

RESOLUTION NO. 10-294

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, EXERCISING THE TWO-YEAR RENEWAL OPTION CONTAINED IN THE CONTRACT FOR GENERAL AND UTILITY ENGINEERING SERVICES WITH PEREZ ENGINEERING AND DEVELOPMENT, INC., ORIGINALLY APPROVED IN RESOLUTION NO. 07-332; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 07-332, the City Commission approved a three-year contract with a two-year renewal option with Perez Engineering and Development, Inc. in accordance with RFQ 06-007; and

WHEREAS, the City Commission, having considered staff recommendations, has chosen to renew the contract, for the two year extension period.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the contract is hereby extended for two years, pursuant to the contract documents approved in Resolution No. 07-332;

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 5th day of October, 2010.

Authenticated by the presiding officer and Clerk of the Commission on October 5, 2010.

Filed with the Clerk October 6, 2010.



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

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EXECUTIVE SUMMARY

TO: Jim Scholl, City Manager
E. David Fernandez, Asst. City Manager – Operations
Mark Finigan, Asst. City Manager - Administration

FROM: Jay Gewin, Utilities Manager

DATE: August 20, 2010

RE: **Approval of a 2-Year Extension to the City's Contract for General and Utility Engineering Services with Perez Engineering and Development**

ACTION STATEMENT:

This resolution will approve a 2-Year Extension as stipulated within the City's contract with Perez Engineering and Development to provide general and utility engineering services.

BACKGROUND:

The City has need of engineering firms of many different disciplines to help design, permit, repair, analyze, and construct facilities of all types. These firms help staff prepare numerous types of projects including stormwater design, underground utilities, facilities design, dock/pier design and maintenance, sewer facilities design/upgrades, construction management and inspection, informational studies, etc.

As the City has multiple departments that manage projects of all sizes and disciplines simultaneously, the City typically contracts with multiple engineering firms to handle the workload. For instance historically, the General Services Department can keep two large engineering firms busy with design just to meet that department's project needs.

In 2007, the City issued a request for qualifications for engineering services. Staff ranked the submittals at a publicly-advertised meeting, and the City Commission approved staff's ranking of the top six firms. Contracts were then negotiated with these firms for a three-year term with one additional two-year option to extend the contract. The City Commission approved its contract with Perez Engineering on September 19, 2007 (Resolution 07-332).

Key to the Caribbean - Average yearly temperature 77° F.

PURPOSE AND JUSTIFICATION

The City has been satisfied with the services it has received from Perez Engineering and Development. They are very accessible and responsive to staff, with an office conveniently located on Kennedy Dr. in Key West. The firm has successfully completed numerous task orders from the City, including the design of stormwater gravity wells, permitting work for the WWTP and related infrastructure, the design of street and sidewalk projects, and project management for numerous projects including the stormwater mitigation flow improvement project. They are currently assisting with several ongoing projects including project management for the stormwater gravity well and pump-assisted well projects, the United St. Mill and Pave project, and the Diffused Aeration project.

At its September 21st City Commission meeting, the City Commission directed staff to request that the consultant lower its rates for the contract extension period. In response, Perez Engineering has proposed to decrease its rates for all disciplines/positions (see Attachment A for the revised rates). These rates will remain in effect for the entire term of the two-year extension.

City Staff has analyzed the consultant hourly wages established in this contract, and finds them to be acceptable and comparable to other engineering firms.

OPTIONS / ADVANTAGES / DISADVANTAGES:

1. The City Commission can decline extending the contract with Perez Engineering and Development. This option is not recommended by staff. Utilizing consulting contracts with various firms has been one of the key ingredients in the City's ability to manage projects simultaneously, and benefit from a level of expertise that is not available within City staff. Without the assistance of engineering consultants, it would be tremendously difficult for the City to meet its capital improvement schedule. The City is satisfied with the performance and responsiveness of Perez Engineering and Development.
2. The City can go out for RFQ for engineering services. This option is not recommended due to Staff's satisfaction with the terms of the existing contracts. The City would plan on going to RFQ in two years once this 2-year extension expires.
3. The City Commission can approve this 2-year contract extension with Perez Engineering and Development. Retaining Perez Engineering under contract will enable the City to proceed with its capital improvement schedule and will utilize a tremendous amount of expertise this firm has in engineering, sewer, stormwater, solid waste/landfills, and marine/port work. It will also allow the City to continue the use of a contract whose terms are acceptable to Staff.

FINANCIAL IMPACT:

There is no direct cost related to extending this contract. However, the cost of services for any particular project will be established through a task order. As per the City's purchasing code, any task order exceeding \$20,000 will be brought to the City Commission for approval.

RECOMMENDATION:

Staff recommends that the City Commission select option 3, the approval of a 2-year contract extension with Perez Engineering and Development.

ATTACHMENT A

Fee Schedule - 2010

Discipline/Position	Registration	Rate	Reduced Rate
Principal	P.E.	\$170/hr	\$150/hr
Senior Engineer	P.E.	\$135/hr	\$110/hr
Project Engineer	P.E.	\$115/hr	\$100/hr
Design Engineer	E.I.	\$90/hr	\$80/hr
Construction Manager		\$85/hr	\$75/hr
CAD Designer	None	\$80/hr	\$70/hr
Clerical	None	\$50/hr	\$35/hr

The depicted rate ranges for each classification include all salaries, overheads, and profit, but do not include allowances for Reimbursable Expenses. These rates are subject to fiscal year adjustments.

Discipline Descriptions

Principal – An officer of the company responsible for contractual obligations who manages the overall work performed.

Senior Engineer – In responsible charge of subordinate professional staff and performs work related to planning, design, and construction projects. Manages and coordinates projects with clients and other Agencies.

Project Engineer – Performs assignments as part of a work team in planning, organizing and developing projects. Usually requires a 4 year degree plus relevant experience. Typically reports to the Senior Engineer and may supervise other project professionals or technicians.

Design Engineer – Performs tasks such as initial drawings, preliminary research, or plan modifications. Assists with the completion of Agency permit applications. Usually requires a 4 year degree plus 1-3 years of relevant experience.

CAD Designer – Uses computer aided software to prepare drawings and designs that meet engineering specifications. Analyzes design in order to complete drawings. Usually requires a 2 year degree plus some relevant experience.

Construction Manager – Coordinates with the client, contractors, and other agencies throughout the construction phase of projects. Evaluates requests for information, requests for work changes, and reviews pay applications. Provides limited construction inspections to make the sure the work is being performed per the contract documents.

Clerical – Provides administrative support and general office support services.



PEREZ ENGINEERING
& DEVELOPMENT, INC

July 7, 2010

Mr. Jay Gewin
City of Key West
Utilities Director
525 Angela Street
Key West, Fl 33040

**RE: General and Utility Engineering Consultant
Request for Contract Extension**

Dear Jay:

On September 18, 2007, resolution No. 07-332 was approved at a regular City Commission meeting. This resolution approved a 3-year engineering services agreement between the City and Perez Engineering & Development, Inc. (PE&D).

At this time, we are asking the City to utilize their option of extending the contract for an additional two (2) years. We believe our work performance over the past three (3) years as well as our current involvement in ongoing projects warrant this request.

If you have any questions or need additional information, please feel free to contact us.

Sincerely,

Allen E. Perez, P.E.
President

ATTACHMENT A

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Discipline Descriptions

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CAD Designer – Uses computer aided software to prepare drawings and designs that meet engineering specifications. Analyzes design in order to complete drawings. Usually requires a 2 year degree plus some relevant experience.

Construction Manager – Coordinates with the client, contractors, and other agencies throughout the construction phase of projects. Evaluates requests for information, requests for work changes, and reviews pay applications. Provides limited construction inspections to make the sure the work is being performed per the contract documents.

Clerical – Provides administrative support and general office support services.

RESOLUTION NO. 07-332

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED CONTRACT BETWEEN THE CITY AND PEREZ ENGINEERING AND DEVELOPMENT, INC. FOR GENERAL AND UTILITY ENGINEERING SERVICES; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 07-254, the City Commission selected six firms in response to RFQ No. 06-007, and authorized the City Manager to negotiate contracts with each firm, to be used on a task order basis, for general and utility engineering services; and

WHEREAS, contract negotiations between the City and Perez Engineering and Development, Inc., one of selected firms, have been completed;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached contract between the City and Perez Engineering and Development, Inc. for general and utility engineering consulting services is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 18 day of September, 2007.

Authenticated by the presiding officer and Clerk of the Commission on September 19, 2007.

Filed with the Clerk September 19, 2007.


MORGAN MCPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

EXECUTIVE SUMMARY

TO: Jim Scholl, City Manager

FROM: R.B. Havens, Manager Public Works
Joe April, Director Engineering Services
Doug Bradshaw, Port Operations Project Manager
E. David Fernandez, Director General Services



DATE: September 6, 2007

RE: Approval of General Engineering and Utility Engineering Services Contracts with Chen and Associates, CH2M Hill, CDM Inc., and Perez Engineering and Development, Inc.

ACTION STATEMENT:

Resolution approving the 3-year (with one 2-year option) General Engineering and Utility Engineering Services Contracts with Chen and Associates, CH2M Hill, CDM, Inc., and Perez Engineering and Development, Inc.

STRATEGIC PLAN:

The improvement and maintenance of City infrastructure is critical to meeting the current and future needs of the citizens of Key West. Having enough engineering resources for all the City departments that have current and future projects planned assures smooth design, permitting and construction of multiple projects simultaneously.

BACKGROUND:

The City has need of engineering firms of many different disciplines to help design, permit, repair and construct facilities of all types. These firms help staff prepare all kinds of projects like stormwater design, underground utilities, facilities design, dock/pier design, sewer facilities design/upgrades etc.

As the City has multiple departments that manage projects of all sizes and disciplines simultaneously, the City typically contracts with multiple engineering firms to handle the workload. Historically, the General Services Department (formally the Utilities Department) can keep two large engineering firms busy with design just to meet that department's project needs.

The six firms that the City had contracted with in 2002 have now expired and the hiring of new companies is necessary to continue smooth and efficient infrastructure projects. The City advertised RFQ#06-007 General and Utilities Engineering Services Consultants and received eleven proposals. The engineering disciplines requested in the RFQ were; Government Buildings and Facilities, Solid Waste Facilities, Sewer Facilities, Storm Water Facilities, Coastal Facilities and Environmental Engineering Services.

The City staff senior project managers met on Friday June 29, 2007 at a publicly advertised meeting to discuss the qualifications and ranking of the proposers. Staff considered the

proposal companies resources, management team resumes and experience, Proposers relevant project experience, phone references from former or current clients, current financial condition and other factors to complete the ranking.

Staff selected six firms that were forwarded to the City Commission for approval of continuing engineering services contracts. The contracts would be good for three years with a two year option. Staff has selected three large firms with the ability to handle multiple disciplines for large projects and three smaller firms that specialize in one or two disciplines that are needed for smaller projects. The City Commission approved this ranking at its July 17, 2007 meeting (Resolution # 07-254)

The six firms selected in the order of their ranking by staff are:

- Chen and Associates Consulting Engineers Inc.
- CH2MHill Inc.
- Camp Dresser & McKee Inc. (CDM Inc.)
- Perez Engineering & Development Inc.
- Hans Wilson & Associates Inc.
- G.M. Selby Inc.

Staff has completed contract negotiations with four of these firms; Chen & Assoc., CH2M Hill, CDM Inc., and Perez Engineering. The contracts for Hans Wilson & Associates and GM Selby, Inc. will appear as a resolution on a future City Commission agenda.

OPTIONS / ADVANTAGES / DISADVANTAGES:

Do Not Approve the Resolution. This option is not recommended by staff. Continuing engineering contracts with multiple firms has been one of the key ingredients in the City's ability to complete multiple large and small projects simultaneously. Having several firms on contract assures all the project managers that plenty of qualified engineering resources are available regardless of project size or scope, without having to advertise a separate RFQ for every individual project. This makes project management much more efficient for the City saving much time, resources and money.

Approval of the Resolution. This option is recommended by staff. Having the engineering resources that each department needs is the most crucial component of successful project management. Having these four firms under contract will assure that the City has engineering resources for multiple disciplines when needed for any size project.

FINANCIAL IMPACT:

Although there is no direct cost related to contracting the firms, having multiple firms under contract has helped the City facilitate grant awards and meeting grant deadlines. No tasks or minimum amount of work will have to be assigned under the contracts. The cost of services for any particular project will be based on the amount of effort to complete the task assigned and the contract Per Diem Rates.

RECOMMENDATION:

Staff recommends the approval of the Resolution.

CONSULTANT AGREEMENT

**CITY OF KEY WEST
GENERAL ENGINEERING AND UTILITIES ENGINEERING SERVICES CONSULTANT**

THIS AGREEMENT, made and entered into the 2nd day of October 2007, by and between **City of Key West** at 525 Angela Street, Key West, Fl. 33040, (hereinafter called "CITY"), and Perez Engineering & Development, Inc., a Florida Corporation, with offices at 1010 Kennedy Drive, Suite 400, Key West, Fl 33040,(hereinafter called "CONSULTANTS").

W I T N E S S E T H:

WHEREAS, the CITY wishes to engage CONSULTANTS to provide certain engineering and related work and services as set forth by Paragraph 1, DESCRIPTION OF WORK AND SERVICES; and

WHEREAS, the CONSULTANTS represent that they have the expertise to provide such work and services:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed that CONSULTANTS are hereby employed, authorized, and instructed by the CITY to perform in accordance with the following covenants and conditions, which both CONSULTANTS and the CITY have agreed upon:

ARTICLE 1. DESCRIPTION OF WORK AND SERVICES:

- A. The specific services to be provided by the CONSULTANTS and the compensation for such services will be as mutually agreed to in separate Task Orders. Each Task Order when fully executed shall become a supplement to and a part of this agreement.
- B. The work and services involved shall include review of pertinent data, studies and plans which the CITY has in its possession and agrees to provide for CONSULTANTS.
- C. The CONSULTANTS agree to furnish planning services for the capital improvements and modifications for the CITY'S wastewater collection system, and stormwater system.
- D. The CONSULTANTS agree to furnish comprehensive permitting assistance relating to operations, construction improvements, rehabilitation and effluent disposal of wastewater as well as stormwater.
- E. The CONSULTANTS shall provide assistance in preparing contract specifications and obtaining bids from qualified general contractors for capital improvements, repairs and replacement projects.
- F. The CONSULTANTS shall provide construction administration and resident project representation for capital improvements, repairs and replacement projects.

ARTICLE II. MANNER OF PERFORMANCE:

- A. Each major task or project the CITY wishes the CONSULTANTS to complete will be defined in a Task Order.

- B. Each Task Order shall include, but not limited to, a description of the scope of services, time of completion, total estimated costs of services, and method of compensation.
- C. All work shall be performed in a neat and workmanlike manner consistent with that degree of care and standards ordinarily exercised by members of the same profession currently practicing under similar circumstances and shall be in accordance with the detailed plans, drawings, and specifications prepared or approved by the CITY.
- D. Should any work and/or services be required which are not specified in this Agreement or any addenda, but which is nevertheless necessary for the proper completion of the job, such work or services shall be performed as fully as if described and delineated herein, but CONSULTANTS shall first obtain permission from the CITY before starting such work and the CITY shall provide payment for such additional work and/or services at the CITY'S expense in accordance with Paragraph III of this Agreement.
- E. The CITY may request CONSULTANTS to make additions, deletions and changes in the work or services by written notice in accordance with the procedures hereinafter set forth. Such shall be at the CITY'S expense and shall not be binding until agreed upon by the parties.
- F. The CONSULTANTS agree that the CITY shall not be liable for payment for any work or services unless the CITY, through an authorized representative of the CITY, provides written authorization to the CONSULTANTS to perform said work.
- G. The CITY understands that opinions rendered by the CONSULTANTS are opinions only and that Federal, State and Local governmental regulations may change, substantially affecting these opinions. The CITY agrees that any services rendered by the CONSULTANTS, in addition to services required herein, resulting from future changes to governmental regulations not contemplated at the time of this Agreement, shall be at the CITY's expense.

ARTICLE III. COMPENSATION:

- A. As compensation for CONSULTANTS' services, the CITY agrees to pay CONSULTANTS as defined in each Task Order. The types of compensation methods which shall be used to pay for the CONSULTANTS' services are limited to the following.
 - 1. The CITY shall pay CONSULTANTS a **Lump Sum** amount which includes compensation for all the CONSULTANTS' salaries, general overhead costs, direct expenses, and profit. The **Lump Sum** is based on immediate authorization to proceed and timely completion of the Task Order. If the Task Order timing deviates from the assumed schedule for causes beyond the CONSULTANTS'S control, the CONSULTANT and/or the CITY reserves the right to request renegotiation of those portions of the **Lump Sum** affected by the time change. In the event of a change in scope, an appropriate decrease or increase in compensation will be authorized in writing. The amount of each monthly accounting shall be determined on the "percentage of completion method" whereby the CONSULTANTS will estimate the percentage of the total work accomplished during the applicable period. Payment of said fee shall be due and payable monthly within Thirty (30) days of invoice.
 - 2. The CITY shall pay the CONSULTANTS on an **Hourly Basis** in accordance with the Fee Schedule Summary as further described in **Attachment "A"**. The depicted rate ranges for

each classification include all salaries, overheads, and profit, but do not include allowances for Reimbursable Expenses. Specific rates for each classification will be established for each task order. Reimbursable Expenses such as printing and reproduction costs, photos, postage, fax charges, long distance phone service, travel, lodging, printing charges and the like are to be invoiced at the actual cost of expenditures incurred by the Consultants.

- B. Additional work and services requested in writing by the CITY to be performed on an hourly basis shall be compensated to consultant in accordance with the rates presented in **Attachment "A"** Fee Schedule Summary, attached hereto and made a part hereof.
- C. The CONSULTANTS shall maintain records conforming to usual accounting practices. The CONSULTANTS further agree to render accountings to the CITY, in writing, setting forth necessary and required information as mutually agreed upon. However, there will be no financial Audit of Consultants fixed rates, unit rates, or lump sum values hereunder. All accountings are due and payable within thirty (30) days of the date of invoice.

ARTICLE IV. SCHEDULE:

The work and services set forth in this Agreement shall be completed in accordance with the schedule as defined in each Task Order.

ARTICLE V. OWNERSHIP OF INSTRUMENTS OF SERVICE:

- A. The CITY acknowledges that the CONSULTANTS' construction documents, including electronic files, are instruments of professional service. Nevertheless, the final documents prepared under this Agreement shall become the property of the CITY upon completion of the services and payment in full of all monies due to the CONSULTANTS. The CITY shall not reuse or make any modification to the construction documents without the prior written authorization of the CONSULTANTS. The CITY agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, it's officers, directors, employees and subconsultants against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the CITY or any person or entity that acquires or obtains the construction documents from or through the CITY without the written authorization of the CONSULTANTS.
- B. In the event that the CITY receives from CONSULTANTS work product in a computer generated form such as e-mail, CD, or Diskette; the CITY shall not be entitled to rely on the work product contained therein and CONSULTANTS shall not be responsible for the work product contained therein, it being understood by all parties hereto that computer ready documents are capable of being easily altered and are often not CONSULTANTS' final work product. Accordingly, the parties hereto agree that the documents for which CONSULTANTS shall be responsible for the preparation and completion of shall be limited to record drawings and sealed documents constituting CONSULTANTS' finished work product. Any use by the CITY of computer generated or comparable items shall be at the CITY'S sole risk.
- C. The CONSULTANTS agree that the CITY is not required in its project activities to use any plan, report, drawing, advice, map, document, or study prepared by CONSULTANTS. Further, CONSULTANTS agree that the CITY in its sole discretion, may utilize the aforesaid, or any part thereof, in any modified or amended form and CONSULTANTS waive any right of redress against

CITY arising out of such use, however, any modification or amendment to any of CONSULTANTS' work by the CITY shall release CONSULTANTS from any and all liability in connection with such work thereafter and the CITY shall not use CONSULTANTS' name thereon.

ARTICLE VI. INDEMNIFICATION:

- A. The CONSULTANTS shall promptly notify the CITY of all damage to property of the CITY or others and of injuries sustained by any persons including employees of the CONSULTANTS, in any manner relating directly or indirectly to the work within the scope of this Agreement.
- B. The CONSULTANTS agree to and do hereby indemnify and save the CITY harmless from and against any and all losses, damage, claims, actions, liability, attorney's fees, and expense in contract or in tort, in connection with loss of life, bodily injury and/or property damage occurring on or about or arising out of those portions of the work under CONSULTANTS' control or wherever arising by the negligence of CONSULTANTS, or by them or their agents, servants, employees, or materialmen, should the same arise during the negligent performance of the work.
- C. Notwithstanding anything to the contrary herein contained, each party hereby waives all claims for recovery from the other party for any loss or damage to its property caused by fire or other insured casualty. This waiver shall apply, however, only where the insurance covering the loss or damage will not be prejudiced by reason of such waiver.

ARTICLE VII. INSURANCE:

- A. The CONSULTANTS shall secure and maintain in effect at all times, at their expense, insurance of the following kinds and limits to cover all locations of the CONSULTANTS' operations in connection with work on the PROJECT:
 - 1. Worker's Compensation and Employer's Liability as required by the State.
 - 2. Professional Liability Insurance for all facets of CONSULTANTS' operations and work, including errors, omission and negligent acts covering this Agreement with minimum limits of \$1,000,000 liability per claim and \$1,000,000 errors and omissions. The CITY agrees to limit the CONSULTANT'S aggregate liability to the CITY, and to all construction Contractors and Subcontractors on the project, due to the CONSULTANT'S negligent acts, errors or omissions, such that the total aggregate liability of the CONSULTANT to all those named shall not exceed \$1,000,000 or the CONSULTANT'S total fee for services rendered on this project, whichever is greater.

ARTICLE VIII. COMPLIANCE WITH GOVERNMENTAL REGULATIONS:

The parties shall keep, observe and perform requirements of applicable Federal, State and Local laws, rules, regulations or ordinances. This agreement is based on the rules, laws, ordinances and regulations in effect as of the date of this agreement, changes in governmental regulations materially affecting the work required for this project or causing the work to be changed prior to completion of the project shall entitle CONSULTANTS to additional compensation for the additional work.

ARTICLE VIX. LIENS AND CLAIMS:

The CONSULTANTS shall promptly and properly pay for all labor employed, materials purchased and equipment hired by them in connection with the work, shall keep the CITY'S property free from any materialman's or mechanics' liens and claims or notices in respect thereto arising by reason of the CONSULTANTS' work and shall discharge the same. In the event that the CONSULTANTS do not pay or satisfy such claim or lien within ten (10) business days after the filing of notice thereof, the CITY, in addition to any and all other remedies, may forthwith terminate this Agreement, effective immediately.

ARTICLE X. COPYRIGHTS, ROYALTIES, PATENTS, ETC.

The CITY shall pay for all copyrights, royalties and license fees as may be specifically required for the project. The CITY shall defend all suits or claims for infringement of any licenses, copyrights or patent rights, and shall save the CONSULTANTS harmless from loss on account thereof.

ARTICLE XI. DEFAULT:

- A. The occurrence of any of the following, by either party, shall constitute an event of default hereunder:
 - 1. The filing of a petition by or against or for adjudication as a bankrupt or insolvent, or for reorganization, for the appointment of a receiver or trustee of the property.
 - 2. An assignment for the benefit of creditors.
 - 3. The taking of possession of the property by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the business.
 - 4. Non-payment of compensations for CONSULTANTS' services.
 - 5. The taking or possession of the property by any creditor of CITY pursuant to an action for foreclosure of a mortgage, mechanics lien or similar action or pursuant to a conveyance by the CITY.
- B. Upon the occurrence of any of the foregoing, or if either party shall fail to discharge and perform the obligations under this Agreement after having received five (5) days written notice from the non-defaulting party of its failure to perform, the non-defaulting party shall have the right, without prejudice to any right or remedy afforded by law or equity, to terminate their performance of the Agreement.
- C. If the defaulting party is the CONSULTANTS and the CITY elects to terminate the Agreement, the CONSULTANTS shall remove themselves from the premises and turn over to the CITY as the CITY'S property, all materials, reports, maps, documents, plans, and other written documents prepared by the CONSULTANTS incident to their work under this PROJECT upon payment in full by the CITY of all amounts due and owing to the CONSULTANTS.
- D. If default shall occur for non-payment of CONSULTANTS' services, the CONSULTANTS retain the right to hold in their possession instruments of service performed under this Agreement until default in payment is corrected.

ARTICLE XII. WARRANTIES AND CONFLICT OF INTEREST:

The CONSULTANTS represent and warrant that they have every legal right to enter into this Agreement and the CONSULTANTS will not be restricted in providing the performance hereunder by any prior commitments. The CONSULTANTS hereby warrant that there is no conflict of interest in CONSULTANTS present employment, if any, with the activities to be performed hereunder and shall advise the CITY if a conflict of interest arises in the future.

The CONSULTANTS warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANTS to solicit or secure this agreement and that they have not paid or agree to pay any person, company, corporations, individual, or firm, other than a bona fide employee working solely for the CONSULTANTS any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

The CITY understands that estimates of probable construction costs by CONSULTANTS cannot be guaranteed and that such estimates are not to be construed as a promise to design facilities within a cost limitation.

ARTICLE XIII. SUCCESSORS:

This Agreement shall inure to the benefit of and be binding upon the heirs, executor, administrators, successors and assigns of the parties hereto, except as expressly limited herein.

ARTICLE XIV. PERMITS AND LICENSES:

All permits and licenses required by any governmental agency shall be paid for and executed by the CITY.

ARTICLE XV. ASSIGNMENT:

This Agreement and the services hereunder are non-assignable by CONSULTANTS unless the CITY has given written consent. This Agreement and the obligations hereunder shall not be assigned by the CITY unless CONSULTANT has given written consent to such assignment. Any attempted assignment without such written consent shall be void.

ARTICLE XVI. INDEPENDENT CONTRACTOR:

In all matters relating to this Agreement, the CONSULTANTS shall be acting as an independent contractor. Neither the CONSULTANTS nor employees of the CONSULTANTS, if any, are employees of the CITY under the meaning or application of any Federal or State Unemployment or Insurance laws or Old Age laws, or otherwise. The CONSULTANTS agree to assume all liabilities or obligations imposed by any one or more of such laws with respect to employees of the CONSULTANTS, if any, in the performance of this Agreement. The CONSULTANTS shall not have any authority to assume or create any obligation, express or implied, on behalf of the CITY and the CONSULTANTS shall have no authority to represent as agent, employee, or in any other capacity than as herein before set forth.

ARTICLE XVII. HEADINGS:

The headings used in this Agreement are for reference only and shall not be relied upon nor used in the interpretation of same.

ARTICLE XVIII. INTERPRETATION:

- A. If the CONSULTANTS be a partnership or corporation, all words in this Agreement referring to the CONSULTANTS shall be read as though written in the plural or in the neuter gender, as the case may be.
- B. This agreement and all of the terms and provisions shall be interpreted and construed according to the law of the State of Florida. Should any clause, paragraph, or other part of this Agreement be held or declared to be void or illegal, for any reason, by any Court having competent jurisdiction, all other clauses, paragraphs or parts of this Agreement shall, nevertheless, remain in full force and effect.
- C. This Agreement between the parties shall be deemed to include this Agreement and any addendum thereto pertaining hereto as may be executed by the parties. The CITY shall not be bound by any supplement hereto unless an executive officer or such other authorized representative of the CITY signs it. The CONSULTANTS shall not be bound by a supplement hereto unless an officer of the CONSULTANTS signs it.
- D. Venue of any action arising under this Agreement shall be laid solely in Monroe County, Florida.

ARTICLE XIX. MISCELLANEOUS:

- A. Records: All records relating to the work performed and reimbursable expenses incurred, including reports of accounts, shall be maintained by CONSULTANTS on generally accepted accounting principles and shall be available to the CITY or its authorized representative at all reasonable times throughout the term of this Agreement.
- B. Litigation: It is understood that the fixed sum payment amount set forth in Paragraph III does not include compensation to CONSULTANTS for assisting the CITY in litigation in which the CITY may be involved. If the CITY desires assistance from the CONSULTANTS in litigation, the parties shall agree in writing on the compensation.

ARTICLE XX. NOTICE:

Any notice provided by this Agreement to be served in writing upon either of the parties shall be deemed sufficient if delivered to an authorized representative of either of the parties, or if mailed by registered or certified mail, return receipt requested, to the address of the party above written or to such other addresses as the parties hereto may designate in writing. Such notice shall be effective from the date the same is deposited in the mails, registered or certified mail, return receipt requested, first class postage prepaid and addressed, whether or not received.

ARTICLE XXI. TERMINATION:

- A. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party, providing that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

- B. This Agreement may be terminated in whole or in part in writing by the CITY for its convenience, provided that the other part is afforded the same notice and consultation opportunity specified in A above. If the CITY effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed for which profit has not already been included in an invoice.
- C. If termination for default is effected by the CITY, an equitable adjustment in the price for this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONSULTANTS at the time of termination may be adjusted to cover any additional costs to the CITY because of the contractor's default.
- D. For any termination, the equitable adjustment shall provide for payment to the CONSULTANTS for services rendered and expenses in addition to termination settlement costs reasonably incurred by the CONSULTANTS relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate.
- E. Upon receipt of a termination action under paragraphs (A) or (B) above, the CONSULTANTS shall (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to the CITY all data, drawings, reports, specifications, summaries and other such information, as may have been accumulated by the CONSULTANTS in performing this agreement, whether completed or in process.
- F. Upon termination, the CITY may take over the work and may award another party a contract to complete the work described in this agreement.
- G. If, after termination for failure of the CONSULTANTS to fulfill contractual obligations, it is determined that the CONSULTANTS had not failed to fulfill contractual obligations, their termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the agreement price shall be made as provided in paragraph (B) above.

ARTICLE XXII EXECUTIVE ORDER:

The CONSULTANTS agrees to comply with Executive Order 11246, which prohibits discrimination in employment regarding race, color, creed, national origin, handicap, religion, ancestry, sex or age, of an excerpt of such Executive Order being attached hereto and made a part hereto by reference. The CONSULTANTS further agrees to comply with the filing of any and all information and reports required by the Executive Order and by the rules, regulations, and orders of the Secretary of Labor.

ARTICLE XXIII. ENTIRE UNDERSTANDING:

This Agreement contains the entire understanding between the parties and no modification or alteration of this Agreement shall be binding unless endorsed in writing by the parties hereto.

ARTICLE XXIV. BINDING EFFECT:

This Agreement shall not be binding until executed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives on the date first above written.

CONSULTANTS:


PEREZ ENGINEERING & DEVELOPMENT, INC.

By: 

Name: ALLEN E. PEREZ

Title: PRESIDENT

City of Key West

By: 

Name: Cheryl Smith

Title: City Clerk

By: 

Name: Morgan McPherson

Title: Mayor

Approved as to Form:

ATTACHMENT A FEE SCHEDULE

END OF AGREEMENT