any manner shall fail to conform to the conditions of the published Request for Proposal.

Only one PROPOSAL from any individual, firm, partnership, or corporation, under the same or different names, will be considered. Should it appear to the CITY that any Proposer is interested in more than one Proposal for work contemplated; all Proposals in which such Proposer is interested will be rejected.

B. SIGNATURE

The Proposer shall sign his PROPOSAL in the blank space provided therefore. If Proposer is a corporation, the legal name of the corporation shall be set forth above, together with the signature of the officer or officers authorized to sign Contracts on behalf of the corporation. If Proposer is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign Contracts in behalf of the partnership. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a notarized power-of-attorney must be on file with the CITY prior to opening of Proposals or submitted with the Proposal, otherwise the Proposal will be regarded as not properly authorized.

C. ATTACHMENTS

Proposer shall complete and submit the following forms with his proposal:

- Anti-Kickback Affidavit
- Sworn Statement under section 287.133(3)(a) Florida Statutes, on public entity crimes
- Indemnification Form
- Local Vendor Form
- Domestic Partnership Affidavit
- Cone of Silence Affidavit
- Signed addenda or indication of receipt of all addenda (Please List)
- All requirements listed in Proposal Submittal Requirements
- All required Insurance forms or an indication that insurance requirements will be met upon notice of award

6. STATE AND LOCAL SALES AND USE TAXES

Unless the contract documents contains a statement that the CITY is exempt from state sales tax on materials incorporated into the work due to the qualification of the work under this Contract, the Contractor, as required by the laws and statutes of the state and its political subdivisions, shall pay all state and local sales and use taxes. Prices quoted in the Proposal shall include all nonexempt sales and use taxes, unless provision is made in the Proposal form to separately itemize the tax.

7. SUBMISSION OF PROPOSALS

All PROPOSALS must be submitted not later than the time prescribed, at the place, and in the manner set forth in the Invitation to Bid.

PROPOSALS must be made on the PROPOSAL forms provided herewith, **submit one (1) ORIGINAL package and one (1) FLASH DRIVE containing a single PDF file of the entire bid package.**

Each PROPOSAL must be submitted in a sealed envelope, so marked as to indicate the Proposer's name and its contents (project name and number) without being opened, and addressed in conformance with the instructions in the Invitation to Bid.

8. MODIFICATION OR WITHDRAWAL OF PROPOSALS

Prior to the time and date designated for receipt of PROPOSALS, any PROPOSAL submitted may be withdrawn by notice to the party receiving PROPOSALS at the place designated for receipt of PROPOSALS. Such notice shall be in writing over the signature of the Proposer or by telegram. If by telegram, written confirmation over the signature of the Proposer shall be mailed and postmarked on or before the date and time set for receipt of PROPOSAL. No PROPOSAL may be withdrawn after the time scheduled for opening of PROPOSALS, unless the time specified in paragraph AWARD OF CONTRACT of these Instructions to Proposers shall have elapsed.

9. AWARD OF CONTRACT

Within one hundred-twenty (120) calendar days after the opening of Proposals, the CITY will accept one of the Proposals or will act in accordance with the following paragraphs. The acceptance of the Proposal will be by written notice of award, mailed to the office designated in the Proposal, or delivered to the Proposer's representative. In the event of failure of the selected Proposer to sign the Contract and provide acceptable insurance certificate(s) and evidence of holding required licenses and certificates, the Owner may award the Contract to the second ranked Proposer. Such award, if made, will be made within one hundred-fifty (150) days after the opening of Proposals.

The CITY reserves the right to accept or reject any or all Proposals, and to waive any informalities and irregularities in said Proposals.

10. BASIS OF AWARD

An evaluation committee will evaluate all proposals that meet the minimum qualifications of this RFP. Each committee member shall complete an evaluation sheet ranking each qualified proposer against the weighted criteria set forth below. Completed evaluations shall be combined and tallied. Committee reserves the right to interview one or more of the highest ranked candidates. Upon completion of its evaluation process, the evaluation committee shall provide the results of the scoring and ranking to the CITY, along with a recommendation to award the contract to the highest ranked Proposer. If the CITY and the firm selected by the CITY are unable for any reason to negotiate a contract the CITY shall, either orally or in writing, formally terminate negotiations with the selected firm. The CITY may then negotiate with the next highest ranked firm. The negotiation process may continue in this manner through successive firms until an agreement is reached or the CITY terminates this RFP.

The selection committee will shortlist no less than 3 firms, unless less than 3 firms submit proposals

SELECTION CRITERIA	Maximum Points
Specialized experience in the type of work to be performed, specifically including work in a city of similar size and geographic location	20
Compatibility of transferring account information	10
Collection rate of same/similar delinquent accounts	25
Technical expertise, including methods available for collection of accounts	25
Fee Rate	20
POINT TOTAL	100

11. EXECUTION OF CONTRACT

The successful Proposer shall, within ten (10) working days after receiving Notice of Award, sign and deliver to the CITY two (2) original Contracts similar in the form hereto attached, together with the insurance certificate examples of the bonds as required in the Contract Documents and evidence of holding required licenses and certificates. The Contract that is attached is a draft and the CITY reserves the right to modify. Within 10 working days after receiving the signed Contract from the successful Proposer, the City's authorized agent will sign the Contract. Signature by both parties constitutes execution of the Contract.

12. TERM OF CONTRACT

It is anticipated that the CITY will enter into a three (3) year agreement, which thereafter may be extended upon written consent of both parties for two (2) additional one (1) year terms.

13. PROPOSER'S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the Proposer, declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the Owner, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.

The Proposer further declares that he has carefully examined the Contract Documents and that this Proposal is made according to the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal

14. ADDENDA

The Proposer hereby acknowledges that he has received Addenda No's. ____, ____, ____. Proposer shall insert No. of each Addendum received) and agrees that all addenda issued are hereby made part of the Contract Documents, and the Proposer further agrees that his Proposal(s) includes all impacts resulting from said addenda.

15. SALES AND USE TAXES

The Proposer agrees that all federal, state, and local sales and use taxes are included in the stated unit prices for the work.

INSURANCE REQUIREMENTS

AGENCY is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for Workers’ Compensation, Public Liability, and Property Damage Liability Insurance and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the **AGENCY** shall provide the minimum limits of liability insurance coverages as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate (Per Project)
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$ 300,000	Fire Damage/Legal
Errors and Omissions	\$1,000,000	Occurrence
	\$1,000,000	Aggregate
Employee Dishonesty Coverage	\$ 500,000	Coverage Shall Include:
		<ul style="list-style-type: none"> • Forgery or Alteration; • Computer Fraud; • Funds Transfer Fraud; • Third Party Coverage in favor of the City of Key West.

AGENCY shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as “Additional Insured” on **PRIMARY** and **NON CONTRIBUTORY** basis utilizing an ISO standard endorsement at **least as broad as CG 2010 (11/85) or its Equivalent, (combination OF CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations is acceptable)** INCLUDING A “Waiver of Subrogation” clause in favor of City of Key West on all policies. **AGENCY** will maintain the Professional Liability, General Liability and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the “additional insured” endorsement until at least 3 years beyond completion and delivery of the work contracted herein.

Notwithstanding any other provision of the Contract, the **AGENCY** shall maintain complete Workers’ Compensation coverage for each and every employee, principal, officer, representative, or agent of the **AGENCY** who is performing any labor, services, or material under the Contract. Further, **AGENCY** shall additionally maintain the following minimum limits of coverage:

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

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

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

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

AGENCY will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. **AGENCY** will notify City of Key West immediately by telephone at (305) 809-3811 of any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the **AGENCY.**

REQUIRED QUALIFICATIONS

Proposers shall have substantial experience with the following:

- Collection of EMS/ Medical Billing

And/Or

- Collection of Parking fines, fees, and costs

PROPOSAL SUBMITTAL REQUIREMENTS

Proposals shall be limited to 25 sheets (excluding required forms) and include, at a minimum, the following items:

1. **Cover Letter.** A one page cover letter containing:
 - The name of the person(s) authorized to represent the Proposer in negotiating and signing any agreement which may result from the proposal;
 - Entity name, address, phone, website and email address,
 - Provide a brief description of your firm, including its founding and history; number of employees; service areas; and, awards or other forms of recognition.
2. Provide a description of your work process.
3. Provide a minimum of three (3) client references.
4. Name and qualifications of the individuals who will provide the requested services and a current resume for each, including a description of qualifications, skills, and responsibilities. The City is interested in professionals with experience serving small governmental entities and especially serving cities comparable in size to the City of Key West.
5. Describe how the Proposer approaches collections. How do you assist clients in using existing resources and leveraging the work you provide for them?
6. Provide previous work examples that demonstrate how you meet the qualifications/experience requirements listed.
7. Submit three projects undertaken in the past three years (preferably for government clients of a size similar to the City) that involved services similar to the services listed in Scope of Services, of this RFP. For each example, provide the following information:
 - The scope and goals of the project and how success was measured.
 - A description of your role in the project and, if applicable, a description of the work of other AGENCYs.
 - Identify individuals who you identified under “Staffing” and who worked on the project and describe their role.
 - Provide a reference for the project – client’s name, title, email address and telephone number.
 - If applicable, attach relevant work samples or a visual representation of the work (for example, a URL for a website, a printed screenshot, etc.).
8. Provide fee structures for the services listed in Scope of Services, of this RFP.
9. Explain proposer’s workload capacity and level of experience commensurate with the level of service required by the City.
10. Explain proposer’s facilities and availability of support staff.
11. A list of the tasks, responsibilities, and qualifications of any subAGENCYs proposed to be used on a routine basis.
12. Describe your proposed use of local businesses and markets in and around the lower Keys. Include the steps you have taken in the past to support local business and promote community involvement as well as the steps you would take if selected for this project.
13. All required attachments listed in Instructions to Proposer

THE FOLLOWING WILL BE SUBMITTED WITH THE PROPOSAL

List items to be performed by CONTRACTOR's own forces and the estimated total cost of these items. (Use additional sheets if necessary.)

SUBCONTRACTORS

The Proposer further proposes that the following subcontracting firms or businesses will be awarded subcontracts for the following portions of the work in the event that the Proposer is awarded the Contract:

Name

Street City State Zip

Name

Street City State Zip

Name

Street City State Zip

PROPOSER

The name of the Proposer submitting this Proposal is

_____ doing business at

Street City State Zip

which is the address to which all communications concerned with this Proposal and with the Contract shall be sent.

The names of the principal officers of the corporation submitting this Proposal, or of the partnership, or of all persons interested in this Proposal as principals are as follows:

If Sole Proprietor or Partnership

IN WITNESS hereto the undersigned has set his (its) hand this _____ day of _____ 2015.

Signature of Proposer

Title

If Corporation

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this _____ day of _____ 2015.

(SEAL)

Name of Corporation

By _____

Title _____

Attest _____

Secretary

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

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid or Proposal for _____

2. This sworn statement is submitted by _____
(Name of entity submitting sworn statement)

whose business address is _____

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

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

3. My name is _____
(Please print name of individual signing)

and my relationship to the entity named above is _____

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

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

6. I understand that an “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means
- a. A predecessor or successor of a person convicted of a public entity crime; or
 - b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
7. I understand that a “person” as defined in Paragraph 287.133(1)(8), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
8. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies).

____Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989, AND (Please indicate which additional statement applies.)

____There has been a proceeding concerning the conviction before a hearing of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted AGENCY list. (Please attach a copy of the final order.)

____The person or affiliate was placed on the convicted AGENCY list. There has been a subsequent proceeding before a hearing officer of the State of

Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted AGENCY list. (Please attach a copy of the final order.)

_____The person or affiliate has not been put on the convicted AGENCY list. (Please describe any action taken by or pending with the Department of General Services.)

(Signature)

(Date)

STATE OF _____

COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority,

_____ who, after first being sworn by me, affixed his/her
(Name of individual signing)

Signature in the space provided above on this ____ day of _____, 2015.

My commission expires:

NOTARY PUBLIC

CITY OF KEY WEST INDEMNIFICATION FORM

To the fullest extent permitted by law, the INDIVIDUAL/FIRM 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 INDIVIDUAL/FIRM 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 INDIVIDUAL/FIRM or its subcontractors, material men or agents of any tier or their respective employees.

Indemnification by INDIVIDUAL/FIRM for Professional Acts. INDIVIDUAL/FIRM 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 INDIVIDUAL/FIRM’S negligent acts, errors or omissions, or intentional acts in the performance of INDIVIDUAL/FIRM’S 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 INDIVIDUAL/FIRM, 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 INDIVIDUAL/FIRM 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 INDIVIDUAL/FIRM or of any third party to whom INDIVIDUAL/FIRM may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of work.

INDIVIDUAL/FIRM: _____ SEAL:

Address

Signature

Print Name

Title

DATE: _____

**LOCAL VENDOR CERTIFICATION PURSUANT TO
CITY OF KEY WEST ORDINANCE 09-22 SECTION 2-798**

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

- a. Principle address as registered with the FL Department of State located within 30 miles of the boundaries of the city, listed with the chief licensing official as having a business tax receipt with its principle address within 30 miles of the boundaries of the city for at least one year immediately prior to the issuance of the solicitation.
- b. Maintains a workforce of at least 50 percent of its employees from the city or within 30 miles of its boundaries.
- c. Having paid all current license taxes and any other fees due the city at least 24 hours prior to the publication of the call for bids or request for proposals.
 - Not a local VENDOR pursuant to Ordinance 09-22 Section 2-798
 - Qualifies as a local VENDOR pursuant to Ordinance 09-22 Section 2-798

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

Business Name _____ Phone: _____

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

Length of time at this address: _____

Date: _____
Signature of Authorized Representative

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2015.

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

or has produced identification _____ as identification
(Type of identification)

Signature of Notary

Print, Type or Stamp Name of Notary

Title or Rank

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

Sec. 2-773. - Cone of silence.

- (a) Definitions. For purposes of this section, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:
- (1) Competitive solicitation means a formal process by the City of Key West relating to the acquisition of goods or services, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. Competitive solicitation shall include request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), invitation to bid ("ITB") or any other advertised solicitation.
 - (2) Cone of silence means a period of time during which there is a prohibition on communication regarding a particular competitive solicitation.
 - (3) Evaluation or selection committee means a group of persons appointed or designated by the city to evaluate, rank, select, or make a recommendation regarding a vendor or the vendor's response to the competitive solicitation. A member of such a committee shall be deemed a city official for the purposes of subsection (c) below.
 - (4) Vendor means a person or entity that has entered into or that desires to enter into a contract with the City of Key West or that seeks an award from the city to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a competitive solicitation for compensation or other consideration.
 - (5) Vendor's representative means an owner, individual, employee, partner, officer, or member of the board of directors of a vendor, or a consultant, lobbyist, or actual or potential subcontractor or sub-consultant who acts at the behest of a vendor in communicating regarding a competitive solicitation.
- (b) Prohibited communications. A cone of silence shall be in effect during the course of a competitive solicitation and prohibit:
- (1) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the city's administrative staff including, but not limited to, the city manager and his or her staff;
 - (2) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and the mayor, city commissioners, or their respective staff;
 - (3) Any communication regarding a particular competitive solicitation between a potential vendor or vendor's representative and any member of a city evaluation and/or selection committee therefore; and
 - (4) Any communication regarding a particular competitive solicitation between the mayor, city commissioners, or their respective staff, and a member of a city evaluation and/or selection committee therefore.
- (c) Permitted communications. Notwithstanding the foregoing, nothing contained herein shall prohibit:
- (1) Communication between members of the public who are not vendors or a vendor's representative and any city employee, official or member of the city commission;
 - (2) Communications in writing at any time with any city employee, official or member of the city commission, unless specifically prohibited by the applicable competitive solicitation.
 - (A) However, any written communication must be filed with the city clerk. Any city employee, official or member of the city commission receiving or making any written communication must immediately file it with the city clerk.
 - (B) The city clerk shall include all written communication as part of the agenda item when publishing information related to a particular competitive solicitation;

- (3) Oral communications at duly noticed pre-bid conferences;
 - (4) Oral presentations before publically noticed evaluation and/or selection committees;
 - (5) Contract discussions during any duly noticed public meeting;
 - (6) Public presentations made to the city commission or advisory body thereof during any duly noticed public meeting;
 - (7) Contract negotiations with city staff following the award of a competitive solicitation by the city commission; or
 - (8) Purchases exempt from the competitive process pursuant to section 2-797 of these Code of Ordinances;
- (d) Procedure.
- (1) The cone of silence shall be imposed upon each competitive solicitation at the time of public notice of such solicitation as provided by section 2-826 of this Code. Public notice of the cone of silence shall be included in the notice of the competitive solicitation. The city manager shall issue a written notice of the release of each competitive solicitation to the affected departments, with a copy thereof to each commission member, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.
 - (2) The cone of silence shall terminate at the time the city commission or other authorized body makes final award or gives final approval of a contract, rejects all bids or responses to the competitive solicitation, or takes other action which ends the competitive solicitation.
 - (3) Any city employee, official or member of the city commission that is approached concerning a competitive solicitation while the cone of silence is in effect shall notify such individual of the prohibitions contained in this section. While the cone of silence is in effect, any city employee, official or member of the city commission who is the recipient of any oral communication by a potential vendor or vendor's representative in violation of this section shall create a written record of the event. The record shall indicate the date of such communication, the persons with whom such communication occurred, and a general summation of the communication.
- (e) Violations/penalties and procedures.
- (1) A sworn complaint alleging a violation of this ordinance may be filed with the city attorney's office. In each such instance, an initial investigation shall be performed to determine the existence of a violation. If a violation is found to exist, the penalties and process shall be as provided in section 1-15 of this Code.
 - (2) In addition to the penalties described herein and otherwise provided by law, a violation of this ordinance shall render the competitive solicitation void at the discretion of the city commission.
 - (3) Any person who violates a provision of this section shall be prohibited from serving on a City of Key West advisory board, evaluation and/or selection committee.
 - (4) In addition to any other penalty provided by law, violation of any provision of this ordinance by a City of Key West employee shall subject said employee to disciplinary action up to and including dismissal.
 - (5) If a vendor is determined to have violated the provisions of this section on two more occasions it shall constitute evidence under City Code section 2-834 that the vendor is not properly qualified to carry out the obligations or to complete the work contemplated by any new competitive solicitation. The city's purchasing agent shall also commence any available debarment from city work proceeding that may be available upon a finding of two or more violations by a vendor of this section.
- (Ord. No. 13-11, § 1, 6-18-2013)

SCOPE OF SERVICES

Proposer responsibilities include, but are not limited to:

- Issuing Collection Letters
- Skip Tracing
- Telephone Collection
- Credit Bureau Reporting
- Registration Holds for Parking

TYPES OF ACCOUNTS

Proposer shall provide collection services for some or all of the following types of accounts:

- Parking Violations
- Emergency Medical Services (EMS) Billing
- Miscellaneous Accounts

DRAFT AGREEMENT

Between

CITY OF KEY WEST

And

For

COLLECTION SERVICES

Date

This is an Agreement between: City of Key West, its successors and assigns, hereinafter referred to as "CITY,"

AND

_____, a corporation organized under the laws of the State of _____, its successors and assigns, hereinafter referred to as "AGENCY."

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

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

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

- 1.1. **Agreement:** This document, Articles 1 through 7, inclusive. Other terms and conditions are included in the CITY'S RFP#16-004 COLLECTION SERVICES CITY OF KEY WEST, AGENCY's Response to RFP dated _____, 2015, exhibits, task orders, and supplemental documents that are by this provision expressly incorporated herein by reference.
- 1.2. **Commissioners:** Members of the city commission with all legislative powers of the city vested therein. The city commission shall consist of seven (7) commissioners, six (6) of whom shall be elected from single member districts numbered I, II, III, IV, V and VI. The mayor shall be elected by the people at large for a term of two (2) years. Commissioners from districts numbered I, II, III, IV, V and VI shall be elected for a term of four (4) years.
- 1.3. **AGENCY:** The collection agency selected to perform the services pursuant to this Agreement.
- 1.4. **Contract Administrator:** The ranking managerial employee of the CITY or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the CITY. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5. **CITY:** City of Key West

ARTICLE 2

PREAMBLE

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

- 2.1. The AGENCY is not entitled to receive, and the CITY is not obligated to pay, any fees or expenses in excess of the amount budgeted or authorized under this Agreement in each fiscal year (October 1-September 30) by CITY. The budgeted amount may only be modified per CITY Ordinance(s).
- 2.2. Negotiations pertaining to the services to be performed by AGENCY were undertaken between AGENCY and CITY staff, and this Agreement incorporates the results of such negotiations.

ARTICLE 3

SCOPE OF SERVICES

- 3.1 **Services.** The AGENCY's responsibilities include, but shall not be limited to, issuing collection letters, skip tracing, telephone collection and credit bureau reporting for virtually all delinquent accounts for services rendered by the CITY and for the collection of amounts due.
- 3.2 **Types of Accounts.** AGENCY shall provide collection services for some or all of the following: Parking Violations, Emergency Medical Services(EMS) Billing, Miscellaneous Accounts
- 3.3 CITY retains AGENCY to collect delinquent accounts which the CITY in its sole discretion may assign to the AGENCY for collection.
- 3.4 AGENCY agrees to use its best efforts and work diligently to collect all money due to CITY and to forward such money to CITY, all in accordance with the terms and conditions of this Agreement.

ARTICLE 4

ASSIGNMENT OF DELINQUENT ACCOUNTS

- 4.1 **Assignment.** CITY shall notify AGENCY of delinquent accounts it wishes to assign to AGENCY and shall provide delinquent account information, as described in this Agreement. Parking will be sent to AGENCY after 30 days past due with the CITY. EMS collections will be sent to AGENCY after 120 past due with the CITY.
- 4.2 **Withdrawal.** CITY is entitled to withdraw any delinquent account which it may have placed in error with AGENCY. Otherwise, delinquent accounts referred to AGENCY shall remain with AGENCY for collection until the account is determined to be uncollectible by AGENCY. Any delinquent account not collected in full within 1460 days from the date the account was placed with AGENCY shall be deemed uncollectible and withdrawn by CITY.

ARTICLE 5

PERFORMANCE STANDARDS

- 5.1 AGENCY shall commence collection efforts upon receipt of any delinquent accounts and shall continue such efforts for the entire period such delinquent accounts are held by AGENCY.
- 5.2 AGENCY shall supervise and direct all collection work, devoting enough attention and applying the necessary skill and expertise to perform the work competently and efficiently. AGENCY shall be solely responsible for the means, methods, techniques, sequences and procedures of the collection.
- 5.3 Notwithstanding the foregoing, the CITY shall review and approve all collection letters prior to AGENCY's use of such form in collecting the CITY's delinquent accounts.
- 5.4 AGENCY shall perform its collection efforts in accordance with all federal, state and local laws and regulations, including the Fair Debt Collection Practices Act and the guidelines established by the Federal Trade Commission.

ARTICLE 6

ELECTRONIC DATA

- 6.1 **Outbound Data Extract.** CITY will provide data files from internal and external systems in a format agreeable to both parties.
- 6.2 **Inbound Data.** AGENCY shall conform data transferred to CITY to the specifications required by the CITY. Any cost of development of an extract program to transfer data to the CITY in accordance with the CITY's specifications shall be at the AGENCY's cost.
- 6.3 **Property of the City.** All data generated by the CITY and the AGENCY with respect to this Agreement shall remain the property of the CITY and shall be surrendered in a compatible electronic format within 10 days at the request of the CITY.

ARTICLE 7

REMITTANCES

- 7.1 **Remittances to the City.** AGENCY shall provide and remit payments to the CITY on a monthly basis (by the 15th of the subsequent month), accompanied by a Statement of Collection Report. Such report shall detail the remittance information, including: gross dollars collected for the month, account name, account number, account type, date of payment, and fee due to AGENCY.
- 7.2 **Returned Checks.** Collections by AGENCY in which a check is returned unpaid by the bank, shall be reported as a minus payment and minus collection fee (credit). CITY will notify AGENCY when a check is returned by the bank unpaid on a payment made directly to CITY on which CITY has paid AGENCY the collection fee due. AGENCY will list such returned check on the next statements minus payment and minus collection fee (credits).
- 7.3 **Paid Direct to City.** For amounts paid directly to the CITY that have been submitted to the AGENCY for collection, the CITY will notify the AGENCY, on a monthly basis, and the AGENCY will net this amount against what is owed the CITY by the AGENCY.
- 7.4 **Trust Account.** Collections made by AGENCY on delinquent accounts will be deposited immediately into a trust account for the benefit of the CITY maintained in a national bank or state bank, FDIC insured. Such collections held in trust for AGENCY for the benefit of the CITY, shall be the property of the CITY and not available for any other use by AGENCY.

ARTICLE 8

REPORTING

8.1 **Reporting.** The AGENCY shall provide the following reports electronically in printable format:

- 8.1.1 *Acknowledgement Report* verifying all accounts that have been received by AGENCY for collection.
- 8.1.2 *Payment Analysis (Collection Analysis)* provides information relating to collection performance, broken down by month of placement. This report illustrates recovery performance.
- 8.1.3 *Spindown Analysis* provides a 12-month record of liquidation rates per month
- 8.1.4 *Statement of Collection (Monthly Statement)* details accounts to which payments have been applied during the statement period. This report indicates not only amounts paid by debtors, but also commissions due AGENCY for collection services rendered.
- 8.1.5 *Cancellation Report* lists all accounts scheduled for return, along with the client account number, debtor name, balance, applicable dates, and reason for return.
- 8.1.6 *Status Report* provides a complete overview of all account information (payments, debtor contacts, collector notes, etc.) and current account status (i.e. paid in full, debtor bankruptcy, debtor deceased, account disputed, etc.).

8.2 AGENCY will work with CITY to provide any additional reports requested.

ARTICLE 9

CREDIT BUREAU REPORTING

- 9.1 AGENCY will report delinquent accounts to the credit bureaus (Equifax, Trans Union, and Experian) within thirty (30) days after the Acknowledgment Date, provided the initial placement balance is at least equal to the minimum balance reportable to said credit bureau.
- 9.2 Based on account information received from CITY and information AGENCY has in its possession, AGENCY shall keep Credit Bureau(s) informed of changes in the status of delinquent accounts.
- 9.3 Disputed accounts will be reported as disputed in accordance with the Fair Credit Reporting Act duty to provide notice: If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed as such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the customer.

ARTICLE 10

OBLIGATIONS OF CITY

- 10.1 At the time CITY assigns delinquent accounts to AGENCY, CITY shall provide AGENCY with the following information with respect to each delinquent account) the “Account Information”) provided CITY has knowledge of this Account Information:
- 10.1.1 Notices of any proceedings under the bankruptcy or insolvency laws of the United States of America or any state relating to the Delinquent Account
 - 10.1.2 Notices of any actions or proceedings commenced by any Delinquent Account Consumer against the CITY relating to the Delinquent Accounts
 - 10.1.3 Any communications received by CITY from the Delinquent Account customer, or the legal representative of a Delinquent Account customer, relating to the Delinquent Account or the collection of the Delinquent Account
 - 10.1.4 Any credits or other forgiveness granted by CITY with respect to any Delinquent Account

10.2 CITY shall have a continuing obligation to provide AGENCY with any new or additional Account Information with respect to the delinquent accounts as soon as such information becomes known to CITY.

ARTICLE 11

LEGAL ACTION

11.1 AGENCY must secure express written approval from the CITY Attorney on each and every account prior to instituting any legal action to collect the account.

11.2 AGENCY shall be reimbursed any monies for litigation costs advanced by AGENCY from the first proceeds of litigation.

11.3 If any legal action is contested, or if a counter-claim is asserted, AGENCY will promptly advise the CITY and CITY may assume further responsibility including all costs.

11.4 Collection cost shall only be added to the principal balance due for the delinquent account if expressly authorized in writing by CITY.

11.5 Prior to initiating collection litigation, in addition to the express written authorization, CITY shall provide AGENCY with the following information:

- Complete documentation of the account
- Validation of the debt
- Statement of non-military service
- Signed affidavit of the account
- A witness, when necessary

11.6 AGENCY shall provide CITY with regular reports on the status of each litigation matter.

ARTICLE 12

FEES

- 12.1 CITY agrees to pay AGENCY, as its sole compensation, a commission or percentage of the amount collected on a delinquent account assigned to AGENCY
- 12.2 AGENCY agrees that it shall not be entitled to fees or commission on delinquent accounts which have been withdrawn from AGENCY, except to the extent that the payment directly resulted from the collection efforts of AGENCY

ARTICLE 13

COMPLIANCE WITH LAWS

13.1 In conduct of the Services under this AGREEMENT, AGENCY shall comply in all material respects with all applicable federal and state laws and regulations and all applicable county and City ordinances and regulations, including but not limited to the following:

- Fair Debt Collection Practices Act (15 U.S.C 1692 et seq.)
- Gramm-Leach- Bliley Act (15 U.S.C., Subchapter 1 6801-6809)
- Consumer Credit Protection Act (15 U.S.C. 1601 et seq.)
- Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)
- The Privacy Act of 1974, as amended (5 U.S.C. 552a)
- Health Insurance Portability & Accountability Act (HIPPA)
- Health Information Technology for Economic and Clinical Health (HITECH)
- Immigration Reform and Control Act of 1986 (IRCA)
- Fair Labor Standards Act and Federal minimum wage laws

13.2 **HIPPA.** With respect to any health information which may be obtained through collection of EMS Billing accounts, AGENCY shall not, and shall ensure that its officers, directors and employees shall not use or disclose any Protected Health Information, as that term is defined under HIPPA, in any manner that would constitute a violation of the HIPPA Privacy Rule. AGENCY agrees to use all appropriate safeguards to prevent the use or disclosure of Protected Health Information. AGENCY will work with CITY to take appropriate steps which mitigate, to the extent reasonably possible, deleterious effects of any unauthorized disclosure or use of Protected Health Information. AGENCY shall, within five (5) business days of becoming aware of any unauthorized disclosure or use of Protected Health Information in violation of HIPPA by AGENCY, its officers or employees, or by a third party to which AGENCY disclosed such Protected Health Information,

report such a disclosure or use to the CITY in writing. Each such report shall provide the following information: (i) identify the Protected Health Information used or disclosed; (ii) identify the nature of such use or disclosure; (iii) identify who made the unauthorized use or disclosure; (iv) identify who received the Protected Health Information; (v) identify what corrective action AGENCY took to prevent future unauthorized use or disclosure of such Protected Health Information; (vi) identify what AGENCY did or will do to mitigate the deleterious effects of such unauthorized disclosure or use of Protected Health Information; (vii) provide any other information requested by CITY

ARTICLE 14

TERM OF AGREEMENT

14.1 The term of this Agreement shall be for a period of three (3) years which thereafter may be extended upon written consent of both parties for two (2) additional one (1) year terms. The Agreement will be in effect upon execution by both parties. The Agreement may be renewed at the discretion of the City Manager.

ARTICLE 15

MISCELLANEOUS

15.1. OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, data matrices, etc. generated, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by AGENCY in connection with this Agreement, whether in hard copy or electronic form, shall become the property of CITY.

15.2. TERMINATION

15.2.1. This Agreement may be terminated with or without cause by CITY at any time.

15.2.2. Notice of termination shall be provided in accordance with paragraph 7.13 NOTICES of this Agreement.

15.2.3. In the event this Agreement is terminated, AGENCY shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 7.1 of this Agreement are

provided to the CITY. Upon being notified of CITY's election to terminate, AGENCY shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment of profit for services that have not been performed.

15.3. AUDIT RIGHT AND RETENTION OF RECORDS

15.3.1. CITY shall have the right to audit the books, records, and accounts of AGENCY. AGENCY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries.

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

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

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

15.4.2. AGENCY's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity or expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor that cannot be lawfully or appropriately used as a basis for service delivery. AGENCY shall comply with Title I of the Americans with Disabilities Act regarding

nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, gender identity or expression, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

15.4.3. AGENCY shall comply with City Ordinance Sec. 2-799 Requirements for City Contractors to Provide Equal Benefits for Domestic Partners

15.5. PUBLIC ENTITY CRIMES ACT

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

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

15.5.3. AGENCY shall promptly notify CITY if it or any subcontractor or subAGENCY is formally charged with an act defined as a "public entity crime" or has been placed on the convicted AGENCY list.

15.6. SUBAGENCYS

AGENCY may use the subAGENCYs identified in the proposal that was a material part of the selection of AGENCY to provide the services under this Agreement. The CITY

reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make determination as to the capability of the subcontractor to perform properly under this Contract. The CITY's acceptance of a subcontractor shall not be unreasonably withheld. AGENCY shall obtain written approval of Contract Administrator prior to changing or adding to the list of subAGENCYs. The list of subAGENCYs submitted and currently approved is as follows:

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

15.7. ASSIGNMENT AND PERFORMANCE

15.7.1. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and AGENCY shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 7.6.

15.7.2. AGENCY represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

15.7.3. AGENCY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of AGENCY's performance and all interim and final product(s) provided to or on behalf of CITY shall be in accordance with the standard of care set forth in Paragraph 3.6.

15.7.4. AGENCY shall not change or replace overall project manager identified in the AGENCY's response to the RFP without the Contract Administrator's prior written approval.

15.8. INDEMNIFICATION OF CITY

To the fullest extent permitted by law, the AGENCY 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 AGENCY 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 AGENCY or its subcontractors, material men or agents of any tier or their respective employees.

15.9. INSURANCE

AGENCY is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for Workers’ Compensation, Public Liability, and Property Damage Liability Insurance and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the **AGENCY** shall provide the minimum limits of liability insurance coverages as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate (Per Project)
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$ 300,000	Fire Damage/Legal
Errors and Omissions	\$1,000,000	Occurrence
	\$1,000,000	Aggregate
Employee Dishonesty Coverage	\$ 500,000	Coverage Shall Include:
		<ul style="list-style-type: none"> • Forgery or Alteration; • Computer Fraud; • Funds Transfer Fraud; • Third Party Coverage in favor of the City of Key West.

AGENCY shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as “Additional Insured” on **PRIMARY** and **NON CONTRIBUTORY** basis utilizing an ISO standard endorsement at **least as broad as CG 2010 (11/85) or its Equivalent, (combination OF CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations is acceptable) INCLUDING A “Waiver of Subrogation”** clause in favor of City of Key West on all policies. **AGENCY** will maintain the Professional Liability, General Liability and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the “additional insured” endorsement until at least 3 years beyond completion and delivery of the work contracted herein.

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

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

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

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

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

AGENCY will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. **AGENCY** will notify City of Key West immediately by telephone at (305) 809-3811 of any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the **AGENCY.**

15.10. ALL PRIOR AGREEMENTS SUPERSEDED

15.10.1. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document and the exhibits attached. Accordingly, the

parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

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

15.11. CONSULTING TEAM

- 15.11.1. The CITY reserves the right to approve the members of the Consulting Team and the roles they will undertake in the assignment. The CITY's acceptance of a team member shall not be unreasonably withheld.
- 15.11.2. Each assignment issued under this Agreement by the CITY to the AGENCY, the AGENCY will at the CITY's request, disclose the role, qualifications and hourly rate of each individual working on the assignment.
- 15.11.3. The CITY reserves the right to require replacement of any of the members of the Consulting Team. Any proposed addition or change of members of the Consulting Team initiated by the AGENCY must obtain the CITY Representative's prior written approval.
- 15.11.4. In the event of the death, incapacity or termination of employment of any member of the Consulting Team before Completion of the Services, the AGENCY shall at its own expense and as soon as reasonably practicable arrange to substitute or replace the individual member concerned.
- 15.11.5. The AGENCY shall ensure that the substitute or replacement is no less qualified in terms of relevant experience and qualifications than the outgoing individual and is available at the relevant time to act as such replacement or substitute. The AGENCY shall without delay forward curriculum vitae of the proposed substitute or replacement to the CITY. The deployment of such substitute or replacement shall be subject to the CITY's consent.
- 15.11.6. The AGENCY shall solely be responsible for all direct, indirect and consequential costs or losses that may arise from the substitution or replacement of members of the Consulting Team.

15.12. NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the

provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR CITY OF KEY WEST:

Michael Turner, Collections Manager
City of Key West
3106 Flagler Ave
Key West, FL 33040

FOR AGENCY:

15.13. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by AGENCY shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price for any task order and any additions thereto shall be adjusted to exclude any significant sums by which CITY determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

15.14. INTERPRETATION

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

15.15. AGENCY'S STAFF

- 15.15.1. AGENCY shall provide the key staff identified in their proposal for Task Order as long as such key staffs are in AGENCY's employment.
- 15.15.2. AGENCY shall obtain prior written approval of Contract Administrator to change key staff. AGENCY shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator shall be reasonable in evaluating key staff qualifications.
- 15.15.3. If Contract Administrator desires to request removal of any of AGENCY's staff, Contract Administrator shall first meet with AGENCY and provide reasonable justification for said removal.

15.16. INDEPENDENT CONTRACTOR

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

15.17. THIRD PARTY BENEFICIARIES

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

15.18. CONFLICTS

- 15.18.1. Neither AGENCY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with AGENCY's loyal and conscientious exercise of judgment related to its performance under this Agreement.
- 15.18.2. AGENCY agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or

administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

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

15.19. CONTINGENCY FEE

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

15.20. WAIVER OF BREACH AND MATERIALITY

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

- 15.20.2. CITY and AGENCY 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.

15.21. COMPLIANCE WITH LAWS

AGENCY 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.

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 AGENCY elects to terminate this Agreement.

15.22. JOINT PREPARATION

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

15.23. 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 Articles 1 through 7 of this Agreement shall prevail and be given effect.

15.24. 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.

15.25. INCORPORATION BY REFERENCE

The attached exhibits are incorporated into and made a part of this Agreement:

15.26. COUNTERPARTS

This Agreement may be executed in three (3) counterparts, each of which shall be deemed to be an original.

**REST OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW**

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

CITY

ATTEST for CITY:

Cheryl Smith, City Clerk

Jim Scholl, City Manager

____ day of _____, 20__

____ day of _____, 20__

ATTEST for AGENCY:

By _____

By _____
AGENCY

(Print Name)

(Print Name)

____ day of _____, 20__

____ day of _____, 20__