

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-84**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO CONTINUING SERVICES AGREEMENTS WITH TRC WORLDWIDE ENGINEERING, INC., ISLAND SURVEYING, INC., NUTTING ENGINEERS OF FLORIDA, INC., ERICKSON CONSULTING ENGINEERS, INC., LANGAN ENGINEERING & ENVIRONMENTAL SERVICES, SANDRA WALTERS CONSULTANTS, INC., DAVID S. KOPPEL, P.E., FLORIDA TRANSPORTATION ENGINEERING, INC. AND MTCI PRIVATE PROVIDER SERVICES, LLC, FOR MULTI-DISCIPLINARY ENGINEERING SERVICES ON AN AS NEEDED BASIS

WHEREAS, the City published a Request For Qualifications (RFQ) for multi-discipline engineering services for the purpose of having under contract various firms for assorted projects within the City; and

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

WHEREAS, a work authorization will be prepared for each project which relates back to this continuing services agreement; 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 TRC Worldwide Engineering, Inc., Island Surveying, Inc., Nutting Engineers Of Florida, Inc., Erickson Consulting Engineers, Inc., Langan Engineering & Environmental Services, Sandra Walters Consultants, Inc., David S. Koppel, P.E., Florida Transportation Engineering, Inc. And MTCI Private Provider Services, LLC, for multi-disciplinary Engineering 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.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 14th day of July, 2009.

THE CITY OF MARATHON, FLORIDA



Mayor Mike Cinque

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
TRC WORLDWIDE ENGINEERING, INC.**

THIS AGREEMENT is made as of this 14th day of July, 2009, by and between TRC WORLDWIDE ENGINEERING, INC., a Florida corporation, (hereinafter the “Consultant”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, pursuant to section 287.055, Florida Statutes, the City requested qualifications from qualified engineers to provide professional multi-disciplinary engineering services to the City; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with the Consultant for multi-disciplinary engineering services by Resolution 2009-84 on July 14, 2009; and

WHEREAS, the Consultant 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 Consultant to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

- 1.1 The Scope of Services shall consist of VARIOUS ENGINEERING SERVICES ON PROJECT BASIS (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 engineering services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Consultant.
- 1.2 When the need for engineering services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Consultant for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Consultant with a “Scope of Services Request,” requesting from the Consultant a proposal to

provide professional services for the Specific Project. The Consultant shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and Consultant shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Consultant shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. The personnel assigned to the Specific Project;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
 - g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Consultant shall commence subsequent to the execution of each Project Agreement. Performance of work by Consultant prior to execution of a Project Agreement shall be at the Consultant'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.
- 1.6 It is recognized that questions in the day-to-day conduct of this Agreement will arise. The City designates the City Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. Consultant shall inform the City Representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

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 Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Consultant 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 Consultant shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Consultant 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. **SubConsultants.**

- 4.1 In the event the Consultant requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the Consultant must secure the prior written approval of the City Manager. The Consultant shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.
- 4.2 The Consultant shall be responsible for all payments to any Subconsultants and shall maintain responsibility for all work related to the Project.
- 4.3 No reimbursement shall be made to the Consultant for any Subconsultants that have not been previously approved by the City for use by the Consultant.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

- 6.1 The Consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable City Codes, state and federal laws, rules and regulations.
- 6.2 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the Consultant has provided engineering services under a prior Project Agreement, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the City, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the City for any other services

and expenses made necessary thereby, save and expect any costs and expenses which the City would have otherwise paid absent the Consultant's error or omission. The City's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

6.3 The Consultant's obligations under Paragraph 6.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

7. **Termination.**

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

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

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

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

8. **Insurance.**

The Consultant 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: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The Consultant shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the City, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the City, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$25,000.00 during the policy term.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Consultant 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, Consultant 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 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

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 Consultant: Derek A. Wassink, Group President
TRC Worldwide Engineering, Inc.
3590 NW 56th Street
Fort Lauderdale, FL 33309-2240
(954) 484-7777

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 Consultant providing services to the City under this Agreement shall be the property of the City. The Consultant shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the Consultant, without the City's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

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 Consultant involving transactions related to this Agreement.

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

15.4 All final plans and documents prepared by the Consultant shall bear the endorsement and seal of a person duly registered as a Professional Engineer, and date approved and/or sealed.

16. **Nonassignability.**

This Agreement shall not be assignable by Consultant 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 Consultant, 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 Consultant.**

The Consultant and its employees, volunteers and agents shall be and remain independent Consultants 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 Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

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 Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

25. **Code of Ethics**

The Code of Ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

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 Consultant, signing by and through its _____, whose representative has been duly authorized to execute same. (Officer)

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 8/3/09

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

[Signature]
City Attorney

By: [Signature]
Signature

Date: 07/29/09

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
ISLAND SURVEYING, INC.**

THIS AGREEMENT is made as of this 14th day of July, 2009, by and between ISLAND SURVEYING, INC., a Florida corporation, (hereinafter the “Consultant”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, pursuant to section 287.055, Florida Statutes, the City requested qualifications from qualified engineers to provide professional multi-disciplinary engineering services to the City; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with the Consultant for multi-disciplinary engineering services by Resolution 2009-84 on July 14, 2009; and

WHEREAS, the Consultant 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 Consultant to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of VARIOUS ENGINEERING SERVICES ON PROJECT BASIS (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 engineering services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Consultant.

1.2 When the need for engineering services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Consultant for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Consultant with a “Scope of Services Request,” requesting from the Consultant a proposal to provide professional services for the Specific Project. The Consultant

shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and Consultant shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Consultant shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. The personnel assigned to the Specific Project;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
 - g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Consultant shall commence subsequent to the execution of each Project Agreement. Performance of work by Consultant prior to execution of a Project Agreement shall be at the Consultant'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.
- 1.6 It is recognized that questions in the day-to-day conduct of this Agreement will arise. The City designates the City Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. Consultant shall inform the City Representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

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 Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Consultant 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 Consultant shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Consultant 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. **SubConsultants.**

- 4.1 In the event the Consultant requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the Consultant must secure the prior written approval of the City Manager. The Consultant shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.
- 4.2 The Consultant shall be responsible for all payments to any Subconsultants and shall maintain responsibility for all work related to the Project.
- 4.3 No reimbursement shall be made to the Consultant for any Subconsultants that have not been previously approved by the City for use by the Consultant.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

- 6.1 The Consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable City Codes, state and federal laws, rules and regulations.
- 6.2 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the Consultant has provided engineering services under a prior Project Agreement, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the City, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the City for any other services and expenses made necessary thereby, save and expect any costs and

expenses which the City would have otherwise paid absent the Consultant's error or omission. The City's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

6.3 The Consultant's obligations under Paragraph 6.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

7. **Termination.**

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

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

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

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

8. **Insurance.**

The Consultant 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: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The Consultant shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the City, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the City, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$25,000.00 during the policy term.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Consultant 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, Consultant 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 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

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 Consultant: F. H. Hildebrandt
Island Surveying, Inc.
3152 Northside Drive, Suite 201
Key West, FL 33040
(305) 293-0466

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 Consultant providing services to the City under this Agreement shall be the property of the City. The Consultant shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the Consultant, without the City's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

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 Consultant involving transactions related to this Agreement.

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

15.4 All final plans and documents prepared by the Consultant shall bear the endorsement and seal of a person duly registered as a Professional Engineer, and date approved and/or sealed.

16. **Nonassignability.**

This Agreement shall not be assignable by Consultant 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 Consultant, 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 Consultant.**

The Consultant and its employees, volunteers and agents shall be and remain independent Consultants 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 Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

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 Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

25. **Code of Ethics**

The Code of Ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

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 Consultant, signing by and through its _____, whose representative has been duly authorized to execute same. (Officer)

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 8/3/09

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

[Signature]
City Attorney

By: [Signature]
Signature

Date: July 30, 2009

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
NUTTING ENGINEERS OF FLORIDA, INC.**

THIS AGREEMENT is made as of this 14th day of July, 2009, by and between NUTTING ENGINEERS OF FLORIDA, INC., a Florida corporation, (hereinafter the "Consultant"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, pursuant to section 287.055, Florida Statutes, the City requested qualifications from qualified engineers to provide professional multi-disciplinary engineering services to the City; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with the Consultant for multi-disciplinary engineering services by Resolution 2009-84 on July 14, 2009; and

WHEREAS, the Consultant 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 Consultant to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of VARIOUS ENGINEERING SERVICES ON PROJECT BASIS (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 engineering services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Consultant.

1.2 When the need for engineering services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Consultant for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Consultant with a "Scope of Services Request," requesting from the Consultant a proposal to

provide professional services for the Specific Project. The Consultant shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and Consultant shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Consultant shall utilize as the agreement for each Specific Project a Standard Project Agreement ("Project Agreement"), a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. The personnel assigned to the Specific Project;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
 - g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Consultant shall commence subsequent to the execution of each Project Agreement. Performance of work by Consultant prior to execution of a Project Agreement shall be at the Consultant'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.
- 1.6 It is recognized that questions in the day-to-day conduct of this Agreement will arise. The City designates the City Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. Consultant shall inform the City Representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

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 Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Consultant 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 Consultant shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Consultant 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. **SubConsultants.**

- 4.1 In the event the Consultant requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the Consultant must secure the prior written approval of the City Manager. The Consultant shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.
- 4.2 The Consultant shall be responsible for all payments to any Subconsultants and shall maintain responsibility for all work related to the Project.
- 4.3 No reimbursement shall be made to the Consultant for any Subconsultants that have not been previously approved by the City for use by the Consultant.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

- 6.1 The Consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable City Codes, state and federal laws, rules and regulations.
- 6.2 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the Consultant has provided engineering services under a prior Project Agreement, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the City, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the City for any other services

and expenses made necessary thereby, save and expect any costs and expenses which the City would have otherwise paid absent the Consultant's error or omission. The City's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

6.3 The Consultant's obligations under Paragraph 6.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

7. **Termination.**

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

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

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

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

8. **Insurance.**

The Consultant 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: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of ~~\$25,000.00~~ ^{From} per claim. The Consultant shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the City, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the City, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of ~~\$25,000.00~~ ^{to \$50,000.00 RWJ} during the policy term.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Consultant 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, Consultant 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 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

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 Consultant: Richard C. Wohlfarth, P.E., Director of Engineering
Nutting Engineers of Florida
2051 NW 112th Avenue, Suite 126
Miami, FL 33172
(305) 824-0060

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 Consultant providing services to the City under this Agreement shall be the property of the City. The Consultant shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the Consultant, without the City's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

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 Consultant involving transactions related to this Agreement.

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

15.4 All final plans and documents prepared by the Consultant shall bear the endorsement and seal of a person duly registered as a Professional Engineer, and date approved and/or sealed.

16. **Nonassignability.**

This Agreement shall not be assignable by Consultant 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 Consultant, 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 Consultant.**

The Consultant and its employees, volunteers and agents shall be and remain independent Consultants 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 Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

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 Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

25. **Code of Ethics**

The Code of Ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

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 Consultant, signing by and through its VICE PRESIDENT whose representative has been duly authorized to execute same.
(Officer)

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 8/24/09

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

[Signature]
City Attorney

NUTTING ENGINEERS OF FLORIDA, INC.

By: Richard Worley
Signature

Date: 8/3/09

RES #
2009-84

EXHIBIT "A"

PROJECT AGREEMENT

Work Authorization No. 1

Pursuant to the provisions contained in the "Continuing Services Agreement" between the CITY OF MARATHON, FLORIDA (the "CITY") and Nutting Engineers of Florida, Inc., ("CONTRACTOR") dated March 12, 2010, this Project Agreement authorizes the CONTRACTOR to provide the services as set forth below:

The CITY and CONTRACTOR agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONTRACTOR shall provide the services to the CITY for the Project as described in the "Scope of Services and Project Schedule" attached as Exhibit "1."

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

SECTION 2. TERM/TIME OF PERFORMANCE/DAMAGE

2.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties ("Commencement Date") and shall continue in full force and effect, unless otherwise terminated pursuant to Section 5 or other applicable provisions of this Project Agreement. The City Manager, in his sole discretion, may extend the term of this Agreement through written notification to the CONTRACTOR. Such extension shall not exceed 30 days. No further extensions of this Agreement shall be effective unless authorized by the CITY Council.

2.2 **Contract Time.** The CONTRACTOR shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in Exhibit "1". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

2.3 **Time is of the Essence.** All limitations of time set forth in this Agreement are of the essence.

SECTION 3. AMOUNT, BASIS AND METHOD OF COMPENSATION

3.1 **Lump Sum Compensation.** CITY agrees to pay CONTRACTOR as compensation for performance of all services described in Exhibit "1" \$1,240.00.

[OR, IF HOURLY, "CITY AGREES TO PAY CONTRACTOR COMPENSATION AT CONTRACTOR'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$_____.]

3.2 Reimbursable Expenses. All expenses by the contractor are included in the price unless specifically noted on Exhibit 1.

SECTION 4. BILLING AND PAYMENTS TO THE CONTRACTOR

4.1 Invoices. CONTRACTOR shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the CITY. The CITY shall pay CONTRACTOR within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONTRACTOR to the CITY.

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

4.3 Suspension of Payment. In the event that the CITY becomes credibly informed that any representations of the CONTRACTOR, provided pursuant to Subparagraph 3.1, are wholly or partially inaccurate, or in the event that the CONTRACTOR is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONTRACTOR until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY'S reasonable satisfaction.

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

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

SECTION 5. TERMINATION/SUSPENSION

5.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONTRACTOR abandons this Project Agreement or causes it to be terminated by the CITY, the CONTRACTOR shall indemnify the CITY against any loss pertaining to this termination.

5.2 **For Convenience.** This Project Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subcontractor obligations. The CONTRACTOR shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The CONTRACTOR shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 4.1 of this Project Agreement. Under no circumstances shall the CITY make any payment to the CONTRACTOR for services which have not been performed.

5.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONTRACTOR's work product shall become the property of the CITY and the CONTRACTOR shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONTRACTOR pertaining to this Project Agreement.

SECTION 6. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICES AGREEMENT

This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated 8-24-09 between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

ATTEST:

CITY OF MARATHON

Diane Clavier
City Clerk

By: [Signature]
Carlos A. Solis, P.E., Public Works Manager

Date: 3-15-10

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

[Signature]
City Attorney

Nutting Engineers of Florida, Inc

[Signature]
Witness

By: Richard Wohlfarth

Date: 3/12/10

FEE SCHEDULE

The above-indicated scope of work will be performed for an estimated cost of \$1,240.00 based on the following rates and quantities:

5 core locations @ \$100.00/each	\$500.00
Two man coring crew with core machine	
• Mobilization – 1 day @ \$400.00/day	\$400.00
Engineering review and report preparation	
• 4 hours @ \$85.00/hour	\$340.00

We can begin this work within approximately one to two business days of receiving written authorization. The field work should take approximately one day to complete. The test reports should be available within approximately two to three days after the field work is complete.

NE has been offering geotechnical engineering, environmental sciences, materials testing, and structural inspection services for over 43 years in South Florida during which time we have worked on many similar projects. Our commitment to practical, cost effective solutions supported by responsive client services distinguishes our firm and enables us to solve your most demanding technical challenges. Another value added component NE brings to your project is our staff of approximately fifty experienced professionals including engineering geologists, geotechnical engineers, environmental specialists, field personnel who are certified and have been trained to provide a wide range of consulting services, and our dedicated administrative staff.

Our laboratory is checked annually by the Construction Materials Engineering Council (CMEC) and the American Association of State Highway & Transportation Officials (AASHTO) and is certified to perform geotechnical engineering and materials testing services for the Florida Department of Transportation (FDOT). Note that we carry one million dollars professional liability and two million dollars general liability insurance.

Thank you for providing us the opportunity to present this proposal/agreement. We look forward to working with you on this and future projects.

Sincerely,
NUTTING ENGINEERS OF FLORIDA, INC.

Scott Ersland
Division Manager

James J. Flaig, P.E.
Principal/ Chief Engineer



Scope of Services and Project Schedule
Exhibit 1



**Nutting
Engineers**

of Florida Inc. | Established 1967
Your Project Is Our Commitment

2051 N.W. 112th Avenue, Suite 126
Miami, Florida 33172
305-557-3083
Toll Free: 877-NUTTING (688-8464)
Fax: 305-824-8827
Broward 954-941-8700
Palm Beach 561-736-4900
St. Lucie 772-408-1050
www.nuttingengineers.com

March 12, 2010

Carlos A. Solis, P.E.
City of Marathon Public Works Manager
9805 Overseas Highway
Marathon, Florida 33050
Phone: 305.289.5008/ Email: solisc@ci.marathon.fl.us

Re: Proposal/Agreement for Asphaltic & Road Core Samples
Coco Plum Drive Bike Path
City of Marathon, Florida 33050

Dear Mr. Solis:

Per your conversation with Mr. Rick Wohlfarth, Principal Engineer, it is our understanding that plans for the project include switching a portion of the existing bike path to a travel lane and utilizing a portion of the travel lane for a bike path.

In an effort to determine if portions of the existing bike path are suitable for vehicular traffic usage, you requested that we perform five (5) asphalt cores at locations along Coco Plum Drive. Four cores will be performed in the existing bike path and one core in the existing travel lane. The cores will be penetrated to a sufficient depth to identify thickness of the asphalt, thickness of the base and thickness of any stabilized subgrade. Each core location will be backfilled with evacuated material and sand. The asphalt will be cold patched to the original thickness. Please be advised that cold patch can deteriorate over time. If a more permanent patch is desired, the City of Marathon may want to provide a hot patch mixture upon completion of the cores. An alternative such as a non-shrink grout could be utilized by NE if authorized by the City of Marathon. Upon completion of the aforementioned, we will provide a report documenting our observations including a description of each core.

Geotechnical and Construction Materials | Engineering, Testing and Inspections | Environmental Services

OFFICES
Palm Beach
Miami-Dade
St. Lucie

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
ERICKSON CONSULTING ENGINEERS, INC.**

THIS AGREEMENT is made as of this 14th day of July, 2009, by and between ERICKSON CONSULTING ENGINEERS, INC., a Florida corporation, (hereinafter the "Consultant"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, pursuant to section 287.055, Florida Statutes, the City requested qualifications from qualified engineers to provide professional multi-disciplinary engineering services to the City; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with the Consultant for multi-disciplinary engineering services by Resolution 2009-84 on July 14, 2009; and

WHEREAS, the Consultant 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 Consultant to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

1. Scope of Services/Deliverables.

1.1 The Scope of Services shall consist of VARIOUS ENGINEERING SERVICES ON PROJECT BASIS (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 engineering services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Consultant.

1.2 When the need for engineering services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Consultant for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Consultant with a "Scope of Services Request," requesting from the Consultant a proposal to

provide professional services for the Specific Project. The Consultant shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and Consultant shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Consultant shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. The personnel assigned to the Specific Project;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
 - g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Consultant shall commence subsequent to the execution of each Project Agreement. Performance of work by Consultant prior to execution of a Project Agreement shall be at the Consultant'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.
- 1.6 It is recognized that questions in the day-to-day conduct of this Agreement will arise. The City designates the City Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. Consultant shall inform the City Representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

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 Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Consultant 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 Consultant shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Consultant 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. **SubConsultants.**

- 4.1 In the event the Consultant requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the Consultant must secure the prior written approval of the City Manager. The Consultant shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.
- 4.2 The Consultant shall be responsible for all payments to any Subconsultants and shall maintain responsibility for all work related to the Project.
- 4.3 No reimbursement shall be made to the Consultant for any Subconsultants that have not been previously approved by the City for use by the Consultant.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

- 6.1 The Consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable City Codes, state and federal laws, rules and regulations.
- 6.2 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the Consultant has provided engineering services under a prior Project Agreement, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the City, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the City for any other services

and expenses made necessary thereby, save and expect any costs and expenses which the City would have otherwise paid absent the Consultant's error or omission. The City's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

6.3 The Consultant's obligations under Paragraph 6.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

7. **Termination.**

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

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

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

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

8. **Insurance.**

The Consultant 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: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The Consultant shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the City, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the City, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$25,000.00 during the policy term.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Consultant 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, Consultant 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 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

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 Consultant: Karyn M. Erickson, P.E. President
Erickson Consulting Engineers, Inc.
7201 Delainey Court
Sarasota, FL 34240
(941) 373-6460

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 Consultant providing services to the City under this Agreement shall be the property of the City. The Consultant shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the Consultant, without the City's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

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 Consultant involving transactions related to this Agreement.

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

15.4 All final plans and documents prepared by the Consultant shall bear the endorsement and seal of a person duly registered as a Professional Engineer, and date approved and/or sealed.

16. **Nonassignability.**

This Agreement shall not be assignable by Consultant 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 Consultant, 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 Consultant.**

The Consultant and its employees, volunteers and agents shall be and remain independent Consultants 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 Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

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 Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

25. **Code of Ethics**

The Code of Ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

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 Consultant, signing by and through its president, whose representative has been duly authorized to execute same. (Officer)

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 8/4/09

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

[Signature]
City Attorney

By: Harvey Erickson
Signature President, Erickson Consulting Engineers, Inc.
Date: July 30, 2009

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
SANDRA WALTERS CONSULTANTS, INC.**

THIS AGREEMENT is made as of this 14th day of July, 2009, by and between SANDRA WALTERS CONSULTANTS, INC., a Florida corporation, (hereinafter the "Consultant"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, pursuant to section 287.055, Florida Statutes, the City requested qualifications from qualified engineers to provide professional multi-disciplinary engineering services to the City; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with the Consultant for multi-disciplinary engineering services by Resolution 2009-84 on July 14, 2009; and

WHEREAS, the Consultant 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 Consultant to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

1. **Scope of Services/Deliverables.**
 - 1.1 The Scope of Services shall consist of VARIOUS ENGINEERING SERVICES ON PROJECT BASIS (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 engineering services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Consultant.
 - 1.2 When the need for engineering services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Consultant for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Consultant with a "Scope of Services Request," requesting from the Consultant a proposal to

provide professional services for the Specific Project. The Consultant shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and Consultant shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Consultant shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. The personnel assigned to the Specific Project;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
 - g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Consultant shall commence subsequent to the execution of each Project Agreement. Performance of work by Consultant prior to execution of a Project Agreement shall be at the Consultant'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.
- 1.6 It is recognized that questions in the day-to-day conduct of this Agreement will arise. The City designates the City Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. Consultant shall inform the City Representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

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 Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Consultant 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 Consultant shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Consultant 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. **SubConsultants.**

- 4.1 In the event the Consultant requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the Consultant must secure the prior written approval of the City Manager. The Consultant shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.
- 4.2 The Consultant shall be responsible for all payments to any Subconsultants and shall maintain responsibility for all work related to the Project.
- 4.3 No reimbursement shall be made to the Consultant for any Subconsultants that have not been previously approved by the City for use by the Consultant.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

- 6.1 The Consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable City Codes, state and federal laws, rules and regulations.
- 6.2 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the Consultant has provided engineering services under a prior Project Agreement, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the City, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the City for any other services

and expenses made necessary thereby, save and expect any costs and expenses which the City would have otherwise paid absent the Consultant's error or omission. The City's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

6.3 The Consultant's obligations under Paragraph 6.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

7. **Termination.**

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

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

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

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

8. **Insurance.**

The Consultant 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~~

8-19-09 *SW* *8-19-09* *SW*
All SWC employees drive their personal vehicles and are covered by their personal vehicle insurance and 5 SWC workmen's compensation insurance.

~~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.~~

SW
8-19-09

- 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: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The Consultant shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the City, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the City, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$25,000.00 during the policy term.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Consultant 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, Consultant 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 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

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 Consultant: Sandra Walters, Principal
Sandra Walters Consultants, Inc.
6410 Fifth Street, Suite 3
Key West, FL 33040
(305) 294-1238

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 Consultant providing services to the City under this Agreement shall be the property of the City. The Consultant shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the Consultant, without the City's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

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 Consultant involving transactions related to this Agreement.

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

15.4 All final plans and documents prepared by the Consultant shall bear the endorsement and seal of a person duly registered as a Professional Engineer, and date approved and/or sealed.

16. **Nonassignability.**

This Agreement shall not be assignable by Consultant 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 Consultant, 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 Consultant.**

The Consultant and its employees, volunteers and agents shall be and remain independent Consultants 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 Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

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 Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

25. **Code of Ethics**

The Code of Ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

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 Consultant, signing by and through its President, whose representative has been duly authorized to execute same.
(Officer)

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 8/20/09

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

[Signature]
City Attorney

By: Sandra Watters
Signature

Date: 8-19-09

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
DAVID S. KOPPEL, P.E.**

THIS AGREEMENT is made as of this 14th day of July, 2009, by and between DAVID S. KOPPEL, P.E., a Sole Proprietor, (hereinafter the “Consultant”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, pursuant to section 287.055, Florida Statutes, the City requested qualifications from qualified engineers to provide professional multi-disciplinary engineering services to the City; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with the Consultant for multi-disciplinary engineering services by Resolution 2009-84 on July 14, 2009; and

WHEREAS, the Consultant 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 Consultant to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

1. Scope of Services/Deliverables.

1.1 The Scope of Services shall consist of VARIOUS ENGINEERING SERVICES ON PROJECT BASIS (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 engineering services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Consultant.

1.2 When the need for engineering services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Consultant for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Consultant with a “Scope of Services Request,” requesting from the Consultant a proposal to provide professional services for the Specific Project. The Consultant

shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and Consultant shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Consultant shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. The personnel assigned to the Specific Project;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
 - g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Consultant shall commence subsequent to the execution of each Project Agreement. Performance of work by Consultant prior to execution of a Project Agreement shall be at the Consultant'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.
- 1.6 It is recognized that questions in the day-to-day conduct of this Agreement will arise. The City designates the City Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. Consultant shall inform the City Representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

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 Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Consultant 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 Consultant shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Consultant 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. **SubConsultants.**

- 4.1 In the event the Consultant requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the Consultant must secure the prior written approval of the City Manager. The Consultant shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.
- 4.2 The Consultant shall be responsible for all payments to any Subconsultants and shall maintain responsibility for all work related to the Project.
- 4.3 No reimbursement shall be made to the Consultant for any Subconsultants that have not been previously approved by the City for use by the Consultant.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

- 6.1 The Consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable City Codes, state and federal laws, rules and regulations.
- 6.2 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the Consultant has provided engineering services under a prior Project Agreement, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the City, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the City for any other services and expenses made necessary thereby, save and expect any costs and

expenses which the City would have otherwise paid absent the Consultant's error or omission. The City's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

- 6.3 The Consultant's obligations under Paragraph 6.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

7. **Termination.**

- 7.1 The City Manager without cause may terminate this Agreement upon thirty (30) days prior written notice to the Consultant, or immediately with cause.
- 7.2 Upon receipt of the City's written notice of termination, Consultant shall stop work on the Project unless directed otherwise by the City Manager or designee.
- 7.3 In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager or designee up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 7.4.
- 7.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

8. **Insurance.**

The Consultant 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: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The Consultant shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the City, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the City, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$25,000.00 during the policy term.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Consultant 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, Consultant 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 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

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 Consultant: David S. Koppel, P.E.
2773 Koehn Ave.
Big Pine Key, FL 33043
(305) 797-1465

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 Consultant providing services to the City under this Agreement shall be the property of the City. The Consultant shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the Consultant, without the City's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

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 Consultant involving transactions related to this Agreement.

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

15.4 All final plans and documents prepared by the Consultant shall bear the endorsement and seal of a person duly registered as a Professional Engineer, and date approved and/or sealed.

16. **Nonassignability.**

This Agreement shall not be assignable by Consultant 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 Consultant, 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 Consultant.**

The Consultant and its employees, volunteers and agents shall be and remain independent Consultants 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 Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

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 Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

25. **Code of Ethics**

The Code of Ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

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 Consultant, signing by and through its _____, whose representative has been duly authorized to execute same. (Officer)

Attest:

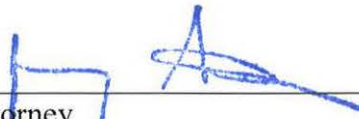

Diane Clavier, City Clerk

CITY OF MARATHON

By: 
Clyde Burnett, City Manager

Date: 9/28/09

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


City Attorney

By: 
Signature

Date: 9/28/09

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
FLORIDA TRANSPORTATION ENGINEERING, INC.**

THIS AGREEMENT is made as of this 14th day of July, 2009, by and between FLORIDA TRANSPORTION ENGINEERING INC., a Florida corporation, (hereinafter the "Consultant"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, pursuant to section 287.055, Florida Statutes, the City requested qualifications from qualified engineers to provide professional multi-disciplinary engineering services to the City; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with the Consultant for multi-disciplinary engineering services by Resolution 2009-84 on July 14, 2009; and

WHEREAS, the Consultant 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 Consultant to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

1. Scope of Services/Deliverables.

1.1 The Scope of Services shall consist of VARIOUS ENGINEERING SERVICES ON PROJECT BASIS (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 engineering services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Consultant.

1.2 When the need for engineering services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Consultant for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Consultant with a "Scope of Services Request," requesting from the Consultant a proposal to

provide professional services for the Specific Project. The Consultant shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and Consultant shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Consultant shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. The personnel assigned to the Specific Project;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
 - g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Consultant shall commence subsequent to the execution of each Project Agreement. Performance of work by Consultant prior to execution of a Project Agreement shall be at the Consultant'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.
- 1.6 It is recognized that questions in the day-to-day conduct of this Agreement will arise. The City designates the City Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. Consultant shall inform the City Representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

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 Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Consultant 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 Consultant shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Consultant 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. **SubConsultants.**

- 4.1 In the event the Consultant requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the Consultant must secure the prior written approval of the City Manager. The Consultant shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.
- 4.2 The Consultant shall be responsible for all payments to any Subconsultants and shall maintain responsibility for all work related to the Project.
- 4.3 No reimbursement shall be made to the Consultant for any Subconsultants that have not been previously approved by the City for use by the Consultant.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

- 6.1 The Consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable City Codes, state and federal laws, rules and regulations.
- 6.2 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the Consultant has provided engineering services under a prior Project Agreement, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the City, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the City for any other services

and expenses made necessary thereby, save and except any costs and expenses which the City would have otherwise paid absent the Consultant's error or omission. The City's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

6.3 The Consultant's obligations under Paragraph 6.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

7. **Termination.**

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

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

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

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

8. **Insurance.**

The Consultant 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: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The Consultant shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the City, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the City, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$25,000.00 during the policy term.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Consultant 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, Consultant 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 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

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 Consultant: Ravi V. Devaguptapu, P.E., PTOE, President
Florida Transportation Engineering, Inc.
7955 NW 12th Street, Suite 418
Doral, FL 33126
(305) 463-8411

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 Consultant providing services to the City under this Agreement shall be the property of the City. The Consultant shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the Consultant, without the City's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

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 Consultant involving transactions related to this Agreement.

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

15.4 All final plans and documents prepared by the Consultant shall bear the endorsement and seal of a person duly registered as a Professional Engineer, and date approved and/or sealed.

16. **Nonassignability.**

This Agreement shall not be assignable by Consultant 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 Consultant, 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 Consultant.**

The Consultant and its employees, volunteers and agents shall be and remain independent Consultants 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 Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

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 Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

25. **Code of Ethics**

The Code of Ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

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 Consultant, signing by and through its President, whose representative has been duly authorized to execute same.
(Officer)

Attest:


Diane Clavier, City Clerk

CITY OF MARATHON


By: 
Clyde Burnett, City Manager

Date: 8/6/09

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


City Attorney

Attest:


Jyothi Kamarajugadda
Secretary

FLORIDA TRANSPORTATION ENGINEERING,
INC. (FTE)

By: 
Signature Ravi Devaguptapu, P.E., PTOE
President

Date: 8/3/09

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
ENVIRONMENTAL CONSULTING, INC.**

THIS AGREEMENT is made as of this ____ day of April, 2009, by and between **ENVIRONMENTAL CONSULTING, INC.**, a Florida corporation, (hereinafter the "Supplier"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the Supplier and City, through mutual negotiation, have agreed upon a scope of services, and fees for consultant services as described below (the "Project"); and

WHEREAS, the City desires to engage the Supplier to create a restoration plan as specified below.

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

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

1.1 The Supplier shall furnish professional environmental consultation services by creating a restoration plan for conservation land managed by the City as outlined in Exhibit A. The City shall not be prevented in any manner from retaining other firms to provide environmental consultation services at its sole discretion.

2. **Term/Commencement Date.**

2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through July 20, 2009, unless earlier terminated in accordance with Paragraph 6 hereof. The City Manager may extend the term of this Agreement up to an additional 30 days by prior written notice to the Supplier

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

3. **Compensation and Payment.**

3.1 The Supplier shall be compensated in accordance with the rates set forth on Exhibit B attached hereto.

- 3.2 The Supplier shall invoice the City upon the completion of the restoration plan.
- 3.3 The City shall pay Supplier in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Supplier the undisputed portion of the invoice. Upon written request of the Finance Director, the Supplier shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **City's Responsibilities**

- 4.1 The City shall furnish to Supplier, at the Supplier's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Supplier, in possession of the City.
- 4.2 The City shall arrange for access to and make all provisions for Supplier to enter upon real property as required for Supplier to perform services as may be requested in writing by the Supplier.

5. **Supplier's Responsibilities**

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

6. **Termination.**

- 6.1 The City Manager without cause may terminate this Agreement upon thirty (30) days prior written notice to the Supplier, or immediately with cause.
- 6.2 Upon receipt of the City's written notice of termination, Supplier shall stop work on the Project unless directed otherwise by the City Manager.

- 6.3 In the event of termination by the City, the Supplier shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Supplier has first complied with the provisions of Paragraph 6.4.
- 6.4 The Supplier 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.

7. **Insurance.**

The Supplier 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:

- 7.1 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$500,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 7.2 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.

8. **Nondiscrimination.**

During the term of this Agreement, Supplier 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

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

- 9.1 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.
- 9.2 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.

10. **Indemnification.**

- 10.1 Supplier 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 Supplier's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Supplier and third parties made pursuant to this Agreement. Supplier 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 Supplier's performance or non-performance of this Agreement.
- 10.2 The provisions of this Section 10 shall survive termination of this Agreement.

11. **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 Supplier: Environmental Consulting, Inc.
71 Tingler Lane
Marathon, FI 33050
(305) 395-1985

12. **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.

13. **Entire Agreement/Modification/Amendment.**

13.1 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.

13.2 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.

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

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

14.2 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 Supplier involving transactions related to this Agreement.

14.3 The City may cancel this Agreement for refusal by the Supplier 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.

15. **Nonassignability.**

This Agreement shall not be assignable by Supplier 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 Supplier, and such firm's familiarity with the City's area, circumstances and desires.

16. **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.

17. **Independent Contractor.**

The Supplier 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.

18. **Compliance with Laws.**

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

19. **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.

20. **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.

21. **Prohibition Of Contingency Fees.**

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

22. **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.

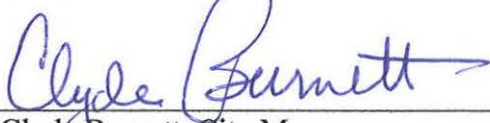
IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same, and by the Supplier, signing by and through its President, whose representative has been duly authorized to execute same.

Attest:



Diane Clavier, City Clerk

CITY OF MARATHON

By: 

Clyde Burnett, City Manager

Date: 5/5/09

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



City Attorney

ENVIRONMENTAL CONSULTING, INC.

By: 

Julie Cheon, President

Date: 4/29/09



Proposal

Date: 4/6/09

To: City of Marathon
c/o Patti Childress
9805 Overseas Highway
Marathon, FL 33050

For: Grassy Key Restoration Plan

DESCRIPTION	Cost
<p>The current management area is approximately 47 acres on Grassy Key in Sunset Bay and Crains Subdivision mostly comprised of 60 x 125 ft parcels (map attached).</p> <p>Assess project area and identify sites that require:</p> <ol style="list-style-type: none"> 1) Removal of trash and debris only 2) Removal of invasive exotic vegetation and can re-vegetate naturally. Identify targeted invasive species and include scope of work for removal. 3) Removal of invasive exotic vegetation and will require replanting of native vegetation. Identify targeted invasive species and include scope of work for removal. Include planting plan and prioritize sites with highest restoration potential. <p>Please note that where practicable contiguous parcels will be considered one area.</p>	\$4175
TOTAL	\$4175.⁰⁰

*Proposal is valid for 90 Days from above date.

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
MTCI PRIVATE PROVIDER SERVICES, LLC**

THIS AGREEMENT is made as of this 14th day of July, 2009, by and between MTCI PRIVATE PROVIDER SERVICES, LLC, a Florida corporation, (hereinafter the “Consultant”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, pursuant to section 287.055, Florida Statutes, the City requested qualifications from qualified engineers to provide professional multi-disciplinary engineering services to the City; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with the Consultant for multi-disciplinary engineering services by Resolution 2009-84 on July 14, 2009; and

WHEREAS, the Consultant 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 Consultant to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

1. Scope of Services/Deliverables.

1.1 The Scope of Services shall consist of VARIOUS ENGINEERING SERVICES ON PROJECT BASIS (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 engineering services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Consultant.

1.2 When the need for engineering services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Consultant for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Consultant with a “Scope of Services Request,” requesting from the Consultant a proposal to

provide professional services for the Specific Project. The Consultant shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and Consultant shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Consultant shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. The personnel assigned to the Specific Project;
 - f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
 - g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Consultant shall commence subsequent to the execution of each Project Agreement. Performance of work by Consultant prior to execution of a Project Agreement shall be at the Consultant'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.
- 1.6 It is recognized that questions in the day-to-day conduct of this Agreement will arise. The City designates the City Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. Consultant shall inform the City Representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

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 Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Consultant 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 Consultant shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Consultant 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. **SubConsultants.**

- 4.1 In the event the Consultant requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the Consultant must secure the prior written approval of the City Manager. The Consultant shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.
- 4.2 The Consultant shall be responsible for all payments to any Subconsultants and shall maintain responsibility for all work related to the Project.
- 4.3 No reimbursement shall be made to the Consultant for any Subconsultants that have not been previously approved by the City for use by the Consultant.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

- 6.1 The Consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable City Codes, state and federal laws, rules and regulations.
- 6.2 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the Consultant has provided engineering services under a prior Project Agreement, it is determined that the Consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the City, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the City for any other services

and expenses made necessary thereby, save and expect any costs and expenses which the City would have otherwise paid absent the Consultant's error or omission. The City's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

6.3 The Consultant's obligations under Paragraph 6.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

7. **Termination.**

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

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

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

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

8. **Insurance.**

The Consultant 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: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The Consultant shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the City, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the City, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$25,000.00 during the policy term.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Consultant 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, Consultant 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 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

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 Consultant: Michael T. Causley, President
MTCI Private Provider Services, LLC
97 NE 15 Street
Homestead, FL 33030
(305) 246-0696

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 Consultant providing services to the City under this Agreement shall be the property of the City. The Consultant shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the Consultant, without the City's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

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 Consultant involving transactions related to this Agreement.

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

15.4 All final plans and documents prepared by the Consultant shall bear the endorsement and seal of a person duly registered as a Professional Engineer, and date approved and/or sealed.

16. **Nonassignability.**

This Agreement shall not be assignable by Consultant 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 Consultant, 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 Consultant.**

The Consultant and its employees, volunteers and agents shall be and remain independent Consultants 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 Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

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 Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

25. **Code of Ethics**

The Code of Ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

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 Consultant, signing by and through its _____, whose representative has been duly authorized to execute same. (Officer)

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 8/28/09

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

[Signature]
City Attorney

By: [Signature]
Signature

Date: 7/29/09