

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-05**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO CONTINUING SERVICES AGREEMENTS WITH THE CRAIG COMPANY OF THE FLORIDA KEYS, INC., MONROE CONCRETE PRODUCTS, INC., CHARLEY TOPPINO & SONS, INC., DAVID MASSEY LAND SURVEYING, INC., MIKE HAACK EXCAVATING, INC., PINWOOD WASTEWATER SERVICES, INC., BAT CONSTRUCTION GROUP, LLC, AND ALLADIN LANDSCAPING & WATER DESIGN, INC. FOR SERVICES ON AN AS NEEDED BASIS

WHEREAS, the City published a Request For Qualifications (RFQ) for the purpose of having under contract various tradesmen for assorted projects within the City; and

WHEREAS, entering into these various continuing service agreements for general services will save time and expedite the process while still following policies and procedures of the City's procurement policy; and

WHEREAS, the City's adopted Purchasing Policies and Procedures allow the City Council to waive, by majority vote, the procurement procedures requiring competitive bidding if they are determined impractical and are not otherwise required by law;

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 incorporated herein.

Section 2. The City Council hereby authorizes the City Manager to negotiate and enter into Continuing Service Agreements With The Craig Company Of The Florida Keys, Inc., Monroe Concrete Products, Inc., Charley Toppino & Sons, Inc., David Massey Land Surveying, Inc., Mike Haack Excavating, Inc., Pinewood Wastewater Services, Inc., BAT Construction Group, LLC, and Alladin Landscaping & Water Design, Inc., For General Trade Services in substantially the form attached as Exhibit A hereto.

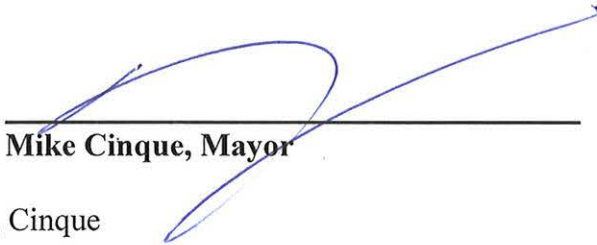
Section 3. The City Council hereby waives the requirement for the City to obtain competitive bids from vendors other than those referenced in Section 2 for the types of work to be performed under these continuing services agreements, unless such competitive bids are otherwise required by law. Notwithstanding the foregoing, any projects contracted as a result of this Resolution may not exceed the City's purchasing policy dollar limits. Each vendor hereunder may only receive up to \$50,000 in projects in the aggregate per year under this Resolution.

Section 4. The City Council further directs the City Manager to issue requests for qualifications annually so as to identify new and/or additional vendors capable of providing general trade services to the City.

Section 5. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 27th day of January, 2009.

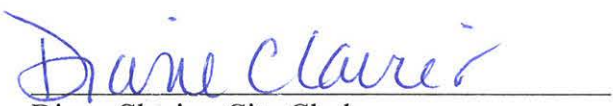
THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Ramsay, Snead, Vasil, Worthington, Cinque
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
BAT CONSTRUCTION**

THIS AGREEMENT is made as of this 27 day of January, 2009, by and between **BAT CONSTRUCTION GROUP, LLC**, a Florida Limited Liability Company, (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 project and repair services to the City in 2009; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with Bat Construction Group, LLC the "Contractor") for Underground Contractor, Heavy Equipment and General Contracting services by Resolution 2009-05 on January, 2009; 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 Underground Contractor, Heavy Equipment and General Contracting (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. 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 or designee 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 or designee 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. 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 December 31, 2010, 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 project or repair services from the City, unless extended in writing by the City Manager or designee.

- 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 or designee 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.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

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 or designee, 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 or designee.

7.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager or designee 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 \$300,000 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. 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: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 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: Clyde Burnett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: Christopher Bass
BAT Construction Group, LLC
127 Industrial Dr. Suite E
Big Pine Key, Florida 33043

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. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

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:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 2/12/09

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

[Signature]
City Attorney

BAT Construction

By: Christina Bee
Signature

Date: 2/6/2009

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
PINEWOOD WASTEWATER SERVICES, INC.**

THIS AGREEMENT is made as of this 27 day of January, 2009, by and between **PINEWOOD WASTEWATER 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 project and repair services to the City in 2009; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with Pinewood Wastewater Services, Inc. (the "Contractor") for Plumbing and Heavy Equipment services by Resolution 2009-~~05~~ on January, 2009; 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 Plumbing and Heavy Equipment (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. 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 or designee 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 or designee 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. 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 December 31, 2010, 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 project or repair services from the City, unless extended in writing by the City Manager or designee.

- 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 or designee 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.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

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 or designee, 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 or designee.

7.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager or designee 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 \$300,000 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. 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: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 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: Clyde Burnett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: Christopher Bass
Pinewood Wastewater Services, Inc.
127 Industrial Dr. Suite E
Big Pine Key, Florida 33043

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. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

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**

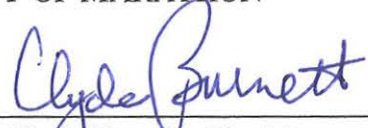
Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each 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:



Diane Clavier, City Clerk

CITY OF MARATHON

By: 
Clyde Burnett, City Manager

Date: 2/12/09

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


City Attorney

Pinewood Wastewater Services, Inc.

By: 
Signature

Date: 2/6/09

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
MONROE CONCRETE PRODUCTS, INC.**

THIS AGREEMENT is made as of this 27 day of January, 2009, by and between **MONROE CONCRETE PRODUCTS, 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 project and repair services to the City in 2009; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with Monroe Concrete Products, Inc. (the "Contractor") for Ready Mix Concrete and Concrete Block Materials, Regular Aggregate and Specialty Aggregate services by Resolution 2009-05 on January, 2009; 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 Ready Mix Concrete and Concrete Block Materials, Regular Aggregate and Specialty Aggregate (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. 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 or designee 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 or designee 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. 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 December 31, 2010, 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 project or repair services from the City, unless extended in writing by the City Manager or designee.

- 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 or designee 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.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

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 or designee, 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 or designee.

7.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager or designee 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 \$300,000 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. 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: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 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: Clyde Burnett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: Frank P. Toppino
Charley Toppino & Sons, Inc.
P.O. Box 787
Key West, Florida 33041

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. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

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:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 2/12/09

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

[Signature]
City Attorney

MONROE CONCRETE PRODUCTS, INC.

By: Frankie P. Joppino
Signature

Date: Jan. 15, 2009

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
CHARLEY TOPPINO & SONS, INC.**

THIS AGREEMENT is made as of this 27 day of January, 2009, by and between **CHARLEY TOPPINO & SONS, 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 project and repair services to the City in 2009; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with Charley Toppino & Sons (the "Contractor") for General Contracting, Road Work, Site Work, Under Ground Utilities, Injection Wells, Concrete Work, and Demolition services by Resolution 2009-~~05~~ on January, 2009; 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 General Contracting, Road Work, Site Work, Under Ground Utilities, Injection Wells, Concrete Work, and Demolition (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. 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 or designee 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 or designee 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. 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 December 31, 2010, 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 project or repair services from the City, unless extended in writing by the City Manager or designee.

- 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 or designee 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.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

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 or designee, 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 or designee.

7.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager or designee 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 \$300,000 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. 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: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 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: Clyde Burnett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: Frank P. Toppino
Charley Toppino & Sons, Inc.
P.O. Box 787
Key West, Florida 33041

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. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

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:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 2/12/09

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

[Signature]
City Attorney

CHARLEY TOPPINO & SONS, INC.

By: Frank P. Toppino
Signature

Date: Jan. 15, 2009

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
DAVID MASSEY LAND SURVEYING, INC.**

THIS AGREEMENT is made as of this 27 day of January, 2009, by and between **DAVID MASSEY LAND SURVEYING, 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 project and repair services to the City in 2009; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with David Massey Land Surveying, Inc. (the "Contractor") for Land Surveying services by Resolution 2009-05 on January, 2009; 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 Land Surveying (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. 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 or designee 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 or designee 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. 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 December 31, 2010, 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 project or repair services from the City, unless extended in writing by the City Manager or designee.

- 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 or designee 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.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

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 or designee, 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 or designee.

7.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager or designee 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 \$300,000 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. 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: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 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: Clyde Burnett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: David Massey
David Massey Land Surveying, Inc.
P.O. Box 619 / 88888 Overseas Highway
Tavernier, Florida 33070

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. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

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:



Diane Clavier, City Clerk

CITY OF MARATHON

By: 
Clyde Burnett, City Manager

Date: 2/12/09

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


City Attorney

David Massey Land Surveying, Inc.

By: 
Signature

Date: 1-16-09

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
ALLADIN LANDSCAPING & WATER DESIGN, INC.**

THIS AGREEMENT is made as of this 27 day of January, 2009, by and between **ALLADIN LANDSCAPING & WATER DESIGN, 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 project and repair services to the City in 2009; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with Alladin Landscaping & Water Design, Inc. (the "Contractor") for Landscaping services by Resolution 2009-25 on January, 2009; 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 Landscaping and Water Design (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. 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 or designee 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 or designee 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. 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 December 31, 2010, 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 project or repair services from the City, unless extended in writing by the City Manager or designee.

- 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 or designee 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.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

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 or designee, 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 or designee.

7.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager or designee 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 \$300,000 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. 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: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 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: Clyde Burnett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: Douglas C, Ewing
Alladin Landscaping & Water Design, Inc.
29100 S.W. 162 Ave.
Homestead, Florida 33033

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. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

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:


Diane Clavier, City Clerk

CITY OF MARATHON

By: 
Clyde Burnett, City Manager

Date: 2/12/09

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


City Attorney

Alladin Landscaping & Water Design, Inc.

By: 
Signature

Date: 1.14.09

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
THE CRAIG COMPANY OF THE FLORIDA KEYS, INC.**

THIS AGREEMENT is made as of this 27 day of January, 2009, by and between **THE CRAIG COMPANY OF THE FLORIDA KEYS, 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 project and repair services to the City in 2009; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with The Craig Company Of The Florida Keys, Inc. (the "Contractor") for Landscape Architecture services by Resolution 2009-05 on January, 2009; 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 Landscape Architecture Services (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. 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 or designee 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 or designee 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. 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 December 31, 2010, 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 project or repair services from the City, unless extended in writing by the City Manager or designee.

- 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 or designee 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.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

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 or designee, 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 or designee.

7.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager or designee 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 \$300,000 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. 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: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 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: Clyde Burnett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: Donald Craig
The Craig Company Of The Florida Keys, Inc.
P.O. Box 970
Key West, Florida 33041-0372

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. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

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:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 2/12/09

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

[Signature]
City Attorney

The Craig Company

By: [Signature]
Signature

Date: 12/09

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
MIKE HAACK EXCAVATING, INC.**

THIS AGREEMENT is made as of this 27 day of January, 2009, by and between **MIKE HAACK EXCAVATING, 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 project and repair services to the City in 2009; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with Mike Haack Excavating, Inc. (the "Contractor") for Excavating & Grading, Specialty Hauler Sludge/Septage services by Resolution 2009-05 on January, 2009; 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 Excavating & Grading, Specialty Hauler Sludge/Septage (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. 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 or designee 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 or designee 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. 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 December 31, 2010, 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 project or repair services from the City, unless extended in writing by the City Manager or designee.

- 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 or designee 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.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

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 or designee, 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 or designee.

7.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager or designee 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 \$300,000 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. 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: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 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: Clyde Burnett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: Michael D. Haack
Mike Haack Excavating, Inc.
P.O. Box 430725
Big Pine Key, Florida 33043

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. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

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:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 2/12/09

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

[Signature]
City Attorney

Mike Haack Excavating, Inc.

By: Mr. L. Haack, V.P. Mike Haack Excavating, Inc.
Signature

Date: 01-20-2009