



## City of Key West

**RFP # 01-016**

**Due by: October 14, 2015 @ 3 pm (EST)**

*Presented By:*



**Bradley R. Heinrichs, FSA, EA, MAAA**

**Foster & Foster Inc.  
13420 Parker Commons Blvd, Suite 104  
Fort Myers, FL 33912  
(239) 433-5500**



THE CITY OF KEY WEST  
P. O. BOX 1409  
KEY WEST, FLORIDA 33041-1409  
www.keywestcity.com

ADDENDUM NO. 1

To All Proposers:

The following change is hereby made a part of RFP #01-016 as fully as completely as if the same were fully set forth therein:

The following is a list of addenda that shall govern all other contract documents to the extent specified.

**Addendum No. 1**

The following revision is hereby made a part of the Contract Documents as fully as completely as if the same were fully set forth therein:

The latest actuarial valuation reports for both the General Employees Pension Plan and the Firefighters and Police Officers Pension Plan

All Proposers shall acknowledge receipt and acceptance of this Addendum No.1 by acknowledging Addendum in their proposal or by submitting the addendum with the proposal package. Bids submitted without acknowledgement or without this Addendum may be considered non-responsive.

*Lauda Heinisch*  
Signature

*Foster & Foster, Inc.*  
Name of Business

# 1. Cover Letter

- 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.

**Bradley R. Heinrichs, President/CEO**  
**Foster & Foster, Inc.**  
**13420 Parker Commons Blvd., Suite 104**  
**Fort Myers, Florida 33912**  
**Telephone: (239) 433-5500**  
**Facsimile: (239) 481-0634**  
**Email: Brad.Heinrichs@foster-foster.com**

Foster & Foster Consulting Actuaries, Inc. d/b/a Foster & Foster, Inc., a Florida corporation, is a national independent actuarial consulting firm that was founded in Gainesville in June 1979 by Ward and Eileen Foster. Our firm is structured to provide actuarial services to public retirement and other post employment benefit programs.

Our firm currently employs thirty six (36) consultants, of which fourteen (14) have obtained actuarial credentials. Brad Heinrichs, Jason Franken, Aimee Strickland, Michael Merlob, and Heidi Andorfer are Fellows of the Society of Actuaries, the highest distinction an actuary can obtain. Our firm also has a strong support staff with teams devoted to data preparation/collection and asset reconciliation.

Foster & Foster is currently providing ongoing support to more than 250 public sector clients in the State of Florida and provides GASB 45 services for over 100 different entities. We work almost exclusively with public retirement and other post employment benefit (OPEB) plans and consider ourselves to be experts in all phases of the design and administration of these programs. We work for more public pension plans in the State of Florida than any other firm, and our Florida public plans database and experience makes us uniquely situated to provide the best service for Key West. We currently have two plans which have over 100,000 participants each and our consultants have almost 220 years of public pension plan experience.

In addition to the annual GASB 45 valuations, we provide a broad spectrum of other actuarial services such as experience studies, plan design, forecast modeling, sustainability studies, plan administration, and active health pricing.

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## 3. Transmittal Letter

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October 14, 2015

*RE: Request for Actuarial Consulting Services for the City of Key West*

Dear City of Key West,

I am writing in response to the request for proposal that we received regarding the City of Key West. This letter is our effort to emphasize what a pleasure it would be to provide actuarial audit services to the City of Key West.

Foster & Foster Inc. is an independent national actuarial consulting firm that has provided actuarial consulting services to public pension programs for over thirty years. As the consulting actuary for over 800 plans across the nation, including over 250 in the State of Florida, we understand and are well qualified to perform the services required of the City.

Our firm understands the scope of services and it is our opinion that we are uniquely qualified and would be the best applicant to perform the services requested for the following reasons:

- **Firm's Expertise** – We have 14 credentialed actuaries with nearly 220 years of actuarial consulting experience. We work for more public pension funds in Florida than any other actuarial consulting firm, and our public plan database and Florida plan experience will provide the City either a unique perspective and will allow the City to properly benchmark itself relative to other plans. We believe our experience combined with our broad experience servicing other types of organizations positions us to best suit the needs of the City of Key West.
- **Active Consultants** – Our consultants are active across the country with pension organizations that inform and educate Board members. We are visible, articulate, and progressive.
- **Progressive Firm** – We are a firm that prides itself in being out in front of the issues of the Board and its Members. This cutting edge mentality is illustrated by our powerful online tools (including benefit calculator and DROP analyzer), innovative plan design, and our proactive approach to education and the handling of the media.
- **Consultant Credentials** – We will devote a Fellow of the Society of Actuaries (FSA) to

perform the valuation audit and provide consulting expertise. This is the highest designation that an actuary can obtain.

- **Unbiased Advice** – We derive 100% of our revenues from our consulting and actuarial services. As we do not accept fees, commissions, or any other form of consideration from any source other than consulting fees, we provide our clients with unbiased advice.

I, Bradley R. Heinrichs, FSA and CEO of Foster & Foster, will be the lead actuary and principal contact for purposes of this proposal. We commit to exceeding the City's expectations for quality and timeliness.

Our firm understands the scope of services and would consider it a privilege to serve the City. We guarantee this proposal for 90 days from October 14, 2015 and we take no exception to the RFP's specifications, terms, and conditions. If you have any questions regarding this proposal response, our firm, or the services we are prepared to provide, please don't hesitate to contact me at [brad.heinrichs@foster-foster.com](mailto:brad.heinrichs@foster-foster.com) or (239) 433-5500 at any time.

Sincerely,



Bradley R. Heinrichs, F.S.A, E.A., M.A.A.A.  
President / CEO

## 4. Technical Proposal

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Foster & Foster Consulting Actuaries, Inc. d/b/a Foster & Foster, Inc., a Florida corporation, is a national independent actuarial consulting firm that was founded in 1979 and is structured to provide actuarial services to public retirement and other post employment benefit programs.

We currently have offices in Fort Myers, FL and Oakbrook Terrace, IL. Additionally, we have satellite offices in Mansfield, TX, Louisville, KY, Tampa, FL, Coral Springs, FL, North Liberty, IA, Newport Beach, CA and Atlanta GA. We have one integrated server and phone system which has allowed all offices to seamlessly work together for over 4 years on clients ranging in size from 50 to 150,000 participants. The primary contact for the City of Key West is our home office, which is located in Fort Myers, FL, at the address below. We currently employ 23 full-time consultants at this location.

*Foster & Foster, Inc.  
13420 Parker Commons Blvd., Suite 104  
Fort Myers, Florida 33912*

*Telephone: (239) 433-5500  
Facsimile: (239) 481-0634  
Email: [data@foster-foster.com](mailto:data@foster-foster.com)  
[www.foster-foster.com](http://www.foster-foster.com)*

Our firm currently employs thirty-six (36) consultants, of which fourteen (14) have obtained actuarial credentials. Brad Heinrichs, Jason Franken, Michael Merlob, Heidi Andorfer and Aimee Strickland are Fellows of the Society of Actuaries, the highest distinction an actuary can obtain.

The person with the primary responsibility for completion of the worked outlined herein is Brad Heinrichs (FSA/EA).

**i) Overall approach and methods to achieve a fully functional project**

An actuarial valuation provides a best estimate of a fund's liabilities and contribution levels at a particular point in time. This estimate helps ensure that current assets and future contribution requirements will be sufficient to provide benefits promised to members. Future liabilities are

determined by applying a set of actuarial assumptions to project the occurrence, amount and timing of benefits that will become payable according to current plan provisions. The extent to which an actuarial valuation accurately measures a plan's liabilities and contribution levels depends on how well the actuarial assumptions predict future plan experience.

An actuarial audit provides assurance that the actuarial valuation work is being performed accurately and in accordance with generally accepted actuarial principles. In addition, the reviewing actuary can identify areas of improvement that may increase the value and understanding of the actuarial services provided to the retirement systems.

The Actuarial Standards Board has provided coordinated guidance through of a series of Actuarial Standards of Practice (ASOP) for measuring pension obligations and determining pension plan costs or contributions. The ASOPs that apply specifically to valuing pensions are as follows:

- ASOP No. 4, *Measuring Pension Obligations and Determining Pension Plan Costs or Contributions*, which ties together the standards shown below, provides guidance on actuarial cost methods, and addresses overall considerations for measuring pension obligations and determining plan costs or contributions
- ASOP No. 23 *Data Quality*
- ASOP No. 27, *Selection of Economic Assumptions for Measuring Pension Obligations*
- ASOP No. 35, *Selection of Demographic and Other Noneconomic Assumptions for Measuring Pension Obligations*
- ASOP No. 41, *Actuarial Communications*
- ASOP No. 44, *Selection and Use of Asset Valuation Methods for Pension Valuations*

In performing the review and replication of the actuarial valuation, we will identify areas where we believe changes or improvements should be made and communicate those in our final report. We will complete the following steps to ensure the actuarial valuation satisfy all of the applicable ASOPs:

- Review of data used in the valuation
- Assessment of the plan provisions to be valued
- Preparation of the actuarial calculations
- Review of sample lives
- A review of methods and procedures
- A review of the actuarial valuation report content
- An analysis of the actuarial assumptions applied
- Summarizing the results



This process will need to be completed prior to performance of any projections. Since we perform more actuarial valuation reports for Florida public plans than any other consulting firm, and since we are NOT the current actuary for either Board of Trustees, we are best equipped to perform an INDEPENDENT analysis of each plan.

In addition to the above, we will review the pension ordinances, collective bargaining agreements, etc., and offer an opinion as to how they stack up relative to our other 200 Florida public plan clients.

Once this is complete, we will begin to perform projections. Absent input from the City (which would be very welcomed), we will assume that population of active plan members will remain constant. We will perform 20-year projections for each plan, which detail the expected City contribution rates, funded levels, and unfunded liabilities in each year of the projection period. Once this is completed, we will be ready to tweak the model projections for changes in assumptions, alternative plan provisions, or premium tax revenues.

We will also provide the City with a copy of our ranking schedules, which will show how each plan compares to our other 200 Florida public plan clients in the following categories:

- Investment performance
- Benefit multiplier
- City contribution rate
- Member contribution rate
- DROP vs Non-DROP
- Salary increases

Next, we will provide a comparative analysis of the Florida Retirement System (FRS), and will project the anticipated costs/savings associated with a transition to the FRS. We will also provide a list of advantages and disadvantages of moving new hires or all employees into the FRS, as well as the anticipated costs associated with doing so.

Finally, we will provide some alternative hybrid strategies that may provide the City with less risk and more cost stability than its current program. These strategies will contain defined contribution AND defined benefit characteristics. We will also discuss the advantages/disadvantages of a defined contribution plan and illustrate the financial impacts of a transition of new hires or all employees to this strategy.

The bottom line is that no other actuarial firm will be able to offer the level of depth, comparative analysis, or independent advice that Foster & Foster will be able to provide. We

work for more public pension plans than any other firm in the State, and we have a Florida public plans database that no other actuarial consulting firm can provide.

We will be able to provide the report within 60-90 days of receipt of all information requested below.

**ii) Involvement of City staff and pension boards**

Below is a sample of what we would request from City staff and boards to be able to complete the actuarial audit.

**Proposed Work Plan**

While we are flexible as to the approach taken for this project, but for purposes of discussion, we propose the following:

- 1) Sign contract with the City for actuarial audit services within two weeks of receiving notice that Foster & Foster was chosen for the award.
- 2) Provide the City with a request for data and information. This request will include, but not be limited to the following:
  1. Census information for each year (2010-2014)
  2. Actuarial Valuation reports for each year (2010-2014)
  3. Plan document or ordinance (with amendments) that outlines the provisions of the City
  4. The last 10 retirement benefit calculations performed for each plan
- 3) Schedule an initial conference call (or in-person meeting) to discuss the project, as well as to get direction regarding assumptions to use for future new hires in the projections.

**iii) Identification of the actuary or actuaries available for assignment. The actuary shall be a Fellow of associate of the Society of Actuaries and/or Fellow of the Conference of Actuaries in Public Practice and/or Member of the American Academy of Actuaries and/or meet standards of a qualified actuary under the provisions of the Pension Retirement Income Security Act of 1974**

The person with the primary responsibility for completion of the worked outlined herein is Brad Heinrichs (FSA/EA).

**Brad Heinrichs** has been the President/CEO of Foster & Foster since 2005. He is considered an industry expert and innovator in retirement plan design and is one of a few

thousand actuaries worldwide who is both a Fellow of the Society of Actuaries and an Enrolled Actuary per ERISA. Mr. Heinrichs is a frequent speaker at national and state pension conferences, and a key consultant to lawmakers and unions in evaluating proposed legislation regarding pensions in the State of Florida. Mr. Heinrichs received a B.S. in Actuarial Science and Economics from the University of Iowa and has over 19 years of experience as a consulting actuary. He has experience consulting as a lead actuary for clients ranging in size from 50 to 250,000 participants and will be managing the project, providing strategic consulting, and ensuring that the work product adheres to the rules, regulations, and guidelines set forth by the United States Government, the State of Florida, and the Actuarial Standards of Practice.

Additional staff personnel who would be providing actuarial support are John Bartz (ASA), and Sara Baumer.

**Mr. John Bartz** is an actuary with more than 35 years' experience in the consulting industry with broad experience in plan design for Fortune 500 companies and large municipalities. Prior to joining Foster & Foster in 2009, he was a practice leader at Watson Wyatt. John is an Associate of the Society of Actuaries (ASA) and will review all work performed by the consultants.

**Ms. Sara Baumer** is a 2011 graduate of the University of North Florida with a Masters in Mathematics. Sara joined Foster & Foster in 2012. Sara works extensively on annual valuations, projections, and special studies. She will help put the reports together and assist Brad and John with the projections.

**iv) Description of current work load**

Brad is currently the lead actuary consultant for fifteen (15) accounts and will be able to service the City of Key West with no issues. He specializes in strategic consulting projects of this kind.

**v) Estimated timeframe for completion of the report**

The reports will then be produced within 60-90 days of receipt of all of the relevant demographic and financial information and certainly within one hundred (100) days of the awarded contract. We are usually able to accelerate that time frame in order to accommodate the particular needs of a client.

**vi) Methodology intended to implement and accomplish scope of work**

The methodologies employed will be to always comply with the Actuarial Standards of Practice, the Florida Statutes, and the pension plan ordinances in the City of Key West.

**vii) All fees and charges**

We have several actuaries and staff assigned to each client, and these actuaries all have different billing rates. We also have a non-actuary who is a project manager, who makes sure that the appropriate professional is performing each task. Regardless, our hourly rates are lower than most other actuarial firms.

The Actuarial Audit fee listed below includes these services:

- Review and comment on the most recent Actuarial Valuation Reports for the two City defined benefit retirement systems.
- Review and evaluate the City's pension ordinance as well as plan amendments, benefits structure changes, collective bargaining agreements and any other factors affecting the costs of the plans and comment on their impact on the short and long term costs of the pension fund.
- Provide a five-year projection of the City's required annual contribution for the five fiscal years following the latest actuarial report, based on current benefit levels and actual experience for the most recent preceding five year period and the current assumptions and cost methods of each of the two retirement systems.
- Provide a future projection of the City's required annual contribution at ten years, fifteen years, and twenty years following the latest actuarial report based on current benefit levels and current assumptions and cost methods of each of the two retirement systems.
- Provide a five-year projection of the City's required annual contribution for various alternatives to the two current retirement systems.
- Provide a future projection of the City's required annual contribution at ten years, fifteen years, and twenty years for various alternatives to the two current retirement systems.
- Provide an analysis of the effects of changes to the Fire and Police Pension systems on state premium tax revenue received. Provide estimates of anticipated changes.
- Provide a projection of future costs, an analysis of labor market competitiveness, and discuss the advantages and disadvantages of defined contribution plans. The projection of future costs is to be comparable to the projections for defined benefit plans to allow for the appropriate comparison and cost benefit analysis.
- Provide a comparative analysis of the Florida Retirement system, the current City retirement systems, and the various alternatives studied.
- Include a review and comparative analysis of various alternatives to the Deferred Retirement Option Plan (DROP).
- Provide an impact statement and cost estimate of transition to the Florida Retirement System.

- When applicable, provide a comparative analysis of alternatives in a manner that considers application of benefits to (1) all eligible employees, and (2) new hires.
- Provide suggestions for alternative options, including “hybrid” plans consisting of a combination of defined benefits and defined contributions.
- Summarize all of the analysis and information in a report prepared in a manner that allows for understanding by City Commission, City staff and the public. The report shall facilitate the process of deciding the appropriate course of action in regards to retirement benefits of City employees.
- Two (2) meetings in Key West
- Present the report to the City Commission at a Workshop or regular meeting

**\$75,000**

*\*This price is all inclusive*

Any additional work shall be billed to the City at rates of up to \$300/hr.

In maintaining fiscal responsibility, it may behoove the City to engage us to examine the City’s medical plans. We are currently the benefits consultant for the State of Florida, and in that capacity have found ways to save the State millions of dollars without any reduction in benefits. Our objective in all of our work is to stretch the taxpayer dollars as far as possible to provide the membership with substantial retirements and a high standard of medical care.

## 5. Past Experience

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Foster & Foster has been doing similar projects that are similar to what the City is requesting for over 30 years. Below is a list of 3 clients that we provided similar services to in the last 5 years.

**Client:** Louisiana State Employees' Retirement System  
**Contact:** Shelley Johnson  
**Phone:** (225) 921-0074  
**Description of Project:** Perform detailed actuarial audit and replication of two prior actuarial valuation reports.  
**Project Date:** December 2012  
**Success Measurement:** Full replication, including audit of the actuarial coding was successfully performed. Provided more accurate evaluation of plan's funded status

**Client:** City of Cape Coral  
**Contact:** Michael Ilzyczyn  
**Phone:** 239 -810-0301  
**Description of Project:** Assisted City and unions develop alternative, low-cost plan designs to meet financial constraints. Developed innovative designs that accomplished short and long-term financial objectives, in a manner that was palatable to the membership. 30-year projections were performed for each scenario.  
**Project Date:** 2013-2014  
**Success Measurement:** Found plan designs that saved the city requisite amounts of money that were satisfactory to the membership.

**Client:** City of Jupiter  
**Contact:** Michael Villella  
**Phone:** (561) 741-2218  
**Description of Project:** Provide alternative plan designs and perform 30 year projections of alternative plan designs. Successful in replicating actuarial calculations from system's actuary, and offered prospective ideas and designs to curb costs.  
**Project Date:** 2013  
**Success Measurement:** Found plan designs that saved the city requisite amounts of money that were satisfactory to the membership.

**Client:** City of Dallas  
**Contact:** Edward Scott, CPA, CGMA  
**Phone:** (214) 670-3856  
**Description of Project:** Perform detailed actuarial audit and replication of 2012 and 2013 actuarial valuation report. The City sponsors three pension plans. Combined, these plans have over \$6 billion in assets and 20,000 members. The final audit reports were delivered to the City in October 2014. Subsequently, changes were made to the Police & Firefighters' Pension Fund.  
**Project Date:** 2014  
**Success Measurement:** Requested and received a better understanding of future funding costs for their police and fire plan

## 6. Client References

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Client Name: Cape Coral General Employees' Retirement System  
Contact: Brian Fenske  
Address: P.O. Box 152665, Cape Coral, FL 33915  
Phone: 239-574-0873

Client Name: Palm Harbor Firefighters' Retirement System  
Contact: Doug Zimmerman  
Address: 250 West Lake Road, Palm Harbor, FL 34684  
Phone: 727-784-8266

Client Name: Lakeland Firefighters' Retirement System  
Contact: Tim Spivey  
Address: 701 East Main Street, Lakeland, FL 33801  
Phone: 863-661-2366

You are more than welcome to contact any of our clients regarding our quality of services. Our client retention rates are unmatched in the State of Florida.

**6. Provide hourly rates or other fee structures for the services listed in Scope of Services, of this RFP.**

Given the scope that has been described, we do not anticipate any extra fees outside of the all-inclusive fee provide. If, however, the project scope is expanded, the fees will be determined based upon the estimated amount of time required to complete each task and the hourly rates that will apply.

Our hourly charges are as follows:

<u>Staff</u>	<u>Hourly Rate</u>
Senior Actuaries	\$ 300
Senior Staff	\$ 250
Junior Staff	\$ 150
Administrative	\$ 100



**7. Provide payment schedule for services.**

Given that this is a fixed fee arrangement, we will provide an invoice upon satisfactory completion of the work.

**8. All required attachments listed in Instructions to Proposer.**

**THE FOLLOWING WILL BE SUBMITTED WITH THE PROPOSAL**

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

<u>Work exclusively performed by Foster &amp; Foster</u>	<u>All inclusive fee of \$75,000 as listed</u>
consultants.	on page 11 of the RFP.
_____	_____
_____	_____

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:

N/A  
Name \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Street City State Zip

Name \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
City State Street  
Zip

Name \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Street City State Zip



If Sole Proprietor or Partnership

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

N/A  
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

**ANTI- KICKBACK AFFIDAVIT**

STATE OF Florida )  
 : SS  
COUNTY OF Lee )

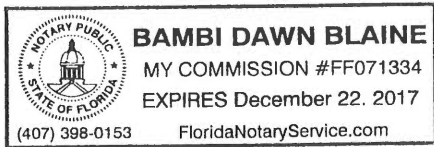
I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the City of Key West as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: *Sandra Heinrichs*

Sworn and subscribed before me this 9th day of October, 2015.

NOTARY PUBLIC, State of Florida at Large *Bambi Dawn Blaine*

My Commission Expires: *12/22/17*



**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 RFP # 01-016

Pension Benefit Consultant

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This sworn statement is submitted by **Foster & Foster Consulting Actuaries, Inc. d/b/a Foster & Foster, Inc**

2. \_\_\_\_\_  
(Name of entity submitting sworn statement)

whose business address is 13420 Parker Commons Blvd., Suite 104

Fort Myers, Florida 33912

and (if applicable) its Federal Employer Identification Number (FEIN) is 59-1921114

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

3. My name is Sandra R. Heinrichs

\_\_\_\_\_  
(Please print name of individual signing)

and my relationship to the entity named above is Secretary

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 of 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 VENDOR list. (Please attach a copy of the final order.)

\_\_\_\_\_The person or affiliate was placed on the convicted VENDOR 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 VENDOR list. (Please attach a copy of the final order.)

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

Sandra R. Heinrichs  
(Signature)

October 9, 2015

(Date)

STATE OF Florida

COUNTY OF Lee

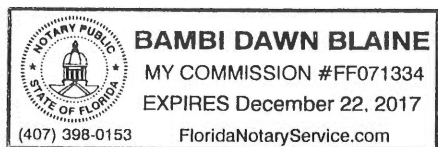
PERSONALLY APPEARED BEFORE ME, the undersigned authority,

Sandra R. Heinrichs who, after first being sworn by me, affixed his/her  
(Name of individual signing)

Signature in the space provided above on this 9<sup>th</sup> day of October, 2015.

My commission expires: 12/22/17

Bambi Dawn Blaine  
NOTARY PUBLIC





**CITY OF KEY WEST INDEMNIFICATION FORM**

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.

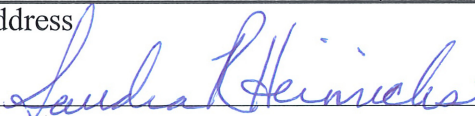
Indemnification by CONSULTANT for Professional Acts. CONSULTANT hereby agrees to indemnify the City of Key West and each of its parent and subsidiary companies and the directors, officers and employees of each of them (collectively, the "indemnitees"), and hold each of the indemnitees harmless, against 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'S negligent acts, errors or omissions, or intentional acts in the performance of CONSULTANT'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 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.

CONSULTANT: Foster & Foster Consulting Actuaries, d/b/a Foster & Foster, Inc. SEAL:

13420 Parker Commons Blvd., Suite 104 Fort Myers, FL 33912

Address



Signature

Sandra R. Heinrichs

Print Name

Secretary

Title

DATE: October 9, 2015

**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.

N/A

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

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

\_\_\_\_\_  
Print, Type or Stamp Name of Notary

\_\_\_\_\_  
Title or Rank

**EQUAL BENEFITS FOR DOMESTIC PARTNERS AFFIDAVIT**

STATE OF Florida )  
: SS  
COUNTY OF Lee )

I, the undersigned hereby duly sworn, depose and say that the firm of Foster & Foster Consulting Actuaries, d/b/a Foster & Foster, Inc. provides benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses per City of Key West Ordinance Sec. 2-799.

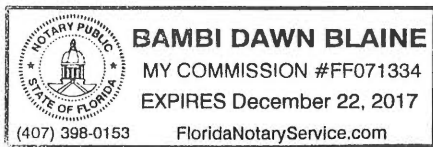
By: *Sandra Heinrichs*

Sworn and subscribed before me this

9th Day of October, 2015.

*Bambi Dawn Blaine*  
NOTARY PUBLIC, State of Florida at Large

My Commission Expires: 12/22/17





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)

**DRAFT AGREEMENT**

**Between**

**City of Key West**

**And**

**Foster & Foster Consulting Actuaries, d/b/a Foster & Foster, Inc.**

**For**

**PENSION BENEFIT CONSULTANT**

**Date**

October 14, 2015



This AGREEMENT is made and entered into this 14 day of October 2015, by and between the City of Key West, 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 Foster & Foster, Inc., whose address is 13420 Parker Commons Blvd., Suite 104 Fort Myers, FL 33912, hereafter referred to as the "CONSULTANT". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

#### Article 1. Scope of Services

The CONSULTANT'S primary responsibilities include, but are not limited to, the evaluation and review of the City's two defined benefit pension plans and the recommendation for alternatives to the current retirement benefits offered by the City for the City of Key West ("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 CONSULTANT is available for telephone consultation and advice related to implementing recommendations for one year following the conclusion of the contract. The CITY engages CONSULTANT to perform those Services described in the Consultant's Proposal dated October 14, 2015, a copy of which is attached hereto, incorporated for reference, and more particularly described as Exhibit A. The specific task goals, task activities and key project milestones, which the CONSULTANT agrees to undertake, accomplish and furnish in approximately 90 days from execution of agreement, are set forth as follows:

#### Article 2. Compensation

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

- 2.1 Lump sum payment in the total, not-to-exceed, fixed amount of \$ 75,000, which includes compensation for all tasks identified in the consultant's proposal, including, but not limited to, CONSULTANT'S travel costs (meals and lodging), transportation, fringe benefits, clerical support, salaries, general overhead costs, direct expenses, profit and all other out-of-pocket expenses.
  - A. The lump sum is based on immediate authorization to proceed and timely completion of the PROJECT. If the PROJECT timing deviates from the assumed schedule for causes beyond CONSULTANT'S control, CONSULTANT and/or the CITY reserves the right to request renegotiation of those portions of the lump sum affected by the time change.
  - B. In the event of a change of scope, an appropriate decrease or increase in compensation will be authorized in writing.
  - C. Invoicing will occur upon completion of Tasks as described in scope of work.
  - D. The CONSULTANT shall submit wage rates and other actual unit costs supporting the compensation. The CONSULTANT shall submit a Truth in Negotiation Certificate stating that all data supporting the compensation is accurate, complete, and current at the time of contracting.

Article 3. Invoicing and Payment

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

Article 4. Obligations of the Consultant

4.1. General

A. The CONSULTANT will serve as CITY’S professional representative under this AGREEMENT, preparing the Pension Benefit Study for the City of Key West.

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

A. The CONSULTANT 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 CONSULTANT 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
Professional Liability (if appl.)	\$1,000,000	Per Claim/Aggregate
<b>Additional Umbrella Liability</b>	<b>\$2,000,000</b>	<b>Occurrence/Aggregate</b>

B. CONSULTANT 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. CONSULTANT will maintain the Professional Liability, General Liability and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the “additional insured” endorsement until at least 3 years beyond completion and delivery of the work

contracted herein.

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

Bodily Injury Each Accident	\$500,000
Bodily Injury by Disease Each Employee	\$500,000
Bodily Injury by Disease Policy Limit	\$500,000

- D. **CONSULTANT** 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.
- E. **CONSULTANT'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.
- F. 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. **PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.**
- G. **CONSULTANT** will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. **CONSULTANT** 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 **CONSULTANT**.

#### 4.4 Subconsultants

- A. The **CONSULTANT** may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY.
- 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.

#### 4.5 Licenses

A. The CONSULTANT will be required to obtain a local required license prior to performing any work for the CITY. This license will be a Business Tax Receipt at a cost not to exceed \$103.00.

### 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

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 12 months 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. All documents shall be made available on re-writable CD and are the property of the City of Key West. Reuse, change, or alteration on another project, by the CITY or by others acting on behalf of the CITY of any such instruments of service without the written permission of the CONSULTANT will be at the CITY's sole risk. Nothing herein shall constitute a waiver of City's sovereign immunity rights, including, but not limited to, those expressed in Section 768.28, Florida Statutes.

### 6.3 Ownership of Work Product and Inventions

All of the work product of CONSULTANT in executing a Project under this contract shall become the property of the CITY. The City may use the deliverables solely for the purpose for which they were intended.

### 6.4 Force Majeure

- A. The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.
- B. In the event of a delay that results in additional costs to the CONSULTANT, an appropriate increase in compensation and schedule will be authorized in writing.

### 6.5 Termination

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

### 6.6 Suspension, Delay, or Interruption of Work

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

- B. In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

6.7 Third Party Beneficiaries

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.
- B. Indemnification by CONSULTANT for Professional Acts. 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'S negligent acts, errors or omissions, or intentional acts in the performance of CONSULTANT'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 CONSULTANT, they shall be borne by each party in proportion to its negligence.

- C. 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.

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

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

6.11 Jurisdiction

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

6.12 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, 5, and 6 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

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

6.15 Attorney's Fees

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

Article 7. Schedules, and Signatures

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

IN WITNESS WHEREOF, the parties execute below:

THE CITY OF KEY WEST

By: \_\_\_\_\_  
Jim Scholl, City Manager

Attest: \_\_\_\_\_  
Name Title

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

By: Sandra R. Heinrichs  
Sandra R. Heinrichs, Secretary

Dated this 9<sup>th</sup> day of October, 2015.