

**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-102**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING THE CONTINUING SERVICES AGREEMENT BETWEEN THE CITY AND KEYS CONTRACTING SERVICES FOR DEMOLITION OF UNSAFE STRUCTURES, THE REPAIR OF DILAPIDATED AND UNSAFE STRUCTURES, AND GENERAL REPAIRS FOR CITY OWNED OR LEASED PROPERTIES, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) requested qualifications from contractors to provide demolition and repair services to the City in 2007; and

WHEREAS, the Contractor and City, through mutual negotiation, have agreed upon a continuing services agreement for demolition and repair services for unsafe structures (the “Agreement”); and

WHEREAS, the purpose of this Agreement is not to authorize the Contractor 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 Keys Contracting Services to provide demolition and repair 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 hereby 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 24th day of July, 2007.

THE CITY OF MARATHON, FLORIDA


Christopher M. Bull, Mayor

AYES: Cinque, Tempest, Vasil, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None

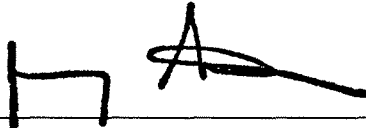
ATTEST:



Diane Clavier
City Clerk

(City Seal)

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



City Attorney

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
KEYS CONTRACTING SERVICES, INC.**

THIS AGREEMENT is made as of this 24th day of July, 2007, by and between **KEYS CONTRACTING SERVICES, INC.** a Florida corporation, (hereinafter the “Contractor”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the City of Marathon (the “City”) requested qualifications from contractors to provide demolition and repair services to the City in 2007; and

WHEREAS, the Contractor is willing and able to perform such 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 Contractor 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 covenants and conditions contained herein, the Contractor and the City agree as follows.

1. **Scope of Services/Deliverables.**

- 1.1 The Scope of Services shall consist of the demolition of unsafe structures, the repair of dilapidated and unsafe structures, and general repairs for City owned or leased properties located within its jurisdiction (the “Services”) from time to time hereunder as authorized by either the City Council or the City Manager. The City shall not be prevented in any manner from retaining other firms to perform demolition or repair services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.
- 1.2 When the need for services for a Specific Project occurs, the City Manager may, enter into negotiations with the Contractor for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Contractor with a “Scope of Services Request,” requesting from the Contractor a proposal to provide professional services for the Specific Project. The Contractor shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager and Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor 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; and
 - f. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 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.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through September 30, 2009, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for demolition or repair services from the City, unless extended in writing by the City Manager.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 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. **Compensation and Payment.**

3.1 The Contractor shall be compensated for each Specific Project in accordance with the applicable Project Agreement.

3.2 The Contractor shall invoice the City upon the completion of each task or deliverable or on a monthly basis

3.3 The City shall pay Contractor 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 Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

5.1 The City shall furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Contractor, in possession of the City.

5.2 The City shall arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform services as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities**

6.1 The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional building contractor under similar circumstances. If at any time during the term of this Agreement, it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the work.

7. **Termination.**

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

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

7.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Contractor has first complied with the provisions of Paragraph 7.4.

7.4 The Contractor 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.

8. **Insurance.**

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:

8.1 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.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$500,000 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.
- 8.3 Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: The Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. 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.

9. **Nondiscrimination.**

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

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

- 10.1 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.
- 10.2 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.

11. **Indemnification.**

11.1 Contractor 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 Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor 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 Contractor's performance or non-performance of this Agreement.

11.2 The provisions of this Section 11 shall survive termination of this Agreement.

12. **Notices/Authorized Representatives.**

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
(305) 743-0033

For The Contractor: John Christopher Gratton, President
5210 Dogwood Dell
Marathon, FL 33050
(305) 481-1582

13. **Governing Law.**

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 of the State of Florida or the United States District Court for the Southern District of Florida.

14. **Entire Agreement/Modification/Amendment.**

14.1 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.

14.2 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.

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

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

15.2 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 Contractor involving transactions related to this Agreement.

15.3 The City may cancel this Agreement for refusal by the Contractor 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.

16. **Nonassignability.**

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

17. **Severability.**

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.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors 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.

19. **Compliance with Laws.**

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

20. **Waiver**

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.

21. **Survival of Provisions**

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.

22. **Prohibition Of Contingency Fees.**

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, 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 Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

23. **Counterparts**

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

24. **Truth-in-Negotiation Certificate**

Signature of this Agreement by the Contractor 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.

IN WITNESS WHEREOF, the parties hereto hereby 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 the Contractor, signing by and through its President, whose representative has been duly authorized to execute same.

Attest:

CITY OF MARATHON



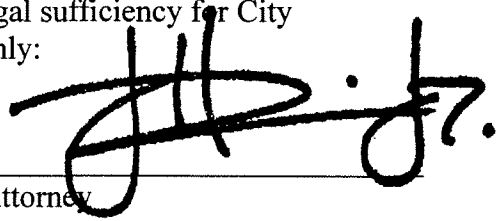
Diane Clavier, City Clerk

By: 

Michael H. Puto, City Manager

Date: 7/25/07

Approved by City Attorney
for legal sufficiency for City
use only:



City Attorney

KEYS CONTRACTING SERVICES, INC.

By: 

Date: 7.27.07

EXHIBIT "A"

PROJECT AGREEMENT

Between

CITY OF MARATHON, FLORIDA

And

for

Work Authorization No. ____

[INSERT NAME OF PROJECT]

PROJECT AGREEMENT
Between

THE CITY OF MARATHON, FLORIDA

And

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 _____, ("CONTRACTOR") dated _____, this Project Agreement authorizes the CONTRACTOR to provide the services as set forth below:

The CITY and CONTRACTOR agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONTRACTOR shall provide demolition and repair 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 CONTRACTOR 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 CONTRACTOR shall provide to the CITY the following Deliverables:

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 6 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 CONTRACTOR. 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 CONTRACTOR'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 CONTRACTOR from the CITY. The CONTRACTOR shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR fails to meet to the contract time for completion of services as determined by the Project Schedule, the CONTRACTOR 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 CONTRACTOR may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONTRACTOR 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 CONTRACTOR an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving completion, or any part thereof, for which the CITY has

withheld payment, the CITY shall promptly release to the CONTRACTOR 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 CONTRACTOR as compensation for performance of all services described in Exhibit "2" \$_____.
[OR, IF HOURLY, "CITY AGREES TO PAY CONTRACTOR COMPENSATION AT CONTRACTOR'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 CONTRACTOR

5.1 Invoices

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** CONTRACTOR 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 CONTRACTOR within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONTRACTOR 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 CONTRACTOR is disputed, or additional backup documentation is required, the CITY shall notify the CONTRACTOR within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONTRACTOR 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 CONTRACTOR. The CITY, at its sole discretion, may pay to the CONTRACTOR 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 CONTRACTOR, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONTRACTOR'S invoice for final payment and reimbursement shall constitute the CONTRACTOR'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONTRACTOR to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONTRACTOR 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 CONTRACTOR.

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 CONTRACTOR abandons this Project Agreement or causes it to be terminated by the CITY, the CONTRACTOR shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONTRACTOR 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 CONTRACTOR. In the event of termination, the CONTRACTOR shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subContractor obligations. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONTRACTOR's work product shall become the property of the CITY and the CONTRACTOR 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 CONTRACTOR pertaining to this Project Agreement. Further, upon the CITY'S request, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall immediately comply with same. In the event the CITY directs a suspension of performance as provided for herein through no fault of the CONTRACTOR, the CITY shall pay to the CONTRACTOR its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

SECION 7. INCORPORATION OF TERMS AND CONDTIONS 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: _____
Mike Puto, City Manager

Date: _____

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

City Attorney

ATTEST:

CONTRACTOR

Secretary

By: _____

Please type name of 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]