



AGENDA ITEM MEMORADUM

Town Manager's Office

Department

Bud Bentley

Department Director 

COMMISSION MEETING DATE - 7:00 PM	Deadline to Town Clerk
March 27, 2012	

- Presentation Reports **Consent** Ordinance
 Resolution Quasi-Judicial Old Business New Business

SUBJECT TITLE: Renewal of Town Engineer's Agreement for Two Years

EXPLANATION: On March 27, 2007, the Commission approved an agreement with Chen and Associates to be the Town Engineer. The agreement had a five year term, which ends April 31, 2012. The Agreement may be renewed for a two (2) year period (Section 2) upon approval of the Town Commission.

The Town's expenses for the five months of this fiscal year and the past two fiscal years are shown in Table 1.

Table 1 – Two Fiscal Year Expenditure History

Fiscal Year	Fund		Grand Total
	General (001)	Capital (300)	
FY 12 (Oct - Feb)	\$309	\$24,785	\$25,094
FY 11	\$3,636	\$58,276	\$61,912
FY 10	\$102,318 (1)	\$3,741	\$106,059
Grand Total	\$106,263	\$86,802	\$193,065

(1) The largest expense was the preparation of the Stormwater Master Plan

As part of their Town Engineer duties, Chen Moore & Associates have been selected to design several drainage projects since their pricing is very competitive. Their designs are on time and they have done an excellent job inspecting the work and coordinating with contractors.

With the addition of the Continuing Services Agreements last year, the Town has more options in the placement of work without going through the CCNA process for each project. Expenditures under the Town Engineering Agreement are expected to continue to fluctuate since the majority of the future work is capital projects.

We prepared a restated agreement rather than just processing an amendment since there are several sections of the agreement that need to be update. The Restated Agreement is **Exhibit 1** and the April 2007 Agreement is **Exhibit 2**.



The most pertinent changes in the Restated Agreement are highlighted in Table 2.

Table 2 – Summary of Changes

Agreement Section	Change
2. Term	Reflects new termination date of April 31, 2014
3. Scope of Service	<p>Minor realignment and reorganization in 3.01 and 3.02.</p> <p>3.02.b) provides all Special Projects shall be approved by the Town Commission or Town Manager.</p> <p>3.02.e) changed so use of a specialized firm is in the initial proposal from Town Engineer and approved by Town Commission or Town Manager.</p> <p>3.07 changed so the Town Engineer is not designated in the Agreement, which allows change in personnel subject to the approval of Town Manager.</p>
4. Consideration	<p>4.01 Deleted the annual limit in the agreement, which had an annual escalation clause and replaced it with the limit of what the Commission approves in the budget. This means we don't have to approve amendments to the agreement for each special project that exceed an amount projected six years ago. The Commission or Town Manager still approves each project.</p> <p>Old 4.02. Deleted this subsection that awarded a maximum annual increase of 3%.</p> <p>4.03 change the hourly rate table to reflect the 2009 rates. Chen has not changed the rates since. Deleted the provision that the hourly rates could increase up to 3% per year.</p>
5. Duties and Responsibilities of Town	<p>5.03 Change Town liaison to Assistant Town Manager.</p> <p>5.04 Deleted –not relevant to renewal.</p>
13. Compliance with laws	13.2 & 13.3. Standard language added regarding no contingent fees and no campaign contributions.

RECOMMENDATION: We recommend the Commission's approval the Restated Agreement (**Exhibit 1**).

EXHIBITS: 1. Restated Agreement
2. April 2007 Agreement

FISCAL IMPACT AND APPROPRIATION OF FUNDS: **None.** The design expenses for special projects are appropriated in the annual budget. There is no guaranty of work in this agreement.

Item reviewed with Town Attorney
 Yes No

Town Manager Initials 

Exhibit 1

Town of Lauderdale-By-The-Sea -- Town Engineer Agreement

This Restated Agreement for the renewal period May 1, 2012 through April 31, 2014 (hereinafter referred to as "Restated Agreement") made and entered into the _____ day of _____, 2012 is a restatement of the original Agreement (hereinafter referred to as "Original Agreement") entered into on 24th day of April, 2007 between the Town of Lauderdale By-The-Sea, a municipal corporation of the State of Florida (hereinafter referred to as "TOWN"), acting by and through its duly authorized Town Commission, and Chen Moore and Associates Consulting Engineers Inc., (hereinafter referred to as "ENGINEER").

WHEREAS, the TOWN issued a Request for Letters of Interest for Town Engineer Services in October 2006; and received eight (8) responses and interviewed four (4) firms; and

WHEREAS, negotiations pertaining to the services to be performed by ENGINEER were undertaken in accordance with the Consultant Competitive Negotiation Act (CCNA), Section 287.055 Florida Statutes, and on March 27, 2007, TOWN authorized the proper TOWN officials to enter into the Original Agreement, which incorporated the results of such negotiation with Engineer; and

WHEREAS, staff recommends the TOWN exercise the renewal clause in the Original Agreement and further recommends the Original Agreement be restated to reflect changes in terms since the execution of the Original Agreement.

NOW, THEREFORE, in consideration of the benefits provided by ENGINEER to the citizens of the TOWN and the covenants and conditions herein expressed and the faithful performance of all such covenants and conditions, the parties agree as follows:

Section 1. RECITALS. The above recitals are true and correct and are incorporated herein.

Section 2. TERM. The Original Agreement terminates on April 31, 2012. The TOWN, by approval of this Restated Agreement, exercised its option to renew this Restated Agreement for one (1) additional two (2) year term, which ends on April 31, 2014.

Section 3. SCOPE OF SERVICES

3.01 ENGINEER hereby agrees to perform and provide engineer services to TOWN and to act as the Town Engineer, including oversight and administration of engineering related activities. ENGINEER acknowledges and agrees that this includes coordination and technical support as required with Town Commission, Town Manager other TOWN departments, public agencies, consulting engineers and citizens. ENGINEER shall complete, among other items, the following tasks essential to the Town Engineer position:

- a) Attend Town Commission meetings as required and respond to engineering related questions;
- b) Attend coordination meetings with the TOWN when necessary to respond to engineering related projects;
- c) Assist in the preparation of the Capital Improvement Budget; and

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- d) Respond to queries from residents pertaining to Town engineering matters when requested by TOWN.
- e) Review and approve plats, plat exemptions and plat waivers;
- f) Sign and seal documents all applicable documents as required by TOWN including, but not limited to engineering design drawings, plats, and permit applications;
- g) Review and approve permits for work in the public rights-of way;
- h) Provide other professional engineering services, as requested, that would normally be performed by the Town Engineer;
- i) Prepare required agenda memorandum and other reports as required; and
- j) Attend review meetings for the Development Services Department.

Other services that may be requested by the TOWN may include, but are not limited to:

- k) Direct, review and approve in-house engineering/construction projects, including final design plans; provide technical administration, as required and certify and approve payments;
- l) Consult with TOWN on construction projects;
- m) Review and approve water, sewer, paving, and drainage plans for compliance with TOWN Engineering Standards; and,
- n) Meet with officials of Federal, State and County Agencies and other cities on TOWN business.

3.02 Special Projects

- a) In addition to the tasks outlined in 3.01, ENGINEER and TOWN acknowledge that from time to time the TOWN may designate special projects to be completed by ENGINEER. Special projects may include, but not be limited to, the following projects:
 - 1) Review of Land Development Code requirements related to engineering requirements,
 - 2) Oversight on various construction projects, and
 - 3) Assist in the preparation of applications and supporting documents for government grants or loans, as required.
- b) All special projects assigned to ENGINEER shall be approved by the Town Commission or Town Manger prior to the commencement of the project.
- c) ENGINEER shall not commence any special project until a written work authorization or purchase order has been issued.
- d) Any assigned special project shall be performed within the time frame established by the TOWN and ENGINEER in each work authorization. Minor adjustments to the timetable from completion approved by TOWN in advance, in writing, will not constitute non-performance by ENGINEER per this Agreement.
- e) In no event shall ENGINEER be compensated for any work which has not been authorized in writing by TOWN.
- f) For the designated special projects, ENGINEER shall be compensated pursuant to the hourly rates as designed in Section 4.03 of this Agreement or at a lump sum basis as mutually agreed upon.

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Town of Lauderdale-By-The-Sea -- Town Engineer Agreement

- g) If a special project includes the services of a specialized firm, ENGINEER shall include those costs in their proposal for the special project, which is considered for approval by the Town Commission or Town Manager.
- 3.03 ENGINEER acknowledges and agrees that the Director of Municipal Services, or his designee, is the individual on behalf of TOWN to coordinate the work to be completed by ENGINEER.
- 3.04 ENGINEER acknowledges and agrees that TOWN will not provide administrative support or office space for this position.
- 3.05 Upon the completion of each task assigned to ENGINEER, ENGINEER shall provide the applicable records to TOWN. All documents including, but not limited to, drawings and specifications prepared in connection with the project constitute the work product of ENGINEER and a portion of the instruments of service with respect to the project. However, ENGINEER acknowledges that said documents are public records and the requirements of Florida Public Records law apply. Such documents and/or specifications constitute a portion of the integral services provided by ENGINEER and, as such, are not intended or represented to be suitable for reuse by TOWN or others or for extensions of the project or in connection with any other project. ENGINEER specifically disclaims any responsibility and/or liability for or in connection with the reuse of such documents and/or specifications or any use thereof beyond the scope of the project as set forth herein.
- 3.06 ENGINEER acknowledges that TOWN and ENGINEER shall establish mutually agreeable performance standards to evaluate ENGINEER'S performance based upon responsiveness, quality of work, turnaround time for the completion of required work and other standards agreed to by the parties. ENGINEER and TOWN'S Director of Municipal Services or designee shall document in writing the performance standards to be utilized as contract administration guidelines.
- 3.07 The parties acknowledge and agree that for the purposes of this Agreement, ENGINEER shall designate a Town Engineer that is acceptable to the TOWN. Peter M. Moore, P.E., is designated as the Assistant Town Engineer. Nothing shall preclude ENGINEER from using other members of the corporation; however, the designated Town Engineer and Assistant Town Engineer shall be the key persons assigned to this Agreement.

Section 4. CONSIDERATION

- 4.01 TOWN agrees to compensate ENGINEER for the services performed by ENGINEER on a lump sum or hourly basis. Lump sum billings shall be as negotiated and approved in writing. Hourly basis billings shall be at the rates shown in Section 4.03. If travel is required, mileage is included in the hourly rate or lump sum. When possible, estimated time or upside limits for individual tasks being performed on any hourly basis shall be established in advance of initiating services.
- 4.02 Method of Billing and Payment.
 - (a) ENGINEER shall submit an invoice monthly, together with a monthly status report, showing work completed and any on-going projects. The invoice, together with the monthly status report shall be submitted to the:

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Assistant Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308-3610.

- b) TOWN will make its best efforts to pay ENGINEER within thirty (30) calendar days of receipt of invoice the total shown to be due on such invoice.

- 4.03 As consideration for providing Town engineering services pursuant to Section 3 of this Restated Agreement, ENGINEER shall invoice the TOWN at the following hourly rates:

Town Engineer	\$159.14
Firm Principal	\$223.85
Professional Engineer	\$143.22
Senior Construction Manager	\$143.22
Senior Engineer	\$ 97.60
Associate Engineer	\$ 85.93
Construction Inspector	\$ 85.93
Clerical	\$ 50.93

Section 5. DUTIES AND RESPONSIBILITIES OF TOWN

- 5.01 Timely review and comment on all work products submitted by ENGINEER and schedule all required meetings on a timely basis.
- 5.02 Other assistance as may be required by ENGINEER to complete required work authorized by TOWN.
- 5.03 The Assistant Town Manager or designee shall be the TOWN liaison for ENGINEER.

Section 6. INSURANCE

- 6.01. ENGINEER shall provide TOWN with certified copies of all insurance policies providing coverage as required.
- 6.02 ENGINEER shall secure and maintain, at its own expense, and keep in effect during the full period of this Agreement a policy or policies of insurance, which must include the following coverages and minimum limits of liability:
- (a) **Professional Liability Insurance** in an amount not less than \$1,000,000 per occurrence.
- (b) **Worker's Compensation and Employer's Liability Insurance** for all employees of ENGINEER engaged in work under the Agreement in accordance with the laws of the State of Florida. ENGINEER shall agree to be responsible for the employment, control and

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conduct of its employees and for any injury sustained by such employees in the course of their employment.

- (c) **Comprehensive General Liability Insurance** with the following minimum limits of liability:
\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence.

Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury and Property Damage Liability per occurrence.

- (1) Premises and Operations;
- (2) Independent Contractors;
- (3) Products and Completed Operations;
- (4) Broad Form Property Damage
- (5) Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
- (6) Personal Injury Coverage with employment and contractual exclusions removed and deleted; and

- (d) **Comprehensive Automobile Liability Insurance** for all owned, non-owned and hired automobiles and other vehicles used by ENGINEER in the performance of the work with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence.

- 6.03 All liability insurance policies shall specifically provide that the TOWN is an additional insured with respect to the required coverages and the operations of the Engineer under the agreement. INSURANCE Companies selected must be acceptable to TOWN. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to TOWN by certified mail.
- 6.04 The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the qualifications of Financial Stability B+ to A+ in accordance with the latest edition of A.M. Best's Insurance Guide.

Section 7. INDEMNIFICATION

- 7.01 GENERAL INDEMNIFICATION: ENGINEER shall indemnify, save and hold harmless TOWN, its officers, agents and employees, from any and all damages, losses, liabilities and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of ENGINEER or his subcontractors, agents, officers, employees or independent contractors pursuant to the Agreement, specifically including but not limited to those caused by or arising out of any act, omission, negligence or default of ENGINEER and/or his subcontractors, agents servants or employees in the provision of the services under the Agreement.

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7.02 PATENT AND COPYRIGHT INDEMNIFICATION: ENGINEER agrees to indemnify, save and hold harmless TOWN, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Agreement.

Section 8. TERMINATION. This Restated Agreement is terminable by either TOWN or ENGINEER at any time on thirty (30) days written notice to the other party. However, at TOWN'S option, and if so requested by TOWN, ENGINEER shall continue to provide the professional services contemplated herein pending the appointment/employment of its successor if such appointment/employment requires more than ten (10) days, and provided that TOWN exerts reasonable efforts within 120 calendar days to seek and select Town Engineer's said successor, and to complete any current projects under contract. In addition, the parties may terminate this Contract at any time and on any agreed basis by mutual consent of all parties, the same reduced to writing and properly executed by all parties hereto. Likewise, the term of this Agreement may be extended at any time by mutual consent of all parties hereto, the terms of such extension being reduced to writing and executed by all parties hereto.

Section 9. RECORDS AND AUDIT. TOWN reserves the right to audit the records of ENGINEER relating to this Agreement at any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by TOWN. If required by TOWN, ENGINEER shall agree to submit to an audit by an independent certified public accountant selected by TOWN. ENGINEER shall allow TOWN to inspect, examine and review the records of ENGINEER at any and all times during normal business hours during the term of this Agreement.

Section 10. INDEPENDENT CONTRACTOR

10.01 It is understood and agreed that ENGINEER is and shall remain an independent contractor with respect to the services being performed by ENGINEER pursuant to this Agreement and shall not, for any purpose, be deemed an employee of TOWN.

10.02 During the term of this Agreement, ENGINEER agrees not to accept representation of another client to pursue interests that are directly adverse to TOWN'S interest.

Section 11. CONFLICT OF INTEREST

11.01 ENGINEER covenants that no person under its employ who presently exercises any functions or responsibilities in connection with' this Agreement has any personal financial interests, direct or indirect, with TOWN. ENGINEER further covenants that, in the performance of this

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Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of ENGINEER or its employees, must be disclosed in writing to TOWN.

- 11.02 ENGINEER is aware of the conflict of interest laws of the Municipal Code of the TOWN, Broward County, and the State of Florida, Chapter 112, Florida Statutes (2004), as amended, and agrees that it will fully comply in all respects with the terms of said laws.
- 11.03 ENGINEER warrants that it has not employed or retained any person employed by TOWN to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay, any public official or person employed by TOWN any fee, Council, percentage, brokerage fee or gift of any kind, contingent upon or resulting from the award of this privilege.

Section 12. ASSIGNMENT. This is a personal services Agreement whereby TOWN has expressly retained ENGINEER. This Agreement is not assignable or transferable in whole or in part without the prior expressed written consent of TOWN which consent can be arbitrarily withheld.

Section 13. COMPLIANCE WITH LAWS.

- 13.1 ENGINEER shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, Town of Lauderdale-By-The-Sea and of any other public authority, which may be applicable to this Agreement.
- 13.2 **No Contingent Fees.** ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ENGINEER 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 ENGINEER, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. No officer or employee of the TOWN, during his or her employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. For the breach or violation of this provision, the TOWN shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.
- 13.3 No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner.

Section 14. VENUE. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida and the prevailing party to any resultant judgment shall be entitled to an award of all reasonable attorney's fees, paralegal expenses, interest and court costs incurred by such prevailing party against the losing party including reasonable appellate attorney's fees, interest and taxable costs.

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Section 15. GOVERNING LAW. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida.

Section 16. INSOLVENCY. In the event that either party shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the other party and immediately upon written notice, this Agreement shall terminate and be of no further force and effect.

Section 17. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

Section 18. SEVERABILITY. Should any part, term or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

Section 19. NOTICES

Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, or by facsimile transmission with certification of transmission and verbal confirmation of receipt of facsimile by the receiving party, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this Section. For the present, the CONTRACTOR and the TOWN designate the following as the respective places for giving of notice:

As to TOWN:

Town Manager
Town of Lauderdale By-The-Sea
4501 Ocean Drive
Lauderdale By-The-Sea, Florida 33308-3610
Telephone: (954) 640-4200
Facsimile: (954) 776-1857

Copy to:

Town of Lauderdale By-The-Sea
4501 Ocean Drive
Lauderdale By-The-Sea, Florida 33308-3610

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Telephone: (954) 640-4200
Facsimile: (954) 776-1857

As to ENGINEER:

President
Chen Moore & Associates Consulting Engineers, Inc.
500 West Cypress Creek Road, Suite 630
Fort Lauderdale, FL 33309

IN WITNESS WHEREOF, the parties have caused these presents to be executed and attested to by their duly authorized officers or representatives and their official seals to be affixed hereon, the day and year first above written.

Attest:

TOWN OF LAUDERDALE BY-THE-SEA

June White, CMC, Town Clerk

By: _____
Constance Hoffmann, Town Manager

Approved as to Form:

By: _____
Susan L. Trevarthen, Town Attorney

CONTRACTOR
Chen Moore & Associates, Inc.

BY: _____
Signature

Print Name and Title

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STATE OF FLORIDA)
) SS:
COUNTY OF _____)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____ of _____, an organization authorized to do business in the State of Florida, and acknowledged and executed the foregoing Agreement as the proper official of _____ for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 2012.

My Commission Expires:

Signature of Notary Public

Printed Name of Notary Public

**AGREEMENT BETWEEN THE TOWN OF LAUDERDALE-BY-THE-SEA AND
CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC., FOR
INDEPENDENT CONTRACTOR FOR PROFESSIONAL TOWN ENGINEER
SERVICES**

Exhibit 2

THIS AGREEMENT, made and entered into the 24 day
of APRIL, 2007, by and between:

TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308-3610
hereinafter referred to as "TOWN")

AND

CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.
a Florida ENGINEER
500 West Cypress Creek Road, Suite 410
Fort Lauderdale, FL 33309
hereafter referred to as ("ENGINEER")

WHEREAS, TOWN issued a Request for Letters of Interest
for Town Engineer Services in October 2006; and

WHEREAS, the TOWN administration has determined that it
is in the best interest of TOWN to hire a professional
engineering firm to serve as the Town Engineer for TOWN;
and

WHEREAS, TOWN received eight (8) responses and
interviewed four (3) firms; and

WHEREAS, negotiations pertaining to the services to be
performed by ENGINEER were undertaken in accordance with
the Consultant Competitive Negotiation Act (CCNA),
Section 287.055, Florida Statutes, and on March 27, 2007,
TOWN authorized the proper TOWN officials to enter into
this Agreement which incorporated the results of such
negotiation; and

WHEREAS, staff recommends that the contract be awarded to
Chen and Associates Consulting Engineers, Inc.; and

WHEREAS, the Town Commission concurs with the staff
recommendation and deems it to be in the best interests
of Town;

Exhibit 2

NOW, THEREFORE, in consideration of the benefits provided by ENGINEER to the citizens of the TOWN and the covenants and conditions herein expressed and the faithful performance of all such covenants and conditions, the parties agree as follows:

Section 1.

1.01 The above recitals are true and correct and are incorporated herein.

Section 2. TERM

2.01 This Agreement shall be effective upon the approval of the Town Commission and shall terminate on April 31, 2012 (5 year); however, the Town may have the option to renew this Agreement for one (1) additional two (2) year term subject to the performance of ENGINEER and upon approval by the Town Commission.

Section 3. SCOPE OF SERVICES

3.01 ENGINEER hereby agree to perform and provide Town engineer services to TOWN and to act as the Town Engineer, including oversight and administration of Engineering related activities. ENGINEER acknowledges and agrees that this includes coordination and technical support as required with Town Commission, Town Manager other TOWN departments, public agencies, consulting engineers and citizens. ENGINEER shall complete, among other items, the following tasks essential to the Town Engineer position:

- a) Attend Town Commission meetings as required and respond to any engineering related questions;
- b) Attend weekly coordination meetings with the TOWN when necessary to respond to any engineering related questions;
- c) Assist in the preparation of the Capital Improvement Budget;

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- d) Respond to occasional queries from residents pertaining to engineering matters;

It is estimated ENGINEER will spend approximately seven (7) hours per week on these essential tasks. In addition, additional tasks may be required from time to time. Additional services will be performed on an hourly basis may include:

- e) Direct, review and approve in-house engineering/construction projects, including final design plans; provide technical administration, as required and certify and approve payments;
- f) Attend review meetings for Development Services Department.
- g) Review and approve water, sewer, paving and drainage plans for compliance with TOWN Engineering Standards;
- h) Prepare required agenda memorandum and other reports as required;
- i) Review and approve plats, plat exemptions and plat waivers;
- j) Complete final inspection issues on construction projects;
- k) Sign and seal documents as required by law, i.e. engineering design drawings, plats, permit applications, etc.;
- l) Review and approve permits for work in the public rights-of-way;
- m) Meet with officials of Federal, State and County agencies and other cities on TOWN business when required by TOWN; and
- n) Provide other professional engineering services, as requested, that would normally be performed by the Town Engineer.

3.02

- a) In addition to the tasks outlined in 3.01 ENGINEER and TOWN acknowledge that from time to time there may be designated onetime special projects that are normally within the purview of the Town Engineer; however, for the purposes of this Agreement are not included in the tasks

designated in 3.01 above. Special projects may include, but not be limited to, the following projects: review of Land Development Code requirements related to engineering requirements, oversight on various construction projects, and assist in the preparation of applications and supporting documents for government grants or loans, as required.

- b) The total cost for any designated project shall not exceed an approved budgeted amount.
- c) All special projects assigned to ENGINEER shall be approved by the Town Commission or Town Manager to the commencement of any special project. In addition, ENGINEER shall not commence any special project until a written work authorization has been issued or a Purchase Order received. In addition, any assigned special project shall be performed within the time frame established by the TOWN and ENGINEER in each work authorization. Minor adjustments to the timetable from completion approved by TOWN in advance, in writing, will not constitute non-performance by ENGINEER per this Agreement.
- (d) In no event shall ENGINEER be compensated for any work which has not been authorized in writing by TOWN.
- (e) For the designated special projects, ENGINEER shall be compensated pursuant to the hourly rates as designed in Section 4.04 of this Agreement or at a lump sum basis as mutually agreed upon.
- (f) If the engineering services require a specialized firm to be hired outside this scope of service, ENGINEER shall negotiate all contracts and present recommendations to Town Commission for approval.

- 3.03 TOWN and ENGINEER acknowledge that the services to be provided pursuant to this Agreement shall commence upon the approval of the Town Commission.
- 3.04 ENGINEER acknowledges and agrees that the Director of Municipal Services, or his designee, is the individual on behalf of TOWN to coordinate the work to be completed by ENGINEER.
- 3.05 ENGINEER acknowledges and agrees that TOWN will not provide administrative support or office space for this position and that it is anticipated that ENGINEER will provide approximately 7-10 hours per week of professional services for TOWN matters.
- 3.06 Upon the completion of each task assigned to ENGINEER, ENGINEER shall provide the applicable records to TOWN. All documents including, but not limited to, drawings and specifications prepared in connection with the project constitute the work product of the firm and a portion of the instruments of service with respect to the project. However, the firm acknowledges that said documents are public records and the requirements of Florida Public Records law apply. Such documents and/or specifications constitute a portion of the integral services provided by the firm and, as such, are not intended or represented to be suitable for reuse by you or others or for extensions of the project or in connection with any other project. The firm specifically disclaims any responsibility and/or liability for or in connection with the reuse of such documents and/or specifications or any use thereof beyond the scope of the project as set forth herein. By your execution of this proposal, you agree to indemnify and hold the firm harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees arising out of or resulting from the reuse or extended use of such documents or specifications.
- 3.07 ENGINEER acknowledges that TOWN and ENGINEER shall establish mutually agreeable performance standards to evaluate ENGINEER'S performance based upon responsiveness, quality of work, turn around time

for the completion of required work and other standards agreed to by the parties. ENGINEER and TOWN'S Director of Municipal Services or designee shall document in writing the performance standards to be utilized as contract administration guidelines.

- 3.08 The parties acknowledge and agree that for the purposes of this Agreement, James Barton, P. E. shall be designated as the Town Engineer and Peter M. Moore, P.E., shall be designated as the Assistant Town Engineer for the services to be provided under this agreement. Nothing shall preclude ENGINEER from using other members of the corporation; however, the above named individuals shall be the key persons assigned to this Agreement.

Section 4. CONSIDERATION

- 4.01 TOWN agrees to compensate ENGINEER for the services performed by ENGINEER pursuant to the requirements of Section 3 of this Agreement. For engineering services pursuant to sections 3.01 of this Agreement, ENGINEER shall be paid an amount not to exceed \$50,400 per year. The parties acknowledge that this amount is based upon an average cost of \$4,200 per month and said services shall be paid based upon the hourly rate as designated in section 4.04 of this Agreement. The amount paid is inclusive of any and all costs to perform the Town Engineer services pursuant to Section 3.02.
- 4.02 ENGINEER shall be awarded a maximum annual increase of three percent (3%) per year on the Anniversary date. The Anniversary date, for the purposes of this Agreement, is October 1st of each calendar year.
- 4.03 Method of Billing and Payment.
(a) ENGINEER shall submit an invoice monthly, together with a monthly status report, showing work completed and any on-going projects. The invoice, together with the monthly status report shall be

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submitted to the Town of Lauderdale-By-The-Sea,
Municipal Services, 4501 Ocean Drive, Lauderdale-By-
The-Sea, Florida 33308-3610

(b) TOWN will make its best efforts to pay ENGINEER
within thirty (30) calendar days of receipt of
invoice the total shown to be due on such invoice.

4.04 As consideration for the Town engineering services,
pursuant to sections 3.01 of this Agreement, and the
special projects as designated in Section 3.02 of
this Agreement, the fees for the services provided
shall be billed at the following hourly rates:

Town Engineer	\$150.00
Firm Principal	\$211.00
Professional Engineer	\$135.00
Senior Construction Manager	\$135.00
Senior Engineer	\$ 92.00
Associate Engineer	\$ 81.00
Construction Inspector	\$ 81.00
Clerical	\$ 48.00

Said hourly rates shall be inclusive of all charges and
may be adjusted annually pursuant to Section 4.02 if
requested in writing by ENGINEER.

Section 5. DUTIES AND RESPONSIBILITIES OF TOWN

- 5.01 Timely review and comment on all work product
submitted by ENGINEER and schedule all required
meetings on a timely basis.
- 5.02 Other assistance as may be required by ENGINEER to
complete required work authorized by TOWN.
- 5.03 The Director of Municipal Services or designee shall
be the TOWN liaison for ENGINEER and all work
requests on behalf of TOWN shall be routed through
the Director of Municipal Services, or his designee.
- 5.04 On or before December 30, 2007, the parties shall
review the Scope of Services. The Town Manager may
amend the Scope of Services after the review,

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subject to the approval of the Town Commission, and provided there are no additional costs to TOWN. Said amendment shall be reduced to writing and approved by both parties.

Section 6. INSURANCE

6.01 Prior to commencing work, ENGINEER shall provide TOWN with certified copies of all insurance policies providing coverage as required.

6.02 ENGINEER shall secure and maintain, at its own expense, and keep in effect during the full period of the agreement a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

(a) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.

(b) Worker's compensation and Employer's Liability Insurance for all employees of ENGINEER engaged in work under the Agreement in accordance with the laws of the State of Florida. ENGINEER shall agree to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

(c) Comprehensive General Liability Insurance with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage ' Liability per occurrence

Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence

- (1) Premises and Operations;
- (2) Independent Contractors;

- (3) Products and Completed Operations;
 - (4) Broad Form Property Damage;
 - (5) Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
 - (6) Personal Injury Coverage with employment and contractual exclusions removed and deleted;
- and

(d) **Comprehensive Automobile Liability Insurance** for all owned, non-owned and hired automobiles and other vehicles used by ENGINEER in the performance of the work with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence

6.03 **ALL LIABILITY INSURANCE POLICIES SHALL SPECIFICALLY PROVIDE THAT THE TOWN OF LAUDERDALE-BY-THE-SEA IS AN ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS OF THE ENGINEER UNDER THE AGREEMENT.** INSURANCE Companies selected must be acceptable to TOWN. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to TOWN by certified mail.

6.04 The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide:

Financial Stability B+ to A+

6.05 ENGINEER is required to submit a list of claims presently outstanding against their professional liability coverage. This information must be provided by and signed by the agent of the insurance carrier. If no outstanding claims exist,

a statement of this fact must be provided by and signed by the agent of the insurance carrier.

Section 7. INDEMNIFICATION

- 7.01 GENERAL INDEMNIFICATION: ENGINEER shall indemnify, save and hold harmless TOWN, its officers, agents and employees, from any and all damages, losses, liabilities and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of ENGINEER or his subcontractors, agents, officers, employees or independent contractors pursuant to the Agreement, specifically including but not limited to those caused by or arising out of any act, omission, negligence or default of ENGINEER and/or his subcontractors, agents, servants or employees in the provision of the services under the Agreement.
- 7.02 PATENT AND COPYRIGHT INDEMNIFICATION: ENGINEER agrees to indemnify, save and hold harmless TOWN, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Agreement.

Section 8. TERMINATION

- 8.01 This Independent Contractor Professional Services Employment Contract is terminable by either TOWN or ENGINEER at any time on Thirty (30) days written notice to the other party. However, at TOWN'S option, and if so requested by TOWN, ENGINEER shall continue to provide the professional services contemplated herein pending the appointment/employment of his successor if such appointment/employment requires more than ten (10) days, and provided that TOWN exerts reasonable efforts within 120 calendar days to seek and select his said successor, and to complete any current projects under contract. In addition, the parties may terminate this Contract at any time and on any

agreed basis by mutual consent of all parties, the same reduced to writing and properly executed by all parties hereto. Likewise, the term of this Agreement may be extended at any time by mutual consent of all parties hereto, the terms of such extension being reduced to writing and executed by all parties hereto.

Section 9. RECORDS AND AUDIT

9.01 TOWN reserves the right to audit the records of ENGINEER relating to this Agreement at any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by TOWN. If required by TOWN, ENGINEER shall agree to submit to an audit by an independent certified public accountant selected by TOWN. ENGINEER shall allow TOWN to inspect, examine and review the records of ENGINEER at any and all times during normal business hours during the term of this Agreement.

Section 10. INDEPENDENT CONTRACTOR

10.01 It is understood and agreed that ENGINEER are and shall remain an independent contractor with respect to the services being performed by ENGINEER pursuant to this Agreement and shall not, for any purpose, be deemed an employee of TOWN.

10.02 During the term of this Agreement, ENGINEER agrees not to accept representation of another client to pursue interests that are directly adverse to TOWN'S interest.

Section 11. CONFLICT OF INTEREST

11.01 ENGINEER covenants that no person under its employ who presently exercises any functions or responsibilities in connection with' this Agreement has any personal financial interests, direct or indirect, with TOWN. ENGINEER further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of

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ENGINEER or its employees, must be disclosed in writing to TOWN.

11.02 ENGINEER is aware of the conflict of interest laws of the Municipal Code of the Town of Lauderdale-by-the-Sea, Broward County and the State of Florida, Chapter 112, Florida Statutes (2004), as amended, and agrees that it will fully comply in all respects with the terms of said laws.

11.03 ENGINEER warrants that it has not employed or retained any person employed by TOWN to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay, any public official or person employed by TOWN any fee, Council, percentage, brokerage fee or gift of any kind, contingent upon or resulting from the award of this privilege.

Section 12. ASSIGNMENT

12.01 This is a personal services Agreement whereby TOWN has expressly retained ENGINEER. This Agreement is not assignable or transferable in whole or in part without the prior expressed written consent of TOWN which consent can be arbitrarily withheld.

Section 13. COMPLIANCE WITH LAWS

13.01 ENGINEER shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, Town of Lauderdale-by-the-Sea and of any other public authority, which may be applicable to this Agreement.

Section 14. VENUE

14.01 Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida and the prevailing party to any resultant judgment shall be entitled to an award of all reasonable attorney's fees, paralegal expenses, interest and court costs incurred by such

prevailing party against the losing party including reasonable appellate attorney's fees, interest and taxable costs.

Section 15. GOVERNING LAW

15.01 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida.

Section 16. INSOLVENCY

In the event that either party shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the other party and immediately upon written notice, this Agreement shall terminate and be of no further force and effect.

Section 17. ENTIRE AGREEMENT

17.01 This Agreement contains the entire understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

Section 18. SEVERABILITY

18.01 Should any part, term or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

Section 19. NOTICES

19.01 All notices or other communications required or permitted under this Agreement other than that in section 8 of this agreement which is to be directed to the Town Manager, shall be in writing and given by:

19.02 Hand delivery;

19.03 Registered or certified mail, return receipt requested;

19.04 Overnight courier, or

19.05 Facsimile to:

TOWN:

Director of Municipal Services
Town of Lauderdale By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea,
Florida 33308-3610

AND ENGINEER:

James Barton P.E.
Senior Engineer
Chen and Associates Consulting Engineer,
Inc.
500 West Cypress Creek Road, Suite 410
Suite 250
Fort Lauderdale, Fl 33309

19.06 Or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered:

19.06.1 on the date delivered if by personal delivery or overnight courier;

19.06.2 On the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed; and

19.06.3 On the date of transmission with confirmed answer back if by fax.

[the balance of this page intentionally left blank]

It witness whereof, the Town of Lauderdale-by-the-Sea and Chen and Associates Consulting Engineering, Inc. have caused these presents to be executed in their respective names by the proper officials the day and year first above written.

Town of Lauderdale-By-The-Sea

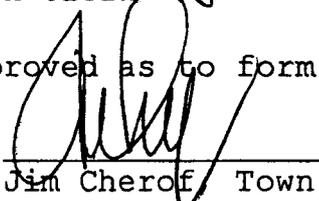
A municipal corporation, organized and existing under the laws of the State of Florida

By: 
Oliver Parker, Mayor

Attest:


Town Clerk

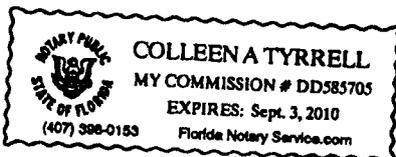
Approved as to form:

By: 
Jim Cherof, Town Attorney

State of Florida
County of Broward

The foregoing instrument was acknowledged before me, the undersigned Notary Public in and for the State of Florida, on this, 24 day of APRIL, 2007 by Colleen TYrrell.

Notary Public
Seal of Office




Notary Public, State of Florida

COLLEEN A. TYRRELL
Printed, typed or stamped name of
Notary Public exactly as commissioned

Individuals who signed are personally
known: no identification produced

ENGINEER

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Chen and Associates Consulting
Engineers, Inc.

By: *Ben H. Chen*
Print Name: Ben H. Chen
Title: President

State of Florida
County of Broward

On this, the 16th day of April, 2007, before me,
the undersigned Notary Public of the State of Florida,
the foregoing instrument was acknowledged by
_____ (name of corporate officer)
_____ (title), of Chen and Associates (name
of corporation), on behalf of the Corporation.

Witness my hand
and official seal

Colleen A. Tyrrell
Notary Public, State of Florida

COLLEEN A. TYRRELL
Printed, typed or stamped name of
Notary Public exactly as commissioned

Individuals who signed are personally
known: no identification produced

