

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2004-068**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MARATHON, APPROVING THE CONTINUING SERVICES AGREEMENT  
BETWEEN THE CITY AND CHEN AND ASSOCIATES, INC. FOR  
ENGINEERING SERVICES**

**WHEREAS**, pursuant to Section 287.055, Florida Statutes, the City of Marathon (the "City") requested qualifications from engineers to provide professional civil and environmental engineering services to the City in December 2003; and

**WHEREAS**, Chen and Associates, Inc. (the "Consultant") was recommended by City staff to provide professional services through a continuing services agreement (the "Agreement"); and

**WHEREAS**, the purpose of this 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, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**


**Section 1.** The continuing services agreement between the City of Marathon and Chen and Associates, Inc. to provide engineering services to the City pursuant to project authorizations, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

**Section 2.** The City Manager is authorized to execute the agreement on behalf of the City.

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

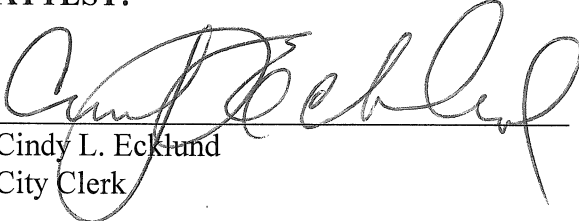
**PASSED AND APPROVED** by the City Council of the city of Marathon, Florida, this 22nd day of June, 2004.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Jeffrey M. Pinkus, Mayor

AYES: Bartus, Bull, Mearns, Miller, Pinkus  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

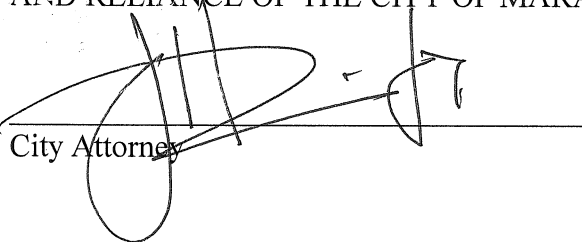


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Cindy L. Ecklund  
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



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City Attorney

**CONTINUING SERVICES**

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

**Between**

**THE CITY OF MARATHON, FLORIDA**

**And**

**CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.**

**CONTINUING SERVICES**

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

**Between**

**THE CITY OF MARATHON**

**And**

**CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.**

**THIS AGREEMENT** is made between the CITY OF MARATHON, a Florida municipal corporation, (hereinafter referred to as the "CITY") and CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC., a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the "CONSULTANT"), whose principal place of business is 20801 Biscayne Blvd., Suite 403, Miami, Florida 33180.

**WHEREAS**, pursuant to Section 287.055, Florida Statutes, the CITY requested qualifications from qualified engineers and selected the CONSULTANT to provide professional civil and environmental 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 \_\_\_¢ per mile, meals and lodging expenses incurred directly for the Specific Project for travel outside of Monroe County, Miami-Dade County and Broward County. No overnight travel or out-of-CITY travel outside of Monroe County 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 City Manager as authorized by subsection 2.6. The services shall be for the following types of Projects or similar disciplines:

- a. NPDES Permitting and stormwater management
- b. Drainage facilities
- c. Road construction and maintenance
- d. Civil Engineering
- e. GIS Mapping assistance
- f. Utility infrastructure evaluation and review
- g. Plat and site plan review
- h. Park and park land development
- i. Environmental engineering
- j. Surveying
- k. Project management
- l. Opinion of probable cost of construction
- m. Public Works permitting and inspections

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 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 CONSULANT's sole risk.

2.5 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.

2.6 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 contract. 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 Pursuant to Section 725.08, Florida Statutes, 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 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 \$25,000.00 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 \$25,000.00 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 principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.

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:**

Ben H. Chen, P.E., Ph.D., D.E.E.  
President  
Chen And Associates Consulting Engineers, Inc.  
20801 Biscayne Blvd.  
Suite 403  
Miami, Florida 33180  
Telephone: (305) 249-2279  
Facsimile: (305) 249-7229

**FOR CITY:**

City of Marathon  
Attention: Scott Janke, City Manager  
10045-55 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033  
Facsimile: (305) 743-3667

With a copy to:

John R. Herin, Esq.  
Weiss Serota Helfman Pastoriza Guedes Cole & Boniske, P.A.,  
City Attorney  
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 President, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

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ATTEST:

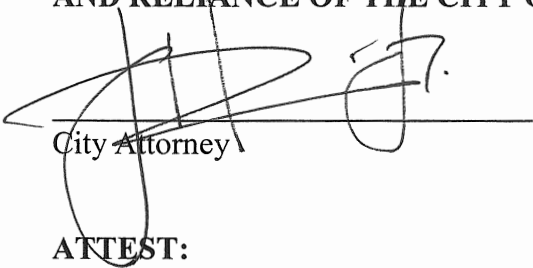
CITY OF MARATHON

  
City Clerk

By:   
Scott Janke, City Manager


Date: 6/23/04

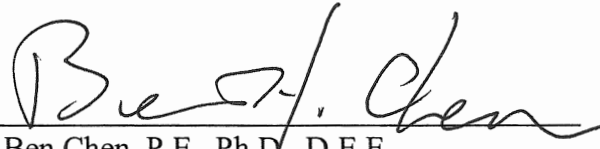
**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
City Attorney

ATTEST:


**CHEN AND ASSOCIATES CONSULTING  
ENGINEERS, INC.**

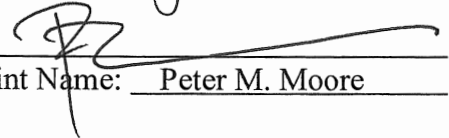
  
Secretary  
Jason J. McClair  
Please type name of Secretary

By:   
Ben Chen, P.E., Ph.D., D.E.E.  
President

Date: 6/9/04

WITNESSES:

  
Print Name: James H. Barton

  
Print Name: Peter M. Moore

**EXHIBIT "A"**

**PROJECT AGREEMENT**

Between

**CITY OF MARATHON, FLORIDA**

And

**CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.**

for

Work Authorization No. \_\_\_\_

[INSERT NAME OF PROJECT]

PROJECT AGREEMENT

Between

THE CITY OF MARATHON, FLORIDA

And

CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.

For

Work Authorization No. \_\_\_\_\_

[INSERT NAME OF PROJECT]

Pursuant to the provisions contained in the "Continuing Services Agreement" between the CITY OF MARATHON, FLORIDA (the "CITY") and CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC., ("CONSULTANT") dated \_\_\_\_\_, this Project Agreement authorizes the CONSULTANT to provide the services as set forth below:

The CITY and CONSULTANT agree as follows:

**SECTION 1. SCOPE OF SERVICES**

1.1 The CONSULTANT shall provide engineering services to the CITY for the Project as described in the "Project Description" attached as Exhibit "1."

1.2 The "Scope of Services and Project Schedule" and tasks to be provided by the CONSULTANT for this Project are those services and tasks as listed in Exhibit "2."

1.3 The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

**SECTION 2. DELIVERABLES**

As part of the Scope of Services and Project Schedule, the CONSULTANT shall provide to the CITY the following Deliverables:

\_\_\_\_\_

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### **SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE**

3.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect \_\_\_\_\_, unless otherwise terminated pursuant to Section 4 or other applicable provisions of this Project Agreement. The City Manager, in his sole discretion, may extend the term of this Agreement through written notification to the CONSULTANT. Such extension shall not exceed 30 days. No further extensions of this Agreement shall be effective unless authorized by the CITY Council.

3.2 **Commencement.** The CONSULTANT'S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the CONSULTANT from the CITY. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the City Manager prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this Agreement as Exhibit "3". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the CITY in writing, in the event that the CONSULTANT fails to meet to the contract time for completion of services as determined by the Project Schedule, the CONSULTANT shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$ \_\_\_\_\_ per day. The CONSULTANT may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONSULTANT shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONSULTANT an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONSULTANT

overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONSULTANT those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this Agreement are of the essence.

#### **SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION**

4.1 **Lump Sum Compensation.** CITY agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "2" \$\_\_\_\_\_.  
[OR, IF HOURLY, "CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$\_\_\_\_\_.]

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the CITY), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the CITY.

#### **SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT**

##### **5.1 Invoices**

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3", to this Project Agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the CITY. The CITY shall pay CONSULTANT within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONSULTANT to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONSULTANT is disputed, or additional backup documentation is required, the CITY shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The CITY, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY's reasonable satisfaction.

5.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONSULTANT until the project is completed. Said retainage may be withheld at the sole discretion of the City Manager and as security for the successful completion of the CONSULTANT'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONSULTANT.

## **SECTION 6. TERMINATION/SUSPENSION**

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the CITY, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the CITY for cause and it is subsequently determined by a court by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

6.2 **For Convenience.** This Project Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subconsultant obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 5.1 of this Project Agreement. Under no

circumstances shall the CITY make any payment to the CONSULTANT for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONSULTANT's work product shall become the property of the CITY and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this Project Agreement. Further, upon the CITY'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the CITY.

6.4 **Suspension for Convenience.** The CITY shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the CITY, the CONSULTANT shall immediately comply with same. In the event the CITY directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the CITY shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

**SECTION 7. INCORPORATION OF TERMS AND CONDITONS OF CONTINUING SERVICE AGREEMENT**

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated \_\_\_\_\_ between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

**ATTEST:**

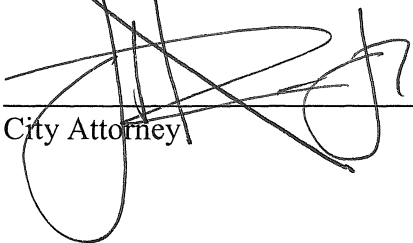
**CITY OF MARATHON**

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Scott Janke, City Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
City Attorney

**ATTEST:**

**CHEN AND ASSOCIATES CONSULTING  
ENGINEERS, INC.**

\_\_\_\_\_  
Corporate Secretary

By: \_\_\_\_\_  
Ben Chen, P.E., Ph.D, D.E.E.  
President

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

Date: \_\_\_\_\_

(CORPORATE SEAL)

**WITNESSES:**

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

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





**Exhibit "1"**

**Project Description**

[TO BE INSERTED]

**Exhibit “2”**

**Scope of Services and Project Schedule**

[TO BE INSERTED]

**EXHIBIT "3"**

**Payment Schedule**

[TO BE INSERTED]

**EXHIBIT "B"**

**PAGE 1 OF 2**

**CONSULTANT'S BILLING RATE**

**CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.\***

Principal.....	\$ 150.00
Project Manager.....	\$ 105.00
Senior Engineer.....	\$ 90.00
Engineer.....	\$ 65.00
Construction Manager.....	\$ 75.00
Construction Inspector.....	\$ 50.00
Technician/Clerical.....	\$ 40.00

**EXHIBIT "B"**

**PAGE 2 OF 2**

Principal: Category refers to individuals that serve as overall quality control/quality assurance agent for the project. Typical duties include project meetings, review sessions and contractual questions.

Project Manager: Category refers to individuals that serves as the singular point of contact between the project and all other entities. Direct supervision of all duties including planning, design, permitting and construction.

Senior Engineer: Category refers to individuals that serve as the lead in all planning or design matters. Typical duties involve preliminary project production, design calculations, permit packages.

Engineer: Category refers to individuals that serve as the production staff for all planning or design matter. Typical duties involve final project production, plan revisions, modeling.

Construction Manager: Category refers to individuals that serve as the lead in all construction and certification matters. Typical duties involve constructability review, construction administration and project closeout.

Construction Inspector: Category refers to individuals that serve as the production staff for all construction and certification matters. Typical duties involve daily reports, construction testing, daily photographs.

Technician/Clerical: Category refers to individuals that serve in an auxiliary capacity for all projects. Typical duties involve drafting, typing, filing.

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE  
8/9/2004

PRODUCER (813)248-1135  
ACORD & CO., PLC  
PATRICIA LANE SCHMALTZ  
BOX 291667

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURERS AFFORDING COVERAGE**

INSURER A: AMERICAN SAFETY RISK RETENTION GROUP  
INSURER B: AMERICAN HOME ASSURANCE COMPANY  
INSURER C:  
INSURER D:  
INSURER E:

AMP, FL 33887-1087

CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.  
5100 NW 33RD AVENUE  
SUITE 250  
FORT LAUDERDALE, FL 33309

**COVERAGES**

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	PFL 03-2552-003	08/26/2003	08/26/2004	EACH OCCURRENCE	\$ 1,000,000
				FIRE DAMAGE (Any one fire)	\$ 50,000
				MED EXP (Any one person)	\$ 6,000
				PERSONAL & ADV INJURY	\$ 1,000,000
				GENERAL AGGREGATE	\$ 2,000,000
				PRODUCTS - COMP/OP AGG	\$ 2,000,000
<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	PFL 03-2552-003	08/26/2003	08/26/2004	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
				BODILY INJURY (Per person)	\$
				BODILY INJURY (Per accident)	\$
				PROPERTY DAMAGE (Per accident)	\$
<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
				OTHER THAN AUTO ONLY: EA ACC	\$
				AGG	\$
<b>EXCESS LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE	\$
				AGGREGATE	\$
					\$
					\$
<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	W06268507	02/01/2004	02/01/2005	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
				E.L. EACH ACCIDENT	\$ 500,000
				E.L. DISEASE - EA EMPLOYEE	\$ 500,000
				E.L. DISEASE - POLICY LIMIT	\$ 500,000
<b>OTHER PROFESSIONAL LIABILITY INCL IN POLICY AND LIMIT W/ GENERAL LIABILITY</b>	PFL 03-2552-003	08/26/2003	08/26/2004	EACH CLAIM	1,000,000
				AGGREGATE	2,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER HAS BEEN NAMED AS ADDITIONAL INSURED UNDER THE GENERAL LIABILITY COVERAGES REFERENCED HEREIN AS RESPECTS THE ACTIVITIES OF THE NAMED INSURED AND AS PER THE TERMS AND CONDITIONS OF THE POLICY AS ISSUED.

CERTIFICATE HOLDER  ADDITIONAL INSURED; INSURER LETTER: A

**CANCELLATION**

CITY OF MARATHON  
100445-55 OVERSEAS HIGHWAY

MARATHON FL 33050-

ATTN: SCOTT JANKE, CITY MANAGER  
FAX: (305) 743-3367

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Patricia Lane Schmaltz*