

## **CONTRACT**

**THIS CONTRACT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **CITY OF KEY WEST**, with an address of P.O. Box 1409, Key West, Florida 33041, hereinafter referred to as the "CITY", and Panamerican Consultants Inc, with an address of 2619 University Blvd. Tuscaloosa, AL 35401, hereinafter referred to as "PCI".

**WHEREAS**, the City of Key West has issued a Request for Proposals (RFP) #007-11 and Addendum #1 (Exhibit A) for completion of a Historic Resources Survey (Services) dated 4-11-2011 and

**WHEREAS**, PCI submitted a response to the RFP to provide the Services to the City; and

**WHEREAS**, PCI is capable of providing the Services requested by the RFP and is in the business of providing these Services; and

**WHEREAS**, CITY desires to engage PCI to provide the Services specified herein, and those listed in the Cost Proposal included in Exhibit B.

**NOW, THEREFORE**, the parties hereto mutually agree as follows:

### **SECTION 1. RECITALS**

The parties agree that the foregoing recitals are true and correct and are incorporated herein by this reference.

### **SECTION 2. SCOPE OF SERVICES AND PROJECT COORDINATOR**

2.1 The CITY engages PCI to perform those services described in the City's RFP 007-11 and Addendum #1 (Exhibit "A") scope of services, PCI will provide those services as outlined in their response to RFP 007-11.

2.2 The following scope of services will be performed by PCI:

A. Conduct an architectural resources survey within the city limits of Key West. Funds would be used to hire a professional consultant to perform the survey. Florida Master Site File Forms will be completed on all newly recorded historic properties and updated on previously recorded sites. A Survey Log Sheet and Final Survey Report, meeting the requirements of Chapter 1A-46.001 FAC, will be produced.

B. A draft of the Survey Report and five sample Florida Master Site File Forms, including photos and maps, per the survey guidelines accompanying this agreement, will be submitted to the Department no later than April 30, 2012 for review and approval.

C. Two copies of the Final Survey Report, the Survey Log Sheet and one copy of each Florida Master Site File Form, with accompanying photos and maps, will be submitted to the Department no later than July 31, 2012, as final products.

2.3 Attachment C- Special Conditions of Contract Required by Historic Preservation Grant Award Agreement is included as part of this Contract.

### **SECTION 3. COMPENSATION; TERMS OF PAYMENT**

3.1 The CITY and PCI agree that compensation shall be paid according to the terms and conditions contained in RFP (Exhibit "A") and the Cost Proposal (Exhibit B). Total cost for the survey will be \$90,674.16.

3.2 The CITY and PCI agrees that the draft and final survey reports, as stipulated on Sec. 2.1 and 2.2 will be paid contingent on receipt and approval of grant products by the Florida Department of State, Division of Historical Resources.

### **SECTION 4. TERM**

4.1 This contract is for a period of eleven months.

### **SECTION 5. TERMINATION AND REMEDIES**

5.1 The City of Key West may terminate this agreement with or without cause by giving PCI written notice at any time. City shall be liable for all fees incurred up to the date of the notice. If the City of Key West does not provide such a notice, it will be obliged to pay all fees for work done and for other charges incurred pursuant to the terms and conditions contained herein. This Agreement shall also terminate upon the filing of any petition for bankruptcy or insolvency proceeding regarding the Consultant PCI.

5.2 In the event that PCI is in violation of or in breach of the terms of this contract, penalties in the form of the withholding of payments or the suspension of the consultant authority may be enforced by the CITY until such time as corrective action taken by PCI is satisfactory to the CITY.

### **SECTION 6. INDEMNIFICATION**

PCI agrees to indemnify and hold the CITY harmless from and against any property damage or bodily injury claim, including reasonable legal fees, arising out of PCI's negligence.

### **SECTION 7. RIGHT TO DATA AND COPYRIGHTS**

When publications, films, or similar materials are developed, directly or indirectly, from a program, project or activity supported by grant funds, any copyright resulting there from shall be held by the Florida Department of State, Division of Historical Resources. The author may

arrange for copyright of such materials only after approval from the Department. Any copyright arranged for by the author shall include acknowledgment of grant assistance. As a condition of grant assistance, the grantee agrees to, and awards to the Department and, if applicable, to the Federal Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for official purposes, to publish, translate, reproduce, and use all subject data or copyrightable material based on such data covered by the copyright.

## **SECTION 8. NOTICES**

Notices, requests, or authorizations provided for herein shall be in writing and shall be delivered or mailed addressed as follows:

To the CITY:	City of Key West Attention: City Manager James K. Scholl City Attorney Shawn D. Smith P.O. Box 1409 Key West, FL 33041 <a href="mailto:jscholl@keywestcity.com">jscholl@keywestcity.com</a> (305) 809-3888
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To PCI:	Panamerican Consultants Inc: Attention: Stacey Griffin, Architectural Historian 2619 University Blvd. Tuscaloosa, AL 35401 <a href="mailto:sgriffin@panamericconsultants.com">sgriffin@panamericconsultants.com</a> (706) 565-6179
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or addressed to either party at such other address as such party shall hereinafter furnish to the other party in writing. Each such notice, request, or authorization shall be deemed to have been duly given when so delivered, or, if mailed, when deposited in the U. S. mail, registered or certified, return receipt requested, postage prepaid.

## **SECTION 9. NON-ASSIGNMENT**

This Agreement is an exclusive agreement for Services and may not be assigned in whole or in part without the written approval of the City.

## **SECTION 10. SEVERABILITY AND CHOICE OF VENUE**

This Agreement shall be construed in accordance with the laws of the State of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective

and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action in connection herewith, in law or equity, shall be brought in Monroe County, Florida.

#### **SECTION 11. NO THIRD PARTY RIGHTS**

The parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.

#### **SECTION 12. JURY TRIAL WAIVER**

As consideration of this Agreement, the parties hereby waive trial by jury in any action or proceeding brought by any party against another party pertaining to any matter whatsoever arising out of or in any way connected with this Agreement.

#### **SECTION 13. MISCELLANEOUS PROVISIONS**

Failure of any party to insist upon strict compliance with any provision of this or any other agreement between the parties shall not constitute a waiver of the right to immediately enforce compliance with that provision or any other provision of such agreements. The parties hereto acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, restrictions and effect of all of the provisions of this Agreement, and each agrees to the enforcement of any and all of these provisions and executes this Agreement with full knowledge of these provisions. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the provision shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. Should any party be required to seek judicial relief regarding the terms and conditions of this agreement, the non-breaching party shall be entitled to recover all reasonable attorneys' fees and costs in such proceeding(s).

#### **SECTION 14 COUNTERPARTS/FACSIMILE**

This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be deemed to be an original with all the counterparts constituting but one and the same instrument. Additionally, facsimile signature shall bind the undersigned. The individuals executing this document warrant and represent they have full authority to do so on behalf of the parties named herein.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the day and year indicated below and shall become effective upon the signature of the last party to the Agreement.

Signed, sealed and delivered in the presence of:

**City of Key West, Florida**

Attest: \_\_\_\_\_  
Cheryl Smith  
City Clerk

By: \_\_\_\_\_  
City Manager

**Panamerican Consultants Inc.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

As its Vice President

**ATTACHMENT C****Grant No.: F1105****SPECIAL CONDITIONS OF CONTRACT  
REQUIRED BY HISTORIC PRESERVATION GRANT AWARD AGREEMENT**

Grant Project Name: Key West Historic Resources Survey Project

Contract Amended/Execution Date: \_\_\_\_\_

Parties:

1. City of Key West (Grantee)
2. Panamerican Consultants, In. (Architect/Consultant/Contractor)  
circle one

These Special Conditions shall supplement and become part of the above referenced Contract and shall supersede any conflicting provisions of said Contract.

**1. Equal Employment Opportunity Compliance**

The Architect/Consultant/Contractor shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title I of the Americans with Disabilities Act of 1990 in that: No person in the United States shall on the grounds of race, creed, color, national origin, sex, age, political affiliation, beliefs, or disability be subject to discrimination under any program or activity which the Architect/Consultant/Contractor has agreed to undertake by and through the covenants and provisions set forth in this Contract.

**2. Access to Records**

The Architect/Consultant/Contractor shall keep and maintain financial, invoice, and employment records pertaining to the contractual obligation between the Parties for pre-audit and post-audit purposes for a period of five (5) years following the completion of all project work, or until all claims and audit findings involving these records have been received, whichever is later. The Grantee, the Florida Department of State, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Architect/Consultant/Contractor which are directly pertinent to this Contract, for the purpose of making audit, examination, excerpts, and transcription.

**3. Termination****3.1 Termination by Grantee**

- 3.1.1 The Grantee may terminate this Contract if the Architect/Consultant/Contractor:
  1. Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
  2. Fails to make payment to Subcontractors for materials or labor in accordance with the respective contracts between the Architect/Consultant/Contractor and the Subcontractors;
  3. Persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
  4. Otherwise is guilty of substantial breach of a provision of the Contract.
- 3.1.2 When any of the above reasons exist, the Grantee may, without prejudice to any other rights or remedies of the Grantee and after giving the Architect/Consultant/Contractor and the Architect/Consultant/Contractor's surety, if any, seven days written notice, terminate

employment of the Architect/Consultant/Contractor and may, subject to any prior rights of the surety:

1. Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Architect/Consultant/Contractor;
2. Accept assignment of subcontracts;
3. Finish the Work by whatever reasonable method the Grantee may deem expedient.

3.1.3 The Architect/Consultant/Contractor will be compensated for any work satisfactorily completed in accordance with this Contract prior to notification of termination.

3.2 Termination by the Architect/Consultant/Contractor

3.2.1 The Architect/Consultant/Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Architect/Consultant/Contractor or a Subcontractor, Sub-subcontractor or other agents or employees or any other persons performing portions of the Work under agreement with the Architect/Consultant/Contractor, for any of the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction;
2. An act of government such as a declaration of national emergency, making material unavailable;
3. Because the Architect has not issued a Certificate for Payment and has not notified the Architect/Consultant/Contractor of the reason for withholding such certification, or because the Grantee has not made payment on a Certification of Payment within the time stated in the Contract;
4. If repeated suspensions, delays or interruptions by the Grantee constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or
5. The Grantee has failed to furnish to the Architect/Consultant/Contractor promptly, upon the Architect/Consultant/Contractor's request, reasonable evidence that financial arrangements have been made to fulfill the Grantee's obligations under the Contract.

**4. Project Duration**

4.1 Complete one of the following, as is applicable to the Contract:

4.1.1 The project work covered under this Contract shall be completed on or before June 30, 2012.

4.1.2 The project work shall be completed within \_\_\_\_\_ days of the date of execution of the Contract.

City of Key West  
**Grantee**

P.O. Box 1409  
Key West, FL 33041  
[jscholl@keywestcity.com](mailto:jscholl@keywestcity.com)  
(305) 809-3888

Panamerican Consultants Inc.  
**Consultant**

2619 University Blvd.  
Tuscaloosa, AL 35401  
[sgriffin@panamericanconsultants.com](mailto:sgriffin@panamericanconsultants.com)  
(706) 565-6179

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_