DATE: November 2, 2015
TO: Doug Sposito, Director
ATTN: Ann Riger
FROM: Cheryl Robertson Executive Aide to the Clerk of Court & Comptroller

At the October 21, 2015, Board of County Commissioner’s meeting the Board granted approval and execution of the following Item D48 Approval to enter into a Continuing Services Contract for professional engineering services with Thompson Younggross Engineering Consultants, Inc., whereas consultant will provide professional engineering services for miscellaneous projects in which construction costs do not exceed $100,000.00 or for individual study where the fee for professional services do not exceed $10,000.00.

Enclosed is a duplicate original of the above-mentioned for your handling. Should you have any questions, please feel free to contact our office.

cc: County Attorney
    Finance
    File
AGREEMENT FOR
CONTINUING PROFESSIONAL ENGINEERING AND SURVEYING SERVICES

This Agreement ("Agreement") made and entered into this 21st day of October, 2015 by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida, 33040, its successors and assigns, hereinafter referred to as "COUNTY," through the Monroe County Board of County Commissioners ("BOCC"),

AND

Thompson Youngross Engineering Consultants, whose address is 902 Clint Moore Rd, Suite 142 Boca Raton Fl 33487-2828 its successors and assigns, hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, COUNTY desires to employ the professional engineering services of CONSULTANT pursuant to section, 287.055(2)(g) Florida Statutes, for various County Projects located in Monroe County, Florida and;

WHEREAS, the employment of the CONSULTANT serves the appropriate public purpose of providing professional engineering and surveying services to Monroe County; and

WHEREAS, CONSULTANT has agreed to provide professional engineering and surveying services for work of a specified nature as outlined in the scope of basic services described in Article Two of this contract and to be additionally specified in each individualized task order required by the COUNTY in which the estimated construction costs of each individual project under the contract does not exceed $100,000.00 or for each individual study activity where the fee for professional services under the contract do not exceed $10,000.00 per task order.

The professional services required by this Contract will be for services in the form of a continuing contract, commencing the effective date of this agreement and ending four years thereafter, with options for the County to renew for one additional 1 year period.

Specific services will be performed pursuant to individual task orders issued by the COUNTY and agreed to by the CONSULTANT. Task Orders will contain a specific scope of work, time schedule, charges and payment conditions, and additional terms and conditions that are applicable to such Task Orders.

Execution of a Task Order by the COUNTY and the CONSULTANT constitutes the COUNTY's written authorization to CONSULTANT to proceed with the services described in the Task Order.

The terms and conditions of this Agreement shall apply to each individual Task Order, except to the extent expressly modified by the Task Order. When a Task Order is to modify a provision of this Agreement, the Article of this Agreement to be modified will be specifically referenced in the Task Order and the modification shall be precisely described.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, COUNTY and CONSULTANT agree as follows:
FORM OF AGREEMENT

ARTICLE 1

1.1 REPRESENTATIONS AND WARRANTIES

By executing this Agreement, CONSULTANT makes the following express representations and warranties to the COUNTY:

1.1.1 The CONSULTANT shall maintain all necessary licenses, permits or other authorizations necessary to act as CONSULTANT for the Project until the CONSULTANT's duties hereunder have been fully satisfied;

1.1.2 The CONSULTANT has become familiar with the Project site and the local conditions under which the Work is to be completed.

1.1.3 The CONSULTANT shall prepare all documentation required by this Agreement in such a manner that they shall be accurate, coordinated and adequate for use in verifying work completed and shall be in conformity and comply with all applicable law, codes and regulations. The CONSULTANT warrants that the documents prepared as a part of this Agreement will be adequate and sufficient to document costs in a manner that is acceptable for reimbursement by government agencies, therefore eliminating any additional cost due to missing or incorrect information;

1.1.4 The CONSULTANT assumes full responsibility to the extent allowed by law with regards to his performance and those directly under his employ.

1.1.5 The CONSULTANT's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. In providing all services pursuant to this agreement, the CONSULTANT shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provisions of such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the Board to terminate this contract immediately upon delivery of written notice of termination to the CONSULTANT.

1.1.6 At all times and for all purposes under this agreement the CONSULTANT is an independent contractor and not an employee of the Board of County Commissioners for Monroe County. No statement contained in this agreement shall be construed so as to find the CONSULTANT or any of his/her employees, contractors, servants, or agents to be employees of the Board of County Commissioners for Monroe County.

1.1.7 The CONSULTANT shall not discriminate against any person on the basis of race, creed, color, national origin, sex, age, or any other characteristic or aspect which is not job related, in its recruiting, hiring, promoting, terminating, or any other area affecting employment under this agreement or with the provision of services or goods under this agreement.
ARTICLE II

SCOPE OF BASIC SERVICES

2.1 DEFINITION

The CONSULTANT will perform for the COUNTY services as described below in sections 2.1.1., 2.1.2, and 2.1.3 and in individual task orders in accordance with the requirement outlined in the Agreement and the specific Task Order. CONSULTANT shall commence work on the services provided for in this Agreement promptly upon his receipt of a written notice to proceed from the COUNTY.

2.1.1 REQUIREMENTS

All services shall be performed in compliance with industry standards and all federal, state, and local laws, ordinances, and regulations including Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), American Standards for Testing and Materials (ASTM), and Florida Building Code. The Services to be provided include but are not limited to the following:

a. Evaluations, investigations, analysis, recommendations, cost and time estimates, testing, reports, studies, designs, preparation of documents, filed inspections, and investigation.

b. Professional involvement throughout all phases of the project including but not limited to development of programs, preparation of reports, periodic progress reports, meetings, process of invoices, timely processing of project correspondence, contractors requests for payment, and materials and equipment submittals.

c. Other types of professional services and nonprofessional services of a nature consistent with the intent of the contract as so directed by Monroe County.

2.1.2 SERVICES

Over the life of this contract, it is expected that Monroe County will require various services such as the following (inclusions of any number of these services and their priority will be established by each individual task order):

a. Surveying Field investigations, site plans, record plats, AutoCAD, limited hydraulic modeling, and all associated engineering work applied by a related task order,

b. Easement plat descriptions, surveys, negotiations, appraisals and acquisition services,

c. Preliminary Land Planning services including land use entitlements, permitting, and wetlands and environmental assessments,

d. Geotechnical engineering related to the task order,

e. Utility locations using conventional GPS techniques.

f. Development and integrations of data into Monroe County's Geographic Information System, including surveys of existing and new facilities,

g. Design of repairs to existing county systems and facilities

h. Feasibility Studies and engineering economic analyses related to the task order, and

i. Peer review services

2.1.3 SPECIFIC REQUIREMENTS OF TASK ORDERS
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a. The CONSULTANT shall be available for consultation with Monroe County staff on an “as-needed” basis between 8:00am and 5:00pm Eastern Standard Time, Monday through Friday.

b. The CONSULTANT shall be required to respond to the task order requests upon communication with Monroe County Staff within 48 hours upon initial notification. If the CONSULTANT does not respond within 48 hours of the initial request Monroe County may proceed to the next CONSULTANT for services.

c. The CONSULTANT will provide a written proposal in the form of a Proposed Task Order consisting of anticipated total labor hours, a preliminary schedule, and project design team.

d. A Task Order should include at a minimum the following phases.
   1. Preliminary Report Phase
   2. Design Phase
   3. Permitting Phase
   4. Bidding Phase
   5. Construction Phase

e. No compensation shall be paid to the CONSULTANT for the preparation and delivery of Task Order Proposals.

f. Monroe County reserves the right to request additional information as determined necessary prior to commencing negotiations for each task order.

2.2 CORRECTION OF ERRORS, OMISSIONS, DEFICIENCIES

The CONSULTANT shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product of the CONSULTANT or its subconsultants, or both.

2.3 NOTICE REQUIREMENT

All written correspondence to the COUNTY shall be dated and signed by an authorized representative of the CONSULTANT. Any notice required or permitted under this agreement shall be in writing and hand delivered or mailed, postage pre-paid, to the COUNTY by certified mail, return receipt requested, to the following:

Mr. Doug Sposito
Director of Project Management
1100 Simonton St. Suite 2-216
Key West FL 33040

And: Mr. Roman Gastesi,
Monroe County Administrator
1100 Simonton Street, Room 2-205
Key West, Florida 33040

For the Consultant:
Daniel E. Thompson P. E.
902 Clint Moore Rd. Suite 142
Boca Raton FL 33487-2828
ARTICLE III
ADDITIONAL SERVICES

3.1 Additional services are services not included in the Scope of Basic Services or on any individual Task Order. Should the COUNTY require additional services they shall be paid for by the COUNTY at rates or fees negotiated at the time when services are required, but only if approved by the COUNTY before commencement.

3.2 If Additional Services are required, the COUNTY shall issue a letter requesting and describing the requested additional services to the CONSULTANT. The CONSULTANT shall respond with a fee proposal to perform the requested additional services. Only after receiving an amendment to the Agreement and a notice to proceed from the COUNTY, shall the CONSULTANT proceed with the Additional Services.

ARTICLE IV
COUNTY'S RESPONSIBILITIES

4.1 The COUNTY shall provide full information regarding requirements for the Project including physical location of work, county maintained roads, maps.

4.2 The COUNTY shall designate a representative to act on the COUNTY's behalf with respect to the Project. The COUNTY or its representative shall render decisions in a timely manner pertaining to documents submitted by the CONSULTANT in order to avoid unreasonable delay in the orderly and sequential progress of the CONSULTANT'S services.

4.3 Prompt written notice shall be given by the COUNTY and its representative to the CONSULTANT if they become aware of any fault or defect in the Project or non-conformance with the Agreement Documents. Written notice shall be deemed to have been duly served if sent pursuant to paragraph 2.3.

4.4 The COUNTY shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the CONSULTANT'S services and work of the contractors.

4.5 The COUNTY's review of any documents prepared by the CONSULTANT or its subconsultants shall be solely for the purpose of determining whether such documents are generally consistent with the COUNTY's criteria, as, and if, modified. No review of such documents shall relieve the CONSULTANT of responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product.

4.6 The COUNTY shall provide copies of necessary documents required to complete the work.

4.7 Any information that may be of assistance to the CONSULTANT that the COUNTY has immediate access to will be provided as requested.

ARTICLE V
INDEMNIFICATION AND HOLD HARMLESS
5.1 Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, the Contractor covenants and agrees that he shall indemnify and hold the COUNTY and the COUNTY's elected and appointed officers, employees and agents harmless from and against (i) claims, actions or causes of action, (ii) litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) costs or expenses that may be asserted against, initiated with respect to, or sustained by the County and the COUNTY’s elected and appointed officers and employees and the property owner upon which the work is performed from liabilities, damages, losses and costs, including but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT and persons employed or utilized by the indemnifying party in the performance of the construction contract. In the event that a court of competent jurisdiction determines that the provisions of F.S. 725.06 and/or F.S. 725.08 apply to this Agreement then, the CONSULTANT shall indemnify and hold harmless COUNTY, and the COUNTY’s elected and appointed officers, employees and agents only to the fullest extent authorized by said statutes. The monetary limitation of liability under this contract shall be not less than $1 million per occurrence pursuant to F.S. 725.06. Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this Agreement.

5.2 The first ten dollars ($10.00) of remuneration paid to the CONSULTANT is for the indemnification provided for above. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement. Should any claims be asserted against the COUNTY by virtue of any deficiency or ambiguity in the plans and specifications provided by the CONSULTANT, the CONSULTANT agrees and warrants that he shall hold the COUNTY harmless and shall indemnify him from all losses occurring thereby and shall further defend any claim or action on the COUNTY’s behalf.

5.3 In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT’s failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify COUNTY from any and all increased expenses resulting from such delays. Should any claims be asserted against COUNTY by virtue of any deficiencies or ambiguity in the plans and specifications provide by the CONSULTANT the CONSULTANT agrees and warrants that CONSULTANT hold the COUNTY harmless and shall indemnify it from all losses occurring thereby and shall further defend any claims or action on the COUNTY’s behalf.

5.4 The extent of liability is in no way limited to, reduced or lessened by the insurance requirements contained elsewhere within the Agreement.

5.5 This indemnification shall survive the expiration or early termination of the Agreement.

ARTICLE VI
PERSONNEL

6.1 PERSONNEL

The CONSULTANT shall assign only qualified personnel to perform any service concerning the project. At the time of execution of this Agreement, the parties anticipate that the following named individuals will perform those functions as indicated:
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NAME
Daniel E. Thompson, P.E.
Andrew J. Youngross, P.E.
Artur Amaral, P. E.
Robert Robbins, P.E.
Angelo da Silva P.E.
Mariam Armanious, E.I.T.

FUNCTION
Mechanical Engineer, President
Electrical Engineer, Vice President
Mechanical Engineer, Project Manager
Electrical Engineer, Project Manager
Mechanical Engineer, Design Engineer
Electrical Designer

So long as the individuals named above remain actively employed or retained by the CONSULTANT, they shall perform the functions indicated next to their names. If they are replaced the CONSULTANT shall notify the COUNTY of the change immediately.

ARTICLE VII
COMPENSATION

7.1 PAYMENT SUM

7.1.1 The COUNTY shall pay the CONSULTANT monthly in current funds for the CONSULTANT's performance of this Agreement based on the hourly rates outlined in Attachment B or as agreed upon lump sum fee, which will be defined in each specific task order.

7.2 PAYMENTS

7.2.1 For its assumption and performances of the duties, obligations and responsibilities set forth herein, the CONSULTANT shall be paid monthly. Payment will be made pursuant to the Local Government Prompt Payment Act 218.70, Florida Statutes.

(A) If the CONSULTANT's duties, obligations and responsibilities are materially changed by amendment to this Agreement after execution of this Agreement, compensation due to the CONSULTANT shall be equitably adjusted, either upward or downward;

(B) As a condition precedent for any payment due under this Agreement, the CONSULTANT shall submit monthly, unless otherwise agreed in writing by the COUNTY, a proper invoice to COUNTY requesting payment for services properly rendered and reimbursable expenses due hereunder. The CONSULTANT's invoice shall describe with reasonable particularity the service rendered. The CONSULTANT's invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought at the COUNTY may require.

7.3 REIMBURSABLE EXPENSES

Reimbursable expenses are not allowable under this agreement unless specifically allowed under separate Task Orders. Allowable Reimbursable expenses will be separately identified in each task order and are subject to the maximum allowable contract amount. Travel expense reimbursements are subject to the limitations of section 112.061, Florida Statutes and Monroe County Codes.
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7.4 BUDGET

7.4.1 The CONSULTANT may not be entitled to receive, and the COUNTY is not obligated to pay, any fees or expenses in excess of the amount budgeted for this contract in each fiscal year (October 1 - September 30) by COUNTY's Board of County Commissioners. The budgeted amount may only be modified by an affirmative act of the COUNTY's Board of County Commissioners.

7.4.2 The COUNTY's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners and the approval of the Board members at the time of contract initiation and its duration.

ARTICLE VIII
INSURANCE

8.1 The CONSULTANT shall obtain insurance as specified and maintain the required insurance at all times that this Agreement is in effect. In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT's failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify the COUNTY from any and all increased expenses resulting from such delay.

8.2 The coverage provided herein shall be provided by an insurer with an A.M. Best rating of VI or better, that is licensed to business in the State of Florida and that has an agent for service of process within the State of Florida. The coverage shall contain an endorsement providing sixty (60) days notice to the COUNTY prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the COUNTY and shall be in a form acceptable to the COUNTY.

8.3 CONSULTANT shall obtain and maintain the following policies:

A. Workers' Compensation insurance as required by the State of Florida, sufficient to respond to Florida Statute 440.

B. Employers Liability Insurance with limits of $100,000.00 per Accident, $500,000.00 Disease, policy limits, $500,000.00 Disease each employee.

C. Comprehensive business automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, hired or non-owned vehicles, with $50,000.00 per person, $100,000.00 per Occurrence, $25,000.00 Property Damage or $100,000.00 combined single limit.

D. Commercial general liability, including Personal Injury Liability, covering claims for injuries to members of the public or damage to property of others arising out of any covered act or omission of the CONSULTANT or any of its employees, agents or subcontractors or subconsultants, including Premises and/or Operations, Products and Completed Operations, Independent Contractors; Broad Form Property Damage and a Blanket Contractual Liability Endorsement with a $300,000.00 Combined Single Limit.

An Occurrence Form policy is preferred. If coverage is changed to or provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be
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reported must extend for a minimum of 48 months following the termination or expiration of this contract.

E. Engineers Errors and Omissions Liability insurance of $250,000.00 per occurrence and $500,000.00 annual aggregate. Recognizing that the work governed by this contract involves the furnishing of advice or services of a professional nature, the Contractor shall purchase and maintain, throughout the life of the contract, Professional Liability Insurance which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the Contractor arising out of work governed by this contract.

F. COUNTY shall be named as an additional insured with respect to CONSULTANT’s liabilities hereunder in insurance coverages identified in Paragraphs C and D.

G. CONSULTANT shall require its subconsultants to be adequately insured at least to the limits prescribed above, and to any increased limits of CONSULTANT if so required by COUNTY during the term of this Agreement. COUNTY will not pay for increased limits of insurance for subconsultants.

H. CONSULTANT shall provide to the COUNTY certificates of insurance or a copy of all insurance policies including those naming the COUNTY as an additional insured. The COUNTY reserves the right to require a certified copy of such policies upon request.

I. If the CONSULTANT participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the CONSULTANT may be required to submit updated financial statements from the fund upon request from the COUNTY.

ARTICLE IX
MISCELLANEOUS

9.1 SECTION HEADINGS

Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

9.2 OWNERSHIP OF THE PROJECT DOCUMENTS

The documents prepared by the CONSULTANT for this Project belong to the COUNTY and may be reproduced and copied without acknowledgement or permission of the CONSULTANT.

9.3 SUCCESSORS AND ASSIGNS

The CONSULTANT shall not assign or subcontract its obligations under this agreement, except in writing and with the prior written approval of the Board of County Commissioners for Monroe County and the CONSULTANT, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the provisions of this agreement. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its
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successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

9.4 NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party.

9.5 TERMINATION

A. In the event that the CONSULTANT shall be found to be negligent in any aspect of service, the COUNTY shall have the right to terminate this agreement after five days written notification to the CONSULTANT.

B. Either of the parties hereto may cancel this Agreement without cause by giving the other party sixty (60) days written notice of its intention to do so.

9.6 CONTRACT DOCUMENTS

This contract consists of the Request for Qualifications, any addenda, the Form of Agreement (Articles I-IX), the CONSULTANT’s response to the RFQ, the documents referred to in the Form of Agreement as a part of this Agreement, all attachments, and modifications made after execution of this Agreement by written amendment. In the event of any conflict between any of the Contract documents, the one imposing the greater burden on the CONSULTANT will control.

9.7 PUBLIC ENTITIES CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on contracts to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

By signing this Agreement, CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes). Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from COUNTY’s competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any subconsultant has committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.
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CONSULTANT will promptly notify the COUNTY if it or any subcontractor or subconsultant is formally charged with an act defined as a "public entity crime" or has been placed on the convicted vendor list.

9.8 MAINTENANCE OF RECORDS

CONSULTANT shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of five years from the termination of this agreement. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the COUNTY or Clerk determines that monies paid to CONSULTANT pursuant to this Agreement were spent for purposes not authorized by this Agreement, or were wrongfully retained by the CONSULTANT, the CONSULTANT shall repay the monies together with interest calculated pursuant to Section 55.03, Florida Statutes, running from the date the monies were paid by the COUNTY.

9.9 GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, COUNTY and CONSULTANT agree that venue shall lie in the 16th Judicial Circuit, Monroe County, Florida, in the appropriate court or before the appropriate administrative body. This agreement shall not be subject to arbitration. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

9.10 SEVERABILITY

If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The COUNTY and CONSULTANT agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

9.11 ATTORNEY'S FEES AND COSTS

The COUNTY and CONSULTANT agree that in the event any claim, cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, and court costs, as an award against the non-prevailing party, and shall include attorney's fees, and courts costs in appellate proceedings. The parties agree that the COUNTY, at its sole option, shall have the sole authority for the direction of the defense
of any claims, causes of action or other proceeding, shall have the authority in its sole discretion to choose its attorney and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the COUNTY.

9.12 BINDING EFFECT
The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the COUNTY and CONSULTANT and their respective legal representatives, successors, and assigns.

9.13 AUTHORITY
Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

9.14 CLAIMS FOR FEDERAL OR STATE AID
CONSULTANT and COUNTY agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

9.15 ADJUDICATION OF DISPUTES OR DISAGREEMENTS
COUNTY and CONSULTANT agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. This provision does not negate or waive the provisions of paragraph 9.5 concerning termination or cancellation.

9.16 COOPERATION
In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, COUNTY and CONSULTANT agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. COUNTY and CONSULTANT specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

9.17 NONDISCRIMINATION
CONSULTANT and COUNTY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. CONSULTANT or COUNTY agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on
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the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 13, Article VI, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

9.18 COVENANT OF NO INTEREST

CONSULTANT and COUNTY covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

9.19 CODE OF ETHICS

COUNTY agrees that officers and employees of the COUNTY recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one’s agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

9.20 NO SOLICITATION/PAYMENT

The CONSULTANT and COUNTY warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the CONSULTANT agrees that the COUNTY shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

9.21 PUBLIC ACCESS.

The CONSULTANT and COUNTY shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its
CONTINUING PROFESSIONAL ENGINEERING AND SURVEYING SERVICES

control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CONSULTANT and COUNTY in connection with this Agreement; and the COUNTY shall have the right to unilaterally cancel this Agreement upon violation of this provision by CONSULTANT.

The CONSULTANT is required under Chapter 119, Florida Statutes to:

A. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.

B. Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

D. Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

9.22 NON-WAIVER OF IMMUNITY

Notwithstanding the provisions of section 768.28, Florida Statutes, the participation of the CONSULTANT and the COUNTY in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the COUNTY be required to contain any provision for waiver.

9.23 PRIVILEGES AND IMMUNITIES

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the COUNTY, when performing their respective functions under this Agreement within the territorial limits of the COUNTY shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the COUNTY.

9.24 LEGAL OBLIGATIONS AND RESPONSIBILITIES

Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the COUNTY, except to the extent permitted by the Florida constitution, state statute, and case law.
CONTINUING PROFESSIONAL ENGINEERING AND SURVEYING SERVICES

9.25 NON-RELIANCE BY NON-PARTIES

No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the CONSULTANT and the COUNTY agree that neither the CONSULTANT nor the COUNTY or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

9.26 ATTESTATIONS AND TRUTH IN NEGOTIATION

CONSULTANT agrees to execute such documents as COUNTY may reasonably require, including a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement. Signature of this Agreement by CONSULTANT shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation pursuant to the Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or concurrent wage rates and other factual unit costs. All such adjustments must be made within one year following the end of the Agreement.

9.27 NO PERSONAL LIABILITY

No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

9.28 EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

9.29 Disadvantaged Business Enterprise (DBE) Policy and Obligation - It is the policy of the COUNTY that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with COUNTY funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The COUNTY and its CONSULTANT agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The COUNTY and the CONSULTANT and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.
CONTINUING PROFESSIONAL ENGINEERING AND SURVEYING SERVICES

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the day and year first above written.

(SEAL)
Attest: AMY HEAVILIN, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: ______________________
Mayor/Chairman

Date: 10/21/15

(CONSULTANT
Thompson Youngross Engineering Consultants
By: ______________________
Andrew J. Youngross, P.E.

Title: Vice President

Date: ______________________

STATE OF FLORIDA
COUNTY OF PALM BEACH

On this ___ day of 2015, before me , the undersigned notary public, personally appeared, known to me to be the person whose name is subscribed above or who produced as identification, and acknowledged that he/she is the person who executed the above contract with Monroe County for the purposes therein contained.

Notary Public
Print Name J. WHITLEY

My commission expires: 11/20/2018

END OF AGREEMENT
ATTACHMENT A
NOT USED
ATTACHMENT B
CONSULTANT RATES

<table>
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<tr>
<th>Name</th>
<th>Hourly Rate</th>
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<tr>
<td>Daniel E. Thompson, P.E. Principal Engineer</td>
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<td>Andrew J. Youngross, P.E., Principal Engineer</td>
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<td>Artur Amaral, P.E., Project Manager Engineer</td>
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<td>Robert Robbins, P.E., Project Manager Engineer</td>
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<td>Angelo da Silva, P.E., Design Engineer</td>
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<td>Mariam Armanious, E.I.T., Design Engineer</td>
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<tr>
<td>Dennis Gonzalez, CAD Drafter</td>
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/17/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Keen Battle Head & Company
7850 Northwest 146th Street
Suite 200
Miami Lakes FL 33016

INSURED
Thompson & Youngross Engineering Consultants, LLC
902 Clint Moore Road
Suite 142
Boca Raton FL 33487

COVERAGE
CERTIFICATE NUMBER: 15-16 GL, WC 14-15 PL
REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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<td>DESCRIPTION OF OPERATIONS BELOW</td>
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<td>EXCLUSIONS AND CONDITIONS OF SUCH POLICIES</td>
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DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (ACORD 101): Additional Remarks Schedule, may be attached if more space is required.

Certificate holder is listed as additional insured with respect to General Liability and Auto Liability.

APPROVED BY

CERTIFICATE HOLDER
Monroe County
The Gato Building
1100 Simonton Street
Key West, FL 33040

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2014/01)

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