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**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-072**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, APPROVING A CONTINUING SERVICES
AGREEMENT WITH PATRICIA L. MCNEESE FOR ENVIRONMENTAL
CONSULTING SERVICES AS AUTHORIZED BY THE CITY**

WHEREAS, the City of Marathon, Florida (the "City") wishes to engage Patricia L. McNeese ("Consultant") to assist the City with environmental issues relating to the Marathon Regional Sewage Facility project; and

WHEREAS, services may only be performed by the Consultant after receipt of an authorized project authorization from the City for each project; and

WHEREAS, the services to be rendered by the Consultant are professional consulting services and, therefore, exempt from the competitive bidding requirements in the City's Policies and Procedures for City Employees and Officials Regarding Purchasing (the "Purchasing Procedures").

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

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

Section 2. The continuing services agreement between the City of Marathon and Patricia L. McNeese for environmental consulting services, 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. These are professional consulting services and therefore procurement of these services is exempt from the City's Purchasing Procedures.

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 14th day of June, 2005.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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

ATTEST:



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:**



CITY ATTORNEY

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
PATRICIA L. MCNEESE ENVIRONMENTAL CONSULTING**

THIS AGREEMENT is made between **PATRICIA L. MCNEESE**, (hereinafter the "Consultant"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for assisting the City of Marathon with environmental issues relating to the Marathon Regional Sewage Facility project (the "Project"); and

WHEREAS, the City desires to engage the Consultant to perform the services specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows.

1. Scope of Services/Deliverables.

- 1.1 The Consultant shall furnish professional planning services to the City as set forth in the Scope of Services for the Project as specified in Exhibit "A," attached to this Agreement.
- 1.2 The "Scope of Services" includes a Project Schedule for the Project which includes a breakdown of tasks and a timeline.
- 1.3 Consultant agrees that City may terminate the Agreement upon the completion of any task listed in the Scope of Services by giving written notice to Consultant. City and Consultant may agree to add additional tasks to the Scope of Services through the issuance of a written work order issued at the discretion of City staff, provided that the amount of any additional work is less than \$25,000 and the additional work has been properly budgeted.

2. Term/Commencement Date.

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through June 1, 2006, unless earlier terminated in accordance with Paragraph 8. The City Manager may extend the term of this Agreement up to an additional 180 days by written notice to the Consultant.

2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in the Project Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

3.1 The Consultant shall be compensated at the rate of \$100 per hour up to the maximum amount included in the Scope of Services.

3.2 The Consultant shall invoice the City upon the completion of each task in accordance with the Project Schedule.

3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.

3.4 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Subconsultants.**

4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Project.

4.2 Any subconsultants used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities**

5.1 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.

5.2 Arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional planner under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the

Project, it is determined that the Consultant has failed to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any adversarial planning issues in the City. For the purposes of this section “adversarial” shall mean any development application where staff is recommending denial or denied the application; administrative appeal or court action wherein the City is a party.

8. **Termination.**

8.1 The City Manager, without cause, may terminate this Agreement upon thirty (30) days written notice to the Consultant, or immediately with cause.

8.2 Upon receipt of the City's written notice of termination, Consultant shall stop work on the Project unless directed otherwise by the City Manager.

8.3 In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

9.1 The Contractor shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

- 9.1.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law. Contractors with Worker's Compensation exemption shall not hold City liable for employee injury or claims.
- 9.1.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$100,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 9.1.3 Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$100,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 9.1.4 Professional Liability. The company shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.

Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the City as additional insured or certificate holder. 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.

10. **Nondiscrimination.**

- 10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys Fees and Waiver of Jury Trial.**

- 11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

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

12. **Indemnification.**

12.1 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Michael H. Puto, City Manager
City of Marathon, Florida
10045-55 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin, Jr., Esq.
Stearns Weaver Miller
Weissler Alhadeff & Sitterson, P.A.
150 W Flagler St, Suite 2200
Miami, Fl 33130

For The Consultant: Patricia L. McNeese
P.O. BOX 450
Crystal River, Fl 34423

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Ownership and Access to Records and Audits.**

16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

16.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.

16.3 The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Nonassignability.**

17.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Consultant, and Consultant's familiarity with the City's area, circumstances and desires.

18. **Severability.**

18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this

Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

19.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

21. **Waiver**

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions**

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

23. **Prohibition Of Contingency Fees.**

23.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts**

24.1 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 on her own behalf.

Attest:


Cindy L. Ecklund, City Clerk

CITY OF MARATHON

By: 
Michael H. Puto, City Manager

Date: 6/15/05

CONSULTANT

By: 
Patricia L. McNeese

Date: 6/16/05

EXHIBIT "A"

SCOPE OF SERVICES

1. **Project.**

Assisting the City of Marathon with environmental issues relating to the Marathon Regional Sewage Facility project

2. **Project Schedule.**

Task 1: NEPA Process

1.1 Track the NEPA process to completion and promote continued progress by the Corps of Engineers on the Marathon project. Provide continuous updates to the City.

1.2 Review the Draft Environmental Assessment (EA) for the Marathon project and provide comments to the Corps through the City, as needed.

1.3 Assist the Corps and their contractor, PBS&J in responding to any comments received on the draft EA from resource agencies or the public, especially with respect to the U.S. Fish and Wildlife Service and endangered species consultation issues.

1.4 Review the Final EA to ensure that comments are properly addressed.

Consultant to perform these tasks on a time and materials basis at the rate of \$100/hour. Anticipated maximum amount of \$10,000.00 should be allocated to this task and this amount not to be exceeded without further authorization. This task includes one visit to the City of Marathon if needed.

Task 2: Wetlands and Endangered Species Permitting

The FKAA's basic facility plan included a regional treatment plant on their parcel on Crawl Key and no wetlands impacts associated with transmission lines and vacuum pump stations. Anticipated tasks under that plan include the following:

2.1 Ensure that the previously performed jurisdictional determination is reviewed and accepted by the Corps and the FDEP (reproduction of sealed survey not included).

2.2 Assist the City Engineer with preparation, submittal and negotiation of state and federal permits for any wetlands impacts, including response to and negotiation of any federal endangered species consultation.

2.3 Design mitigation for wetlands impacts and/or endangered species impacts if needed.

Consultant to perform these tasks on a time and materials basis at the rate of \$100/hour. Anticipated maximum amount of \$15,000.00 to be allocated to this task and this

amount not to be exceeded without further authorization. This task includes two visits to the City of Marathon for field work and other necessary site activities.

Task 3. City of Marathon Permitting

Outstanding tasks with respect to this aspect of the project are as follows:

3.1 Ensure that tentative environmental issues identified during the pre-application meeting are resolved including conducting a habitat analysis (HEI) on the proposed vacuum pump station site on Grassy Key.

3.2 Ensure that the review conducted by the Florida Department of Community Affairs (FDCA) proceeds smoothly and that all issues are resolved.

Consultant to perform these tasks on a time and materials basis at the rate of \$100/hour. Anticipated maximum amount of \$5,000.00 should be allocated to this task and this amount not to be exceeded without further authorization. This task includes one visit to the City of Marathon if needed.