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**CITY OF MARATHON, FLORIDA  
RESOLUTION 2006-110**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON AUTHORIZING CITY MANAGER TO ENTER INTO CONTRACT WITH CARTAYA & ASSOCIATES ARCHITECTS, P.A., FOR ARCHITECTURAL, STRUCTURAL ENGINEERING, MECHANICAL / ELECTRICAL / PLUMBING ENGINEERING, CIVIL ENGINEERING AND LANDSCAPE ARCHITECTURAL SERVICES FOR CONSTRUCTION OF FIRE STATION NO. 14 IN AN AMOUNT NOT TO EXCEED \$385,000**

**WHEREAS**, the City has contracted Biltmore Construction for construction of City of Marathon Fire Station No. 14; and

**WHEREAS**, architectural and engineering services are necessary to complete the bidding, contracting, and construction; and

**WHEREAS**, Cartaya & Associates Architects, P.A. have been chosen to work with the Construction Manager at Risk, Biltmore Construction on this project.

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

**Section 1.** Council approves city manager entering into a contract with Cartaya & Associates for architectural/engineering work on City of Marathon Fire Station No. 14 in an amount not to exceed \$385,000.

**Section 2.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED** by the City Council of the city of Marathon, Florida, this 25th day of July, 2006.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Christopher M. Bull, Mayor

AYES: Pinkus, Tempest, Mearns, Bull  
NOES: Worthington  
ABSENT: None  
ABSTAIN: None

**ATTEST:**



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Diane Clavier  
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



# AIA® Document B141™ – 1997 Part 1

## Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services

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### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

**AGREEMENT** made as of the \_\_\_\_\_ day of July \_\_\_\_\_ in the year 2006.  
*(In words, indicate day, month and year)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, address and other information)*

The City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050

and the Architect:  
*(Name, address and other information)*

Cartaya & Associates, Architects P.A.  
3077 E. Commercial Boulevard, Suite 201  
Fort Lauderdale, Florida 33308

For the following Project:  
*(Include detailed description of Project)*

Construction of Fire Station No. 14 at 8900 Overseas Highway, Marathon, Florida 33050

The Owner and Architect agree as follows:

## ARTICLE 1.1 INITIAL INFORMATION

§ 1.1.1 This Agreement is based on the following information and assumptions.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

### § 1.1.2 PROJECT PARAMETERS

§ 1.1.2.1 The objective or use is:

*(Identify or describe, if appropriate, proposed use or goals.)*

Construction of a fire station to be built at 8900 Overseas Highway, Marathon, Florida 33050.

§ 1.1.2.2 The physical parameters are:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)*

The fire station shall consist of 19,500 square feet. The Owner shall provide to the Architect all other pertinent information regarding the site and the design criteria.

§ 1.1.2.3 The Owner's Program is:

*(Identify documentation or state the manner in which the program will be developed.)*

The Architect has already provided design plans to the Owner for this project, and the Owner has retained a construction manager-at-risk to build the project. The Architect's scope of work under this agreement shall be to provide the Owner with Architectural, Structural Engineering, Mechanical/Electrical/Plumbing Engineering, Civil Engineering and Landscape Architectural Services, consisting of Construction Documents, Permitting Assistance and Construction Administration. Construction Administration Services shall include all shop drawing review, request for information responses, as equal research, change order evaluation and a site visit to observe construction, review Construction Manager's request for payment and help respond to questions every other week.

§ 1.1.2.4 The legal parameters are:

*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)*

§ 1.1.2.5 The financial parameters are as follows.

- .1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is: unknown at time of execution of this Agreement
- .2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is: unknown at time of execution of this Agreement

§ 1.1.2.6 The time parameters are:

*(Identify, if appropriate, milestone dates, durations or fast track scheduling.)*

Project duration is estimated at twelve (12) months.

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:

*(Identify method such as competitive bid, negotiated contract, or construction management.)*

The fire station is being built under a construction manager-at-risk arrangement with Biltmore Construction Co., Inc. (the "Construction Manager").

§ 1.1.2.8 Other parameters are:

*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)*

This project is adjacent to the airport and therefore FAA, Homeland Security and related issues will need to be taken into consideration.

**§ 1.1.3 PROJECT TEAM**

**§ 1.1.3.1** The Owner's Designated Representative is:  
*(List name, address and other information.)*

B.W. Sprague, Inc.  
825 Duval Street  
Key West, Florida 33040

**§ 1.1.3.2** The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
*(List name, address and other information.)*

Susie Thomas or Walter McDowell

**§ 1.1.3.3** The Owner's other consultants and contractors are:  
*(List discipline and, if known, identify them by name and address.)*

N/A

**§ 1.1.3.4** The Architect's Designated Representative is:  
*(List name, address and other information.)*

Mario Cartaya & Juan Justiniano (Project Manager) & Carlos Llanos (Construction Administration)  
3077 E. Commercial Boulevard, Suite 201  
Fort Lauderdale, Florida 33308  
Phone: 954-771-2724  
Fax: 954-776-4280

**§ 1.1.3.5** The consultants retained at the Architect's expense are:  
*(List discipline and, if known, identify them by name and address.)*

Curtis & Rogers Design Studio, Inc.  
3250 Mary Street, Suite 301  
Miami, Florida 33133

Jenkins & Charlend, Inc.  
3590 N.W. 56<sup>th</sup> Street  
Fort Lauderdale, Florida 33308

Kamm Consulting, Inc.  
1407 W. Newport Center Drive  
Deerfield Beach, Florida 33442

**§ 1.1.4** Other important initial information is:

N/A

**§ 1.1.5** When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

N/A

§ 1.1.6 The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.

## ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES

§ 1.2.1 The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

### § 1.2.2 OWNER

§ 1.2.2.1 Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.

§ 1.2.2.3 The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 1.2.2.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 1.2.2.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

### § 1.2.3 ARCHITECT

§ 1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

§ 1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.2.3.3 The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

§ 1.2.3.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public

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or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

§ 1.2.3.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

§ 1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

### ARTICLE 1.3 TERMS AND CONDITIONS

#### § 1.3.1 COST OF THE WORK

§ 1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit.

§ 1.3.1.3 The Cost of the Work does not include the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

#### § 1.3.2 INSTRUMENTS OF SERVICE

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 1.3.2.3 Except for the licenses granted in Section 1.3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the

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Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**§ 1.3.2.4** Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

### **§ 1.3.3 CHANGE IN SERVICES**

**§ 1.3.3.1** Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5.

**§ 1.3.3.2** If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 decisions of the Owner not rendered in a timely manner;
- .4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- .7 change in the information contained in Article 1.1.

### **§ 1.3.4 MEDIATION**

**§ 1.3.4.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

**§ 1.3.4.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§ 1.3.4.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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**§ 1.3.5 ARBITRATION**

**§ 1.3.5.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4.

**§ 1.3.5.2** Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

**§ 1.3.5.3** A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

**§ 1.3.5.4** No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 1.3.5.5** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

**§ 1.3.7 MISCELLANEOUS PROVISIONS**

**§ 1.3.7.1** This Agreement shall be governed by the laws of the State of Florida.

**§ 1.3.7.2** Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

**§ 1.3.7.3** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

**§ 1.3.7.4** To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 1.3.7.5** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

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§ 1.3.7.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 1.3.7.8 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 1.3.7.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

#### § 1.3.8 TERMINATION OR SUSPENSION

§ 1.3.8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 1.3.8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

#### § 1.3.9 PAYMENTS TO THE ARCHITECT

§ 1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's

compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

§ 1.3.9.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include only costs for document reproduction and courier expenses incurred by the Architect and Architect's employees and consultants directly related to the Project.

(Paragraph deleted)

§ 1.3.9.3 Records of Reimbursable Expenses, and of expenses pertaining to a Change in Services shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

#### ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

§ 1.4.1 Enumeration of Parts of the Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement comprises the documents listed below.

§ 1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:

*(List other documents, if any, delineating Architect's scope of services.)*

N/A

§ 1.4.1.3 Other documents as follows:

*(List other documents, if any, forming part of the Agreement.)*

None

§ 1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

See Article 1.6 below.

#### ARTICLE 1.5 COMPENSATION

§ 1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

Construction Documents	
-Shell and Interior Build-Out Plans and Specifications	\$250,000.00
Permitting	
-Civil, Landscaping and Building Shell Documents	\$ 25,000.00
Interior Build-Out Documents	\$ 10,000.00
Construction Administration	
-Shell and Interior Build-Out	\$100,000.00
TOTAL FEES:	\$385,000.00

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

N/A

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§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of ( ) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the expenses incurred by the Architect, and the Architect's employees and consultants, shall be invoiced at cost. Additional renderings will be provided at cost if requested by the Owner.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

N/A

§ 1.5.6 Invoices for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement. Fifty percent (50%) of the Construction Document Fee shall be due at the submittal of the Shell documents and one hundred percent (100%) of the Construction Document Fee shall be due at the submittal of the Build-Out Documents.

§ 1.5.78 Payments are due and payable in accordance with Chapter 218.70, Florida Statutes. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of interest agreed upon.)*

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*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

*(Paragraph deleted)*

## ARTICLE 1.6 OTHER CONDITIONS AND SERVICES

### § 1.6.1 POLICY OF NON-DISCRIMINATION/WAGES

§ 1.6.1.1 The Architect 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.

§ 1.6.1.2 The Architect 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 Architect shall be required to comply with the same.

### § 1.6.2 NO CONTINGENT FEE

The Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, 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 the Architect, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the Architect violates this provision, the Owner shall have the right to terminate this 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.

### § 1.6.3 INDEPENDENT CONTRACTOR

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The Architect is an independent contractor under this Agreement. Services provided by the Architect shall be by employees of the Architect, and not as officers, employees, or agents of the Owner. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the Architect.

**§ 1.6.4 TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Agreement by the Architect 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 are accurate, complete, and current at the time of contracting.

**§ 1.6.5 PUBLIC ENTITY CRIMES ACT**

The Architect represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a Architect, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to the Owner, may not submit a bid on a contract with the Owner for the construction or repair of a public building or public work, may not submit bids on agreements of real property to the Owner, may not be awarded or perform work as a Architect, supplier, subcontractor, or consultant under a contract with the Owner, and may not transact any business with the Owner in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall be a material breach of the Agreement and result in termination of this Agreement and recovery of any monies paid by the Owner, and may result in debarment from the Owner's competitive procurement activities. In addition to the foregoing, the Owner further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether the Owner has been placed on the convicted vendor list.

**§ 1.11.6 TRENCH SAFETY ACT**

The Architect shall also comply with the Trench Safety Act set forth in Sections 553.60 through 553.64, inclusive, Florida Statutes, and OSHA Standard 29 C.F.R. § 1926.650 Subpart P. In order to evidence the Architect's intent to comply with the foregoing, upon execution of this Agreement, the Architect shall also execute and deliver to the Owner a Trench Safety Act Compliance Statement on a form provided by the Owner. Without limiting the foregoing, at all times during performance of the Work, under no circumstances shall any trench(es) remain open overnight.

This Agreement entered into as of the day and year first written above.

**OWNER**



(Signature)

Mike Puto  
City Manager  
City of Marathon

(Printed name and title)

**ARCHITECT**



(Signature)

MARIO CARTAYA, ARCHITECT

(Printed name and title)

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# Additions and Deletions Report for AIA® Document B141™ – 1997 Part 1

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:25:12 on 07/18/2006.

## PAGE 1

### 1.6 OTHER CONDITIONS AND SERVICES

**AGREEMENT** made as of the \_\_\_\_\_ day of July in the year 2006.

...

The City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050

...

Cartaya & Associates, Architects P.A.  
3077 E. Commercial Boulevard, Suite 201  
Fort Lauderdale, Florida 33308

...

Construction of Fire Station No. 14 at 8900 Overseas Highway, Marathon, Florida 33050

## PAGE 2

Construction of a fire station to be built at 8900 Overseas Highway, Marathon, Florida 33050.

...

The fire station shall consist of 19,500 square feet. The Owner shall provide to the Architect all other pertinent information regarding the site and the design criteria.

...

The Architect has already provided design plans to the Owner for this project, and the Owner has retained a construction manager-at-risk to build the project. The Architect's scope of work under this agreement shall be to provide the Owner with Architectural, Structural Engineering, Mechanical/Electrical/Plumbing Engineering, Civil Engineering and Landscape Architectural Services, consisting of Construction Documents, Permitting Assistance and Construction Administration. Construction Administration Services shall include all shop drawing review, request for information responses, as equal research, change order evaluation and a site visit to observe construction, review Construction Manager's request for payment and help respond to questions every other week.

...

- .1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is: unknown at time of execution of this Agreement
- .2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is: unknown at time of execution of this Agreement

...

Project duration is estimated at twelve (12) months.

...

The fire station is being built under a construction manager-at-risk arrangement with Biltmore Construction Co., Inc. (the "Construction Manager").

## PAGE 3

This project is adjacent to the airport and therefore FAA, Homeland Security and related issues will need to be taken into consideration.

...

B.W. Sprague, Inc.  
825 Duval Street  
Key West, Florida 33040

...

Susie Thomas or Walter McDowell

...

N/A

...

Mario Cartaya & Juan Justiniano (Project Manager) & Carlos Llanos (Construction Administration)  
3077 E. Commercial Boulevard, Suite 201  
Fort Lauderdale, Florida 33308  
Phone: 954-771-2724  
Fax: 954-776-4280

...

Curtis & Rogers Design Studio, Inc.  
3250 Mary Street, Suite 301  
Miami, Florida 33133

Jenkins & Charlend, Inc.  
3590 N.W. 56<sup>th</sup> Street  
Fort Lauderdale, Florida 33308

Kamm Consulting, Inc.  
1407 W. Newport Center Drive  
Deerfield Beach, Florida 33442

...

N/A

...

N/A

## PAGE 5

~~§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.~~

...

~~§ 1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants; the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.~~

## PAGE 7

~~§ 1.3.7.1 This Agreement shall be governed by the law/laws of the principal place/State of business of the Architect, unless otherwise provided in Section 1.4.2:Florida.~~

## PAGE 8

~~§ 1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7:due.~~

...

~~§ 1.3.8.7~~ Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

PAGE 9

~~§ 1.3.9.2~~ Reimbursable Expenses are in addition to compensation for the Architect's services and include only costs for document reproduction and courier expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- ~~.1~~ transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- ~~.2~~ fees paid for securing approval of authorities having jurisdiction over the Project;
- ~~.3~~ reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- ~~.4~~ expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- ~~.5~~ renderings, models and mock-ups requested by the Owner;
- ~~.6~~ expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- ~~.7~~ reimbursable expenses as designated in Section 1.5.5;
- ~~.8~~ other similar direct Project-related expenditures.

...

~~§ 1.3.9.3~~ Records of Reimbursable Expenses, and of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense Services shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

...

~~§ 1.3.9.4~~ Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

...

N/A

...

None

...

See Article 1.6 below.

...

Construction Documents

<u>-Shell and Interior Build-Out Plans and Specifications</u>	<u>\$250,000.00</u>
<u>Permitting</u>	
<u>-Civil, Landscaping and Building Shell Documents</u>	<u>\$ 25,000.00</u>
<u>Interior Build-Out Documents</u>	<u>\$ 10,000.00</u>
<u>Construction Administration</u>	
<u>-Shell and Interior Build-Out</u>	<u>\$100,000.00</u>
<u>TOTAL FEES:</u>	<u>\$385,000.00</u>

...

N/A

PAGE 10

~~§ 1.5.4~~ For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of ( ) times the expenses incurred by the Architect, and the Architect's employees and consultants, shall be invoiced at cost. Additional renderings will be provided at cost if requested by the Owner.

...



N/A

...

~~§ 1.5.6~~ The rates and multiples Invoices for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

~~§ 1.5.7~~ An initial payment of ~~(\$ )~~ shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement. Fifty percent (50%) of the Construction Document Fee shall be due at the submittal of the Shell documents and one hundred percent (100%) of the Construction Document Fee shall be due at the submittal of the Build-Out Documents.

...

~~§ 1.5.8~~ **§ 1.578** Payments are due and payable ~~( )~~ days from the date of the Architect's invoice, in accordance with Chapter 218.70, Florida Statutes. Amounts unpaid ~~( )~~ days after the invoice date on which payment is due shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

per annum

...

~~§ 1.5.9~~ If the services covered by this Agreement have not been completed within ~~( )~~ months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

...

## **ARTICLE 1.6 OTHER CONDITIONS AND SERVICES**

### **§ 1.6.1 POLICY OF NON-DISCRIMINATION/WAGES**

**§ 1.6.1.1** The Architect 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.

**§ 1.6.1.2** The Architect 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 Architect shall be required to comply with the same.

### **§ 1.6.2 NO CONTINGENT FEE**

The Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, 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 the Architect, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the Architect violates this provision, the Owner shall have the right to terminate this 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.

### **§ 1.6.3 INDEPENDENT CONTRACTOR**

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...

Mike Puto  
City Manager  
City of Marathon

...

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## **Certification of Document's Authenticity**

AIA® Document D401™ – 2003

I, Mike Puto, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:25:12 on 07/18/2006 under Order No. 1000242522\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B141™ – 1997 Part 1 - Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

*Michael Puto*

(Signed)

*CITY MANAGER*

(Title)

*7/26/06*

(Dated)