

**CITY OF MARATHON, FLORIDA
RESOLUTION 2010-24**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CONTINUING SERVICES AGREEMENTS WITH, 3RD GENERATION PLUMBING, DANA'S AIR CONDITIONING AND APPLIANCES SERVICES, INC., DOT PALM LANDSCAPING, INC., GONZALEZ BROTHERS LANDSCAPING, INC., UNIVERSAL BEACH SERVICES CORP., APPLIED TECHNOLOGY & MANAGEMENT, INC., BILTMORE CONSTRUCTION CO., INC., SIGNS BY RENEE, INC., MJ REEL LAND AND SEA DEALS, INC., RYDER CONSTRUCTION, INC., MARATHON ELECTRIC SIGN & LIGHT, INC., KEYS CONTRACTING SERVICES, INC., MARATHON SEAWALLS & DOCKS, INC., CORAL MARINE CONSTRUCTION, LLC., SUPERIOR ELECTRIC OF THE FLORIDA KEYS, INC., JOHN PAUL GRIMES III, COASTAL DOCKS, LLC. FOR SERVICES ON AN AS NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS ON BEHALF OF THE CITY AND AUTHORIZING THE EXPENDITURE OF BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

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

WHEREAS, City staff has reviewed and ranked the submitted statements of qualifications and recommends to the City Council that it enter into continuing service agreements with the firms or individuals listed herein; and

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

WHEREAS, whenever possible City staff will solicit multiple price quotes from the contractors approved under this Resolution, and the total aggregate amount awarded annually to a single vendor under a continuing services agreement will not exceed \$50,000 without prior City Council approval.

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 Continuing Services Agreements with 3rd Generation Plumbing, Dana's Air Conditioning And Appliances Services, Inc., Dot Palm Landscaping, Inc., Gonzalez Brothers Landscaping, Inc., Universal Beach Services Corp., Applied Technology & Management, Inc., Biltmore Construction Co., Inc., Signs By Renee, Inc., MJ Reel Land And Sea Deals, Inc., Ryder Construction, Inc., Marathon Electric Sign & Light, Inc., Keys Contracting Services, Inc., Marathon Seawalls & Docks, Inc., Coral Marine Construction, LLC., Superior Electric Of The Florida Keys, Inc., John Paul Grimes III, and Coastal Docks, LLC. Attached hereto as Exhibit "A," together with such non-material changes acceptable to the City Manager and approved as to form and legality by the City Attorney, are hereby approved. The City Manager is authorized to execute the agreements on behalf of the City and expend budgeted funds.

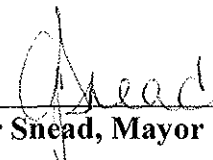
Section 3. The City Council hereby waives the requirement for the City to obtain competitive bids from vendors other than those referenced in Section 2 for the types of work to be performed under these continuing services agreements, unless such competitive bids are otherwise required by law. The total aggregate amount awarded annually to a single vendor under a continuing services agreement will not exceed \$50,000 without prior City Council approval.

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

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9th DAY OF MARCH, 2010.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

AYES: Cinque, Keating, Ramsay, Worthington, Snead
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
DOT PALM LANDSCAPING, INC.**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **DOT PALM LANDSCAPING, INC.**, a Florida corporation, (hereinafter the “Contractor”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the City of Marathon (the “City”) requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **DOT PALM LANDSCAPING, INC.** (the “Contractor”) for **LANDSCAPING** services by Resolution 2010-24 on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as “Continuing Services Agreement or Agreement”); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

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

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **DOT PALM LANDSCAPING, INC.**
John Harrison
P.O. Box 501359
Marathon, Florida 33050
305-743-3090

13. **Governing Law.**

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs

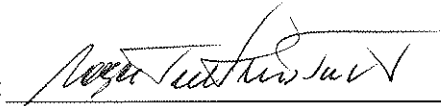
supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price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

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

Attest:

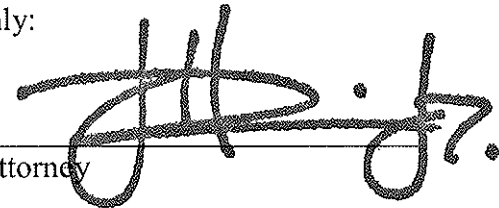

Diane Clavier, City Clerk

CITY OF MARATHON

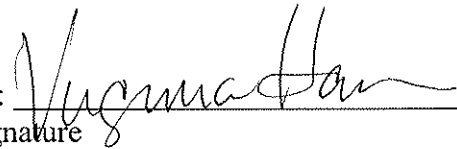
By: 
Roger Hernstadt, City Manager

Date: 03/16/10

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


City Attorney

DOT PALM LANDSCAPING, INC.

By: 
Signature

Date: 2/27/10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
GONZALEZ BROTHERS LANDSCAPING, INC.**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **GONZALEZ BROTHERS LANDSCAPING, INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **GONZALEZ BROTHERS LANDSCAPING, INC.** (the "Contractor") for **LANDSCAPING** services by Resolution 2010-24 on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

1. Scope of Services/Deliverables.

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

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **GONZALEZ BROTHERS LANDSCAPING,
INC.**
Luis A. Gonzalez
P.O. Box 501740
Marathon, Florida 33050
305-481-6189

13. **Governing Law.**

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs

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

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

Attest:



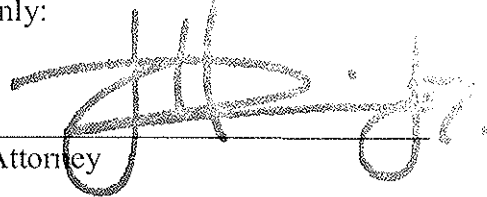
Diane Clavier, City Clerk

CITY OF MARATHON

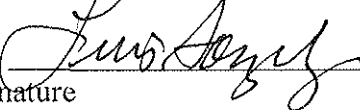
By: 
Roger Hernstadt, City Manager

Date: 03/16/10

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


City Attorney

**GONZALEZ BROTHERS
LANDSCAPING, INC.**

By: 
Signature

Date: 2/26/10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
MJ REEL LAND & SEA DEALS INC. DBA LANDSCAPE SERVICES**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **MJ REEL LAND & SEA DEALS INC. DBA LANDSCAPE SERVICES**, a Florida corporation, (hereinafter the “Contractor”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the City of Marathon (the “City”) requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **MJ REEL LAND & SEA DEALS INC. DBA LANDSCAPE SERVICES** (the “Contractor”) for **LANDSCAPING** services by Resolution 2010-___ on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as “Continuing Services Agreement or Agreement”); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of **LANDSCAPING** (the “Services”) from time to time hereunder as authorized by either the City Council or the City Manager or designee. The City shall not be prevented in any manner from retaining other firms to perform demolition or repair services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.

1.2 When the need for services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Contractor for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Contractor with a “Scope of Services Request,” requesting from the Contractor a proposal to provide professional services for the Specific Project. The Contractor shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **MJ REEL LAND & SEA DEALS, INC. DBA**
LANDSCAPE SERVICES
Jill Brownlow
PO Box 432004
Big Pine Key, Florida 33043
305-797-1622

13. **Governing Law.**

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs

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

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

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Roger Hernstadt
Roger Hernstadt, City Manager

Date: 3/1/10

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

[Signature]
City Attorney

**MJ REEL LAND & SEA DEALS INC.
DBA LANDSCAPE SERVICES**

By: [Signature]
Signature

Date: 3-1-10

Jill Brownlow 3/1/10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
3RD GENERATION PLUMBING**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between 3RD GENERATION PLUMBING, a Florida corporation, (hereinafter the “Contractor”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the City of Marathon (the “City”) requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with 3RD GENERATION PLUMBING (the “Contractor”) for PLUMBING services by Resolution 2010-~~24~~ on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as “Continuing Services Agreement or Agreement”); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

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

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

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

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

11. **Indemnification.**

- 11.1 Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- 11.2 The provisions of this Section 11 shall survive termination of this Agreement.

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **3RD GENERATION PLUMBING**
James N. Massaro
3980 Overseas Hwy.
Marathon, Florida 33050

13. **Governing Law.**

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

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

- 14.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or

relied upon by either party, other than those that are expressly set forth herein.

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership,

association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are

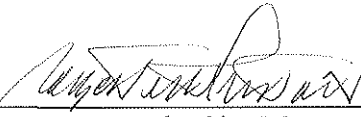
accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

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

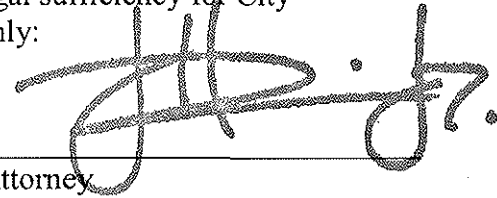
Attest:

CITY OF MARATHON



Diane Clavier, City Clerk

By: 
Roger Hernstadt, City Manager
Date: 03/16/10

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


City Attorney

3rd GENERATION PLUMBING

By: 
Signature
Date: MARCH 15th 2010

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
APPLIED TECHNOLOGY & MANAGEMENT, INC.**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **APPLIED TECHNOLOGY & MANAGEMENT, INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **APPLIED TECHNOLOGY & MANAGEMENT, INC.** (the "Contractor") for **COASTAL, ENVIRONMENTAL, MARINE AND WATER RESOURCES ENGINEERING** services by Resolution 2010-~~24~~ on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of **COASTAL, ENVIRONMENTAL, MARINE, AND WATER RESOURCES ENGINEERING** (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. The City shall not be prevented in any manner from retaining other firms to perform demolition or repair services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.

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

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

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement ("Project Agreement"), a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.

- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.
- 2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

- 3.1 The Contractor shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Contractor shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

4. **Subcontractors.**

- 4.1 The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Project.
- 4.2 Any subcontractors used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

- 8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.
- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

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

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

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **APPLIED TECHNOLOGY &
MANAGEMENT, INC.**
Michael G. Jenkins
400 S. Australian Ave., Suite 300
West Palm Beach, Florida 33401
561-659-0041

13. **Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this

Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court of the State of Florida or the United States District Court for the Southern District of Florida.

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

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

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

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



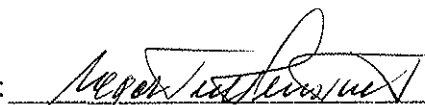
IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same, and by the Contractor, signing by and through its Designate, whose representative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

Attest:

CITY OF MARATHON



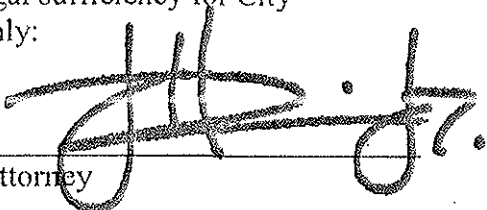
Diane Clavier, City Clerk

By: 

Roger Hernstadt, City Manager

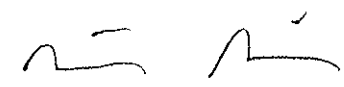
Date: 03/16/10

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



City Attorney

APPLIED TECHNOLOGY &
MANAGEMENT, INC.

By: 

Signature Mike Jenkins, Coastal Team Leader

Date: 2/26/2010

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
SUPERIOR ELECTRIC OF THE FLORIDA KEYS INC.**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **SUPERIOR ELECTRIC OF THE FLORIDA KEYS INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **SUPERIOR ELECTRIC OF THE FLORIDA KEYS INC.** (the "Contractor") for **ELECTRICAL** services by Resolution 2010-~~24~~ on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of **ELECTRICAL** (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. The City shall not be prevented in any manner from retaining other firms to perform demolition or repair services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.

1.2 When the need for services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Contractor for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Contractor with a "Scope of Services Request," requesting from the Contractor a proposal to provide professional services for the Specific Project. The Contractor shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

- 11.1 Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Contractor's performance or non-performance of this Agreement.
- 11.2 The provisions of this Section 11 shall survive termination of this Agreement.

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **SUPERIOR ELECTRIC OF THE FLORIDA KEYS INC.**
David Rodriguez
P.O. Box 522672
Marathon Shores, Florida 33052
305-743-0290

13. **Governing Law.**

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs

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

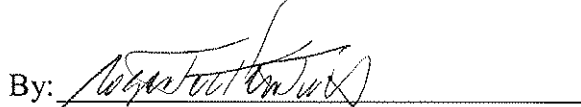
IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same, and by the Contractor, signing by and through its President, whose representative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

Attest:



Diane Clavier, City Clerk

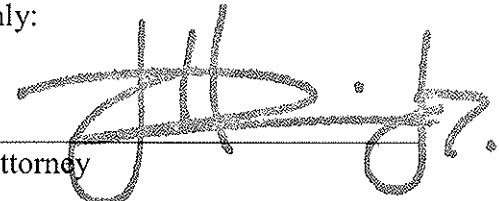
CITY OF MARATHON

By: 

Roger Hernstadt, City Manager


Date: 03/16/10

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



City Attorney

**SUPERIOR ELECTRIC OF THE
FLORIDA KEYS INC.**

By: 

Signature

Date: 3/5/10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
JOHN PAUL GRIMES, III**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **JOHN PAUL GRIMES, III**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **JOHN PAUL GRIMES, III** (the "Contractor") for **SURVEYING & MAPPING** services by Resolution 2010-___ on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of **SURVEYING & MAPPING** (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. The City shall not be prevented in any manner from retaining other firms to perform demolition or repair services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.

1.2 When the need for services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Contractor for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Contractor with a "Scope of Services Request," requesting from the Contractor a proposal to provide professional services for the Specific Project. The Contractor shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **JOHN PAUL GRIMES, III**
P.O. Box 510403
Key Colony Beach, Florida 33051
305-743-4510

13. **Governing Law.**

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

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

14.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or

relied upon by either party, other than those that are expressly set forth herein.

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

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

- 15.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Contractor providing services to the City under this Agreement shall be the property of the City.
- 15.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Contractor involving transactions related to this Agreement.
- 15.3 The City may cancel this Agreement for refusal by the Contractor to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership,

association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are

accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the City determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

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

Attest:

CITY OF MARATHON

Diane Clavier, City Clerk

By: _____
Roger Hernstadt, City Manager

Date: _____

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

CityAttorney

JOHN PAUL GRIMES, III

By: John Paul Grimes III
Signature

Date: 03/09/10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
DANA'S AIR CONDITIONING AND APPLIANCE SERVICE, INC.**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **DANA'S AIR CONDITIONING AND APPLIANCE SERVICE, INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **DANA'S AIR CONDITIONING AND APPLIANCE SERVICE, INC.** (the "Contractor") for **AIRCONDITIONING AND APPLIANCE** services by Resolution 2010-24 on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of **AIR CONDITIONING AND APPLIANCES SERVICES** (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. The City shall not be prevented in any manner from retaining other firms to perform demolition or repair services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.

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

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

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.

- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.
- 2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

- 3.1 The Contractor shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Contractor shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

4. **Subcontractors.**

- 4.1 The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Project.
- 4.2 Any subcontractors used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

- 8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.
- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

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

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

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **DANA'S AIR CONDITIONING AND APPLIANCES SERVICE, INC.**
Dana E. Banks
P.O. Box 500786
Marathon, Florida 33050
305-289-9498

13. **Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this

Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court of the State of Florida or the United States District Court for the Southern District of Florida.

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

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

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

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

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

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: [Signature]
Roger Hernstadt, City Manager

Date: 03/10/10

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

[Signature]
City Attorney

**DANA'S AIR CONDITIONING AND
APPLIANCE SERVICES, INC.**

By: [Signature]
Signature

Date: 2-26-10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
MARATHON ELECTRIC SIGN & LIGHT, INC.**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **MARATHON ELECTRIC SIGN & LIGHT, INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **MARATHON ELECTRIC SIGN & LIGHT, INC.** (the "Contractor") for **ELECTRICAL AND SIGN** services by Resolution 2010-24 on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of **ELECTRICAL AND SIGN SERVICES** (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. The City shall not be prevented in any manner from retaining other firms to perform demolition or repair services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.

1.2 When the need for services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Contractor for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Contractor with a "Scope of Services Request," requesting from the Contractor a proposal to provide professional services for the Specific Project. The Contractor shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (f). The City Manager or designee and

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **MARATHON ELECTRIC SIGN & LIGHT,
INC.**
Randall Mearns
10690 Aviation Blvd.
Marathon, Florida 33050
305-743-5805

13. **Governing Law.**

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs


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

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

Attest:

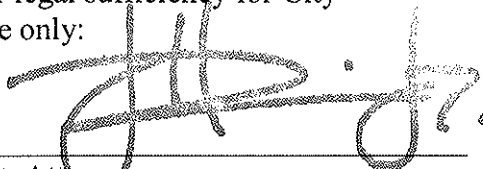

Diane Clavier, City Clerk

CITY OF MARATHON

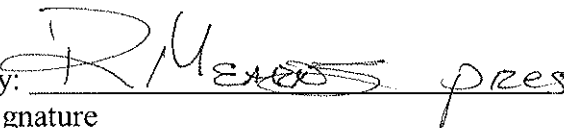
By: 
Roger Hernstadt, City Manager

Date: 03/6/10

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


City Attorney

**MARATHON ELECTRIC SIGN &
LIGHT, INC.**

By:  *pres*
Signature

Date: 3/4/10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
UNIVERSAL BEACH SERVICES CORP.**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **UNIVERSAL BEACH SERVICES CORP.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **UNIVERSAL BEACH SERVICES CORP.** (the "Contractor") for **BEACH CLEANING AND MAINTENANCE** services by Resolution 2010-~~24~~ on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of **BEACH CLEANING AND MAINTENANCE** (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. The City shall not be prevented in any manner from retaining other firms to perform demolition or repair services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.

1.2 When the need for services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Contractor for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Contractor with a "Scope of Services Request," requesting from the Contractor a proposal to provide professional services for the Specific Project. The Contractor shall prepare a proposal which includes those subjects specified in

subsection 1.3 (a) through (f). The City Manager or designee and Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.

- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.
- 2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

- 3.1 The Contractor shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Contractor shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

4. **Subcontractors.**

- 4.1 The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Project.
- 4.2 Any subcontractors used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

- 8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.
- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

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

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

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **UNIVERSAL BEACH SERVICE CORP.**
John Peart
107 Northwest Ninth Street
Delray Beach, Florida 33444

13. **Governing Law.**

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

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

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

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

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

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

Attest:

CITY OF MARATHON



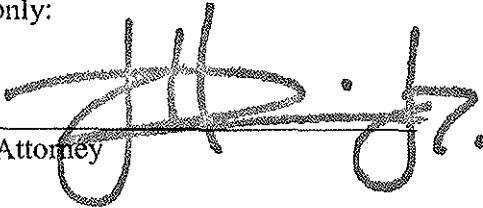
Diane Clavier, City Clerk

By: 

Roger Hernstadt, City Manager

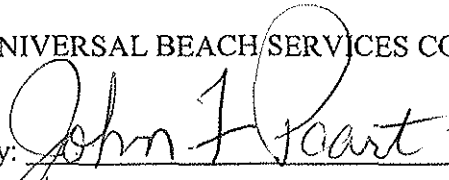
Date: 03/16/10

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



City Attorney

UNIVERSAL BEACH SERVICES CORP.

By: 

Signature

Date: 3/1/10

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

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **KEYS CONTRACTING SERVICES, INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **KEYS CONTRACTING SERVICES, INC.** (the "Contractor") for **PLUMBING AND GENERAL CONSTRUCTION** services by Resolution 2010-24 on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of **PLUMBING AND GENERAL CONSTRUCTION** (the "Services") from time to time hereunder as authorized by either the City Council or the City Manager or designee. The City shall not be prevented in any manner from retaining other firms to perform demolition or repair services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.

1.2 When the need for services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Contractor for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Contractor with a "Scope of Services Request," requesting from the Contractor a proposal to provide professional services for the Specific Project. The Contractor shall prepare a proposal which includes those subjects specified in

subsection 1.3 (a) through (f). The City Manager or designee and Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.

- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.
- 2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

- 3.1 The Contractor shall be compensated for each Specific Project in accordance with the applicable Project Agreement.
- 3.2 The Contractor shall invoice the City upon the completion of each task or deliverable or on a monthly basis
- 3.3 The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager or designee may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.
- 3.5 Contractor shall provide City with a listing of hourly charges for services for both regular and emergency business hours and other common charges as applicable on an annual basis due Sept. 30 of each year.

4. **Subcontractors.**

- 4.1 The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Project.
- 4.2 Any subcontractors used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

- 8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.
- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

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

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

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **KEYS CONTRACTING SERVICES, INC.**
John Christopher Gratton
5210 Dogwood Dell
Marathon, Florida 33050
305-481-1582

13. **Governing Law.**

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

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

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

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

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



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

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Roger Hernstadt
Roger Hernstadt, City Manager

Date: 02/16/10

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

[Signature]
City Attorney

**KEYS CONTRACTING SERVICES,
INC.**

By: [Signature]
Signature

Date: 3/2/10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
MARATHON SEAWALLS & DOCKS, INC**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **MARATHON SEAWALL & DOCKS, INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **MARATHON SEAWALL & DOCKS, INC.** (the "Contractor") for **MARINE CONSTRUCTION** services by Resolution 2010-24 on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

1. Scope of Services/Deliverables.

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

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **MARATHON SEAWALL & DOCKS, INC.**
Eugene (Randy) Culmer
P.O. Box 504316
Marathon, Florida 33050
305-289-9393

13. **Governing Law.**

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs

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

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

Attest:

CITY OF MARATHON

Diane Clavier
Diane Clavier, City Clerk

By: Roger Hernstadt
Roger Hernstadt, City Manager
Date: 3/6/10

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

[Signature]
City Attorney

**MARATHON SEAWALLS & DOCKS,
INC.**

By: [Signature]
Signature

Date: 3-2-10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
SIGNS BY RENEE INC.**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **SIGNS BY RENEE INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **SIGNS BY RENEE INC.** (the "Contractor") for **SIGNAGE** services by Resolution 2010-24 on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

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

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **SIGNS BY RENEE INC.**
Renee Anderson
72 Coco Plum Dr.
Marathon, Florida 33050
305-743-5151

13. **Governing Law.**

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs

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

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

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: Roger Hernstadt
Roger Hernstadt, City Manager

Date: 03/16/10

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

[Signature]
City Attorney

SIGNS BY RENEE INC.

By: Renee Anderson
Signature

Date: 3/1/10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
BILTMORE CONSTRUCTION CO., INC.**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **BILTMORE CONSTRUCTION CO., INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **BILTMORE CONSTRUCTION CO., INC.** (the "Contractor") for **CONSTRUCTION** services by Resolution 2010-~~24~~ on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

1. Scope of Services/Deliverables.

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

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **BILTMORE CONSTRUCTION CO., INC.**
Edward A. Parker, Jr.
1055 Ponce de Leon Blvd.
Belleair, Florida 33756
727-585-2084

13. **Governing Law.**

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

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

- 14.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 14.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

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

- 15.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Contractor providing services to the City under this Agreement shall be the property of the City.
- 15.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Contractor involving transactions related to this Agreement.
- 15.3 The City may cancel this Agreement for refusal by the Contractor to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employces of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs

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

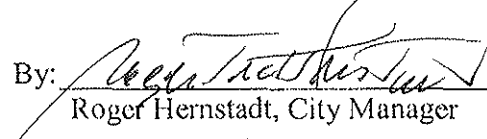
IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same, and by the Contractor, signing by and through its President, whose representative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

Attest:

CITY OF MARATHON

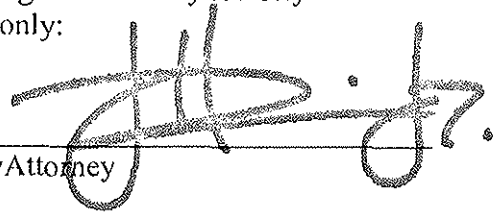


Diane Clavier, City Clerk

By: 

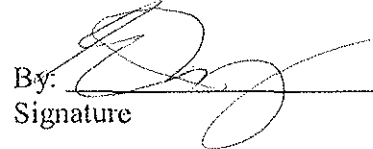
Roger Hernstadt, City Manager
Date: 03/6/10

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



City Attorney

**BILTMORE CONSTRUCTION CO.,
INC.**

By: 

Signature
Date: 2/26/10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
RYDER CONSTRUCTION, INC.**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **RYDER CONSTRUCTION, INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **RYDER CONSTRUCTION, INC.** (the "Contractor") for **CONSTRUCTION** services by Resolution 2010-24 on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

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

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

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

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

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **RYDER CONSTRICTION INC.**
Jeffery Ryder
5409 Overseas Hwy. #323
Marathon, Florida 33050
305-289-8331

13. **Governing Law.**

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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

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


Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs

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

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

Attest:

CITY OF MARATHON



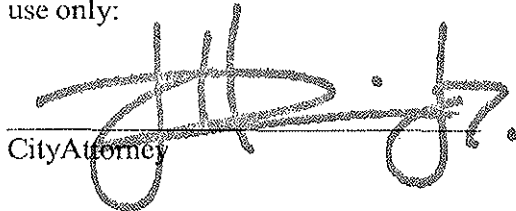
Diane Clavier, City Clerk

By: 

Roger Hernstadt, City Manager


Date: 03/16/10

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



City Attorney

RYDER CONSTRUCTION, INC.

By: 

Signature

Date: 3-1-10

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
CORAL MARINE CONSTRUCTION, LLC**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **CORAL MARINE CONSTRUCTION, LLC**, a Florida corporation, (hereinafter the “Contractor”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the City of Marathon (the “City”) requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **CORAL MARINE CONSTRUCTION, LLC** (the “Contractor”) for **CONSTRUCTION** services by Resolution 2010-24 on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as “Continuing Services Agreement or Agreement”); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

1. Scope of Services/Deliverables.

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

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **CORAL MARINE CONSTRUCTION, LLC**
A. George Steinmetz or Paul Ban Beuren
10610 7th Ave. Gulf
Marathon, Florida 33050
305-743-0907

13. **Governing Law.**

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project. The contractor shall be registered with the Building Department of the City of Marathon to perform his trade within the City of Marathon.

20. **Waiver**

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

21. **Survival of Provisions**

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

22. **Prohibition Of Contingency Fees.**

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

23. **Counterparts**

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


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

Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs

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

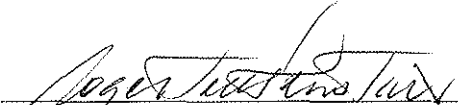
IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same, and by the Contractor, signing by and through its Managing Member, whose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

Attest:



Diane Clavier, City Clerk

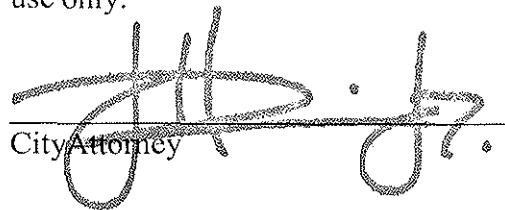
CITY OF MARATHON

By: 

Roger Hernstadt, City Manager

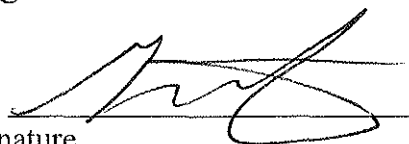
Date: 03/16/10

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



City Attorney

**CORAL MARINE CONSTRUCTION
LLC**

By: 

Signature

Date: _____

**CONTINUING SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
COASTAL DOCKS, LLC**

THIS AGREEMENT is made as of this 9 day of March, 2010, by and between **COASTAL DOCKS, LLC**, a Florida corporation, (hereinafter the “Contractor”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the City of Marathon (the “City”) requested qualifications from contractors to provide project and repair services to the City in 2010; and

WHEREAS, the City Council authorized the City Manager to negotiate a contract with **COASTAL DOCKS, LLC** (the “Contractor”) for **MARINE AND GENERAL CONSTRUCTION** services by Resolution 2010-24 on March 9, 2010; and

WHEREAS, the Contractor is willing and able to perform such services for the City within the basic terms and conditions set forth in this agreement (hereinafter referred to as “Continuing Services Agreement or Agreement”); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the Contractor to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

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

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

1.1 The Scope of Services shall consist of **MARINE AND GENERAL CONSTRUCTION** (the “Services”) from time to time hereunder as authorized by either the City Council or the City Manager or designee. The City shall not be prevented in any manner from retaining other firms to perform demolition or repair services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.

1.2 When the need for services for a Specific Project occurs, the City Manager or designee may, enter into negotiations with the Contractor for that Specific Project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the Contractor with a “Scope of Services Request,” requesting from the Contractor a proposal to provide professional services for the Specific Project. The Contractor shall prepare a proposal which includes those subjects specified in subsection 1.3 (a) through (e). The City Manager or designee and

Contractor shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 1.3.

- 1.3 The City and Contractor shall utilize as the agreement for each Specific Project a Standard Project Agreement (“Project Agreement”), a copy of which is attached and incorporated into this Agreement as Exhibit “A”. Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:
 - a. The Scope of Services;
 - b. The Deliverables;
 - c. The Time and Schedule of Performance and Term;
 - d. The amount of Compensation;
 - e. Any modifications to the Project Agreement, if mutually agreed upon by the parties.
- 1.4 The professional services to be rendered by the Contractor shall commence subsequent to the execution of each Project Agreement. Performance of work by Contractor prior to execution of a Project Agreement shall be at the Contractor's sole risk.
- 1.5 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through December 31, 2012, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 180 days by prior written notice to the Contractor
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in any request for project or repair services from the City, unless extended in writing by the City Manager or designee.
- 2.3 Contractor has the right to decline any requests from the City for demolition or repair services, provided that written notice thereof is provided to the City within 48 hours of any request for services hereunder.

2.4 Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3. **Compensation and Payment.**

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

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

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

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

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

4. **Subcontractors.**

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

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

5. **City's Responsibilities**

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

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

6. **Contractor's Responsibilities**

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

7. **Termination.**

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

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

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

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

8. **Insurance.**

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

8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 8.4 Professional Liability: If applicable, the Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 U.S. Longshoremen & Harbor Workers Insurance: If applicable, the Contractor shall furnish longshoreman & harbor insurance when any work is done from a barge, in the amount not less than \$1,000,000.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

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

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

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

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

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

12. **Notices/Authorized Representatives.**

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

For the City: Roger Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

For The Contractor: **COASTAL DOCKS, LLC**
Jan Hogeboom
P.O. Box 522500
Marathon Shores, Florida 33052
305-289-0461

13. **Governing Law.**

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

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

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

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

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

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

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

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

16. **Nonassignability.**

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

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement.

This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

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

Attest:

CITY OF MARATHON

Diane Clavier
Diane Clavier, City Clerk

By: Roger Hernstadt
Roger Hernstadt, City Manager

Date: 03/16/10

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

[Signature]
City Attorney

COASTAL DOCKS, LLC

By: [Signature]
Signature

Date: March 4, 2010