

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2015-15**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CONTINUING SERVICES AGREEMENT FOR DESIGN BUILD OWNER'S REPRESENTATIVE SERVICES WITH WADE TRIM, INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the "City") published a Request for Qualifications (RFQ) from Florida certified, licensed and experienced firms to provide design build owner's representative services for future utility projects;

**WHEREAS**, the City Manager established an "Evaluation Team" consisting of City Staff to review, evaluate and rank proposals in accordance with the RFQ criteria; and

**WHEREAS**, on December 16, 2014 the City Council authorized the City Manager to negotiate contracts with the top ranked firm, Wade Trim, Inc., as recommended by the City's Evaluation Team; and

**WHEREAS**, the City Council hereby approves the Continuing Services Agreement (the "Agreement") for Design Build Owner's Representative Services with Wade Trim, Inc., and authorizes the City Manager to execute the Agreement as provided on Exhibit "A."

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

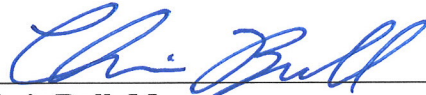
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The City Council hereby approves the Continuing Agreement for Design Build Owner's Representative Services with Wade Trim, Inc., and authorizes the City Manager to execute the Agreement as provided on Exhibit "A".

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2015.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Chris Bull, Mayor**

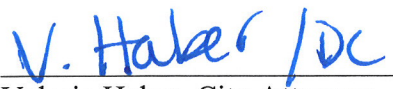
AYES: Keating, Kelly, Senmartin, Zieg, Bull  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

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

  
\_\_\_\_\_  
Valerie Haber, City Attorney

CONTINUING SERVICES

OWNER'S REPRESENTATIVE DESIGN BUILD  
CONTINUING SERVICES AGREEMENT

THIS OWNER'S REPRESENTATIVE DESIGN BUILD CRITERIA CONTINUING SERVICES AGREEMENT (this "Agreement"), dated as of 2/12/15 (the "Effective Date"), between the City of Marathon, Florida, a Florida municipal corporation (the "City") and Wade Trim, Inc., a Florida corporation authorized to do business in the State of Florida (the "Owner's Representative").

RECITALS:

WHEREAS, the City requested proposals from qualified design build criteria professionals and selected the Owner's Representative to provide design build criteria and owner's representative services; and

WHEREAS, the Owner's Representative 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 "Owner's Representative Design Build Criteria Continuing Services Agreement" or "Agreement"); and

WHEREAS, the purpose of this Agreement is not to authorize the Owner's Representative 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.

AGREEMENT:

NOW, THEREFORE, for valuable consideration, the Owner's Representative and the City hereby agree as follows:

1. APPOINTMENT OF OWNER'S REPRESENTATIVE

1.1 The City hereby engages the Owner's Representative to provide design build criteria and owner's representative services to the City for Specific Projects as authorized from time to time by the City Council or the City Manager as authorized by Section 1.4 and the City's purchasing ordinance.

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

1.3 The City and the Owner's Representative shall utilize as the agreement for each Specific Project or work assignment a Standard Project Agreement ("Project Agreement"), a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each Project 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 Compensation for the Basic Services;
- e. The Personnel assigned to the Specific Project; and
- f. Any modifications to this Agreement, if mutually agreed upon by the parties.

The professional services to be rendered by the Owner's Representative shall commence subsequent to the execution of each Project Agreement.

1.4 The Contract Documents for each Specific Project shall incorporate this Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

1.5 The Owner's Representative shall provide a project team to perform its duties hereunder (as existing from time to time, the "Project Team"), the members of which shall be employees of the Owner's Representative. The Owner's Representative shall designate from time to time an individual to act as representative of Owner's Representative. Dan Burden, Ph.D PE is hereby designated as such representative until Owner's Representative otherwise notifies the City. Owner's Representative may, from time to time upon notice to the City, make changes in and deletions and additions to the Project Team; provided, however, the City shall have the right to approve any new or replacement member of the Project Team. The City shall have the right from time to time to reasonably request that a member or members of the Project Team be removed and replaced by a person or persons acceptable to the City in its reasonable discretion.

1.6 The City shall designate from time to time an individual to act as representative of the City. Zully Hemeyer, Utilities Manager, is hereby designated as such representatives until the City, in its sole discretion, otherwise notifies Owner's Representative.

1.7 The Owner's Representative and the City acknowledge that a variety of third-party contractors and consultants may be involved with each Specific Project. All of such contractors and consultants will execute contracts directly with the City (or the architect and/or engineer (A/E) or general contractors, as the case may be). To minimize the City's exposure to liability, all agreements with third party contractors (including subcontractors) and consultants shall, to the extent feasible, contain an indemnification in favor of the City in a form acceptable to the City and, to the extent feasible, such contractors and consultants shall be required to maintain errors and omissions insurance acceptable to the City. Owner's Representative shall advise the City on the selection of contractors and consultants and shall, at the request and on behalf of the City, negotiate contracts for their engagement by the City. Additionally, Owner's Representative shall review and make

recommendations with respect to the terms and conditions that are contained, or recommended to be included, within such draft contracts.

1.8 The Owner's Representative and the City acknowledges that a variety of project delivery methods may be used to deliver the design and construction of the projects delivered during the delivery of these Owner's Representative Services. Projects will be delivered using one or multiple project delivery firms including Design-Builder and Progressive Design-Builder (DB Contractor).

## 2. TERM AND TERMINATION

2.1 This Agreement, when fully executed by all parties, shall be effective as of 2/12/15 and shall continue in full force and effect, unless and until terminated pursuant to Section 2.2 or other applicable sections of this Agreement. Each Project Agreement shall specify the period of service agreed to by the City and the Owner's Representative for services to be rendered under said Project Agreement.

2.2 This Agreement may be terminated by the City for convenience upon thirty (30) calendar days written notice to the Owner's Representative.

2.3 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 and as set forth in Section 8 hereof.

2.4 Notwithstanding the provisions of Subsection 2.1, the City Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the City under similar continuing services agreements. Nothing in this Agreement shall be construed to give the Owner's Representative a right to perform services for a specific project.

## 3. SCOPE OF OWNER'S REPRESENTATIVE BASIC SERVICES

3.1 In connection with each Specific Project, the Owner's Representative's Basic Services may consist of, but is not limited to those described in Sections 3.2 through 3.9, and any other services identified in this Agreement or the Project Agreement as part of Basic Services. The scope of services for each Project Agreement will be included in each discrete Project Agreement.

3.2 **Owner's Representative General Services.** During the course of the development of each Utility Project, the City anticipates requiring the professional services of the Owner's Representative to assist with evaluating and/or assessing engineering data that is critical to the operation of the City's Utility. These general services are outlined below.

3.2.1 Provide as-needed technical assistance at the direction of the Utilities Manager.

3.2.2 Attendance at monthly City meetings and workshops to address any discussions, questions or issues that arise with regards to the City Utility Projects.

3.2.3 Provide as needed technical assistance pertaining to the operations and maintenance of the City Utility and its facilities.

3.2.4 Assistance with the preparation of permit compliance data and renewals for City wastewater facilities, including meetings with and responses to requests for information by local or state jurisdictional agencies.

3.2.5 Assisting the City with the review and development of relevant policies including those pertaining to re-development and service connections within the wastewater and reclaimed water service areas.

3.3 **Program Planning and Technical Assessment (Study and Report).** The Owner's Representative shall perform the following:

3.3.1 Consult with Owner to define and clarify Owner's technical requirements for each Utility Project, and to identify and obtain all available data for each wastewater facility.

3.3.2 Identify, consult with and analyze requirements of City and permitting authorities having jurisdiction for each Utility Project.

3.3.3 Prepare reports for design development and financial planning and other reports, as appropriate, for each Utility Project.

3.4 **Preliminary Design, Design Criteria Professional, and Procurement Services.** The Owner's Representative shall perform the following:

3.4.1 As the City's Design Criteria Professional, prepare design criteria packages (DCP) for each assigned Utility Project as required to comply with Section 287.055, Florida Statute. The Owner's Representative will provide concurrent work on the projects as appropriate.

3.4.2 Develop preliminary engineering data, conceptual drawings, and design criteria in support of the development of required DCPs.

3.4.3 Develop design documents (including drawings and specifications) of Utility improvements.

3.4.4 Prepare a Request for Qualifications (RFQ) document with design criteria package including preliminary engineering data, conceptual drawings and design criteria for procurement purposes for Utility Projects, and addenda to the RFQ as appropriate to procure DB Contractors.

3.4.5 Assist the City to review and evaluate responses to the RFQ, including responses to questions and participation on selection panel, and assist City to develop short list of DB Contractors, as required.

3.4.6 Prepare Request for Proposal (RFP) documents, to include the instructions to proposers with evaluation and selection criteria, Proposal form and separate Cost Proposal Form, Agreement form, Bond forms, General and Special Conditions of the Design Build Contract, Program of Facility Requirements, Conceptual drawings, Environmental and Permit Requirements, Performance Standards, and Addenda to the RFP to procure DB Contractors.

3.4.7 Assist the City to review and evaluate the responses to the RFP, including Cost Proposals review, preparation of analysis of proposals, and participate on selection panel to rank the DB Contractors including recommendation of award or rejection of proposals.

3.4.8 Assist the City and the DB Contractors to complete and execute the contract.

3.5 **Design Phase Management Services.** The Owner's representative shall perform the following:

3.5.1 Assist the City in preliminary conferences with DB Contractors.

3.5.2 Expediently review design documents during their development to ensure the designs meet the intent and criteria of the DCP.

3.5.3 Review submittals prepared by the DB Contractors including drawings, specifications, permit applications, technical submittals, shop drawings, and other submittals as required by the Basis of Design Documents for acceptability and conformance with the DCP.

3.5.4 Assist the City in issuing clarifications and interpretations of the DCP.

3.5.5 As the DB Contractor progresses with the design and construction Documents, the Owner's Representative shall review and comment on the estimates of probable Construction Cost of increasing detail and refinement as prepared by the DB Contractor, if applicable. The Owner's Representative shall advise the City if it appears that the Construction Cost may exceed the latest approved Project budget and make recommendations for corrective action.

3.5.6 Make recommendations during the review of Construction Documents whenever design details adversely affect constructability, cost or schedules.

3.6 **Operation and Maintenance Services.** The Owner's Representative shall perform the following:

3.6.1 Provide technical assistance related to assuring continuing operation and maintenance services during construction projects.

3.6.2 Review maintenance and operating instructions, and schedules and guarantees submitted, by the DB Contractor and/or the City's contract operator for compatibility with current operations.

3.6.3 Review operation and maintenance work authorizations submitted by the City's contract operator and provide recommendations to the City as to the need for the work and an estimate of cost.

3.6.4 Evaluate current operation and maintenance practices of the City's contract operator and provide recommendations for improvements.

**3.7 Construction Phase Management Services.** The Construction Phase will commence with the award of the initial DB Contractor Contract. The Owner's Representative shall perform the following.

3.7.1 Assist in providing administrative, management and related services to coordinate scheduled activities and responsibilities of the DB Contractor and manage the Project in accordance with the DB Contractor's contract.

3.7.2 Assist in scheduling and conducting meetings to discuss such matters as procedures, progress and scheduling. Prepare and promptly distribute meeting summaries to the City, and DB Contractor.

3.7.3 Consistent with the various RFP and bidding documents, and utilizing information from the DB Contractor, the Owner's Representative shall assist in coordinating the sequence of construction and assignment of space in areas where the Contractors are performing Work.

3.7.4 Endeavor to obtain satisfactory performance from each of the DB Contractors and recommend courses of action to the City when requirements of a Contract are not being fulfilled.

3.7.5 Make part-time and/or full-time inspection during construction for review and observation of the DB Contractors' Work, including daily reports and photographs.

3.7.6 Assist the City in issuing clarifications and interpretations of the DCP.

3.7.7 Assist in maintaining records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring records.

3.7.8 Assist in developing and implement procedures for the review and processing of applications by DB Contractors for progress and final payments.

3.7.9 Based on the Owner's Representative's observations and evaluations of each DB Contractor's Application for Payment, the Owner's Representative shall review and certify the amounts due the respective DB Contractors.

3.7.10 Assist in preparing a Project Application for Payment based on the DB Contractors' Certificates for Payment.

3.7.11 Review the safety programs developed by each of the DB Contractors for purposes of coordinating the safety programs with those of the other DB Contractors. The



Owner's Representative's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the DB Contractors, Subcontractors, agents or employees of the DB Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Owner's Representative.

3.7.12 Determine, in general, that the Work of each DB Contractor is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard the City against defects and deficiencies in the Work. As appropriate, the Owner's Representative shall have authority, upon written authorization from the City, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Owner's Representative, in consultation with the DB Contractor, may reject Work which does not conform to the requirements of the Contract Documents.

3.7.13 Assist in scheduling and coordinating the sequence of construction in accordance with the Contract Documents and the latest approved Project construction schedule.

3.7.14 With respect to each DB Contractor's own Work, the Owner's Representative shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the DB Contractors, since these shall be solely the DB Contractor's responsibility under the corresponding contract for construction. The Owner's Representative shall not be responsible for a DB Contractor's failure to carry out the Work in accordance with the respective contract documents. The Owner's Representative shall not have control over or charge of acts or omissions of the DB Contractors, Subcontractors, or their agents or employees, or any other persons performing portions of the Work not directly employed by the Owner's Representative.

3.7.15 Assist in transmitting to the DB Contractor requests for interpretations (RFI) of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.

3.7.16 Assist in reviewing requests for changes, assist in negotiating DB Contractors' proposals, submit recommendations to the City, and, if they are accepted, assist in preparing Change Orders and Construction Change Directives which incorporate the DB Contractor's modifications to the Documents.

3.7.17 Assist the City in the review, evaluation and documentation of Claims.

3.7.18 Assist in receiving certificates of insurance from the Contractors and forward them to the City with a copy to the DB Contractor.

3.7.19 In collaboration with the DB Contractor, establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

3.7.20 Assist in recording the progress of the Project, including the submittal of monthly written progress reports to the City including information on each DB Contractor and each DB Contractor's Work, as well as the entire Project, showing percentages of completion.

3.7.21 Review and ensure that the DB Contractor maintains, at the Project site for the City, one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. Maintain records, in duplicate, all project records. Assist in making all such records available to the City and upon completion of the Project shall deliver them to the City.

3.7.22 Assist in arranging for the delivery, storage, protection and security of the City-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.

3.7.23 With the DB Contractor and the City's Utility Department personnel, assist in observing the Contractors' final testing and start-up of utilities, operational systems and equipment.

3.7.24 When the Owner's Representative considers each DB Contractor's Work or a designated portion thereof substantially complete, the Owner's Representative shall, jointly with the DB Contractor, prepare for the City a list of incomplete or unsatisfactory items and a schedule for their completion. The Owner's Representative shall assist the City in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

3.7.25 Assist in coordinating the correction and completion of the Work, evaluate the completion of the Work of the DB Contractors upon issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, and make recommendations to the City when Work is ready for final inspection; and assist the City in conducting final inspections.

3.7.26 Secure from the DB Contractors warranties and similar submittals required by the Contract Documents for delivery to the City; deliver all keys, manuals, record drawings and maintenance stocks to the City; and forward to the City a final Project Application for Payment upon compliance with the requirements of the Contract Documents.

3.7.27 Recommend Change orders or Change requests.

3.7.28 Advise City as to the necessity of special inspections, and to receive and review certifications of inspections, tests, etc.

3.7.29 Advise City regarding claims between the City and the DB Contractor.

3.7.30 Review and approve DB Contractor's requests for payment and conformance with completion of Project.

3.7.31 Receive bonds, certificates or other evidence of insurance required by the Contract Documents.

3.8 **Grant and Funding Support Services.** The Owner's Representative shall perform the following.

3.8.1 Assist City to meet grant compliance documentation including preparation of conditions and requirements in applicable Project Contracts, Bonds, Insurance and associated submittal requirements.

3.8.2 Assist the City in obtaining information regarding applicable requirements for equal employment opportunity programs and other applicable grant requirements for inclusion in the Contract Documents.

3.8.3 Prepare monthly and quarterly progress reports to meet appropriate grant and funding agency requirements.

3.8.4 Prepare reimbursement requests with all applicable documentation as required to meet appropriate grant and funding agency requirements.

3.9 **Project Controls and Management Services.** The Owner's Representative shall perform the following.

3.9.1 Advise the City regarding the division of the Utility Projects into individual Contracts for various categories of Work, including the method to be used for selecting DB Contractors and awarding Contracts.

3.9.1.1 If multiple Contracts are to be awarded, the Owner's Representative shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the DB Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

3.9.2 Review the Project construction schedule(s) with DB Contractors, including major components of the Work, the phasing of construction, times of commencement and completion required of one or more DB Contractor, ordering and delivery of products requiring long lead time, and the occupancy or utilization requirements of the City.

3.9.3 Prepare meeting summaries as required.

3.9.4 Assist the City and Design Build Contractor in identifying, expediting and coordinating the ordering and delivery of materials requiring long lead-time.

3.9.5 Assist the City in preparing Construction Contracts and advise the City on the acceptability of Subcontractors and material suppliers proposed by DB Contractors.

3.9.6 Assist the City in obtaining building, environmental and other such permits as required for permanent improvements, except for permits required to be obtained directly

by the various DB Contractor(s). The Owner's Representative shall verify that the City has paid applicable fees and assessments. The Owner's Representative shall assist the City and DB Contractor in connection with the City's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

3.9.7 Assist in developing cash flow reports and forecasts for the Project and advise the City and Contractor as to variances between actual and budgeted or estimated costs.

3.9.8 Monitor, track, and manage all project related documents during the course of the Owner's Representative Services, including maintaining electronic and hard copies of all documents.

#### 4. ADDITIONAL SERVICES; CHANGES IN THE SCOPE OF SERVICES

##### 4.1 General

4.1.1 The services described in this Article 4 are not included in Basic Services unless so identified in the Project Agreement, and they shall be paid for by the City as provided in this Agreement, in addition to the compensation for Basic Services. The Optional Additional Services described under Section 4.3 shall only be provided if authorized or confirmed in writing by the City. If services described under Contingent Additional Services in Section 4.2 are required due to circumstances beyond the Owner's Representative's control, the Owner's Representative shall notify the City prior to commencing such services. If the City deems that such services described under Section 4.2 are not required, the City shall give prompt written notice to the Owner's Representative. If the City indicates in writing that all or part of such Contingent Additional Services are not required, the Owner's Representative shall have no obligation to provide those services.

##### 4.2 Contingent Additional Services

4.2.1 Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity or the City's schedule.

4.2.2 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

4.2.3 Providing services made necessary by the termination or default of the Design Build Contractor or a Contractor, by major defects or deficiencies in the Work of a Contractor, or by failure of performance of either the City or Contractor under a Contract for Construction.

4.2.4 Providing services in evaluating an extensive number of claims submitted by a Contractor or others in connection with the Work.

4.2.5 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Owner's Representative is party thereto.

#### 4.3 Optional Additional Services

4.3.1 Providing any other services not otherwise included in this Agreement.

#### 4.4 Changes in the Scope of Services

Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the City by Change Order without invalidating the Project Agreement. Change Order shall mean a written order to the Owner's Representative executed by the City, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

#### 4.5 Execution of Change Order

The execution of a Change Order by the City and the Owner's Representative shall constitute conclusive evidence of the Owner's Representative's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Owner's Representative, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order.

#### 4.6 Council Approval

All Change Orders, regardless of amount, must be approved by the City Council.

### 5. CITY'S RESPONSIBILITIES

5.1 The City shall provide full information regarding requirements for each Specific Project, including a program which shall set forth the City's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

5.2 The City shall establish and update an overall budget for each Specific Project based on consultation with the Owner's Representative and the DB Contractor which shall include the Construction Cost, the City's other costs and reasonable contingencies related to all of these costs.

5.3 The City shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

5.4 The City shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for each Specific Project, including auditing services the City may require to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by or on behalf of the City.

5.5 The City shall furnish the Owner's Representative with a sufficient quantity of Construction Documents.

5.6 The services, information and reports required by Sections 5.3 through 5.6 shall be furnished at the City's or Construction Contractor's expense, and the Owner's Representative shall be entitled to rely upon the accuracy and completeness thereof.

5.7 Prompt written notice shall be given by the City to the Owner's Representative and DB Contractor if the City becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

5.8 The City reserves the right to perform construction and operations related to each Specific Project with the City's own forces, and to award contracts in connection with the Project which are not part of the Owner's Representative's responsibilities under this Agreement. The Owner's Representative shall notify the City if any such independent action will interfere with the Owner's Representative's ability to perform the Owner's Representative's responsibilities under this Agreement. When performing construction or operations related to the Project, the City agrees to be subject to the same obligations and to have the same rights as the Contractors.

5.9 Information or services under the City's control shall be furnished by the City with reasonable promptness to avoid delay in the orderly progress of the Owner's Representative's services and the progress of the Work.

## 6. COMPENSATION

6.1 Hourly Not To Exceed Compensation - City agrees to pay Owner's Representative as compensation for performance of services described in the Project Agreement an hourly not-to-exceed amount agreed upon and described in the Project Agreement.

6.2 Owner's Representative shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase or task of work, the hours charged to each phase or task, and the hourly rate in accordance with the Rate Schedule(s) included herein as Exhibit "A". The City shall pay Owner's Representative within thirty (30) calendar days of approval by the City of any invoices submitted by Owner's Representative to the City.

### 6.3 Reimbursable Expenses

6.3.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Owner's Representative and Owner's Representative's employees and consultants in the interest of the Specific Project, as identified in the following Clauses:

6.3.1.1 Expense of transportation in connection with the Specific Project, expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Specific Project.

6.3.1.2 Expense of reproductions, postage, express deliveries, electronic facsimile transmissions and handling of Drawings, Specifications and other documents.

6.4 Payments on account of Additional Services and Reimbursable Expenses

Payments on account of the Owner's Representative's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Owner's Representative's statement of services rendered or expenses incurred.

6.5 Payments Withheld

No deductions shall be made from the Owner's Representative's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in Work other than those for which the Owner's Representative has been found to be liable.

6.6 Owner's Representative's Accounting Records

Records of Reimbursable Expenses and expenses pertaining to Additional Services shall be available to the City or the City's authorized representative at mutually convenient times.

7. INSURANCE AND INDEMNITY

The Owner's Representative shall secure and maintain throughout the duration of this Agreement and any Project Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the City against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. Any insurance maintained by the City shall be in excess of the Owner's Representative's insurance and shall not contribute to the Owner's Representative's insurance. The insurance coverages shall include a minimum of:

7.1 A policy of workman's compensation, as may be required by the appropriate statutory authority in the Consultant's office location(s).

7.2 A policy of commercial general liability insurance, written on an occurrence form, including all the usual coverages known as:

7.3 Premises/Operations Liability

7.4 Products/Completed Operations

7.5 Personal/Advertising Injury

7.6 Explosion, Collapse and Underground Property Damage

7.7 Said policy must provide the following minimum coverage: Bodily Injury and Property Damage: \$1,000,000 per occurrence, and \$2,000,000 annual aggregate. Any deductible or self-insured retention must be disclosed and is subject to the Owner's approval.

7.8 A policy of commercial automobile liability, including coverage for owned, non-owned, leased or hired vehicles. Such policy must provide the following minimum coverage; Liability: \$1,000,000 per accident.

7.9 A policy of professional liability ("errors and omissions") insurance to include the Consultant, and all professional sub-consultants employed on the Project under this Agreement. Such policy must provide a minimum coverage of one million dollars (\$1,000,000) for each claim and two million dollars (\$2,000,000) annual aggregate. Alternatively, sub-consultants may provide their own policy consistent with the foregoing minimum coverages.

7.10 If such a policy is written on a claims made form, the retroactive date shall be prior to or coincident with the date of this Agreement. This insurance may be maintained by the Owner for the duration of this Agreement, plus an extended three year reporting period ("tail"). Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. Prior to commencing any work on the proposed Consultant Services Contract to be provided upon notice of award by City, a certificate(s) of insurance approved by the City and evidencing the maintenance of said insurance shall be furnished to the City. The certificate(s) shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until fifteen (15) days after receipt of written notice by the City. Notices of cancellation/non-renewal/material changes must be sent directly to the City by the insurance company. All policies, except professional liability, and the insurance certificate shall name the City as an 'additional named insured' on a primary and non-contributory basis and provide for waiver of subrogation. The policy shall provide that attorney's fees are paid only after the claims are paid in full.

7.11 Indemnity. The Owner's Representative shall indemnify and hold harmless the City and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the Owner's Representative or any persons employed or utilized by the Owner's Representative in the performance of this or any Project Agreement. Additional insurance requirements by the City shall be reimbursable to the Owner's Representative.

## 8. DEFAULT, TERMINATION AND SUSPENSION OF A PROJECT AGREEMENT

8.1 Termination by the City for Default. The City may, in addition to its other remedies, terminate a Project Agreement by notice to the Owner's Representative following the occurrence of a Manager Event of Default. Any breach of this Agreement and the applicable Project Agreement by Owner's Representative which remains uncured for more than 30 days following notice from the City (plus, with respect to breaches which cannot reasonably be cured within 30 days, such additional period as is reasonably required to cure such breach) shall be a "Manager Event of Default." Upon the date of such termination specified in the City's notice, the City shall pay to Owner's Representative all sums earned by or payable to Owner's Representative as of such



date, less the actual damages incurred by the City as a result of such breach, including Reimbursable Expenses (subject to the limitations on damages provided for in this Agreement).

8.2 Termination by the City for Other Reasons. If the City abandons the Specific Project, the City shall have the right to terminate the Project Agreement on thirty (30) days' prior written notice to Owner's Representative. Upon the date of such termination, the City shall pay to Owner's Representative all sums earned by or payable to Owner's Representative as of such date (as to the Basic Fee, only the installments payable on or prior to such date being deemed "earned"). As used herein, "abandon" shall mean that the City stops all work on the Specific Project, releases its rights to the Specific Project and does not engage in any activity with respect to the Specific Project or reacquire such rights for a period of at least twelve (12) months.

8.3 Termination by Owner's Representative. The Owner's Representative may, in addition to its other remedies, terminate this Agreement by notice to the City following the occurrence of a City Event of Default. If the City (i) fails to timely pay any sum owed to Owner's Representative which remains unpaid for more than thirty (30) days after notice from Owner's Representative, or (ii) breaches any other obligation of the City under this Agreement and the applicable Project Agreement which continues for more than 30 days after notice from Owner's Representative (plus, in the case of breaches which cannot reasonably be cured within 30 days, such additional time as is reasonably required to cure such breach), such failure or breach shall constitute a "City Event of Default". Upon the date of termination specified in Owner's Representative's notice, the City shall pay to Owner's Representative upon the effective date of termination all sums earned by or payable to Owner's Representative as of such date including Reimbursable Expenses.

8.4 Other Termination by Owner's Representative. The Owner's Representative may also terminate the Project Agreement by notice to the City in the event the City stops funding the cost of work on the Specific Project or orders that work stop on the Specific Project and work is stopped for ninety (90) days or more. In such event, the City shall pay to Owner's Representative upon the effective date of termination all sums earned by or payable to Owner's Representative as of such date including Reimbursable Expenses.

## 9. POLICY OF NON-DISCRIMINATION/WAGES

9.1 The Owner's Representative shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

9.2 The Owner's Representative shall comply with the wage provisions of Section 287.055, Florida Statutes. If the project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, the Owner's Representative shall be required to comply with the same.

## 10. THE OWNERSHIP OF DOCUMENTS/DELIVERABLES

10.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the City or furnished by the Owner's Representative pursuant to any Project Agreement, shall become the property of the City, whether the Specific Project for which they are made is completed or not, and shall be delivered by Owner's Representative to the City within five (5) calendar days after receipt of written notice requesting delivery of said documents or digital files. The Owner's Representative shall have the right to keep one record set of the documents upon completion of the Specific Project, however, in no event shall the Owner's Representative, without the City's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

10.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the Owner's Representative for each Specific Project shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the City.

## 11. RECORDS/AUDITS

11.1 Owner's Representative shall maintain and require Subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Specific Project. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the City Manager or any authorized City representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each Project Agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the City of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the City.

11.2 The Owner's Representative shall comply with Chapter 119, Florida Statutes, as applicable.

11.3 Refusal of the Owner's Representative to comply with the provisions of Sections 11.1 or 11.2 shall be grounds for immediate termination for cause by the City of this Agreement or any Project Agreement.

## 12. NO CONTINGENT FEE

Owner's Representative warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Owner's Representative, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Owner's Representative, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the Owner's Representative violates this provision, the City shall have the right to terminate this Agreement or any Project Agreement,

without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

### 13. INDEPENDENT CONTRACTOR

The Owner's Representative is an independent contractor under this Agreement and any Project Agreements. Personal services provided by the Owner's Representative shall be by employees of the Owner's Representative and subject to supervision by the Owner's Representative, and not as officers, employees, or agents of the City, Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Project Agreements shall be those of the Owner's Representative.

### 14. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by the Owner's Representative 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 non-current wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

### 15. MISCELLANEOUS

15.1 Assignment. The City may not assign this Agreement. Owner's Representative may not assign or otherwise transfer all or any portion of its interest in this Agreement or delegate its duties hereunder without the prior consent of The City. The foregoing shall not prevent Owner's Representative from pledging to any person or entity Owner's Representative's right to receive the Basic Fee under this Agreement.

15.2 Survival. Upon the expiration or earlier termination of this Agreement, neither party shall have any further rights or obligations under this Agreement, except that Articles 2, 6, 7, 8 and 15 shall survive the expiration or termination of this Agreement.

15.3 Notices. Any notice provided for in or permitted under this Agreement shall be made in writing, and may be given or served by (i) delivering the same in person or by facsimile transmission to the party to be notified, or (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, or (iii) by depositing same with a reputable overnight courier service with proof of delivery. If notice is deposited in the United States mail pursuant to clause (ii) of this Section 15.3, it will be effective from and after the day it is received by the addressee or receipt thereof is refused by the addressee, unless such day is not a business day, and then it shall be deemed received on the next business day. Notice given in any other manner shall be effective only if and when received by the party to be notified unless the day it is received is not a business day, and then it shall be deemed received on the next business day. For the purpose of notice, the address of the party shall be, until changed as hereinafter provided for, as follows:

If to the City:

Michael H. Puto, City Manager  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050

With a copy to:

If to the Owner's  
Representative:

Thomas Brzezinski,  
Executive Vice President  
Wade Trim, Inc.  
88539 Overseas Highway  
Suite 4  
Islamorada, Florida 33070

or to such other address as the City may specify in a written notice to the Owner's Representative or the Owner's Representative may specify in a written notice to the City in accordance with this Section 15.3.

Each party shall have the right from time to time and at any time to change its respective address and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other party. Each party shall have the right from time to time to specify additional parties to whom notice hereunder must be given by delivering to the other party fifteen (15) days' written notice thereof setting forth the address of such additional party or parties; provided, however, that no party shall have the right to designate more than three (3) such additional parties. Notice required to be delivered hereunder to either party shall not be deemed to be effective until the additional parties, if any, designated by such party have been given notice in a manner deemed effective pursuant to the terms of this Section 15.3.

15.4 Authority. Each party represents to the other that it has the power and authority to enter into this Agreement and that the person executing on its behalf has the power to do so and to bind it to the terms of this Agreement.

15.5 Entire Agreement; Amendments; Governing Law; Consent to Jurisdiction; Venue This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and negotiations with respect thereto. This Agreement may be amended only by a written instrument signed by both parties. This Agreement shall be governed by the laws of the state of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of or relating to this Agreement or any Project Agreement. Venue of any action to enforce this Agreement or any Project Agreement shall be in Monroe County, Florida.

15.6 Severability If any provision in this Agreement is held to be unenforceable, the remainder of this Agreement shall continue in full force and effect and, to the extent permitted by law, this Agreement shall be interpreted so as to give effect to the original written intent of the parties. If any portion of a provision is held to be unenforceable, the remainder shall be enforced to the maximum extent so as to give effect to the original written intent of the parties.

15.7 Attorney Fees. If Owner's Representative or the City obtains a judgment against the other with respect to a dispute arising under to this Agreement, reasonable attorneys' fees and costs as fixed by the court shall be included in the judgment.

15.8 Successors and Assigns. Subject to Section 15.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15.9 Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original of this Agreement but all of which, taken together, shall constitute one and the same agreement.

15.10 Pronouns. The pronouns used in this Agreement referring to Owner's Representative or the City shall be understood and construed to apply whether Owner's Representative or the City is an individual, partnership, corporation or an individual or individuals doing business under a firm or trade name, and the masculine and neuter pronouns shall each include the other and may be used interchangeably with the same meaning.

15.11 Headings All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

15.12 No Waiver The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed as waiver of such terms and conditions on any future occasion. No waiver shall be implied by any isolated or repeated action or non-action. To be effective, any waiver must be in writing executed by the party to be bound thereby.

15.13 No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the parties hereto and their permitted successors and assigns and are not for the benefit of any other person or entity.

15.14 Further Assurances. Each party agrees to execute, acknowledge, deliver, file, record and publish such further instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the purposes and intent of this Agreement.

15.15 Definitions. Capitalized terms used but not defined herein shall have the same meaning as those in the edition of AIA. Document A201/CMA, General Conditions of the Contract for Construction, Owner's Representative-Adviser Editions, current as of the date of this Agreement.

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 the Owner's Representative, signing by and through its Vice President, duly authorized to execute same.

Attest:

Diane Clavier  
Diane Clavier, City Clerk

CITY OF MARATHON

By: Michael H Puto  
Michael H. Puto, City Manager

Date: 2/12/2015

Approved as to form and legality for the use and reliance of the City of Marathon, Florida only:

V. Haber / DC  
City Attorney

WADE TRIM, INC.

By: Thomas S. Duff  
Title: EXECUTIVE VICE PRESIDENT

Date: 2/12/15

**Wade Trim Billing Rate Schedule  
Water Resources  
With Equipment Billed Separately  
Effective January 2015**

<b>Labor Cost Classification Code</b>	<b>Title</b>	<b>2015 Rate Per Hour</b>
236	Professional Engineer III	\$212.00
235	Professional Engineer II	\$150.00
234	Professional Engineer I	\$120.00
233	Engineer III	\$150.00
232	Engineer II	\$110.00
231	Engineer I	\$90.00
246	Professional Planner III	\$140.00
245	Professional Planner II	\$106.00
244	Professional Planner I	\$92.00
243	Planner III	\$105.00
242	Planner II	\$70.00
241	Planner I	\$65.00
256	Prof. Landscape Architect III	\$150.00
255	Prof. Landscape Architect II	\$110.00
254	Prof. Landscape Architect I	\$85.00
253	Landscape Architect III	\$90.00
252	Landscape Architect II	\$70.00
251	Landscape Architect I	\$65.00
266	Professional Scientist III	\$135.00
265	Professional Scientist II	\$94.00
264	Professional Scientist I	\$81.00
263	Scientist III	\$108.00
262	Scientist II	\$68.00
261	Scientist I	\$56.00
286	Professional Surveyor III	\$125.00
285	Professional Surveyor II	\$110.00
284	Professional Surveyor I	\$95.00
283	Surveyor III	\$101.00
282	Surveyor II	\$73.00
281	Surveyor I	\$50.00
785	Surveyor Technician V	\$105.00
784	Surveyor Technician IV	\$85.00
783	Surveyor Technician III	\$75.00
782	Surveyor Technician II	\$55.00
781	Surveyor Technician I	\$45.00
716	Construction Technician VI	\$140.00
715	Construction Technician V	\$130.00
714	Construction Technician IV	\$110.00
713	Construction Technician III	\$100.00
712	Construction Technician II	\$90.00
711	Construction Technician I	\$70.00
726	CADD Technician VI	\$130.00
725	CADD Technician V	\$125.00
724	CADD Technician IV	\$120.00
723	CADD Technician III	\$90.00
722	CADD Technician II	\$71.00
721	CADD Technician I	\$56.00
736	Engineering Specialist II	\$145.00
735	Engineering Specialist I	\$136.00
734	Engineering Technician IV	\$165.00



**Wade Trim Billing Rate Schedule  
Water Resources  
With Equipment Billed Separately  
Effective January 2015**

733	Engineering Technician III	\$96.00
732	Engineering Technician II	\$77.00
731	Engineering Technician I	\$56.00
756	Project Specialist III/Manager	\$165.00
755	Project Specialist II	\$149.00
754	Project Specialist I	\$103.00
753	Project Aide III	\$120.00
752	Project Aide II	\$112.00
751	Project Aide I	\$72.00
203	Senior Principal	\$250.00
202	Principal	\$240.00
201	Senior Professional	\$225.00

---

**ECKLER ENGINEERING, INC.**

**HOURLY RATES**

For Work from February 1, 2015 through January 31, 2016, the hourly rates for ENGINEER's personnel shall be as follows:

<u>PERSONNEL CATEGORY</u>	<u>HOURLY RATE</u>
Principal	\$ 225.00
Engineer 8	\$ 215.00
Engineer 7	\$ 204.00
Engineer 6	\$ 160.00
Engineer 5	\$ 135.00
Engineer 4	\$ 105.00
Engineer 3	\$ 102.00
Engineer 2	\$ 85.00
Engineer 1	\$ 80.00
Technician 4	\$ 100.00
Technician 3	\$ 90.00
Technician 2	\$ 78.00
Technician 1	\$ 75.00
Secretary	\$ 84.00
Administrative Assistant	\$ 75.00

