

RESOLUTION NO. 17-004

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "ASSIGNMENT, DELEGATION AND RELEASE AGREEMENT" TO ASSIGN A CONTRACT FOR GENERAL FINANCIAL SERVICES BETWEEN THE CITY AND BLACK AND VEATCH CORPORATION TO BLACK & VEATCH MANAGEMENT CONSULTING, LLC; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution 15-162, the City Commission awarded the bid and authorized a three-year contract between the City and Black and Veatch Corporation for financial services; and

WHEREAS, Black and Veatch consulting has transitioned from a business unit within Black and Veatch Corporation to a stand-alone entity known as Black & Veatch Management Consulting, LLC; and

WHEREAS, City staff recommends assignment of the contract with Black and Veatch Corporation to Black & Veatch Management Consulting, LLC upon terms in the attached "Assignment, Delegation and Release Agreement"; and

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

Section 1: That the attached "Assignment, Delegation and Release Agreement," to assign the City's contract with Black and

Veatch Corporation to Black & Veatch Management Consulting, LLC, is hereby approved.

Section 2: That the City Manager is authorized to execute any necessary documents, upon consent of the City Attorney.


Section 3: 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 4th day of January, 2017.

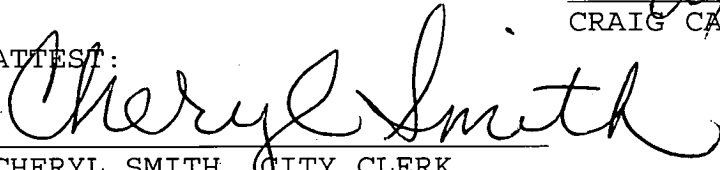
Authenticated by the Presiding Officer and Clerk of the Commission on 5th day of January, 2017.

Filed with the Clerk on January 5, 2017.

Mayor Craig Cates	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Clayton Lopez	<u>Absent</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
\_\_\_\_\_  
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

M E M O R A N D U M

**TO:** Jim Scholl, City Manager  
**Cc:** Greg Veliz, Asst. City Manager  
**FROM:** John Paul Castro, Utilities Director  
**DATE:** December 14, 2016

**SUBJECT: Amending the City's Financial Services Contract from Black and Veatch Corporation to Black and Veatch Management Consulting, LLC.**

**Action statement:**

We are requesting the Commission's permission to assign the City's Financial Services Contract approved by Resolution 15-162 from Black and Veatch Corporation to Black & Veatch Management Consulting, LLC.

**Background:**

The City maintains a financial services contract with Black & Veatch that was approved for a 3-year term in 2015. In 2016 Black & Veatch Corporation restructured its organization creating a separate entity for its management consulting division.

The entity that will be performing the financial services work will be titled Black & Veatch Management Consulting, LLC. The same people that are currently performing the work for the City will continue to perform their duties under this new organizational title.

**Purpose and Justification:**

"Black & Veatch Management Consulting was created to provide clients with a comprehensive financial, technology, and strategic consulting services within the electric, oil, and gas and water markets."

**Financial Impact:**

There is no financial impact to amending this contract to reflect the name change. The hourly rates will remain the same.

**Options:**

1. The City Commission can consent to novate the contract to reflect the name change. Doing so will allow the current level of service and contractual terms to remain.

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

- 
2. The City Commission can decline to amend the contract. This option is not recommended by Staff, as the City may not be able to utilize the engineering services that are essential in completing numerous projects. City Staff believes that Black and Veatch is one of the firms that can best manage many of our sewer and stormwater projects of the financial firms we have under contract.

**Recommendation:**

Staff recommends that the City Commission select option 1, approving to assign the engineering services contract from Black & Veatch Corporation to Black & Veatch Management Consulting, LLC.

**BLACK & VEATCH MANAGEMENT CONSULTING, LLC**  
8400 WARD PARKWAY, KANSAS CITY, MO 64114 USA  
+1 913-458-7029 | CLARKLS@BV.COM

November 29, 2016

Mr. John Paul Castro  
City of Key West, Florida  
Utilities Director  
3110 Flagler Ave  
Key West, Florida 33040

Dear Mr. Castro:

Effective January 2, 2016, Management Consulting (MC) has transitioned from a business unit within Black & Veatch Corporation to a standalone entity under Black & Veatch Holding Company. The new entity is known as Black & Veatch Management Consulting, LLC (BVMC).

BVMC was created to provide clients with comprehensive financial, technology and strategic consulting services within the electric, oil and gas and water markets. By specializing in the infrastructure market BVMC is a trusted source of integrated strategy, process and technology solutions for our clients, including investor-owned and publicly owned utilities, municipalities, financial institutions and organizations across the oil and gas value chain.

Black & Veatch has been working on this transition for more than two years and only affects our U.S. operations. Clients will continue to have access to the full complement of services available through BVMC, Black & Veatch Corporation and all companies under the Black & Veatch Holding Company.

Please let us know if you have any further questions regarding this transition.

Very truly yours,

**BLACK & VEATCH MANAGEMENT CONSULTING, LLC**

Mr. Shane Clark  
Corporate Financial Officer

**ASSIGNMENT, DELEGATION**  
**AND**  
**RELEASE AGREEMENT**

BLACK & VEATCH CORPORATION ("B&V"); BLACK & VEATCH MANAGEMENT CONSULTING, LLC ("BVMC"); and the City of Key West, a municipal corporation of the State of Florida ("City"), enter into this Assignment, Delegation and Release Agreement ("Agreement") as of March 1, 2017.

THE PARTIES AGREE TO THE FOLLOWING FACTS:

1. B&V entered into a Master Agreement to Furnish Financial Consulting Services to the City of Key West, executed by the parties thereto on July 1<sup>st</sup>, 2015 and July 10<sup>th</sup>, 2015, a copy of which is attached hereto and made a part thereof ("Contract").
2. It is the desire of the B&V and BVMC to assign the Contract as set forth herein.
3. The City is willing to accept the assignment of the Contract to BVMC.

IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT:

1. BVMC agrees to be bound by and to perform the Contract in accordance with the conditions contained in the Contract. BVMC also assumes all obligations and liabilities of, and all claims against, B&V under the Contract, as if the BVMC were the original party to the Contract.
2. BVMC ratifies all previous actions taken by B&V with respect to the Contract, with the same force and effect as if the action had been taken by BVMC.
3. The City recognizes BVMC as B&V's successor in interest in and to the Contract. BVMC, by this Agreement, becomes entitled to all rights, titles, and interests of B&V in and to the Contract, as if BVMC was the original party to the Contract. Following the effective date of this Agreement, any references to B&V in the Contract shall be deemed to refer to the BVMC.
4. Any payments and reimbursements previously made by B&V to City, and all other previous actions taken by B&V under the Contract, shall be considered to have discharged those parts of BVMC's obligations under the Contract.
5. The Contract shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

**SIGNATURE PAGE TO FOLLOW**

BLACK & VEATCH CORPORATION,  
a Delaware Corporation

By L. Shane Clark

Name L. Shane Clark

Title Associate Vice President

Legal  
Approved CGH  
Reviewed \_\_\_\_\_  
Date 3/1/17

PM  
Approved RSC  
Date 03/01/2017

BLACK & VEATCH MANAGEMENT CONSULTING, LLC  
a Kansas Corporation

By Robert E. Welch

Name Robert E. Welch

Title Vice President/COO

City of Key West,  
a municipal corporation of the State of Florida

By J.K. Scholl

Name J.K. Scholl

Title CITY MANAGER

**CITY OF KEY WEST**

**MASTER AGREEMENT TO FURNISH  
FINANCIAL CONSULTING SERVICES  
TO THE  
CITY OF KEY WEST**

**May 2015**

**Financial Consultants:  
Black and Veatch Corporation**



# Master Agreement to Furnish Financial Consulting Services to the City of Key West

This AGREEMENT made and entered into by and between the City of Key West, a municipal corporation of the State of Florida, whose address is 3126 Flagler Ave., Key West, Florida 33040, hereafter referred to as the "CITY" and Black and Veatch Corporation., a corporation authorized to do business in the State of Florida, whose address is 1300 Concord Terrace, Suite 120 Sunrise, FL 33323, hereafter referred to as the "CONSULTANT". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

## **Article 1. Scope of Services**

The CONSULTANT'S primary responsibilities include, but are not limited to, providing financial consulting assistance in the creation of stormwater, sewer, and solid waste annual rate studies. Additional work may include capital financing support, financial and compliance reporting support, marinas economic consulting operations benchmarking or other consulting services which the CONSULTANT is qualified to provide and which the CITY authorizes the CONSULTANT to undertake in connection with the CITY's present and planned activities in the areas identified below. The specific services, which the CONSULTANT agrees to furnish, are set forth as follows:

- 1.1 Provide comprehensive financial consulting services that may include preparing utility rate models, budgets, and City Commission presentation documents, capital financing support, financial and compliance reporting support, special rate determination assistance (stormwater), operations benchmarking, auditing, analyzing City expenditures and resources, and assisting the CITY with other projects where financial consulting assistance is needed.

CONSULTANT shall provide the above-mentioned Scope of Services as tasked by the CITY for the projects specifically identified in RFQ No. 15-002, RFQ submission/proposal, and any other tasks as assigned under this scope. The terms that the CONSULTANT agrees to follow are set forth as follows:

- 2.1 The specific services to be provided by the CONSULTANT and the compensation for such services will 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.
- 2.2 Unless otherwise indicated in a Task Order, execution of a Task Order by the CITY and CONSULTANT shall constitute authorization for the CONSULTANT to proceed with the services enumerated in the Task Order. Each Task Order will be supported by appropriate cost and pricing data and such other documentation as required by the CITY.
- 2.3 Task Orders shall be numbered consecutively. Each Task Order shall include a description of the scope of services, time of completion, total estimated costs of services, and method of compensation. Additional information shall be provided to the CITY if required. Amended Task Orders shall include substantially the same information and be submitted to the CITY for approval.

- 2.4 The CITY 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 will be made through an amendment to the Task Order.
- 2.5 A task order may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to CONSULTANT. No further work will be performed by CONSULTANT upon receipt of this notice unless specifically authorized by the General Services Dept. Director of the City of Key West.

On termination, the CONSULTANT will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the Task Order. The CITY will not pay for anticipatory profits.

- 2.6 The CONSULTANT will provide ADDITIONAL SERVICES mutually agreed to and authorized by the CITY in writing but not specifically described and authorized by a Task Order.

## **Article 2. Compensation**

As consideration for providing the services enumerated in Article 1 and supplemental Task Orders, the CITY shall pay the CONSULTANT fees as defined in each Task Order.

Field rates as identified in Exhibit A shall be applicable when the CONSULTANT'S employees are assigned to a field location for a continuous period exceeding 90 calendar days. Field location is defined as office space which is made available to CONSULTANT'S employees by the CITY at no cost to the CONSULTANT. Field rates shall be applied on the first day the CONSULTANT employee is assigned to a field location. Should the CONSULTANT'S employee assignment not exceed 90 continuous calendar days, CONSULTANT shall be permitted to retroactively reinvoice for the applicable field rate charges but based upon the CONSULTANT'S per diem rates.

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

- 2.1 Lump sum payment, which includes compensation for all the CONSULTANT'S salaries, general overhead costs, direct expenses, and profit.
- A. The lump sum is based on immediate authorization to proceed and timely completion of the PROJECT. If the PROJECT timing deviates from the assumed schedule for causes beyond CONSULTANT'S control, CONSULTANT and/or the CITY reserves the right to request renegotiation of those portions of the lump sum affected by the time change.
  - B. In the event of a change of scope, an appropriate decrease or increase in compensation will be authorized in writing.
  - C. Monthly Invoicing will be based on an estimate of the percent complete at the end of the preceding month.
  - D. The CONSULTANT shall submit wage rates and other actual unit costs supporting the compensation. The CONSULTANT shall submit a Truth in Negotiation Certificate stating that all data supporting the compensation is accurate, complete, and current at the time of contracting.

## 2.2 Cost Reimbursable-Per Diem (Time and Expenses)

- A. Hourly Per Diem Rates are provided in Exhibit A to this Agreement. Per Diem Rates are those hourly 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 fiscal year adjustments and shall be based on the Data Resources, Inc. (DRI) forecast of wage and price escalation. There shall be no rate increase until October 1, 2015.
- B. 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 CITY. CONSULTANT will make reasonable efforts to complete the work within the budget and will keep CITY informed of progress toward that end so that the budget or work effort can be adjusted if found necessary.
- C. CONSULTANT is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is CITY obligated to pay CONSULTANT beyond these limits.
- D. 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.
- E. The CITY shall pay for reimbursable expenses invoiced at the actual cost of expenditures incurred by the CONSULTANT. Direct expenses are those necessary costs and charges incurred for the PROJECT including, but not limited to: 1) the costs of express courier charges, mail, supplies and field equipment incurred directly for the PROJECT, printing and reproduction of drawings, documents, and other material, , and subcontracts and other outside services; and 2) CONSULTANT'S standard project charges for computing services, special health and safety requirements of OSHA and telecommunication services; and 3) the costs of travel, including the use of CONSULTANT'S vehicles, subsistence, lodging and related expenses of personnel while traveling in connection with the PROJECT in accordance with CITY policy and Florida Statute FS 112.061. Required Documentation: All requests for travel reimbursement must provide enough detail to clearly indicate the reason (s) for travel, date (s) of travel, exact time (s) of travel, and mode (s) of travel. If travel is by privately owned vehicle, exact mileage traveled with odometer readings must be submitted. All receipts for which reimbursement is requested are subject to Florida Statute rates applicable at the time of travel. CONSULTANT is obligated to minimize all expenses incurred in the execution of this AGREEMENT and subsequent Task Orders. There shall be no markup on expenses reimbursed under this agreement.
- F. All reimbursement requested must be supported by a receipt except where a receipt could not be obtained such as an unattended toll booth or parking meters. In those situations where receipts cannot be obtained, reimbursement requested must be supported by documents that show dates, parking meter numbers and locations, toll booth locations, and signature of employee. Travel, in connection with the work and for convenience of CONSULTANT (to make use of talent not located in Monroe County), shall be included in CONSULTANT'S Task Order. Travel requested by CITY'S AUTHORIZED REPRESENTATIVE and travel

associated with permitting and grants, as required by state and federal agencies, will be reimbursed in accordance with this section.

- G. Transportation by passenger vehicles supplied by CONSULTANT in connection with the work will be reimbursed in accordance with Florida Statute 112.061. Required Documentation: Mileage log stating point of departure, point of destination, and odometer reading for both.

### **Article 3. Invoicing and Payment**

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

### **Article 4. Obligations of the Consultant**

#### **4.1. General**

- A. The CONSULTANT will serve as CITY'S professional representative under this AGREEMENT, providing professional financial and related consulting advice and furnish customary services incidental thereto.

#### **4.2. Standard of Care**

- A. The standard of care applicable to CONSULTANT'S services will be the degree of skill and diligence normally employed by financial and other related consultants performing the same or similar services at the time said services are performed. The CONSULTANT will perform any services not meeting this standard without additional compensation.

#### **4.3. Opinions of Cost, Financial Considerations, and Schedules**

- A. In providing opinions of construction cost, financial analyses, economic feasibility projections, and schedules for design projects, the CONSULTANT has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the CONSULTANT makes no warranty that the CITY'S actual PROJECT costs, financial aspects, economic feasibility or schedules will not vary from the CONSULTANT'S opinions, analyses, projections, or estimates.
- B. If CITY wishes greater assurance as to any element of PROJECT cost, feasibility, or schedule, CITY will employ an independent cost estimator, contractor, or other appropriate advisor.

#### **4.4 INDIVIDUAL/FIRM Insurance Language**

**INDIVIDUAL/FIRM** is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for Workers' Compensation, Public Liability, and Property Damage Liability Insurance and such other insurance coverages as may be required by specifications and addenda thereto, in the following amounts. Notwithstanding any other provision of

the Contract, the **INDIVIDUAL/FIRM** shall provide the limits of liability insurance coverages as follows:

Auto Liability	\$1,000,000 Combined Single Limit
General Liability	\$2,000,000 Aggregate (Per Project)
	\$2,000,000 Products Aggregate
	\$1,000,000 Any One Occurrence
	\$1,000,000 Personal Injury
	\$300,000 Fire Damage/Legal
Professional Liability (if applicable)	\$1,000,000 Per Claim/Aggregate
Additional Umbrella Liability	\$2,000,000 Occurrence/Aggregate

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

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

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

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

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

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

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

The parties waive all claims for property damage, and shall require their insurers to waive subrogation rights against the other party under any applicable policy of property insurance.

4.5 Subconsultants

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

4.6 Licenses

A. The **CONSULTANT** will be required to obtain a local required license prior to performing any work for the **CITY**. This license will be a Business Tax Receipt at a cost not to exceed \$98.70.

## **Article 5. Obligations of the City**

5.1 Authorization to Proceed

A. Authorization to proceed will be considered to be given upon execution of each Task Order by the **CITY**.

5.2 City-Furnished Data

A. The **CITY** will provide to the **CONSULTANT** all data in the **CITY'S** possession relating to the **CONSULTANT'S** services on the **PROJECT** including, but not limited to, information on any pre-existing. **CONSULTANT** will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the **CITY**.

5.3 Access to Facilities and Property

A. The **CITY** will make its facilities accessible to **CONSULTANT** as required for **CONSULTANT'S** performance of its services and will provide labor and safety equipment as required by **CONSULTANT** for such access. **CITY** will be responsible for all acts of **CITY'S** personnel.

5.4 Timely Review

A. The **CITY** will examine the **CONSULTANT'S** studies, reports, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as **CITY** deems

appropriate; and render in writing decisions required of CITY in a timely manner.

5.5. Prompt Notice

- A. The CITY will give prompt written notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect in the work of the CONSULTANT.

5.6. Litigation Assistance

- A. The Scope of Services does not include costs of CONSULTANT for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CITY. All such services required or requested of CONSULTANT by CITY, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed in a separate Task Order, and payment for such services shall be in accordance with Article 3, unless and until there is a finding by a court or arbitrator that CONSULTANT's sole negligence caused CITY's damage.

## **Article 6. General Legal Provisions**

6.1 Agreement Period

- A. The duration of the agreement shall be three (3) years commencing from the date this Agreement was entered into, with an option, maintained by the CITY, to renew the contract on a yearly basis for up to two (2) years.

6.2. Reuse of Project Documents

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

6.3 Ownership of Work Product and Inventions

- A. With the exception of the "Pre-existing Intellectual Property" described below, all of the work product of CONSULTANT in executing a Project under this contract shall become the property of the CITY when CONSULTANT has been compensated for Services rendered. The City may use the deliverables solely for the purpose for which they were intended. Nothing contained in this Agreement shall be construed as limiting or depriving CONSULTANT of its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement. At all times, CONSULTANT shall retain all of its rights in and to its designs, specifications, databases, models, know how, computer software, copyrights, trade and service marks, patents, trade secrets, and any other proprietary property developed or otherwise obtained by or for Consultant independent of this Agreement and any modification thereof ("Pre-existing

Intellectual Property"). Rights to Intellectual property developed, utilized, or modified in the performance of the services shall remain the property of CONSULTANT. CONSULTANT hereby grants to CITY an irrevocable, nonexclusive, royalty-free license to utilize CONSULTANT's Pre-existing Intellectual Property provided to CITY as part of the services.

**6.4 Force Majeure**

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

**6.5 Termination**

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

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

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

**6.7 Third Party Beneficiaries**

- A. This Agreement gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third party beneficiaries. CONSULTANT's services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the Project.
- B. All work products will be prepared for the exclusive use of CITY for specific application as described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of CONSULTANT. Any unauthorized assignment of related work product shall be void and unenforceable.

**6.8 Indemnification**

INDIVIDUAL/FIRM Indemnity Language



To the fullest extent permitted by law, the INDIVIDUAL/FIRM expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents and employees (herein called the "indemnitees") from any and all liability for damages based upon third party claims, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by any negligent act, omission, or default by INDIVIDUAL/FIRM or its subcontractors, material men, or agents of any tier or their employees, arising out of this agreement or its performance, including any such damages to the extent caused by any negligent act, omission or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the INDIVIDUAL/FIRM or its subcontractors, material men or agents of any tier or their respective employees.

Indemnification by INDIVIDUAL/FIRM for Professional Acts

INDIVIDUAL/FIRM hereby agrees to indemnify the City of Key West and each of its parent and subsidiary companies and the directors, officers and employees of each of them (collectively, the "indemnitees"), and hold each of the indemnitees harmless, against all losses, liabilities, penalties (civil or criminal), fines and expenses based upon third party claims (including reasonable attorneys' fees and expenses) (collectively, "Claims") to the extent caused by the performance of INDIVIDUAL/FIRM'S negligent acts, errors or omissions, or intentional acts in the performance of INDIVIDUAL/FIRM'S services, or any of their respective affiliates, under this Agreement. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of the City of Key West and INDIVIDUAL/FIRM, they shall be borne by each party in proportion to its negligence.

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

6.9 Limitation of Liability

- A. CONSULTANT's services shall be governed by the negligence standard for professional services, measured as of the time those services are performed.
- B. This Provision takes precedence over any conflicting Provision of this Agreement or any document incorporated into it or referenced by it.

C. This limitation of liability will apply whether CONSULTANT'S liability arises under breach of contract or warranty; tort; including negligence; strict liability; statutory liability; or any other cause of action, and shall include CONSULTANT's officers, affiliated corporations, employees, and subcontractors.

**6.10 Assignment**

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

**6.11 Jurisdiction**

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

**6.12 Severability and Survival**

A. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

B. ARTICLES 4, 5, and 6 will survive termination of this AGREEMENT for any cause.

**6.13 Dispute Resolution**

A. The parties will use their best efforts to resolve amicably any dispute, including the use of alternative dispute resolution options.

B. Unless otherwise agreed in writing, the CONSULTANT shall continue the Work and maintain the approved schedules during any arbitration proceedings. If the engineer continues to perform, CITY shall continue to make payments in accordance with this Agreement.

**Article 7. Schedules, and Signatures**

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

IN WITNESS WHEREOF, the parties execute below:

For the CITY, J.K. Scholl

Dated this 10<sup>TH</sup> day of JULY, 2015.

By: J.K. SCHOLL CITY MANAGER  
Name Title

By: \_\_\_\_\_  
Name Title

By: \_\_\_\_\_  
Name Title

For the CONSULTANT,

Dated this 1st day of July, 2015.

By: John H. Clivett President  
Name Title

*Approved by Leys @ 7-1-15*  
Approved by PM(Chambers) e-mail July 1, 2015.

**ATTACHMENT "A"**  
**DETAILED FEE SCHEDULE**

Provide below is a summary of the Black & Veatch billing rates by Job Category:

<b>Line</b>	<b>Job Category</b>	<b>Billing Rates</b>
1	Analyst	\$ 165.00
2	Senior Analyst	\$ 170.00
3	Consultant	\$ 190.00
4	Manager	\$ 210.00
5	Principal	\$ 250.00
6	Director	\$ 285.00

**ATTACHMENT "B"**  
**LABOR CATEGORY DESCRIPTIONS**

Provide below is a description of each Black & Veatch Job Category:

<b>Line</b>	<b>Job Category</b>	<b>Primary Purpose</b>
1	<b>Analyst</b>	Responsible for gathering data and providing basic analysis work products to contribute to the completion of an engagement.
2	<b>Senior Analyst</b>	Responsible for compiling analysis and preparation of deliverables to contribute to the completion of multiple engagement phases of a project.
3	<b>Consultant</b>	Responsible for data analysis and initial preparation of deliverables to contribute to the completion of an engagement.
4	<b>Manager</b>	Provides technical or industry knowledge to the completion of multiple engagement phases. Lead and delegate project team efforts through all phases of delivery during an engagement. Will serve as the project manager on perspective engagements.
5	<b>Principal</b>	Provides technical or industry knowledge to contribute to or lead the completion of multiple or all engagement phases. Lead and delegate team work assignments through various phases of an engagement. Serve as a high level project manager on perspective engagements.
6	<b>Director</b>	Direct the development of processes and techniques to improve operations and deliver utility solutions. Provides technical or industry knowledge to contribute to the completion of all engagement phases. Lead work assignments by providing thought leadership, quality assurance, and the appropriate Black & Veatch resources. May serve as a project manager on perspective engagements.

RESOLUTION NO. 15-162

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE STAFF RANKING OF FINANCIAL CONSULTANTS IN RESPONSE TO THE CITY'S REQUEST FOR QUALIFICATIONS (RFQ) 15-002, AND AUTHORIZING STAFF TO NEGOTIATE CONTRACTS WITH THE THREE TOP-RANKED FIRMS IN SUBSTANTIAL CONFORMANCE WITH THE RFQ DOCUMENTS, FOR A TERM OF THREE YEARS WITH UP TO TWO ONE-YEAR OPTIONS, UPON ADVICE AND CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City issued RFQ 15-002 for Financial Consulting Services, to which five firms responded by the bid opening on April 2, 2015; and

WHEREAS, a ranking committee composed of city staff convened on April 23, at a properly noticed public meeting, to review the five (5) responses to the RFQ, and determined that three (3) firms are particularly qualified, and the City wishes to engage each one on a Task Order basis;

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

Section 1: That the top three responses in response to RFQ No. 15-002, for Financial Consulting Services are hereby ranked by staff, and approved by the City Commission as follows:

- (1) Arcadis U.S., Inc.
- (2) Black and Veatch
- (3) CDM Smith

Section 2: That the City Manager is hereby authorized to negotiate and execute contracts on a task-order basis with each of the three top-ranked companies for a term of three years, with two one-year options, upon advice and consent of the City Attorney.


Section 3: 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 May, 2015.

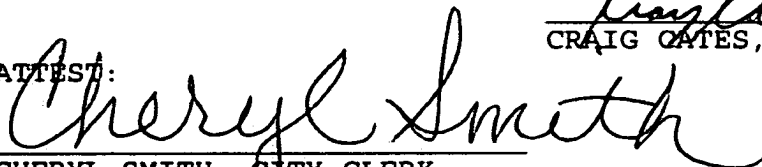
Authenticated by the Presiding Officer and Clerk of the Commission on 6th day of May, 2015.

Filed with the Clerk on May 6, 2015.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Absent</u>
Commissioner Tony Yaniz	<u>Yes</u>

  
CRAIG CATES, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK