THE CITY OF KEY WEST
NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY
1340 Flagler Ave
Key West, Florida 33040

May 8, 2011

To: All Prospective Respondents

Subject: Truman Waterfront Upland Improvements Design and Construction Administration

The City of Key West Naval Properties Local Redevelopment Authority (LRA) Request for Qualifications No. 11-004 –PROFESSIONAL LANDSCAPE ARCHITECTURAL/ ENGINEERING/ARCHITECTURAL/LAND SURVEYOR SERVICES FOR TRUMAN WATERFRONT UPLAND DESIGN AND CONSTRUCTION ADMINISTRATION, contains the following documents.

1. One cover sheet;
2. The Request for Qualifications which is forty-one (41) pages in length and contains important information on the project, deadlines, a mandatory pre-response meeting, required response contents, and selection process as well as the following forms: Anti-Kickback Affidavit and Public Entity Crimes Certification.

Please review your package to ensure it contains all of these documents. If not, contact Sue Snider, City of Key West Purchasing Agent at (305) 809-3815, immediately, to obtain copies of any missing document(s).

Firms/corporations submitting a response should ensure that the following documents are completed, certified, notarized and returned as instructed.

INFORMATION TO PROPOSERS

SUBJECT:	REQUEST FOR QUALIFCATIONS (RFQ #11-004) PROFESSIONAL LANDSCAPE ARCHITECTURAL/ ENGINEERING/ARCHITECTURAL/LAND SURVEYOR SERVICES FOR TRUMAN WATERFRONT UPLAND DESIGN AND CONSTRUCTION ADMINISTRATION
ISSUE DATE:	MAY 8, 2011
PRE RESPONSE CONFERENCE:	MAY 25, 2011, 2:00 P.M. MANDATORY PRE-RESPONSE CONFERENCE, ECO-DISCOVERY CENTER AT THE TRUMAN WATERFRONT, 33 EAST QUAY ROAD, KEY WEST, FL. TEAM PROJECT MANAGER MUST BE IN ATTENDANCE
MAIL OR SPECIAL DELIVERY REPONSES TO:	CITY CLERK CITY OF KEY WEST 525 ANGELA STREET KEY WEST, FL 33040
DELIVER BIDS TO:	SAME AS ABOVE
RESPONSES MUST BE RECEIVED:	JUNE 29, 2011
NOT LATER THAN:	3:00 P.M.

SUE SNIDER
PURCHASING AGENT
CITY OF KEY WEST

ses

Enclosures

CALL FOR REQUEST FOR QUALIFICATIONS
PROFESSIONAL LANDSCAPE ARCHITECTURAL/
ENGINEERING/ARCHITECTURAL/LAND SURVEYOR SERVICES FOR TRUMAN WATERFRONT UPLAND DESIGN AND CONSTRUCTION ADMINISTRATION

NOTICE is hereby given to prospective proposers that the Naval Properties Local Redevelopment Authority (LRA) of the City of Key West, Florida is seeking Professional Landscape Architectural/ Engineering/Architectural/ Surveying Services: RFQ No 11-004. The Clerk of the City of Key West, Florida at 525 Angela Street, Key West, Florida 33040 will receive Request for Qualifications until 3:00 P.M. local time on June 29, 2011. Late proposals will not be considered. REQUEST FOR QUALIFICATIONS DOCUMENTS may be obtained from DemandStar by Onvia at www.demandstar.com/supplier or call toll-free 1-800-711-1712. Applicants shall submit one response marked "Original", one copy marked "Copy", and 2 CD-ROM or flash drives, each shall contain one PDF file each of the full response enclosed in two (2) sealed envelopes, one within the other clearly marked on the outside: Request for Qualifications No. 11-004 –PROFESSIONAL LANDSCAPE ARCHITECTURAL/ ENGINEERING/ARCHITECTURAL/LAND SURVEYOR SERVICES FOR TRUMAN WATERFRONT UPLAND DESIGN AND CONSTRUCTION ADMINISTRATION, addressed and delivered to:

CITY CLERK
CITY OF KEY WEST, FLORIDA
CITY HALL, 525 ANGELA STREET
KEY WEST, FLORIDA 33040

Mandatory Pre-response Conference: May 25, 2011, 2:00 p.m. Eco-Discovery Center at the Truman Waterfront, 33 East Quay Road, Key West, FL. Team project manager must be in attendance.

Prior to award by the LRA the successful Bidder must be able to prove that Bidder held State Licenses prior to submittal of Bid as would be required to perform work herein. Within 10-days after issuance of the Notice of Award, the successful Bidder must be able to prove that Bidder holds City Licenses as would be required to perform work herein. Any permit and/or license requirement and subsequent costs are located within the Bid document. The successful Bidder must also be able to satisfy the City Attorney as to such insurance coverage, and legal requirements as may be demanded in Bid. The LRA may reject Bids: (1) for budgetary reasons, (2) if the Bidder misstates or conceals a material fact in its Bid, (3) if the Bidder does not strictly conform to the law or is non-responsive to Bid requirements, (4) if the Bid is conditional, (5) if a change of circumstances occurs making the purpose of the Bid unnecessary or (6) if such rejection is in the best interest of the LRA. The LRA may also waive any minor informalities or irregularities in any Bid.

REQUEST FOR QUALIFICATIONS
PROFESSIONAL LANDSCAPE ARCHITECTURAL/
ENGINEERING/ARCHITECTURAL/LAND SURVEYOR SERVICES FOR TRUMAN WATERFRONT UPLAND DESIGN AND CONSTRUCTION ADMINISTRATION

BACKGROUND STATEMENT

The City of Key West Naval Properties Local Redevelopment Agency (LRA) has been engaged in the acquisition, planning and permitting of the redevelopment of a portion of the former US Navy Truman Waterfront base since 1995 as allowed by the Federal Government's Base Realignment and Closure (BRAC) process. A copy of all historic documents can be found on the City's web site. The LRA cleared the site of unneeded buildings and structures and completed the changes of zoning necessary to implement the master redevelopment plans know as the Base Reuse Plan. Previously, the LRA received a design/build proposal from a private entity for both the upland and water portions of the master plan area. Due to questions about the timing of the completion of improvements by the entity and legal issues as to the public funding of some of the improvements, the LRA with a recommendation of the City's Truman Waterfront Advisory Committee chose to proceed with the redevelopment of the upland portion of the project area as a publicly funded design and development project. The cost for completion of the improvements is estimated at $18-20 million period and will be a 5-10 year phased project as revenue is generated from a number of sources within the City's budget.

PROJECT GOALS

The LRA is seeking to engage a qualified professional Landscape Architectural/ Engineering/ Architectural/Surveyor (LA/E/A/S) firm or teams of firms for specific design and construction administration/inspection services in the development of a portion of surplus Navy property known as the Truman Waterfront Upland Parcels, located in Key West, Florida. Additional parcels of the property may be added in the future to the scope of services. The attached aerial photograph illustrates the location of the approximately 23 acre parcel relative to other portions of the City's Truman Waterfront parcels, waterfront areas and areas of surrounding residential and institutional uses. The proposed concept plan and guiding principles approved by the LRA and the Truman Waterfront Advisory Board are attached. The firm will perform the services requested by the LRA under a "Professional Services Agreement." The duration of this agreement will be an initial five (5) year term with the option to extend the Agreement at the discretion of the LRA. All firms must be currently licensed to perform LA/E/A/S services in the State of Florida. Selection of LA/E/A/S firm or team of firms will be made based upon expertise and qualifications with heavy emphasis on firms or teams who have a demonstrated successful track record in designing and implementing comprehensively and functionally inclusive, thematically integrated waterfront parks and economically beneficial mixed use projects characterized by outstanding design consistent with the character of a surrounding historic community. Based upon the LRA's long history with the site, a number of data sets and materials partially or wholly complete are available to the firm chosen to undertake the design and engineering tasks. The LRA has data or has established direction/guidelines in each of the following areas which the successful respondent must further augment by analysis, appropriate design and construction management/observation techniques:

1. Surveys and Topography

2. Sub-surface Conditions
3. Infrastructure Locations and Capacities
4. Roads and Pedestrian Access
5. Ecological and environmental conditions
6. Land Use Commitments on Surrounding Properties
7. Existing Preliminary and Conceptual Design
8. Authorized Construction in the Immediate Area
9. Land Uses Requiring Access During Construction
10. Special mitigation areas and needs during construction

MANDATORY PRE-RESPONSE CONFERENCE

May 25, 2011, 2:00 p.m. Eco-Discovery Center at the Truman Waterfront, 33 East Quay Road, Key West, FL. Team project manager must be in attendance.

QUALIFICATIONS

Respondents must demonstrate expertise and relevant experience in each of the following areas

1. **Landscape Architecture**
   - Hardscapes including Benches and other Seating Facilities, Water Features, Walkways and Public Art
   - Softscapes and Xeriscape Practices
   - Signage and Wayfinding
   - Lighting – site, pathways accent and emergency
   - Site Design
   - Bicycle and Pedestrian Planning
   - "Green" projects
   - Ecological and Environmental Design in accordance with section 255.2575(2) Florida Statue (Green Buildings/Construction)
2. **Civil Engineering**
   - Roadway/Pedestrian access way design
   - Parking lot design
   - Utility design including water, sewer, stormwater, communications, and electrical
   - Design within Special Flood Hazard Areas
3. **Architectural Design**
   - Museum Design or historic markers
   - Amphitheaters
   - Event Plazas
   - Transportation Multimodal Centers
   - One and two story multi use office, institutional and retail
   - Residential or residential/commercial mix
   - Alternative Supplemental Energy Sources
   - Defensible/Safe Space Design
4. **Structural Engineering**
   - Waterfront design;
   - Structural analysis (above and below water);

- One and two-story commercial, retail, institutional, and office buildings design.

5. **Park Design**
    - Active and Passive Recreational areas and facilities;
    - Restroom and Rest Area facilities
    - Historic Resource Protection and Interpretation
    - Visual and Spatial Analyses for Primary use Relationships and Natural Resource Protection
    - Development of parks that are self sustaining
    - Noise Control and Buffering
    - Multi Use Facilities including Festival/Market Spaces
    - Waterfront Design which integrates Upland Parks and Boating/Marina uses
    - Facility Maintenance and Replacement Programming
6. **Construction Oversight/Inspection**
    - Phasing schedules
    - Quantity Surveying
    - Cost Control
    - Bidding Management Assistance
    - Alternative Construction Methods Evaluation
7. **Permitting**
    - Environmental and structural permitting in South Florida for all phases of construction including maritime improvements
    - Understanding of United States National Marine Sanctuary, Florida Area of Critical State Concern, Florida Outstanding Florida Waters, and other relevant classifications
    - Environmental Remediation
    - Public Input Processes Including Workshops, on-site meeting, Internet based information dissemination and gathering
    - Conditional Use and Zoning Approvals and Concurrency Analysis
    - Compliance with Base Closure/Reuse Plans
8. **Surveying**
    - Topography
    - Construction Control
    - As Builts
    - Permitting Certifications

<u>QUALIFICATIONS CRITERIA</u>

The qualification criteria applied to the selections of firms for further consideration are the following from the City of Key West's policies and procedures for the selection of LA/E/A/S firms, as follows:

- Specialized experience and technical competence of the firm or team of firms in the disciplines of landscape architectural design architectural design surveying and engineering of waterfront areas, parks, multi use recreation areas and economic benefit facilities, as listed above.

- Professional qualifications of staff personnel. The firm must have specific Professional Landscape Architects, Engineers, Architects, Surveyors and be qualified/certified to perform design and inspection services within the State of Florida at the time of RFQ submission.
- Capacity of assigned and identified staff to accomplish work within the required time frame and the anticipated budget.
- Ability to perform the services expeditiously at the request of the LRA. Location and availability of technical support people and assigned project manager to the LRA within a reasonable timeframe will be a factor in overall evaluation.
- Other general expertise, experience, or abilities that the firm can bring to the LRA, particularly experience with the redevelopment of former naval facilities and historic waterfront areas.

SELECTION PROCESS*

The following steps will be followed in the selection process:

1. City of Key West management, engineering, planning staff will review each response that is submitted and determine which ones are considered responsive to the RFQ.
2. The City staff tasked with the review of the responses to the RFQ and/or members of the public will rank the responses in a publicly advertised meeting using the selection criteria matrix attached. At a minimum, the top three ranked firms or teams of firms will be recommended to the Truman Waterfront Advisory Board (TWAB).
3. Each of the top ranked respondents will be required to give a presentation to the TWAB at a meeting to be scheduled at a later date. Presentations shall not exceed 30-minutes or of such time as allowed by the TWAB.
4. The TWAB will rank in order of preference the firms and make a recommendation to the LRA.
5. The firms will then be required to give a second presentation to the LRA at a meeting to be scheduled at a later date. Presentations shall not exceed 15-minutes or of such time as allowed by the LRA.
6. The LRA will rank in order of preference the firms and will authorize the City Manager to negotiate a contract with the highest ranked firm. If the City Manager is unable to negotiate a satisfactory contract with the highest ranked firm, the City Manager will terminate negotiations and then negotiate with the second highest ranked firm and so on in order of preference if needed.

* The City reserves the right to modify the above selection process based on the number of responses that it receives. Additionally the City reserves the right to combine the meetings of the LRA and TWAB in order to rank the firms.

CITY STAFF SELECTION CRITERIA MATRIX

Project Name: PROFESSIONAL LANDSCAPE ARCHITECTURAL/ ENGINEERING/ARCHITECTURAL/LAND SURVEYOR SERVICES FOR TRUMAN WATERFRONT UPLAND DESIGN AND CONSTRUCTION ADMINISTRATION

Project Number: RFQ 11-004

Firm _____

Date _____

SELECTION CRITERIA	POINTS ALLOWED	POINTS EARNED
Specialized experience and technical competence of the firm or team of firms in the disciplines of landscape architectural design architectural design surveying and engineering of waterfront areas, parks, multi use recreation areas and economic benefit facilities	40	
Other general expertise, experience, or abilities that the firm can bring to the LRA, particularly experience with the redevelopment of former naval facilities	20	
Professional qualifications of staff personnel.	20	
Ability of the services to be performed expeditiously at the request of the LRA. Location and availability of technical support people to the LRA	10	
Capacity to accomplish work within the required time frame and the proposed budget	10	
Total Points	**100**	

SCOPE OF WORK

The services of the LA/E/A/S firm may consist of but are not limited to:

- Design of harbor walks, pedestrian paths, bicycle ways, and recreational paths
- Design of utility infrastructure to serve all upland facilities inclusive of a parks, entry ways, museum, any marina support area and associated retail commercial and office areas
- Design of roadway and parking lot infrastructure
- Design of parkland to include restroom facilities, recreational areas/fields, lighting, signage, public plazas, and small amphitheater;
- Design ingress and egress to the property for off-site roadways
- Provide updated surveys and topography for the entire site sufficient to serve as basis for detailed design inclusive of identification of all infrastructure and utilities
- Evaluate environmental impacts of proposed projects and prepare the appropriate local, state, and federal permit applications.
- Conduct public awareness and input strategies
- Prepare reports, schedules, cost estimates, green building/construction certifications, maintenance schedules and manuals and other information needed or requested by the TWAB and/or LRA in considering development and maintenance strategies of the Truman Waterfront.

SUBMISSIONS DETAILS

LA/E/A/S firms or team of firms should submit a complete qualifications package that includes:

- Complete company profile for each firm of the team
- Identification of each firm's team members by name and role in project
- Demonstration of key personnel expertise in the above mentioned disciplines
- Specific relevant experience of the firm in the design of waterfront parks, parks, public plazas and walks, museums, military property redevelopment, and the infrastructure to support such uses. The examples should include the name of client, client's representative, client's address and telephone number, key personnel involved in design phase services, design services fee, estimate of construction cost, name of contractor awarded project, contract award amount, contractor's representative, contractor's address and telephone number. Additionally, include how projects integrated the waterfront, park, any economic benefit aspects into an overall total project of design and historic continuity, functionality, public acclaim, and profit generation
- Names, job classifications, and qualifications of landscape architectural, architectural, engineering, , and technical personnel who will be assigned to perform services
- Proposed management approach to be taken on any service rendered. A description of the firm's procedure for quality control for small, medium, and large projects should be provided, along with a discussion of the firm's typical experience of change orders with clients associated with planning, design, and construction projects
- Five references
- Anti-Kickback Affidavit and Public Entity Crimes Certification for members of any team.

Submit to:

City Clerk
City of Key West
525 Angela Street
Key West, Fl 33040

Date/Time:

June 29, 2011
3:00 PM

Identification of Responses:

Responses shall be submitted in two (2) sealed envelopes, one within the other, each clearly marked on the outside: **"Request for Qualifications No. 11-004 –Professional Landscape Architectural/ Engineering/Architectural/Land Surveyor Services for Truman Waterfront Upland Design and Construction Administration,"** the due date, and the respondent's name.

Number of Copies:

Applicants shall submit one response marked "Original", one copy marked "Copy", and 2 CD-ROM or flash drives, each shall contain one PDF file each of the full response. All contents of a Proposer's submittal shall remain the property of the City.

Response Preparation Costs:

The costs of response preparation for both steps in the process are not reimbursable. Response preparation costs are the applicant's total responsibility.

Authorized Signature:

The initial response must contain the signature of a duly authorized officer or agent of the proposer's company empowered with the right to bind the respondent to the RFQ. The respondent must provide evidence of the authority of the officer or agent to bind the respondent.

Property of the City:

All responses and related materials provided to the City related to this RFQ will become the property of the City of Key West.

License Requirements:

At the time the proposal is submitted, the Responder must show satisfactory documentation of state licenses (if applicable). Please note that the winning respondent will also be required to obtain and maintain a City of Key West Business Tax Receipt for the duration of the work.

Insurance /Indemnification:

The Consultant shall keep in full force and effect at all times during the effective period of any resulting agreement and durations identified within, and at its own cost and expense the following insurance with insurance companies authorized in the State of Florida, with an A.M. Best rating of A-:VI or higher and shall provide evidence of such insurance to the City. The policies or certificates shall provide thirty (30) days prior to cancellation notices of same shall be given to the City by registered mail, return receipt requested, for all of the required insurance policies stated below. All notices shall name the Consultant and identify the contract number. The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees are to be added as "additional insureds" as respects liability arising out of activities performed by or on behalf of the Consultant.

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

1. **Worker's Compensation** – Statutory, in compliance with the Compensation law of the State of Florida. The coverage must include Employer's Liability with a limit of One Million ($1,000,000) Dollars per each accident

2. **Commercial General Liability (CGL)** shall be in an amount acceptable to the City of Key West but not less than One Million ($1,000,000.00) Dollars Combined Single Limit per occurrence and Two Million ($2,000,000.00) Dollars annual aggregate. The City of Key West must be named as an Additional Insured. The coverage must include:
   - Commercial Form
   - Premises/Operations
   - Products/Completed Operations
   - Independent Consultants (if any part of the Work is to be subcontracted)
   - Broad Form Property Damage
   - Personal Injury

3. **Business Automobile Liability** Insurance with a minimum limit of liability per occurrence of One Million ($1,000,000.00) Dollars Combined Single Limit and no annual aggregate. The City of Key West must be named as an Additional Insured. This insurance shall include for bodily injury and property damage the following coverage:
   - Owned automobiles
   - Hired automobiles
   - Non-owned automobiles
   - Location of operation shall be "All Locations"

4. **Excess/Umbrella Liability** shall have a minimum limit of Two Million ($2,000,000) Dollars per occurrence with an annual aggregate of Two Million ($2,000,000) Dollars.

This coverage is to be following form and include the Commercial General Liability and Automobile Liability Policies.

5. **Professional Liability/Errors & Omissions** Insurance with a minimum limit of One Million ($1,000,000.00) Dollars.

If the contract is awarded, a full copy of this policy is to be provided at signing of contract. Coverage forms for this type of policy vary greatly from carrier to carrier thus making it important to review coverage and exclusions to insure proper coverage is being provided specific to the project.

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

The insurance required under Paragraphs 1, 2, 3, 4, and 5 hereof is a minimum to provide adequate protection for the Consultant, respectively, against damage claims which may arise from operations under this contract, whether such operation be by the insured or by anyone directly or indirectly employed by the insured and, also against any of the special hazards which may be encountered in the entity's operation under this contract. The insurance required herein and approval of the Consultant's insurance by the City of Key West shall not relieve or decrease the liability of the Consultant hereunder.

7. **Waiver of Subrogation**

The insurance required under Paragraphs 1, 2, 3, 4, and 5 hereof shall contain a "Waiver of Subrogation" provision whereas the Consultant insurer waives any claim against the City of Key West.

8. **Certificates of Insurance**

Certificates of Insurance shall be filed and maintained throughout the life of any resulting Agreement with the City Clerk evidencing the minimum limits of the insurance cited above. All policies shall provide that they may not be terminated or modified without the insurer providing the City of Key West at least thirty (30) days of advance notice. Additionally, the Consultant shall immediately notify the City of any cancellation of such insurance.

9. **Indemnification Agreement**

The following shall be made a provision of any resulting agreement:

Consultant agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way grow out of any act or omission of the Consultant, its agents, servants, and employees, or any and

all costs, expense and/or attorney fees incurred by the Consultant as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. The Consultant agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent.

In addition, it is understood if at any time any of the policies required by the City shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the City, the Consultant shall obtain a new policy, submit the same to the City for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of the Consultant to furnish, deliver and maintain such insurance as required above, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of the Consultant to take out and/or maintain any required insurance shall not relieve the Consultant from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the Consultant concerning indemnification.

CONTACTS

Project Contact: Doug Bradshaw, LRA Project Manager, 1340 Flagler Ave, Key West, FL 33040, Phone: 305-809-3792, Fax: 305-2809-3739. Email: dbradsha@keywestcity.com.

Every request for information should be in writing addressed to Mr. Doug Bradshaw, Senior Project Manager, emailed or faxed, and to be given consideration must be received at least ten (10) days prior to the date fixed for the opening of the responses to the RFQ. Any and all such interpretations and any supplemental instructions will be in the form of written addendum to the RFQ. If an addendum is issued you will be notified by DemandStar by Onvia. Failure of any Respondent to receive any such addendum or interpretation shall not relieve such Respondent from any obligation under his response as submitted. All addenda so issued shall become a part of the Contract document.

ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA)
: SS
COUNTY OF MONROE)

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 LRA 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: _____

Sworn and subscribed before me this

_____ day of _____, 2011.

_____
NOTARY PUBLIC, State of Florida at Large

My Commission Expires: _____

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 OFFICE AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Bid or Contract No. _____ 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_____and my relationship to
   (Please print name of individual signing)

   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 entity 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(l)(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

   1. A predecessor or successor of a person convicted of a public entity crime: or

   2. An entity under the control of any natural person who is active in the management of t 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 a 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.

___The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has 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. Them has been a subsequent proceeding before a hearing officer of the Sate 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.)

_____
(Signature)

_____
(Date)

STATE OF_____

COUNTY OF_____

_____
PERSONALLY APPEARED BEFORE ME, the undersigned authority,

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

space provided above on this_____ day of _____, 2011.

My commission expires: _____
NOTARY PUBLIC

AERIAL MAP OF 23 ACRES

CONCEPTUAL PLAN

(Not all components of the conceptual plan have been approved)

GUIDING PRINCIPLES

- Eaton Street Connectivity,
- Water features with public access,
- Oval green space with a small amphitheater and multiuse recreational field of no less than the size of a regulation soccer field,
- Promenade walkway with access across Admiral's Cut,
- Maritime Museum,
- Pedestrian and Bicycle access thru feeder streets including (Geraldine, Angela and Eaton Streets),
- Elimination of the road north of the identified Ferry Dock area to create more green space if possible,
- Bicycle paths along all roadways,
- Preserving and creating view corridors and entry ways or gateway features,
- Market space on the identified Presidential Lawn and Event Plaza.

The support of the conceptual plan and the above listed components are conditioned by the following:

- The location and arrangement of the above design should be determined by a professional park planning firm chosen through the City's request for qualification (RFQ) or appropriate process,
- The identified 6.6 acres along Fort Street are not part of the recommendations to the LRA at this time but would like to emphasize that the look of the park and access elements to all portions of the property be coordinated,
- That use of proposed facilities or areas by a particular group not be identified at this time,
- All construction Comply with Florida Building Codes Florida Statute 255.2575(2) (Green Buildings).

THE FOLLOWING AGREEMENT IS A DRAFT AGREEMENT AND SHOULD NOT BE FILLED OUT AS PART OF THE SUBMISSION PACKAGE. FINAL CONTRACT WILL BE NEGOTIATED WITH THE SELECTED FIRM

AGREEMENT

Between

CITY OF KEY WEST NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY

And

_____

For

PROFESSIONAL LANDSCAPE ARCHITECTURAL/ ENGINEERING/ARCHITECTURAL/LAND SURVEYOR SERVICES FOR TRUMAN WATERFRONT UPLAND DESIGN AND CONSTRUCTION ADMINISTRATION

KEY WEST, FLORIDA

Date

This is an Agreement between: CITY OF KEY WEST NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY, its successors and assigns, hereinafter referred to as "LRA,"

AND

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

W I T N E S S E T H, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, LRA and CONSULTANT 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 8, inclusive. Other terms and conditions are included in the LRA's RFQ 11-004, CONSULTANT's Response to RFQ dated _____, 2011, exhibits, task orders, and supplemental documents that are by this provision expressly incorporated herein by reference.

1.2. **Board:** The governing body of the Naval Properties Local Redevelopment Authority of the City of Key West, Florida.

1.3. **CONSULTANT**: The architect or engineer selected to perform the services pursuant to this Agreement.

1.4. **Contract Administrator**: The ranking managerial employee of the LRA or some other employee expressly designated as Contract Administrator by the City Manager, who is the representative of the LRA, concerning the Project. 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. **Contractor**: The person, firm, corporation or other entity that enters into an agreement with LRA to perform the construction work for the Project.

1.6. **LRA:** The City of Key West Naval Properties Local Redevelopment Authority created pursuant to Chapter 163 of the Florida Statutes and Sec. 2-446 of the Code of Ordinances of the City of Key West.

1.7. **Project**: Development of the Truman Waterfront. The evaluation of the costs for all options available to the LRA will be considered a part of the Project. The LRA may elect not to proceed with the Project or to proceed with all or a portion of the project at its discretion.

1.8. **Task Order:** A detailed description of a particular service or services to be performed by CONSULTANT for a prescribed type and amount of compensation.

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 LRA has budgeted funds for consulting services for the Project. The CONSULTANT is not entitled to receive, and the LRA is not obligated to pay, any fees or expenses in excess of the amount budgeted for this contract in each fiscal year (October 1-September 30) by LRA. The budgeted amount may only be modified by Resolution of the Commission.

2.2. The LRA has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform the services hereunder based on the Request for Qualifications 11-004 incorporated by reference and made a part hereof and the Response to the Request for Qualifications from CONSULTANT dated _____, 2011, incorporated by reference and made a part hereof.

2.3. Negotiations pertaining to the services to be performed by CONSULTANT were undertaken between CONSULTANT and staff selected by the Commission, and this Agreement incorporates the results of such negotiations.

ARTICLE 3

SCOPE OF SERVICES AND STANDARD OF CARE

3.1. CONSULTANT's services may include but are not limited to the following in regard to the Project:

3.1.1. Design of harbor walks, pedestrian paths, bicycle ways, and recreational paths

3.1.2. Design of utility infrastructure to serve all upland facilities inclusive of a parks, entry ways, museum, any marina support area and associated retail commercial and office areas

3.1.3. Design of roadway and parking lot infrastructure

3.1.4. Design of parkland to include restroom facilities, recreational areas/fields, lighting, signage, public plazas, and small amphitheater;

3.1.5. Design ingress and egress to the property for off-site roadways

3.1.6. Provide updated surveys and topography for the entire site sufficient to serve as basis for detailed design inclusive of identification of all infrastructure and utilities

3.1.7. Evaluate environmental impacts of proposed projects and prepare the appropriate local, state, and federal permit applications.

3.1.8. Conduct public awareness and input strategies

3.1.9. Prepare reports, schedules, cost estimates, green building/construction certifications, maintenance schedules and manuals and other information needed by the LRA in considering development and maintenance strategies of the Truman Waterfront.

3.2. CONSULTANT's services shall include landscape architectural design services, including hardscapes and softscapes and general site design, civil, structural, mechanical, fire protection, and electrical engineering and architectural services and consulting for facilities planning, location and design, surveying, permitting, preliminary and ongoing cost estimating, construction budgets and cash flow time line, cost impact analysis, testing services, writing of design-build Requests for Proposals, evaluation of design-build proposals and their associated budgets and cost supervision services, preliminary architectural studies, appraisals and evaluations, architectural design, auto CAD services, construction management and on-site construction services, and any other lawful professional architectural, engineering, or other consulting services that the CONSULTANT is qualified to provide and that the LRA authorizes the CONSULTANT to undertake in connection with the LRA’S Project. CONSULTANT shall provide all necessary, incidental and related activities and services as required.

3.3. CONSULTANT and LRA acknowledge that the Scope of Services does not delineate every detail and minor work task required to be performed by CONSULTANT to complete the Project or any particular task order. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Project which is, in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator in writing in a timely manner before proceeding with the work. If CONSULTANT proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by LRA to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written LRA approval or modification of task order is at CONSULTANT's sole risk.

3.4. The specific services to be provided by the CONSULTANT and the compensation for such services shall be as mutually agreed to in separate Task Orders to this AGREEMENT. Each Task Order when fully executed shall become a supplement to and a part of this AGREEMENT.

3.4.1. Each Task Order shall be supported by appropriate cost and pricing data and such other documentation as required by the LRA.

3.4.2. Task Orders shall be numbered consecutively as specified by LRA. Each Task Order shall include a description of the scope of services and specified deliverables, time of completion, total estimated costs of services, and method of compensation. Additional information shall be provided to the LRA if required. Amended Task Orders shall include substantially the same information and be submitted to the LRA for approval.

3.4.3. The LRA may make or approve changes within the general Scope of Services in any Task Order. If such changes affect the CONSULTANT's cost of or time required for performance of the services, an equitable adjustment shall be made through an amendment to the Task Order.

3.4.4. A task order may be terminated at any time, with or without cause, by the LRA upon written notice to CONSULTANT. CONSULTANT shall perform no further work upon receipt of this notice unless specifically authorized by the City Manager of the City of Key West. On termination, the CONSULTANT shall be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the LRA, reasonable expenses incurred during the close-out of the Task Order. The LRA shall not pay for anticipatory profits. The termination of this Agreement pursuant to Paragraph 8.2, hereof, shall constitute the termination of any and all outstanding task orders.

3.4.5. The CONSULTANT shall begin services under any Task Order when authorized by a Purchase Order issued by the LRA and delivered to CONSULTANT.

3.5. The LRA and CONSULTANT may negotiate additional scopes of services, compensation, time of performance and other related matters for each Task Order. If LRA and CONSULTANT cannot contractually agree, LRA shall have the right to immediately terminate negotiations at no cost to LRA and procure services for future Project Task Orders from another source.

3.6. CONSULTANT shall perform the professional services under this Agreement at the level customary for competent and prudent professionals in CONSULTANT'S field performing such services at the time and place where the services are provided. In the event CONSULTANT does not comply with this standard, and omissions or errors are made by CONSULTANT, CONSULTANT will correct such work that contains errors or omissions.

3.7. CONSULTANT is required to perform the task orders consistent with current applicable Federal, State and City laws, codes and regulations that pertain to the project. In all task

orders, where changes to any laws, codes or regulations affecting the project have a projected effective date or are anticipated to be effective at a future date, or if knowledge of anticipated changes is available to CONSULTANT or any subconsultant, CONSULTANT shall present options for their use or implementation.

3.8. Construction Responsibility - Notwithstanding anything in this Agreement, CONSULTANT shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety measures, precautions and programs including enforcement of Federal and State safety requirements, in connection with construction work performed by LRA's construction contractors.

3.9. Estimates - Since CONSULTANT has no control over local conditions, the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, CONSULTANT does not guarantee the accuracy of any opinions of probable construction cost as compared to construction contractor's bids or the actual cost to the LRA.

ARTICLE 4

TERM OF AGREEMENT; TIME FOR PERFORMANCE; CONTRACTOR DAMAGES;

The term of this Agreement shall be for a period of five (5) years from the effective date of the Agreement. The Agreement will be in effect upon execution by both parties. The Agreement may be renewed at the discretion of the LRA.

4.1. CONSULTANT shall perform the services described in each Task Order within the time periods specified. Each such time period shall commence from the date of the purchase order issued for such services.

4.2. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent task order. Prior to granting approval for CONSULTANT to proceed to a subsequent task order, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit any deliverables/documents for the Contract Administrator's review.

4.3. In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by LRA or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, LRA shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CONSULTANT to notify LRA within 10 days in writing whenever a delay in approval by a governmental agency, including LRA, is anticipated or experienced, and to inform the Contract Administrator of all facts and details related to the delay.

4.4. In the event the Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with LRA or if Contractor is granted an extension of time beyond said substantial completion date, and CONSULTANT's services are extended beyond the substantial completion date, through no fault of CONSULTANT, CONSULTANT shall be compensated in accordance with Article 5 for all services rendered by CONSULTANT beyond the substantial completion date.

4.5. In the event Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with LRA, and the failure to substantially complete is caused in whole or in part by a negligent act, error or omission of CONSULTANT, then CONSULTANT shall pay to LRA its proportional share of any claim or damages to Contractor or LRA arising out of the delay. This provision shall not affect the rights and obligations of either party as set forth in Paragraph 8.8, INDEMNIFICATION OF LRA.

ARTICLE 5

COMPENSATION AND METHOD OF PAYMENT

5.1. AMOUNT AND METHOD OF COMPENSATION

The types of compensation methods, which shall be used to pay for the CONSULTANT's services, are limited to the following:

5.1.1. Lump sum payment, which includes compensation for all the CONSULTANT'S salaries, general overhead costs, direct expenses, and profit.

5.1.1.1. If the PROJECT timing deviates from the assumed schedule for causes beyond CONSULTANT's control, CONSULTANT and/or the LRA reserves the right to request renegotiation of those portions of the lump sum affected by the time change. During construction contract administration, if tasked, it is agreed by both parties that whether construction is completed earlier or later, that a proportional part of the compensation will be adjusted and either given to CONSULTANT for additional work or deleted from the amount owed CONSULTANT for less time required.

5.1.1.2. In the event of a change of scope, LRA shall authorize in writing an appropriate decrease or increase in compensation.

5.1.1.3. Monthly invoicing will be based on an estimate of the percent of work completed at the end of the preceding month.

5.1.1.4. 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.

5.1.2. Cost Reimbursable-Per Diem (Time and Expenses)

5.1.2.1. Per diem rates are those hourly or daily rates charged for work performed on the PROJECT by CONSULTANT's employees of the indicated classifications and include all salaries, overheads, and profit, but do not include allowances for Direct Expenses. These rates are subject to annual adjustments based on the Consumer Price Index Urban U.S. City Average All Items U.S. Department of Labor Bureau of Labor Statistics.

5.1.2.2. Hourly rates for the first year of the contract:

Initial per Hourly Rates for _____, 2011 through _____, 2012 are:

Personnel Grade	**Hourly Rate ($ per Hour)**

5.1.2.3. A budgetary amount will be established for each Task Order. This budgetary amount shall not be exceeded unless prior written approval is provided by the LRA. CONSULTANT shall make reasonable efforts to complete the work within the budget and will keep LRA informed of progress toward that end so that the budget or work effort can be adjusted if found necessary.

5.1.2.4. CONSULTANT is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is LRA obligated to pay CONSULTANT beyond these limits.

5.1.2.5. When any budget has been increased, CONSULTANT's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.

5.2. REIMBURSABLES

5.2.1. Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project shall be charged at actual cost, and shall be limited to the following:

5.2.1.1. Identifiable transportation expenses in connection with the Project, subject to the limitations of Section 112.061, Florida Statutes. There shall be no mileage reimbursement for travel within the City of Key West. Transportation expenses to locations outside the City area or from locations outside the City will not be reimbursed unless specifically pre-authorized in writing by the Contract Administrator.

5.2.1.2. Identifiable per diem, meals and lodgings, taxi fares, automobile rental, and miscellaneous travel-connected expenses for CONSULTANT's personnel subject to the limitations of Section 112.061 Florida Statutes. Meals for class C travel inside the City of Key West will not be reimbursed. Lodging will be reimbursed only for room rates equivalent to Holiday Inn, Hampton Inn, or Best Western.

5.2.1.3. Identifiable communication expenses approved by Contract Administrator, long distance telephone, courier and express mail utilized to render the services required by this Agreement.

5.2.1.4. Cost of printing, reproduction or photography that is required by or of CONSULTANT to deliver services set forth in this Agreement. Unit costs must be specified on the task order.

5.2.1.5. Identifiable testing costs approved by Contract Administrator. Unit costs must be specified on the task order.

5.2.1.6. All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the Contractor.

5.2.2. It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in Paragraph 5.2.1 is a limitation upon, and describes the maximum extent of, LRA's obligation to reimburse CONSULTANT for direct, non-salary expenses. If LRA or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by LRA prior to incurring such expenses.

5.2.3. All subconsultants' hourly rates shall be billed in the actual amount paid by CONSULTANT. These amounts shall not increase each fiscal year of LRA by more than the Consumer Price Index Urban U.S. City Average All Items U.S. Department of Labor Bureau of Labor Statistics. Reimbursable subconsultant expenses are limited to the items in Paragraph 5.2.1 described above when the subconsultant's agreement provides for reimbursable expenses.

5.3. METHOD OF BILLING

5.3.1. Lump Sum Compensation

CONSULTANT shall submit billings that are identified by the specific project number and task order if applicable on a monthly basis in a timely manner. These billings shall identify the nature of the work performed and the estimated percent of work accomplished. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, CONSULTANT shall provide backup for past and current invoices that record hours, personnel, and expense costs on a task basis, so that total hours and costs by task may be determined.

5.3.2. Cost Reimbursable-Per Diem (Time and Expenses) Compensation

CONSULTANT shall submit billings that are identified by the specific project number and task order on a monthly basis in a timely manner for all personnel hours and Reimbursables attributable to the Project. These billings shall identify the nature of the work performed, the total hours of work performed and the employee category and name of the individuals performing same. Billings shall itemize and summarize Reimbursables by category and identify same as to the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for Reimbursables, a copy of the approval shall accompany the billing for such reimbursable. The statement shall show a summary of Salary Costs and Reimbursables with accrual of the total and credits for portions paid previously. External Reimbursables and subconsultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain a project number or other identifier that clearly indicates the expense is identifiable to the Project. Subsequent addition of the identifier to the invoice or receipt by the CONSULTANT is not acceptable except for meals and travel expenses. Appropriate CONSULTANT's cost accounting forms with a summary of charges must document internal expenses by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and rates by employee category, Reimbursables by category, and subcontractor fees on a task basis, so that total hours and costs by task may be determined.

5.3.3. If requested, CONSULTANT shall provide copies of past paid invoices to any subcontractor or subconsultant prior to receiving payment. LRA reserves the right to pay any subcontractor or subconsultant if CONSULTANT has not paid them timely and the services of the subcontractor or subconsultant are necessary to complete the PROJECT or any task order.

5.4. METHOD OF PAYMENT

5.4.1. LRA shall pay CONSULTANT within thirty- (30) calendar days from receipt of CONSULTANT's proper invoice with documentation as provided above.

5.4.2. Payment will be made to CONSULTANT at:

ARTICLE 6

ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

LRA or CONSULTANT may request changes that would modify the Scope of Services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of this Agreement including the initiation of any additional services. LRA shall compensate CONSULTANT for such additional services as provided in Article 5.

ARTICLE 7

LRA 'S RESPONSIBILITIES

7.1. LRA shall assist CONSULTANT by placing at CONSULTANT's disposal all information LRA has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

7.2. LRA shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.

7.3. LRA shall review the CONSULTANT's itemized deliverables/documents identified in the task orders and respond in writing with any comment within the time set forth in the task order or within a reasonable time.

7.4. LRA shall give prompt written notice to CONSULTANT whenever LRA observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of any Contractor.

ARTICLE 8

MISCELLANEOUS

8.1. OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, data matrices and calculations generated and used to evaluate and compute the construction or material requirements for the Project, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by CONSULTANT in connection with this Agreement, whether in hard copy or electronic form, shall become the property of LRA, whether the Project for which they are made is completed or not. If applicable, LRA may withhold any payments then due to CONSULTANT until CONSULTANT complies with the provisions of this Article. CONSULTANT is not responsible for damages caused by the unauthorized re-use by others of any of the materials for another project.

8.2. TERMINATION

8.2.1. This Agreement may be terminated with or without cause by LRA at any time.

8.2.2. Notice of termination shall be provided in accordance with paragraph 8.12 NOTICES of this Agreement.

8.2.3. In the event this Agreement is terminated, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 8.1 of this Agreement are

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

8.3. AUDIT RIGHT AND RETENTION OF RECORDS

8.3.1. LRA shall have the right to audit the books, records, and accounts of CONSULTANT that are related to this Project. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

8.3.2. CONSULTANT shall preserve and make available, at reasonable times for examination and audit by LRA, 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 LRA to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, CONSULTANT 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 LRA's disallowance and recovery of any payment upon such entry.

8.4. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

8.4.1. CONSULTANT 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 LRA, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

8.4.2. CONSULTANT'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 can not be lawfully or appropriately used as a basis for service delivery. CONSULTANT 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.

8.5. PUBLIC ENTITY CRIMES ACT

8.5.1. CONSULTANT 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, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to LRA, may not submit a bid on a contract with LRA for the construction or repair of a public building or public work, may not submit bids on leases of real property to LRA , may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with LRA , and may not transact any business with LRA 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 vendor 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 LRA's competitive procurement activities.

8.5.2. In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any subconsultant, 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 CONSULTANT has been placed on the convicted vendor list.

8.5.3. CONSULTANT shall promptly notify LRA if it or any subcontractor or subconsultant is formally charged with an act defined as a "public entity crime" or has been placed on the convicted vendor list.

8.6. SUBCONSULTANTS

CONSULTANT may use the subconsultants identified in the proposal that was a material part of the selection of CONSULTANT to provide the services for this Project. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or adding to the list of subconsultants. The list of subconsultants submitted and currently approved is as follows:

a.
b.
c.

Rates are as on attached Exhibit A.

8.7. ASSIGNMENT AND PERFORMANCE

8.7.1. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 8.6.

8.7.2. CONSULTANT 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 LRA 's satisfaction for the agreed compensation.

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

8.8. INDEMNIFICATION OF LRA

Consultant agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way grow out of any act or omission of the Consultant, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the Consultant as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. The Consultant agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent.

8.9. INSURANCE

8.9.1. CONSULTANT shall provide, pay for and maintain in force at all times during the services to be performed suitable insurance, including Professional Liability Insurance, Workers' Compensation Insurance, Comprehensive General or

Commercial Liability Insurance, Business Automobile Liability Insurance and Employer's Liability Insurance, etc. as is required in the RFQ.

8.10. REPRESENTATIVE OF LRA AND CONSULTANT

8.10.1. The parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more LRA employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

8.10.2. CONSULTANT shall inform the Contract Administrator in writing of CONSULTANT's representative to whom matters involving the conduct of the Project shall be addressed.

8.11. ALL PRIOR AGREEMENTS SUPERSEDED

8.11.1. 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.

8.11.2. 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.

8.12. 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:

<u>FOR LRA OF KEY WEST</u>:
Doug Bradshaw
City of Key West LRA
3140 Flagler Ave
Key West, FL 33040

<u>FOR CONSULTANT</u>:

8.13. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT 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 LRA 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.

8.14. 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.

8.15. CONSULTANT'S STAFF

8.15.1. CONSULTANT shall provide the key staff identified in their proposal for Project as long as such key staffs are in CONSULTANT's employment.

8.15.2. CONSULTANT shall obtain prior written approval of Contract Administrator to change key staff. CONSULTANT 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.

8.15.3. If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.

8.16. INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of CONSULTANT. In providing the services, CONSULTANT or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the LRA, nor shall they accrue any of the rights or benefits of a LRA 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.

8.17. THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor LRA 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 subconsultant, whether named or unnamed, shall be a third party beneficiary of this Agreement.

8.18. CONFLICTS

8.18.1. Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

8.18.2. CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against LRA 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 LRA 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.

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

8.19. CONTINGENCY FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, 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 CONSULTANT, 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, LRA 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.

8.20. WAIVER OF BREACH AND MATERIALITY

8.20.1. Failure by LRA 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.

8.20.2. LRA and CONSULTANT 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.

8.21. COMPLIANCE WITH LAWS

CONSULTANT shall comply with federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement applicable at the time the scope of services was drafted for this agreement**.** In addition, at the time each Task Order is executed, any revisions to applicable federal state, and local laws, codes, ordinances, rules and regulations shall apply.

8.22. 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 LRA or CONSULTANT elects to terminate this Agreement.

8.23. JOINT PREPARATION

Preparation of this Agreement has been a joint effort of LRA and CONSULTANT 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.

8.24. 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 8 of this Agreement shall prevail and be given effect.

8.25. 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.

8.26. INCORPORATION BY REFERENCE

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

Exhibit A – Subconsultants' Hourly Rates

8.27. 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.

LRA

ATTEST:

_____
Cheryl Smith, City Clerk

____ day of _____,20___

_____
Jim Scholl, City Manager

____day of _____, 20_____

ATTEST:

By _____
Secretary

_____
(Print Name of Secretary)

_____day of _____, 20_____

By _____
Vice President

_____
(Print Name of Vice President)

_____day of _____, 20_____