

RESOLUTION NO. 02-04-59

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE CONTRACT FOR LEGISLATIVE CONSULTING AND GOVERNMENT RELATIONS SERVICES BETWEEN THE CITY OF MARATHON AND KEITH AND SCHNARS, P.A., A FLORIDA CORPORATION, WITH AN ANNUAL FEE NOT TO EXCEED \$20,000.00, PLUS EXPENSES; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF SAID AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Marathon ("City") desires to enter into a contract for legislative consulting and government relations services on behalf of the City before applicable federal, state and county agencies pertaining to the City's wastewater and infrastructure programs, as well as any other issues affecting the City; and

WHEREAS, the City Council hereby approves the Contract for legislative consulting and government relations services between the City of Marathon and Keith and Schnars, P.A., a Florida Corporation ("Consultant"), for the professional services outlined within the agreement for an annual fee not to exceed \$20,000.00, plus reimbursement of expenses incurred by Consultant as a result of its representation of the City.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

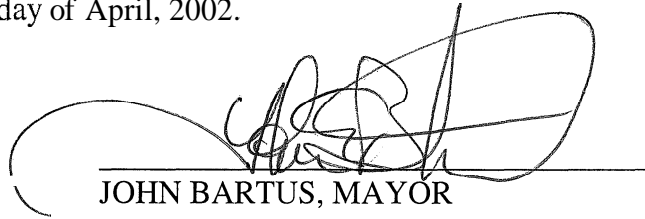
Section 2. Approval. The Contract for Legislative Consulting and Government Relations Services between Keith and Schnars, P.A., and the City of Marathon,

attached as Exhibit " A , is hereby approved. The City Manager and the City Attorney are authorized to finalize the terms and conditions of said Agreement, if deemed necessary, and the

~~City Manager~~ <sup>Mayor</sup> is authorized to execute said Agreement on behalf of the City.

**Section 3. Effective Date.** This resolution shall take effect immediately upon adoption.

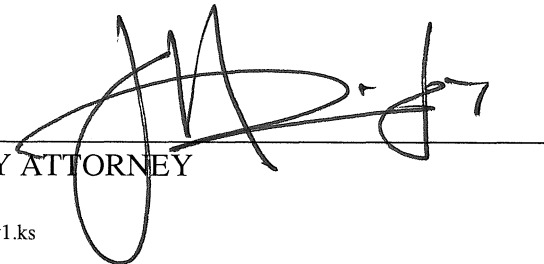
PASSED AND ADOPTED this 30<sup>th</sup> day of April, 2002.

  
\_\_\_\_\_  
JOHN BARTUS, MAYOR

ATTEST:

  
\_\_\_\_\_  
KATHERINE V. SELCHAN  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
CITY ATTORNEY

**CONTINUING SERVICES**

**A G R E E M E N T**

**Between**

**THE CITY OF MARATHON, FLORIDA**

**and**

**KEITH and SCHNARS, P.A.**

## CONTINUING SERVICES

### A G R E E M E N T

Between

THE CITY OF MARATHON, FLORIDA

and

KEITH and SCHNARS, P.A.

THIS AGREEMENT is made between the CITY OF MARATHON, FLORIDA, a Florida municipal corporation, (hereinafter referred to as the "CITY ") and KEITH and SCHNARS, P.A., a Florida corporation, (hereinafter referred to as the "CONSULTANT"), whose principal place of business is in Fort Lauderdale, Florida, and whose Federal I.D. Number is 59-1406307.

WHEREAS, pursuant to Section 287.055, Florida Statutes, the CITY requested qualifications from qualified planning and engineering firms and selected the CONSULTANT to provide professional planning and engineering services; and

WHEREAS, the CONSULTANT is willing and able to perform such professional, services for the CITY within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the CONSULTANT to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the CITY and CONSULTANT agree as follows:

#### SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 Compensation: The total amount paid by the CITY for the Consultant's professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Reimbursable Expenses:** the direct non-salary expenses directly attributable to the Project. Reimbursable expenses include long-distance communications, application and permit fees paid for securing approval of authorities having jurisdiction over the Specific Project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.

1.3 **Specific Project Agreement or Project Agreement:** an agreement to provide services for a particular Project.

1.4 **Subconsultant Fee:** the direct and actual cost of the Subconsultant with no markup, as reflected by actual invoices of the Subconsultant.

1.5 **Travel Expenses:** actual mileage at 29¢ per mile, meals and lodging expenses incurred directly for the Specific Project for travel outside of Miami-Dade County, Broward County or Monroe County. No overnight travel or out-of-town travel shall be reimbursed unless the CONSULTANT has secured advance written authorization for such travel from the City Manager. Reimbursement for such authorized travel expenses shall be at the rates provided for in Chapter 112, Florida Statutes, as may be amended from time to time, which rates shall by reference be made a part of this Agreement as though set forth in full.

## **SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES**

2.1 In accordance with the Consultants' Competitive Negotiation Act, the CONSULTANT may provide professional services to the CITY for Specific Projects as authorized from time to time by either the City Council or the City Manager as authorized by subsection 2.6. The services shall be for the following types of Projects or similar disciplines:

- a. Land Use Planning and Development
- b. Engineering services
- c. Environmental services
- d. Government relations
- e. Public involvement
- f. Surveying
- g. Stormwater management
- h. Project management
- i. Wastewater management
- j. Opinion of probable cost of construction

2.2 When the need for services for a Specific Project occurs, the City Manager may, enter into negotiations with the CONSULTANT for that Specific Project under the terms and conditions of this Agreement. The CITY shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide professional services for the Specific Project. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The

City Manager and CONSULTANT shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 2.3.

2.3 The CITY and CONSULTANT shall utilize as the agreement for each Specific Project a Standard Project Agreement ("Project Agreement"), a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation;
- e. The Personnel assigned to the Specific Project;
- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements;
- g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.

2.4 If the City Manager determines that the CONSULTANT's services in its capacity as CITY Engineer for a particular project are needed on an hourly basis, in lieu of a lump sum compensation package, the Consultant shall charge the CITY for professional services at those hourly fees as specified in Exhibit "B." The Project Agreement shall specify that the CONSULTANT's services shall be provided on an hourly basis with a maximum amount of compensation that may not be exceeded without additional approval.

2.5 The professional services to be rendered by the CONSULTANT shall commence subsequent to the execution of each Project Agreement. Performance of work by CONSULTANT prior to execution of a Project Agreement shall be at CONSULTANT's sole risk.

2.6 The City Manager is authorized to negotiate and execute a Project Agreement for Projects in which the CONSULTANTS' services do not exceed \$10,000.00.

2.7 The contract documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

### **SECTION 3. TERM/TERMINATION**

3.1 **Term of Agreement.** – This Continuing Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to Section 3.2 or other applicable sections of this Agreement. Each Project Agreement shall specify the period of service agreed to by the CITY and CONSULTANT for services to be rendered under said Project Agreement.

3.2 **Termination – For Convenience** – This Continuing Services Agreement may be terminated by the CITY for convenience upon thirty (30) calendar days written notice to the CONSULTANT.

3.3 **Effect on Project Agreement** – Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3.4 **Non-Exclusive Agreement** - Notwithstanding the provisions of Subsection 3.1, the City Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the CITY under similar continuing services agreements. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.

### **SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES**

4.1 **Changes Permitted.** Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the CITY by Change Order without invalidating the Project Agreement.

4.2 **Change Order Defined.** Change Order shall mean a written order to the CONSULTANT executed by the CITY, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 **Effect of Executed Change Order.** The execution of a Change Order by the CITY and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONSULTANT, by executing the Change Order, waives and forever releases any claim against the CITY for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order.

4.4 **Authority to Execute Changes or Requests for Additional Services.** The City Manager is authorized to negotiate and execute Change Orders, in an amount not to exceed \$10,000.00 per charge. Changes, which exceed \$10,000.00, shall be approved by the City Council.

## **SECTION 5. SURVIVAL OF PROVISIONS**

5.1 Any terms or conditions of either this Agreement or any subsequent Project Agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

## **SECTION 6. CITY'S RESPONSIBILITIES**

6.1 Assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allow reasonable access to all pertinent information relating to the services to be performed by CONSULTANT.

6.2 Furnish to CONSULTANT, at the CONSULTANT'S written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by CONSULTANT, in possession of the CITY.

6.3 Arrange for access to and make all provisions for CONSULTANT to enter upon public property as required for CONSULTANT to perform services.

## **SECTION 7. CODE OF ETHICS**

7.1 The code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

## **SECTION 8. POLICY OF NON-DISCRIMINATION WAGES**

8.1 The CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

8.2 The CONSULTANT shall comply with the wage provisions of Section 287.055, Florida Statutes. If the project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, the CONSULTANT shall be required to comply with the same.



## **SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES**

9.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the CITY or furnished by the CONSULTANT pursuant to any Project Agreement, shall become the property of the CITY, whether the Project for which they are made is completed or not, and shall be delivered by CONSULTANT to the CITY within five (5) calendar days after receipt of written notice requesting delivery of said documents or digital files. The CONSULTANT shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the CONSULTANT, without the CITY'S prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

9.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for each Specific Project shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the CITY.

9.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

## **SECTION 10. RECORDS/AUDITS**

10.1 CONSULTANT shall maintain and require Subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Specific Project. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the City Manager or any authorized CITY representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each Project Agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the CITY of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the CITY.

10.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable.

10.3 Refusal of the CONSULTANT to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the CITY of this Agreement or any Project Agreement.

## **SECTION 11. NO CONTINGENT FEE**

11.1 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, 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 CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the CITY shall have the right to terminate this Agreement or any Project Agreement, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

## **SECTION 12. INDEPENDENT CONTRACTOR**

12.1 The CONSULTANT is an independent contractor under this Agreement and any Project Agreements. Personal services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the CITY. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Project Agreements shall be those of the CONSULTANT.

## **SECTION 13. ASSIGNMENT; AMENDMENTS**

13.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the CITY.

13.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

## **SECTION 14. INDEMNIFICATION/HOLD HARMLESS**

14.1 The CONSULTANT shall indemnify and hold harmless the CITY and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this Agreement or any Project Agreement. This provision shall be subject to the limitations set forth in Section 725.08, Florida Statutes, to the extent applicable to the performance of this Agreement or any Project Agreement.

## **SECTION 15. INSURANCE**

The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Project Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the CITY against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the CITY, its officials, employees, agents and volunteers. Any insurance maintained by the CITY shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The insurance coverages shall include a minimum of:

15.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident.

15.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the CITY against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

15.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the CITY against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

(b) The CITY is to be specifically included as an Additional Insured for the liability of the CITY resulting from operations performed by or on behalf of CONSULTANT in

performance of this or any Project Agreement. CONSULTANT'S insurance, including that applicable to the CITY as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the CITY shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

15.4 **Professional Liability:** The CONSULTANT shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$100,000.00 per claim. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the CITY, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The CONSULTANT shall additionally notify the CITY, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$100,000.00 during the policy term.

15.5 **Certificate of Insurance:** Prior to the execution of this Agreement, CONSULTANT shall provide the City Manager with evidence of insurability from the Consultant's Insurance Carrier or a Certificate of Insurance. Prior to execution of any Project Agreement, the CONSULTANT shall provide to the City Manager, Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any Project Agreement and shall state that such insurance is as required by this and any Project Agreement. The CITY reserves the right to require the CONSULTANT to provide a certified copy of such policies, upon written request by the CITY. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the CITY before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City Manager.

15.6 All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The City Manager may require the CONSULTANT, as a condition of execution of a particular Project Agreement, to provide a bond or other monetary consideration to cover the CONSULTANTS' deductible for Professional Liability Insurance.

## **SECTION 16. REPRESENTATIVE OF CITY AND CONSULTANT**

16.1 **CITY Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The CITY designates the City Manager or his designee, as the

person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

16.2 **CONSULTANT Representative.** CONSULTANT shall inform the CITY Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

#### **SECTION 17. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL**

17.1 If either the CITY or CONSULTANT is required to enforce the terms of this Agreement or any Project Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

17.2 In the event of any litigation arising out of this Agreement or Project Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

#### **SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED**

18.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

#### **SECTION 19. CONSULTANT'S RESPONSIBILITIES**

19.1 The CONSULTANT and any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction and shall comply with all applicable CITY Codes, state and federal laws, rules and regulations.

19.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Project Agreement, it is determined that the CONSULTANT'S documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the CITY, the CONSULTANT shall immediately proceed to correct the work, re-perform services which failed to satisfy the

foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the CITY for any other services and expenses made necessary thereby, save and expect any costs and expenses which the CITY would have otherwise paid absent the CONSULTANT'S error or omission. The CITY 'S rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

19.3 The CONSULTANT'S obligations under Paragraph 19.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

## **SECTION 20. SUBCONSULTANTS**

20.1 In the event the CONSULTANT requires the services of any subconsultants or other professional associates in connection with services covered by any Project Agreement, the CONSULTANT must secure the prior written approval of the City Manager. The CONSULTANT shall utilize his/her best efforts to utilize subconsultants where the subconsultant's principal place of business is located within the City of Marathon, Florida.

20.2 Any subcontract with a subconsultant shall afford to the CONSULTANT rights against the subconsultant which correspond to those rights afforded to the CITY against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

20.3 No reimbursement shall be made to the CONSULTANT for any subconsultants that have not been previously approved by the CITY for use by the CONSULTANT.

## **SECTION 21. NOTICES**

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

### **FOR CONSULTANT:**

KEITH and SCHNARS, P.A.  
6500 North Andrews Avenue  
Fort Lauderdale, Florida 33309  
Telephone: (954) 776-1616  
Facsimile: (954) 771-3636

**FOR CITY :**

City of Marathon, Florida  
Attention: Craig Wrathell, City Manager  
Moyer & Associates  
210 North University Drive, Suite 301  
Coral Springs, Florida 33071  
Telephone: (954) 753-5841  
Facsimile: (954) 743-0033

With a copy to:

Nina L. Boniske, Esq.  
Weiss Serota Helfman Pastoriza & Guedes, P.A.,  
City Attorneys  
2665 South Bayshore Drive  
Suite 420  
Miami, FL 33133  
Phone: (305) 854-0800  
Facsimile: (305) 854-2323

**SECTION 22. TRUTH-IN-NEGOTIATION CERTIFICATE**

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 of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the CITY determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

**SECTION 23. CONSENT TO JURISDICTION**

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Project Agreement. Venue of any action to enforce this Agreement or any Project Agreement shall be in Monroe County, Florida.

**SECTION 24. GOVERNING LAW**

This Agreement and any Project Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

**SECTION 25. HEADINGS**

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

**SECTION 26. EXHIBITS**

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

**SECTION 27. SEVERABILITY**

If any provision of this Agreement or any Project Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

**SECTION 28. COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties execute this Agreement on the respective dates under each signature: The CITY, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by CONSULTANT by and through its *Executive Vice President*, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

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ATTEST:

CITY OF MARATHON, FLORIDA

Katherine V. Selcher  
City Clerk

By: [Signature]  
John Bartus, Mayor

Date: June 11, 2002

APPROVED AS TO FORM:

[Signature]  
City Attorney

ATTEST:

KEITH and SCHNARS, P.A.

\_\_\_\_\_  
Secretary

By: Michael J. Davis

\_\_\_\_\_  
Please type name of Secretary

Print Name: MICHAEL L. DAVIS

Date: JUNE 21, 2002

WITNESSES:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

SCANNED

7/8/02 #5959 KSV