

**CITY OF MARATHON, FLORIDA
RESOLUTION 2011-104**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING RANKINGS AND AWARD OF CONTRACT FOR COMMUNITY DEVELOPMENT BLOCK GRANT SMALL CITIES FUNDS ECONOMIC DEVELOPMENT ADMINISTRATION SERVICES TO MERIDIAN COMMUNITY SERVICES GROUP, INC., AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) plans to submit a Community Development Block Grant Small Cities Funds Economic Development grant application (the “Grant Application”) to the Florida Department of Economic Opportunity; and

WHEREAS, if the Grant Application is approved the City will require the assistance of a qualified individual or entity to administer the Grant on its behalf; and

WHEREAS, the City published a request for proposals for Grant administration services in accordance with the City’s procurement policy (the “RFP”); and

WHEREAS, the City received two responses to the RFP; and

WHEREAS, the proposal submitted by Meridian Community Services Group, Inc., (the “Consultant”) was the only one that was responsible and responsive to the RFP, and therefore is the top ranked proposal evaluated by City staff; and

WHEREAS, the City finds that the Consultant’s proposal meets the requirements of the RFP and is in the best interest of the City.

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 by this reference.

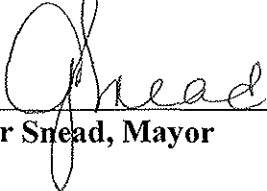
Section 2. The City hereby accepts staff’s ranking of the proposals submitted in response to the RFP.

Section 3. The Contract between the City and Consultant for the provision of Grant administration services, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the agreement on behalf of the City

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 25th DAY OF OCTOBER, 2011.

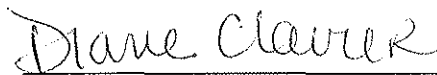
THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

AYES: Cinque, Keating, Ramsay, Worthington, Snead
NOES: None
ABSENT: None
ABSTAIN: None

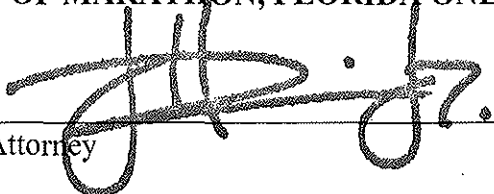
ATTEST:



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

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON AND
MERIDIAN COMMUNITY SERVICES GROUP, INC.,
FOR COMMUNITY DEVELOPMENT BLOCK GRANT 2011 ECONOMIC
DEVELOPMENT CATEGORY ADMINISTRATION SERVICES**

THIS AGREEMENT is made and entered into this 25th day of October, 2011, between **MERIDIAN COMMUNITY SERVICES GROUP, INC.**, a Florida corporation, (hereinafter the “Consultant”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the Consultant and City, after the solicitation of competitive proposals and through mutual negotiation, have agreed upon a scope of services, schedule, and fee for Community Development Block Grant (“CDBG”) 2011 Economic Development Category administration services (the “Project”); and

WHEREAS, the City desires to engage the Consultant to perform the services specified below.

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

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

1.1 Subject to the terms and conditions of this Agreement and applicable federal, state and local laws and regulations, Consultant will undertake, perform, and complete all necessary Project administration services for which CDBG and other public program funds may be utilized generally described as follows:

Conducting environmental reviews(s), contractor verification, developing bid packages, overseeing bidding process, progress inspections, tracking and implementing activities in compliance with program guidelines, technical assistance, and all other CDBG related services as required or requested, at the sole discretion of the City.

1.2 The City’s payment of funds pursuant to this Agreement is subject to and conditioned upon the release of authorized appropriations from the Florida Department of Economic Opportunity (the “Department”). The City’s grant award agreement from the Department shall become part of this Agreement. If additional funding, either through an amendment to the grant award agreement or through the issuance of an additional award agreement by the Department, any resulting grant award agreement amendment shall also become a part of this Agreement.

2. **Term/Commencement Date.**

2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through Project completion, unless earlier terminated in accordance with Paragraph 8. The City Manager may extend the term of this Agreement up to an additional 180 days by written notice to the Consultant.

3. **Compensation and Payment.**

3.1 The City shall pay Consultant the sum of \$58,800.00 for the Project. The City shall make an initial payment of \$9,483.00 to Consultant upon the release of Grant funds by the Department.

3.2 The Consultant shall invoice the City on a monthly basis, and the City will pay Consultant the sum of \$4, 483.00 in 12 equal monthly payments. If the Project is completed in less than 12 months, the balance of the Consultant's compensation will be paid by the City upon submission of the "administrative closeout package" to the Department.

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

3.4 Notwithstanding anything to the contrary herein, if a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the City's Finance Director, the Consultant shall provide written documentation to justify any invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

3.5 If additional services are requested or required by the City, then Consultant shall be compensated for the additional services based on the hourly rates identified in Attachment "A" of this Agreement.

4. **Subconsultants.**

4.1 Any subconsultants used on the Project must have the prior written approval of the City.

4.2 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Project.

4.3 If Consultant subcontracts any of the Project it agrees to include in the subcontract that the subcontractor is bound by the terms and conditions of this Agreement including, but not limited to, agreeing to indemnify and

hold harmless the City from and against all claims of whatever nature arising out of the subcontractor's performance of work on the Project.

5. **City's Responsibilities.**

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

6. **Consultant's Responsibilities.**

- 6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a grant administrator under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Project, it is determined that the Consultant's work is incorrect, defective or fails to conform to the Scope of Services of the Project, upon written notification by the City, the Consultant shall at Consultants sole expense, immediately correct the work.

7. **Conflict of Interest.**

- 7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, property owners, etc.); with regard to any grant issues in the City.
- 7.2 No City official or employee shall share in any proceeds of this Agreement, the grant award agreement with the Department, or in any benefit to arise from it. No City official or employee who exercises any function or responsibility with respect to this Agreement, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this Agreement the grant award agreement with the Department, or in any benefit to arise from it.
- 7.3 Consultant shall cause to be incorporated in all subcontracts the language set forth in this section.

8. **Termination.**

- 8.1 The City or Consultant may terminate this Agreement without cause upon twenty (20) days written notice, or terminate this Agreement with cause upon ten (10) days written notice.
- 8.2 Upon receipt of the City's written notice of termination, Consultant shall stop work on the Project unless directed otherwise in writing by the City.
- 8.3 In the event of termination by the City, the Consultant shall be paid for all work accepted by the City up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.
- 8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City. 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, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers, or name the City as an additional insured. The insurance coverages shall include a minimum of:

- 9.1 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.
- 9.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$1,000,000.00 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.
- 9.3 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$2,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.

9.4 Professional Liability: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.00.

9.5 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement. 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.

10. **Nondiscrimination.**

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

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

11.1 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.

11.2 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.

12. **Indemnification.**

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

12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

13.1 The City's Project Manager is Susie Thomas, Director of Community Development. 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

With a Copy to: John Herin, Jr., Esq
Stearns Weaver Miller
Weissler Alhadeff & Sitterson, P.A.
150 W Flagler St, Suite 2200
Miami, Florida 33130

For The Consultant: Lisa A. Blair, President
Meridian Community Services Group, Inc.
P.O. Box 13408
Tallahassee, Florida 32317

14. **Governing Law.**

14.1 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 or the Southern District of Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 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.

15.2 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.

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

16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant

providing services to the City under this Agreement shall be the property of the City.

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

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

17. **Nonassignability.**

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

18. **Severability.**

18.1 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.

19. **Independent Contractor.**

19.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractor 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.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project including, but not limited to Attachments "B" and "C."

21. **Waiver.**

21.1 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.

22. **Survival of Provisions.**

22.1 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.

23. **Prohibition Of Contingency Fees.**

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

24. **Energy Efficiency.**

24.1 Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

25. **Eligibility.**

25.1 Consultant certifies that it is eligible to receive state and federally funded contracts, and also certifies that no party, which is ineligible for such work, will be subcontracted to perform services under this Agreement.

26. **Counterparts.**

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

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties 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 Consultant by and through its Vice-President, who has been duly authorized to execute same.

Attest:

CITY OF MARATHON

Diane Clavier
Diane Clavier, City Clerk

By: Roger Hernstadt
Roger Hernstadt, City Manager

Approved As To Form And Legality For The Use
And Reliance Of The City Of Marathon, Florida Only:

[Signature]
City Attorney

CONSULTANT

By: T. Calvin Knowles, Jr.
T. Calvin Knowles, Jr., Vice President

ATTACHMENT "A"

ADDITIONAL SERVICES FEE SCHEDULE

<u>Description</u>	<u>Fee*</u>
Principal	\$150.00 per hour
Director of Grant Services	\$120.00 per hour
Project Grants Manager	\$100.00 per hour
Chief Financial Officer	\$100.00 per hour
Director of Project Development	\$120.00 per hour
Production Manager	\$90.00 per hour
Construction Specialist	\$90.00 per hour
Administrative Assistant	\$38.00 per hour
Data Processing	\$26.00 per hour

***Please note that all fees include overhead, travel, office supplies, benefits, etc.**

ATTACHMENT "B"

FEDERAL PROVISIONS

1. Equal Employment Opportunity

During the performance of this Agreement Consultant agrees as follows:

a. Consultant will not discriminate against any employee or applicant for employment because of age, race, sex, national origin, ethnic background, and handicap status. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.

b. Consultant will, in all solicitation or advertisements for employees placed by or on its behalf, state that all qualified applicants will receive consideration for employment without regard to age, race, sex, national origin, ethnic background, and handicap status.

c. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

d. Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60).

e. Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the City and the Florida or United States Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of Consultant's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules,

regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and Consultant may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. Consultant will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Consultant will take such action with respect to any subcontract or purchase order as the City representative may direct as a means of enforcing such provisions including sanction for non-compliance. Provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

2. Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

3. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under Title I of the Housing and Community Development Act.

4. “Section 3” Compliance in the Provision of Training, Employment, and Business Opportunities

a. The work to be performed under this Agreement is assisted by direct federal assistance from the U.S. Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (24 CFR Part 135), as amended, 12 U.S.C. 170. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection

with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

b. The parties to this Agreement will comply with the provisions of said Section 3 and regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.

c. Consultant will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants-for employment or training.

d. Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, CFR Part 135. Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

5. Access and Retention to Records

The City, the Department, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and

records of Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Consultant shall retain all records relating to this Agreement for six (6) years after the City makes final payment and all other pending matters are closed.

ATTACHMENT "C"

SECTION 3 AND AFFIRMATIVE ACTION PLAN

1. Consultant will solicit and evaluate applications for employment in a manner that is non-discriminatory based upon age, race, sex, national origin, ethnic background, and handicap status.
2. When training and/or employment opportunity arises in connection with this project, Consultant will, to the greatest extent feasible, provide maximum opportunity to lower income residents of the project. Employment opportunity will be locally advertised in a manner that will ensure that potentially eligible applicants are 1) made aware of the opportunity, and 2) provided a convenient way to apply for employment.
3. During this project, Consultant will seek to purchase necessary goods and/or services from businesses that are located in, or owned by persons residing in the jurisdiction.
4. Consultant will utilize the HUD and Florida lists of minority businesses in filling subcontracting and/or purchasing needs.
5. Consultant will include applicable equal opportunity provisions in subcontracts issued in connection with this project.
6. Consultant shall publicize and post this policy in a conspicuous place available to employees and applicants for employment and training.
7. Consultant is under no contractual or other disability, which would prevent compliance with this policy.