

ORDINANCE NO. 13-14

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$23,500,000 OF SEWER SYSTEM REFUNDING REVENUE BONDS FOR THE PURPOSE OF REFUNDING ALL OR A PORTION OF CERTAIN OUTSTANDING SEWER SYSTEM DEBT OF THE CITY AND PAYING COSTS OF ISSUANCE RELATED THERETO; PROVIDING FOR THE PAYMENT OF SUCH BONDS FROM NET REVENUES OF THE SEWER SYSTEM OF THE CITY; AMENDING ORDINANCE NO. 03-15; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA:

SECTION 1. AUTHORITY FOR THIS ORDINANCE. This Supplemental Ordinance is enacted pursuant to Chapter 166, Part II, Florida Statutes, the hereinafter defined Original Ordinance, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared that:

(A) On September 21, 1999, the City of Key West, Florida (the "Issuer") duly adopted Resolution No. 99-346 which authorized the issuance of the Issuer's Sewer System Revenue Bonds in one or more series in an amount not to exceed \$23,000,000 to finance the cost of design, permitting, acquisition, construction, and reconstruction of improvements to the sewer system.

(B) The issuance of said bonds was subject to a bond referendum held on November 2, 1999, wherein a majority of the qualified electors of the Issuer approved the issuance of said bonds (the "1999 Referendum").

(C) Pursuant to the 1999 Referendum, on February 9, 2001, the Issuer entered into a Clean Water State Revolving Fund Construction Loan Agreement with the Florida Department of Environmental Protection (as amended, the "State Revolving Fund Loan") for the purpose of constructing certain wastewater treatment plant improvements in an amount equal to \$5,252,639.07, which then left authority under the 1999 Referendum at \$17,747,360.93.

(D) On June 17, 2003, the City of Key West, Florida (the "Issuer") enacted Ordinance No. 03-15 (the "Original Ordinance").

(E) Pursuant to the Original Ordinance, on July 23, 2003, the Issuer issued its Sewer System Refunding Revenue Bonds, Series 2003 to refinance prior indebtedness, which did not require any use of authority under the 1999 Referendum since it was a refunding for savings.

(F) Pursuant to the Original Ordinance and the 1999 Referendum, on February 14, 2012, the Issuer issued its Sewer System Revenue Bond, Series 2012 in the aggregate principal amount of \$4,065,000 (the "2012 Bond") for the purpose of repaying a grant made by the Florida Department of Emergency Management which had previously paid for sewer system capital improvements, which then left authority under the 1999 Referendum at \$13,682,360.93.

(G) The State Revolving Fund Loan is junior and subordinate in all respects to the 2003 Bonds and the 2012 Bond as to source of security.

(H) The Issuer deems it necessary and in the best interests of the Issuer and its sewer system customers to authorize the issuance of not exceeding \$23,500,000 Sewer System Refunding Revenue Bonds, Series 2013 (the "2013 Bonds") for the purpose of refunding all or a portion of the 2003 Bonds and/or the State Revolving Fund Loan for net present value savings, which will not require any use of authority under the 1999 Referendum since it would be a refunding for savings.

(I) The Original Ordinance provides for the issuance of Additional Parity Obligations (as such term is defined in the Original Ordinance) upon compliance with certain requirements therein.

(J) The principal of and interest on the 2013 Bonds shall be payable solely from the Net Revenues (as defined in the Original Ordinance) on parity and equal status with the 2012 Bond. The State Revolving Fund Loan, if not refinanced, would be junior and subordinate in all respects to the 2013 Bonds and the 2012 Bond as to source of security.

SECTION 3. AUTHORIZATION OF BONDS. The issuance by the Issuer of not exceeding \$23,500,000 of 2013 Bonds for the purpose and secured as specified above; to be dated, to bear interest at a rate or rates not exceeding the maximum legal rate per annum, to be payable, to mature, to be subject to redemption and to have such other characteristics as shall be provided by supplemental resolution of the City Commission prior to their delivery; is hereby authorized. Such supplemental resolution may set forth the fiscal details of the 2013 Bonds and other covenants and provisions necessary for the marketing, sale and issuance of the 2013 Bonds.

SECTION 4. AMENDMENT TO TAKE EFFECT UPON CONSENT OF THE REGISTERED OWNERS OF NOT LESS THAN A MAJORITY OF THE OUTSTANDING BONDS. The following amendment to the Original Ordinance will take effect upon the issuance of the 2013 Bonds, at which time the written consent of the registered owners of more than fifty-one percent in principal amount of the Bonds (as such term is defined in the original Ordinance) so affected and then outstanding will have been obtained. BY ACCEPTANCE OF THE 2013 BONDS, EACH REGISTERED OWNER THEREOF IS DEEMED TO HAVE CONSENTED TO THE PROSPECTIVE AMENDMENT CONTAINED IN THIS SECTION. Section 17(B)(3) of the Original Ordinance is hereby amended by adding a new paragraph to the end as follows:

The Issuer may also establish a separate subaccount in the Reserve Account for any series of Bonds and provide a pledge of such subaccount to the payment of such series of Bonds apart from the pledge provided herein. To the extent a series of Bonds is secured separately by a subaccount of the Reserve Account, the Registered Owners of such Bonds shall not be secured by any other moneys in the Reserve Account. Moneys in a separate subaccount of the Reserve Account shall be maintained at a level applicable to such series of Bonds secured by the subaccount as designated by the Supplemental Ordinance authorizing such series of Bonds as the Issuer deems appropriate, provided such level may not exceed the Reserve Account Requirement for such series of Bonds. Moneys deposited into the Reserve Account to replenish withdrawals therefrom shall be deposited in the Reserve Account and the separate subaccounts in the Reserve Account on a pro rata basis.

Further, a series of Bonds may be issued without being secured by the Reserve Account or any subaccount therein to the extent so provided by a Supplemental Ordinance.

SECTION 5. NO RESERVE ACCOUNT. The 2013 Bond shall not be secured by the Reserve Account or any subaccount therein.

SECTION 6. REPEAL OF INCONSISTENT PROVISIONS. All ordinances, resolutions or parts thereof in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 7. ORIGINAL ORDINANCE TO CONTINUE IN FORCE. The Original Ordinance, as amended hereby, and all the terms and provisions thereof, are and shall remain in full force and effect except as may otherwise amended and supplemented hereby.

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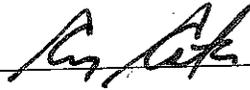
SECTION 8. EFFECTIVE DATE. This ordinance shall take effect immediately upon its final passage and adoption.

Read and passed on first reading at a regular meeting of the City Commission held on the 6<sup>th</sup> day of August, 2013.

Read and passed on final reading at a regular meeting held on the 20<sup>th</sup> day of August, 2013.

Authenticated by the presiding officer and Clerk of the Commission on the 20<sup>th</sup> day of August, 2013.

Filed with the Clerk on August 20, 2013.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

**EXECUTIVE SUMMARY**

**TO:** Bogdan Vitas, City Manager  
E. David Fernández, Asst. City Manager

**FROM:** Jay Gewin, Utilities Manager

**DATE:** July 23, 2013

**SUBJECT:** **Approving a Bond Ordinance to Authorize the City of Key West to Issue \$23,500,000 in Sewer System Revenue Bonds to Re-Finance Completed Sewer Projects, Including Paying Costs Relating to Loan Issuance.**

**ACTION STATEMENT:**

This bond ordinance will allow the City of Key West to authorize \$23.5 million in sewer system revenue bonds to re-finance already-completed sewer projects. This is for a bank loan to replace our existing bond that should result in an annual savings for the City of approximately \$200,000. This ordinance will also allow the City to pay the costs relating to securing the loan agreement.

**BACKGROUND:**

On September 21, 1999, the City of Key West adopted Resolution No. 99-346 which authorized the issuance of Sewer System Revenue Bonds in an amount not to exceed \$23,000,000 to finance the cost of design, permitting, acquisition, construction, and reconstruction of improvements to the sewer system. The issuance of these bonds was subject to a bond referendum held on November 2, 1999, wherein a majority of Key West voters approved the issuance of said bonds.

Pursuant to the 1999 Referendum, on February 9, 2001, the City entered into a Clean Water State Revolving Fund Construction Loan Agreement with the Florida Department of Environmental Protection for the purpose of constructing certain wastewater treatment plant improvements in an amount equal to \$5,252,639.07, which then left authority under the 1999 Referendum at \$17,747,360.93.

On June 17, 2003, the City enacted Ordinance No. 03-15, and per that *Key to the Caribbean - Average yearly temperature 77° F.*

MEMORANDUM

ordinance on July 23, 2003, the City issued its Sewer System Refunding Revenue Bonds, Series 2003 to refinance prior indebtedness, which did not require any use of authority under the 1999 Referendum since it was a refunding for savings.

Pursuant to the Original Ordinance and the 1999 Referendum, on February 14, 2012, the City issued its Sewer System Revenue Bond, Series 2012 in the aggregate principal amount of \$4,065,000 for the purpose of repaying a grant made by the Florida Department of Emergency Management which had previously paid for sewer system capital improvements, which then left authority under the 1999 Referendum at \$13,682,360.93.

The State Revolving Fund Loan is junior and subordinate in all respects to the 2003 Bonds and the 2012 Bond as to source of security.

### **PURPOSE & JUSTIFICATION:**

Current economic conditions have resulted in interest rates at a lower percentage than what the City is currently paying for our 2003 series Bonds. Therefore City Staff and our financial consultants believe it is in the best interests of the City and its sewer system customers to authorize the issuance of not exceeding \$23,500,000 Sewer System Refunding Revenue Bonds for the purpose of refunding all or a portion of the 2003 Bonds and/or the State Revolving Fund Loan for net present value savings, which will not require any use of authority under the 1999 Referendum since it would be a refunding for savings.

The 2003 Bonds allow for us to now capitalize on these low interest rates to secure a bank loan that will help lower our annual payments by approximately \$200,000. Our financial analysts with PFM believe that a bank loan rather than a bond would offer the City the lower annual payment sum.

The principal of and interest on the 2013 Bonds shall be payable solely from the Net Revenues on parity and equal status with the 2012 Bond. The State Revolving Fund Loan, if not refinanced, would be junior and subordinate in all respects to the 2013 Bonds and the 2012 Bond as to source of security.

Our financial consultants have issued a RFP for the bank loan that is consistent with City purchasing ordinances. A resolution will be forwarded to the City Commission at the August 20<sup>th</sup> meeting that will select the proposal City Staff and our consultants believe is in the best interest of the City.

### **OPTIONS:**

1. Approve the bond ordinance that will allow the City to enter into a bank loan that would lower the City's annual payments for the 2003 sewer bonds by approximately \$200,000 per year.
2. Do not approve the bond ordinance. This option is not recommended, because it is in the best financial interest of the City's sewer utility to capitalize on the

current low interest rates so that we can achieve over \$200,000 in savings on the annual payments towards our 2003 Bonds.

**FINANCIAL IMPACT:**

The annual savings in annual payments for the 2003 bonds is expected to exceed \$200,000. This figure was included in the FY 2014 budget that was presented to the City Commission. These annual savings from the bonds is a key reason why City Staff is recommending a 2% rate cut for next fiscal year.

**RECOMMENDATION:**

Staff recommends option # 1, that the City Commission approves the bond ordinance allowing the City to secure a \$23.5 million bank loan that will lower the current annual payment compared to the existing 2003 bonds.

# **CITY OF KEY WEST, FLORIDA**



## **REQUEST FOR PROPOSALS FOR**

### **SEWER SYSTEM REFUNDING REVENUE BOND SERIES 2013**

#### **TERM LOAN**

**Due Date: July 31, 2013**

**Due Time: 2:00 P.M. ET**

**REQUEST FOR PROPOSALS  
SEWER SYTEM REFUNDING REVENUE BOND, SERIES 2013  
TERM LOAN  
CITY OF KEY WEST, FLORIDA**

**I. INTRODUCTION**

**A. Objectives**

Public Financial Management, Inc. (PFM) submits this request for proposals (RFP) on behalf of The City of Key West, Florida (the "City") to identify the institution that can provide the City with a fixed rate, non-bank qualified term loan in the form of a Sewer System Refunding Revenue Bond (the "Term Loan" or "2013 Bond") at the lowest overall borrowing cost, pursuant to certain conditions as determined by the City in an amount not to exceed \$20,000,000. This debt will be a private placement and the City does not anticipate preparing any disclosure documents.

The proposed Term Loan will be used to: (1) refund the outstanding 2014-2018 Serial Bonds, 2023 Term Bond and 2026 Term Bond of the Sewer System Refunding Revenue Bonds, Series 2003 and (2) to pay the associated cost of issuance. The principal of and interest on the proposed Series 2013 Bonds will be secured by a pledge of and lien on, the Pledged Revenues, comprised of the Net Revenue derived from the Sewer System, on parity with existing and potentially future, Sewer System Bonds. The City will covenant in the resolution authorizing the Term Loan not to issue any senior debt with a lien on the Pledged Revenues that is prior to the lien of the Term Loan provided additional parity debt may be issued upon compliance with certain requirements.

**B. Proposal Instructions**

**1. Electronic Proposal**

An electronic response to this RFP must be submitted on or before 2:00 P.M. ET, July 31, 2013 to the attention of the City's Financial Advisor, PFM, via e-mail to David Moore ([moored@pfm.com](mailto:moored@pfm.com)) and Nicklas Rocca ([roccan@pfm.com](mailto:roccan@pfm.com)).

**THE CITY RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS, TO WAIVE ANY INFORMALITIES OR IRREGULARITIES IN ANY PROPOSALS RECEIVED, OR TAKE ANY OTHER ACTIONS THAT MAY BE DEEMED TO BE IN THE BEST INTEREST OF THE CITY.**

**2. Proposal Response**

Each proposal should address all pertinent areas and be specific. All conditions should be clearly stated.

Failure to disclose substantive terms, conditions and covenants may be considered cause for the proposer's proposal to be rejected by the City.

3. Questions, Additional Information

**Contact with City's personnel or consultants other than PFM, the City's Financial Advisor, regarding this Request for Proposals may be grounds for elimination from the selection process.**

**The Proposer shall examine all proposal documents and shall judge all matters relating to the adequacy of such documents. Any inquiries, suggestions or requests concerning clarification or solicitation for additional information shall be in writing to the City's Financial Advisor, PFM, via e-mail to [moored@pfm.com](mailto:moored@pfm.com) and [roccan@pfm.com](mailto:roccan@pfm.com). The City shall not be responsible for oral interpretations given by any employee or its representative.**

4. Tentative Schedule

The City will attempt to adhere to the following schedule:

July 10, 2013	RFP Issued
July 31, 2013	Electronic responses due prior to 2:00 P.M. ET
August 2, 2013	Selection of Term Loan Provider (pending Commission approval)
August 20, 2013	Award of the Term Loan by City Commission
August 22, 2013	Approximate closing on Term Loan

The City reserves the right to alter scheduled dates if necessary.

**C. Security for Term Loan**

The principal of and interest on the proposed Series 2013 Bonds will be payable solely from and secured by a pledge of the Net Revenues of the Sewer System as further described in Ordinance No. 03-15 enacted on June 17, 2003 (the "Ordinance"). The Net Revenues are pledged by the City for the equal and ratable benefit and security of the Series 2013 Bonds, the Series 2012 Bonds outstanding in the principal amount of \$4,065,000, the Series 2003 Bonds outstanding 10/1/2013 maturity in the principal amount of \$1,095,000 and any Additional Parity Obligation, each issued under the Ordinance.

**D. Structure of the Financing**

The following describes the City’s requirements in establishing the Term Loan:

1. Amount: Not to exceed \$20,000,000.
2. Final Maturity: 10/1/2024, 10/1/2025 or 10/1/2026
3. The City is considering three (3) potential amortization schedules. The original bonds amortize in 2026. The City is considering shortening the amortization to 2024 or 2025 as well, if deemed to be in the City’s best interest. Proposals should provide a rate for at least one, and preferably all three amortization options. The amortization schedules provided below are estimated and subject to change.

<b>Estimated Principal Amortization Schedule</b>			
	<b>2024 Final Maturity</b>	<b>2025 Final Maturity</b>	<b>2026 Final Maturity</b>
10/1/2013	-	-	-
10/1/2014	1,580,000	1,420,000	1,285,000
10/1/2015	1,625,000	1,465,000	1,325,000
10/1/2016	1,665,000	1,500,000	1,360,000
10/1/2017	1,700,000	1,535,000	1,390,000
10/1/2018	1,745,000	1,575,000	1,430,000
10/1/2019	1,790,000	1,620,000	1,475,000
10/1/2020	1,835,000	1,660,000	1,510,000
10/1/2021	1,885,000	1,710,000	1,560,000
10/1/2022	1,925,000	1,745,000	1,595,000
10/1/2023	1,970,000	1,790,000	1,635,000
10/1/2024	2,020,000	1,835,000	1,675,000
10/1/2025		1,885,000	1,725,000
10/1/2026			1,775,000
<b>Total</b>	<b>\$19,740,000</b>	<b>\$19,740,000</b>	<b>\$19,740,000</b>

4. **Fixed, tax-exempt rate.** The rate quoted may not exceed the maximum rate permitted under Florida Statute 215.84 applicable at the time of sale.
5. **Repayment Provisions:** Interest payments on the outstanding principal balance of the Term Loan will be calculated on a 30/360-day basis and will be paid semiannually on April 1 and October 1, of each year, beginning October 1, 2013. The principal amount of the Term Loan will be payable annually on October 1 of each year beginning October 1, 2014, through the final maturity of the Term Loan.
6. All of the covenants of Ordinance shall apply to the Note.
7. **Prepayment Options:** Please specify any prepayment parameters. The City is interested in prepayment options ahead of the scheduled amortization. In particular proposers should consider prepayment provisions at par after five (5) years and ten (10) years.

**E. Provisos**

The City reserves the right to reject proposals with terms and conditions different than those included in the Bond Resolution.

## II. EVALUATION OF PROPOSALS - CRITERIA

Proposals will be evaluated on the basis of cost and compliance with the proposed structure and terms of the Term Loan as outlined in this RFP.

### A. Proposal Format

In order to assist the City in reviewing proposals, each proposal shall be prepared utilizing the following format and headings:

1. Contact Information - State the legal name of the financial institution or firm, current principal business address, contact person, telephone and facsimile numbers.
2. Interest Rate - State the fixed rate being proposed. If the rate is not locked until closing, please provide a formula expressed as a function of the yield for a U.S. Government Treasury obligation (or other nationally recognized index) that may be independently tracked and verified.

The award of the RFP does not obligate the City to close on the Bond and there will be no penalty for locking a rate until such time as the City has adopted an Ordinance approving the issuance of the Bond.

3. Fees and Expenses - Describe in detail all fees and expenses which the City will be responsible to pay. The amounts stated in the proposal shall represent the maximum amounts payable to the proposer by the City. All fees and expenses in excess of those stated in the proposal shall be the sole responsibility of the proposer and will not be paid or reimbursed by the City. The City's Bond Counsel, Bryant Miller Olive P.A. will deliver an opinion regarding the excludability of interest from gross income for federal income tax purposes on the Term Loan.
4. Prepayment Provisions - Please outline any prepayment provisions.
5. Conditions - Provide a listing of all conditions, terms or restrictions, other than those specified in this RFP, which would be included in your commitment to provide the Term Loan. Please keep in mind when submitting proposals that the City strongly prefers an offer without capital adequacy or other interest rate adjustment language. The only interest rate adjustment provision the City will likely consider is a gross-up to preserve the after-tax yield of the Term Loan in the event of a determination of taxability by the IRS which results solely from actions of the City. If your firm's proposal contains any rate adjustment provisions please fully disclose the terms and conditions of such provision.

### III. INSTRUCTIONS TO PROPOSERS

- A. Proposers shall thoroughly examine and be familiar with the proposal specifications. Failure of any proposer to receive or examine this document shall in no way relieve any proposer of obligations pertaining to this proposal or the subsequent contract.
- B. Any changes or modifications to the proposal specifications can result in the rejection from the proposal process as not being responsive to this RFP.
- C. The responsibility for e-mailing the proposal to the City's Financial Advisor on or before the specified date and time will be solely and strictly the responsibility of the proposer. The City or its Financial Advisor will in no way be responsible for delays caused by transmission of the proposal or a delay caused by any other occurrence.
- D. The response deadline shall be strictly observed. Under no circumstances will a proposal delivered after the time specified be considered.
- E. Proposers will not be allowed to withdraw or modify their proposals for a period of ninety (90) days after the opening time and date for indexed rates.
- F. The City reserves the right to reject the proposal of any proposer who has previously failed in the proper performance of a contract or to deliver on time other contracts similar in nature, or who is not in a position to perform properly under this contract.
- G. The City reserves the right to inspect all facilities of the proposer in order to make a determination as to their capabilities.
- H. Federal, state, county and local laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the proposer will in no way be a cause for relief from responsibility.
- I. No successful proposer may assign any portion of the contractual agreement between the parties without prior written authorization by the City.
- J. Changes to the RFP may be made by and at the sole discretion of the City.
- K. Warranties - The proposer, in submission of its proposal, warrants to the City that it will comply with all applicable federal, state and local laws, regulations and orders in providing the services under the proposed documents.
- L. Collusion - The Proposer, by affixing its signature to this proposal, certifies that its proposal is made without previous understanding, agreement, or connection either with any previous firms or corporations offering a Proposal for the same items, or with the City. The Proposer also certifies that its proposal is in all respects fair, without outside control, collusion, fraud or otherwise illegal action.

- M. Discrimination: Pursuant to Section 287.134(2)(a), Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit a proposal on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- N. Each Proposer shall complete and acknowledge the enclosed Anti-Kickback Affidavit, Public Entities Crime Sworn Statement, Local Vendor Certification, Equal Benefits Affidavit, and Indemnification Requirement and shall submit the executed forms with their proposal. The City considers the failure of the Proposer to submit these forms to be a major irregularity and shall be cause of rejection of submissions.

#### **IV. OTHER INFORMATION**

- A. The City reserves the right to accept or reject any and all proposals, to waive any irregularities or informalities in any proposal and to accept or reject any items or combination of items. The award will be to the institution whose response complies with all of the requirements set forth in this RFP and whose proposal, in the sole opinion of the City, is best taking into consideration all aspects of the proposer's response.
- B. In the event that the successful proposer does not execute a contract within a timeframe acceptable to the City, the City may give notice of intent to award the proposal to the next most qualified proposer or to call for new proposals and may proceed to act accordingly.

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 response will be paid to any employee 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: \_\_\_\_\_

sworn and prescribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013

NOTARY PUBLIC, State of Florida

My commission expires:

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

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER  
OFFICIAL AUTHORIZED TO ADMINISTER OATHS,

1. This sworn statement is submitted to \_\_\_\_\_  
by \_\_\_\_\_  
(print individual's name and title)  
For \_\_\_\_\_  
(print 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):

2. 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 of 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, or material misrepresentation.

3. I understand that "conviction" as defined in Paragraph 287.133(1)(g), 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 or information after July 01, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. 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 agent who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment of 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.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statute 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.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement (indicate which statement applies).

Neither the entity submitting this sworn statement, or any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July, 1989.

\_\_\_\_\_The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 01, 1989.

\_\_\_\_\_The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 01, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH ONE (1) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR THE CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(DATE)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority

\_\_\_\_\_ who, after first being sworn by me,  
(name of individual)

affixed his/her signature in the space provided above on this

\_\_\_\_\_ day of \_\_\_\_\_, 2013

NOTARY PUBLIC

My commission expires:

**LOCAL VENDOR CERTIFICATION**  
**Pursuant to City of Key West Code of Ordinances 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.

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

Business Name \_\_\_\_\_  
Current Local Address: \_\_\_\_\_  
(P.O Box numbers may not be used to establish status)

Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

Length of time at this address \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

or has produced \_\_\_\_\_ as identification  
(type of identification)

\_\_\_\_\_  
Signature of Notary

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

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



**City Ordinance Sec. 2-799**

**Requirements for City Contractors to Provide Equal Benefits for Domestic Partners**

(a) Definitions. For purposes of this section only, the following definitions shall apply:

(1) **Benefits** means the following plan, program or policy provided or offered by a contractor to its employees as part of the employer's total compensation package: sick leave, bereavement leave, family medical leave, and health benefits.

(2) **Bid** shall mean a competitive bid procedure established by the city through the issuance of an invitation to bid, request for proposals, request for qualifications, or request for letters of interest.

(3) **Cash equivalent** means the amount of money paid to an employee with a domestic partner in lieu of providing benefits to the employee's domestic partner. The cash equivalent is equal to the employer's direct expense of providing benefits to an employee for his or her spouse.

The cash equivalents of the following benefits apply:

a. For bereavement leave, cash payment for the number of days that would be allowed as paid time off for the death of a spouse. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.

b. For health benefits, the cost to the contractor of the contractor's share of the single monthly premiums that are being paid for the domestic partner employee, to be paid on a regular basis while the domestic partner employee maintains such insurance in force for himself or herself.

c. For family medical leave, cash payment for the number of days that would be allowed as time off for an employee to care for a spouse who has a serious health condition. Cash payment would be in the form of the wages of the domestic partner employee for the number of days allowed.

(4) **Contract** means any written agreement, purchase order, standing order or similar instrument entered into pursuant to the award of a bid whereby the city is committed to expend or does expend funds in return for work, labor, professional services, consulting services, supplies, equipment, materials, construction, construction related services or any combination of the foregoing.

(5) **Contractor** means any person or persons, sole proprietorship, partnership, joint venture, corporation, or other form of doing business, that is awarded a bid and enters into a covered contract with the city, and which maintains five (5) or more full-time employees.

(6) **Covered contract** means a contract between the city and a contractor awarded subsequent to the date when this section becomes effective valued at over twenty thousand dollars (\$20,000).

(7) **Domestic partner** shall mean any two adults of the same or different sex, who have registered as domestic partners with a governmental body pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least

one of the domestic partners. A contractor may institute an internal registry to allow for the provision of equal benefits to employees with domestic partner who do not register their partnerships pursuant to a governmental body authorizing such registration, or who are located in a jurisdiction where no such governmental domestic partnership registry exists. A contractor that institutes such registry shall not impose criteria for registration that are more stringent than those required for domestic partnership registration by the City of Key West pursuant to Chapter 38, Article V of the Key West Code of Ordinances.

(8) **Equal benefits** mean the equality of benefits between employees with spouses and employees with domestic partners, and/or between spouses of employees and domestic partners of employees.

(b) Equal benefits requirements.

(1) Except where otherwise exempt or prohibited by law, a Contractor awarded a covered contract pursuant to a bid process shall provide benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses.

(2) All bid requests for covered contracts which are issued on or after the effective date of this section shall include the requirement to provide equal benefits in the procurement specifications in accordance with this section.

(3) The city shall not enter into any covered contract unless the contractor certifies that such contractor does not discriminate in the provision of benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees.

(4) Such certification shall be in writing and shall be signed by an authorized officer of the contractor and delivered, along with a description of the contractor's employee benefits plan, to the city's procurement director prior to entering into such covered contract.

(5) The city manager or his/her designee shall reject a contractor's certification of compliance if he/she determines that such contractor discriminates in the provision of benefits or if the city manager or designee determines that the certification was created, or is being used for the purpose of evading the requirements of this section.

(6) The contractor shall provide the city manager or his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this section, and upon request shall provide evidence that the contractor is in compliance with the provisions of this section upon each new bid, contract renewal, or when the city manager has received a complaint or has reason to believe the contractor may not be in compliance with the provisions of this section. This shall include but not be limited to providing the city manager or his/her designee with certified copies of all of the contractor's records pertaining to its benefits policies and its employment policies and practices.

(7) The contractor may not set up or use its contracting entity for the purpose of evading the requirements imposed by this section.

(c) Mandatory contract provisions pertaining to equal benefits. Unless otherwise exempt, every covered contract shall contain language that obligates the contractor to comply with the applicable provisions of this section. The language shall include provisions for the following:

(1) During the performance of the covered contract, the contractor certifies and represents that it will comply with this section.

(2) The failure of the contractor to comply with this section will be deemed to be a material breach of the covered contract.

(3) If the contractor fails to comply with this section, the city may terminate the covered contract and all monies due or to become due under the covered contract may be retained by the city. The city may also pursue any and all other remedies at law or in equity for any breach.

(4) If the city manager or his designee determines that a contractor has set up or used its contracting entity for the purpose of evading the requirements of this section, the city may terminate the covered contract.

(d) Enforcement. If the contractor fails to comply with the provisions of this section:

(1) The failure to comply may be deemed to be a material breach of the covered contract;  
or

(2) The city may terminate the covered contract; or

(3) Monies due or to become due under the covered contract may be retained by the city until compliance is achieved; or

(4) The city may also pursue any and all other remedies at law or in equity for any breach;

(5) Failure to comply with this section may also subject contractor to the procedures set forth in Division 5 of this article, entitled "Debarment of contractors from city work."

(e) Exceptions and waivers.

The provisions of this section shall not apply where:

(1) The contractor does not provide benefits to employees' spouses.

(2) The contractor is a religious organization, association, society or any non-profit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

(3) The contractor is a governmental entity.

(4) The sale or lease of city property.

(5) The provision of this section would violate grant requirement, the laws, rules or regulations of federal or state law (for example, The acquisition services procured pursuant to Chapter 287.055, Florida Statutes known as the "Consultants' Competitive Negotiation Act").

(6) Provided that the contractor does not discriminate in the provision of benefits, a contractor may also comply with this section by providing an employee with the cash equivalent of such benefits, if the city manager or his/her designee determines that either:

a. The contractor has made a reasonable yet unsuccessful effort to provide equal benefits. The contractor shall provide the city manager or his/her designee with sufficient proof of such inability to provide such benefit or benefits which shall include the measures taken to provide such benefits or benefits and the cash equivalent proposed, along with its certificate of compliance, as is required under this section.

(7) The city commission waives compliance of this section in the best interest of the city, including but not limited to the following circumstances:

- a. The covered contract is necessary to respond to an emergency.
- b. Where only one bid response is received.
- c. Where more than one bid response is received, but the bids demonstrate that none of the bidders can comply with the requirements of this section.

City's authority to cancel contract. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity prequalification, or otherwise deny a person or entity city business.

(f) Timing of application. This section shall be applicable only to covered contracts awarded pursuant to bids which are after the date when this section becomes effective.

## INDEMNIFICATION REQUIREMENT

### Indemnification

To the fullest extent permitted by law, the INDIVIDUAL/FIRM expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents, and employees (herein called the "indemnitees") from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the INDIVIDUAL/FIRM, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claims by indemnitees for indemnification shall be limited to the amount of INDIVIDUAL/FIRM's insurance or \$1 million per occurrence, whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any.

The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the INDIVIDUAL/FIRM under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the INDIVIDUAL/FIRM or of any third party to whom INDIVIDUAL/FIRM may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the work.

**CITY OF KEY WEST**  
**Sewer System Refunding Revenue Bonds, Series 2013**

**DISTRIBUTION LIST**

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