

CITY OF MARATHON, FLORIDA  
RESOLUTION 2013-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO CONTINUING SERVICES AGREEMENTS WITH ADA ENGINEERING INC., AMEC, APPLIED TECHNOLOGY AND MANAGEMENT, BERMELLO, AJAMIL AND PARTNERS, INC., CALTRAN ENGINEERING GROUP, CALVIN GIORDANO AND ASSOCIATES, INC., CDM SMITH, CES CONSULTANTS, INC., CHEN-MOORE AND ASSOCIATES, COAST AND HARBOR ENGINEERING, DAVID DOUGLAS ASSOCIATES, INC., DOUGLAS WOOD ASSOCIATES, INC., ELERT AND ASSOCIATES, EMK CONSULTANTS OF FLORIDA, INC., E SCIENCES, INC., FLORIDA TRANSPORTATION ENGINEERING, INC., GARTEK ENGINEERING CORP., GLE ASSOCIATES, INC., GM SELBY, INC., HBC ENGINEERING CO., JBC PLANNING AND DESIGN, MAXWELL MARINE CONSULTING ENGINEERS, INC., METRIC ENGINEERING, NUTTING ENGINEERS OF FLORIDA, PROJECT CAINE, PSI, REYNOLDS ENGINEERING SERVICES, INC., SOLARIA DESIGN AND CONSULTING CO., THE BETA JONES GROUP, THOMPSON AND ASSOCIATES, INC., TIERRA SOUTH FLORIDA, TRC WORLDWIDE ENGINEERING, URS CORPORATION SOUTHERN, VERTICAL V- SOUTHEAST INC., WEILER ENGINEERING CORP., AND WF MCCAIN AND ASSOCIATES, INC. FOR MULTI-DISCIPLINARY ENGINEERING SERVICES ON AN AS NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTINUING SERVICES AGREEMENTS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

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

WHEREAS, entering into these various continuing service agreements will expedite the process for selecting an engineering firm to provide needed professional services while still complying with the policies and procedures of the City's procurement policy.

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

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

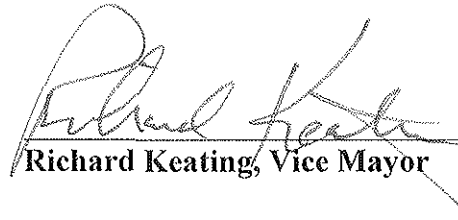
**Section 2.** The City Council hereby authorizes the City Manager to negotiate and enter into Continuing Service Agreements with ADA Engineering Inc., AMEC, Applied

Technology and Management, Bermello, Ajamil and Partners, Inc., Caltran Engineering Group, Calvin Giordano and Associates, Inc., CDM Smith, CES Consultants, Inc., Chen-Moore and Associates, Coast and Harbor Engineering, David Douglas Associates, Inc., Douglas Wood Associates, Inc., Elert and Associates, EMK Consultants of Florida, Inc., E Sciences, Inc., Florida Transportation Engineering, Inc., Gartek Engineering Corp., GLE Associates, Inc., GM Selby, Inc., HBC Engineering Co., JBC Planning and Design, Maxwell Marine Consulting Engineers, Inc., Metric Engineering, Nutting Engineers of Florida, Project Caine, PSI, Reynolds Engineering Services, Inc., Solaria Design and Consulting Co., The Beta Jones Group, Thompson and Associates, Inc., Tierra South Florida, TRC Worldwide Engineering, URS Corporation Southern, Vertical V- Southeast Inc., Weiler Engineering Corp., WF McCain and Associates, Inc., for multi-disciplinary Engineering Services in substantially the form attached as Exhibit "A" attached hereto, and incorporated herein by this reference.

**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 22<sup>nd</sup> DAY OF JANUARY 2013.**

**THE CITY OF MARATHON, FLORIDA**

  
Richard Keating, Vice Mayor

AYES: Bull, Ramsay, Snead, Keating  
NOES: None  
ABSENT: Cinque  
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

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 12th day of February, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and A.D.A. Engineering, Inc. whose address is 8550 NW 33 St., Suite 101, ("Consultant").  
Doral, Florida 33122

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials JA  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
| ✓   |    | ✓         |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
| ✓   |    | ✓         |               | Computer Aided Drafting and Design      |
| ✓   |    | ✓         |               | Construction Cost Estimating            |
| ✓   |    | ✓         |               | Construction Inspections                |
| ✓   |    | ✓         |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
| ✓   |    | ✓         |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
| ✓   |    | ✓         |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
| ✓   |    | ✓         |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
| ✓   |    | ✓         |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
| ✓   |    | ✓         |               | Traffic Engineering                     |
| ✓   |    | ✓         |               | Utilities                               |
| ✓   |    | ✓         |               | Water Resources/Stormwater              |
| ✓   |    | ✓         |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials JA  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials ll  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials JA  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials       
Initials       
Initials

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$<sup>\*\*\*</sup> \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

<sup>\*\*\*</sup> on a project by project basis (to be determined).

Initials JA  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials JA  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## 21. Termination.

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials JA  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no affect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by



both parties. All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials     *JA*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials      
Initials      
Initials

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: A.D.A. Engineering, Inc.  
Ivette O. Argudin, Exec. Vice Pres.  
8550 NW 33 Street, Suite 101  
Doral, Florida 33122

32. **Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 12th day of February, 20123

**CONSULTANT:**

By: Ivette O. Argudin  
Ivette O. Argudin  
Its: Executive Vice President

**CITY:**

By: [Signature]  
Its: City Manager.

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials JA  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

EXHIBIT "A"  
PROJECT SPECIFIC AGREEMENT

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**PROJECT SPECIFIC AGREEMENT**  
**Between**  
**THE CITY OF MARATHON, FLORIDA**  
**And**

\_\_\_\_\_  
**For**  
\_\_\_\_\_

Pursuant to the provisions contained in the "Continuing Services Agreement" between the City of Marathon, Florida (the "City") and \_\_\_\_\_, (the "Consultant") dated \_\_\_\_\_, 20\_\_; this Project Specific Agreement authorizes the Consultant to provide the services as set forth below:

**I. Scope of Services**

The Consultant shall provide engineering services to the City for the Project as described in the "Project Description" attached as Exhibit "1."

The "Scope of Services and Project Schedule" and tasks to be provided by the Consultant for this Project are those services and tasks as listed in Exhibit "2."

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

**II. Deliverables**

As part of the Scope of Services and Project Schedule, the Consultant shall provide to the City the following Deliverables:

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

III. Term/Time of Performance

This Project Specific Agreement shall be effective on the date it is fully executed by all parties and shall continue in full force for \_\_\_ year (s) or until completion of the Project, unless otherwise terminated pursuant to the Continuing Services Agreement or other applicable provisions of this Project Specific Agreement. The City Manager, in his sole discretion, may extend the term of this Project Specific Agreement through written notification to the Consultant. Such extension shall not exceed 180 days. No further extensions of this Project Specific Agreement shall be effective unless authorized by the City Council

The Consultant's services under this Project Specific Agreement and the time frames applicable to this Project Specific Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the Consultant from the City. The Consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Consultant must receive written notice from the City prior to the beginning the performance of services.

Upon receipt of the Notification of Commencement, the Consultant shall commence services to the City on the Commencement Date, and shall continuously perform services to the City, without interruption, in accordance with the time frames set forth in the Project Schedule."

IV. Amount, Basis and Method of Compensation

\_\_\_\_\_ Lump Sum Compensation - City agrees to pay consultant compensation for performance of all services described in Exhibit "2" in the total amount of \$\_\_\_\_\_, plus reimbursable expenses not to exceed \$\_\_\_\_\_. Consultant will submit invoices for monthly progress payments in an amount equivalent to the percentage completion of the total Work.

OR

\_\_\_\_\_ City agrees to pay Consultant compensation for performance of all services described in Exhibit "2" at Consultant's hourly rates as set forth in Exhibit "3", up to a maximum amount not to exceed \$\_\_\_\_\_, plus reimbursable expenses not to exceed \$\_\_\_\_\_.

V. Incorporation of Terms and Conditions of Continuing Service Agreement

This Project Specific Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated \_\_\_\_\_, 20\_\_ between the City and Consultant as though fully set forth herein. In the event that any terms or conditions of this Project Specific Agreement conflict with the Continuing Services Agreement, the more restrictive provision shall prevail and apply.

Initials JA  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**PAYMENT UNDER THIS PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 12th day of February, 2013.

**CONSULTANT:**

**CITY:**

By: Ivette O. Argudin  
Ivette O. Argudin  
Its: Executive Vice President

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST:**

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

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

\_\_\_\_\_  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.



EXHIBIT "1"  
PROJECT DESCRIPTION

**EXHIBIT "2"**  
**SCOPE OF SERVICES AND PROJECT SCHEDULE**

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**EXHIBIT "3"**  
**CONSULTANT'S HOURLY RATES**

| <b>Company:</b>           |   | <b>A.D.A. Engineering, Inc.</b>       |                             |                           |                           |                                      |
|---------------------------|---|---------------------------------------|-----------------------------|---------------------------|---------------------------|--------------------------------------|
| <b>Job Position Title</b> | <b>QTY<br/>Required for<br/>Project</b> | <b>Maximum Raw<br/>Salary \$/Hour</b> | <b>Overhead<br/>\$/Hour</b> | <b>Fringe<br/>\$/Hour</b> | <b>Profit<br/>\$/Hour</b> | <b>Total Hourly<br/>Rate \$/Hour</b> |
|                           |   |                                       | 134.98%                     | 43.71%                    | 10%                       |                                      |
| Principal                 |   | \$75.00                               | \$101.24                    | \$32.78                   | \$20.90                   | \$230                                |
| Project Manager           |   | \$65.00                               | \$87.74                     | \$28.41                   | \$18.11                   | \$199                                |
| Senior Engineer           |   | \$65.00                               | \$87.74                     | \$28.41                   | \$18.11                   | \$199                                |
| Construction Manager      |   | \$65.00                               | \$87.74                     | \$28.41                   | \$18.11                   | \$199                                |
| Project Engineer          |   | \$51.00                               | \$68.84                     | \$22.29                   | \$14.21                   | \$156                                |
| Engineer                  |   | \$39.25                               | \$52.98                     | \$17.16                   | \$10.94                   | \$120                                |
| Scheduler/Estimator       |   | \$31.93                               | \$43.10                     | \$13.96                   | \$8.90                    | \$98                                 |
| Construction Inspector    |   | \$28.64                               | \$38.66                     | \$12.52                   | \$7.98                    | \$88                                 |
| CADD Technician           |   | \$25.00                               | \$33.75                     | \$10.93                   | \$6.97                    | \$77                                 |
| Clerical                  |   | \$22.00                               | \$29.70                     | \$9.62                    | \$6.13                    | \$67                                 |

Initials

    *JA*    

Initials

\_\_\_\_\_

Initials

\_\_\_\_\_



**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 8<sup>th</sup> day of March, 2013, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and Applied Technology and Management, Inc. whose address is 2047 Vista Parkway, Suite 201, West Palm Beach, FL 33411, ("Consultant").

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant

Initials   *AB*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

represents that it is prepared and qualified to perform (with its own employees or subconsultants) include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
| X   |    | X         |               | Civil Engineering                       |
| X   |    | X         |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
| X   |    | X         |               | Computer Aided Drafting and Design      |
| X   |    | X         |               | Construction Cost Estimating            |
| X   |    | X         |               | Construction Inspections                |
| X   |    | X         |               | Construction Project Management         |
| X   |    | X         |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
| X   |    | X         |               | Environmental Engineering               |
| X   |    | X         |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
| X   |    | X         |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
| X   |    | X         |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
| X   |    | X         |               | Planning                                |
| X   |    | X         |               | Specification Writing                   |
| X   |    | X         |               | Structural Engineering                  |
| X   |    | X         |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
| X   |    | X         |               | Utilities                               |
| X   |    | X         |               | Water Resources/Stormwater              |
| X   |    | X         |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

Initials \_\_\_\_\_  
 Initials \_\_\_\_\_  
 Initials \_\_\_\_\_

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials   R    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be “marked as received” or “stamped as received.” Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and “stamped as received.” If Consultant submits an improper payment request, the City will within ten calendar days after the request is “stamped as received”, notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.


**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant’s pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel’s recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City’s decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City’s decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City’s decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City’s satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials       
Initials       
Initials

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials                       
Initials                       
Initials

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials         
Initials         
Initials

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials     *JK*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$0) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials       
Initials       
Initials

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials   *38*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials             
Initials             
Initials



**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials     *AW*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**


All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials   B    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

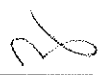
All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Mike Jenkins, PhD, P  
Coastal Engineering Principal  
Applied Technology and Management  
2047 Vista Parkway, Suite 201  
West Palm Beach, FL33411

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 8th day of March, 2013.

**CONSULTANT:**

By: [Signature]

Its: Coastal Engineering Principal

**CITY:**

By: [Signature]

Its: City Manager

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials [Signature]  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 14 day of February, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and Bermello, Ajumic Partners, Inc., whose address is 2601 S Bayshore Dr Miami, FL 33133, ("Consultant").

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     | X  |           |               | Archeology                              |
| X   |    | X         |               | Architecture                            |
|     | X  |           |               | Asbestos Survey and Removal             |
| X   |    | X         |               | Building Official Services              |
| X   |    | X         |               | Civil Engineering                       |
| X   |    | X         |               | Coastal Engineering                     |
|     | X  |           |               | Communications Engineering              |
| X   |    | X         |               | Computer Aided Drafting and Design      |
|     | X  |           |               | Construction Cost Estimating            |
| X   |    | X         |               | Construction Inspections                |
| X   |    | X         |               | Construction Project Management         |
|     | X  |           |               | Ecology                                 |
|     | X  |           |               | Electrical Engineering                  |
|     | X  |           |               | Energy Management                       |
|     | X  |           |               | Environmental Engineering               |
|     | X  |           |               | Geographic Information Systems          |
|     | X  |           |               | Geotechnical Engineering                |
|     | X  |           |               | Hazardous Material Tanks                |
| X   |    | X         |               | Hydraulic Engineering                   |
| X   |    | X         |               | Land Development                        |
|     | X  |           |               | Land Surveying                          |
| X   |    | X         |               | Landscape Architecture                  |
|     | X  |           |               | Mechanical Engineering                  |
| X   |    | X         |               | Planning                                |
| X   |    | X         |               | Specification Writing                   |
| X   |    | X         |               | Structural Engineering                  |
|     | X  |           |               | Surveying                               |
|     | X  |           |               | Traffic Engineering                     |
| X   |    | X         |               | Utilities                               |
| X   |    | X         |               | Water Resources/Stormwater              |
| X   |    | X         |               | Water and Wastewater Services           |
|     | X  |           |               | Water Tank Inspection/Corrosion Control |





If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.


**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials    *dl*     
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.


Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials             
Initials             
Initials

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials    *de*     
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.


**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

### Coverage Minimums

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ 0 insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials JK  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials    sk     
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.


In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

A termination for cause or for convenience shall have no affect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**


All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.


**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant:

Ms. Diana Garcia, CFO  
Bermello, Ajami & Partners, Inc  
2601 S. Bayshore Dr.  
miami, FL 33133  
305-859-2050

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials dg  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 14th day of February, 2013.

CONSULTANT:

By: [Signature]

Its: President  
Luis Ajami

CITY:

By: [Signature]

Its: City manager

ATTEST:

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials ch  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 30 day of January, 2013 by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and Cotton Engineering Group whose address is 1400 NW 107 Ave #201 ("Consultant").  
Miami, FL 33172

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     | ✓  |           |               | Archeology                              |
|     | ✓  |           |               | Architecture                            |
|     | ✓  |           |               | Asbestos Survey and Removal             |
|     | ✓  |           |               | Building Official Services              |
| ✓   |    | ✓         |               | Civil Engineering                       |
|     | ✓  |           |               | Coastal Engineering                     |
|     | ✓  |           |               | Communications Engineering              |
|     | ✓  |           |               | Computer Aided Drafting and Design      |
|     | ✓  |           |               | Construction Cost Estimating            |
|     | ✓  |           |               | Construction Inspections                |
|     | ✓  |           |               | Construction Project Management         |
|     | ✓  |           |               | Ecology                                 |
|     | ✓  |           |               | Electrical Engineering                  |
|     | ✓  |           |               | Energy Management                       |
|     | ✓  |           |               | Environmental Engineering               |
| ✓   |    | ✓         |               | Geographic Information Systems          |
|     | ✓  |           |               | Geotechnical Engineering                |
|     | ✓  |           |               | Hazardous Material Tanks                |
|     | ✓  |           |               | Hydraulic Engineering                   |
|     | ✓  |           |               | Land Development                        |
|     | ✓  |           |               | Land Surveying                          |
|     | ✓  |           |               | Landscape Architecture                  |
|     | ✓  |           |               | Mechanical Engineering                  |
| ✓   |    | ✓         |               | Planning                                |
|     | ✓  |           |               | Specification Writing                   |
|     | ✓  |           |               | Structural Engineering                  |
|     | ✓  |           |               | Surveying                               |
| ✓   |    | ✓         |               | Traffic Engineering                     |
|     | ✓  |           |               | Utilities                               |
|     | ✓  |           |               | Water Resources/Stormwater              |
|     | ✓  |           |               | Water and Wastewater Services           |
|     | ✓  |           |               | Water Tank Inspection/Corrosion Control |

Initials JC  
 Initials \_\_\_\_\_  
 Initials \_\_\_\_\_

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

3. The Agreement Sum.

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

4. Payment.

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials JC  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials SC  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials JC  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   JC    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials JC  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials SC  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
  
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
  
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
  
- D. Products — Completed Operations \$1,000,000— each occurrence
  
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
  
- E. Professional Liability \$1,000,000
  
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials JC  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials JC  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials   JC    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials   JC    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   JC    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials   JC    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials JC  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   JC    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant:

Coltron Engineering  
Group, Inc.  
1400 NW 107 Ave #209  
Miami, FL 33172

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials JC  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 7 day of February, 2013

CONSULTANT Callan Engineering Group, Inc.

By: [Signature]

Its: Principal.

CITY:

By: [Signature]

Its: City Manager.

ATTEST:

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials JC  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 13<sup>th</sup> day of Feb., 20  , by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and Calvin Giordano & Assoc. whose address is 1800 Eller Dr. Ste. 600, ("Consultant").  
Ft. Lauderdale, FL 33316

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES      | NO | OWN STAFF | SUBCONSULTANT |   |
|----------|----|-----------|---------------|---|
|          |    |           |               | Archeology                              |
|          |    |           |               | Architecture                            |
|          |    |           |               | Asbestos Survey and Removal             |
| (BOTH) X |    | X         | M.T. CAUSLEY  | Building Official Services              |
| X        |    | X         |               | Civil Engineering                       |
| X        |    | X         |               | Coastal Engineering                     |
|          |    |           |               | Communications Engineering              |
| X        |    | X         |               | Computer Aided Drafting and Design      |
| X        |    | X         |               | Construction Cost Estimating            |
| X        |    | X         |               | Construction Inspections                |
| X        |    | X         |               | Construction Project Management         |
| X        |    | X         |               | Ecology                                 |
| X        |    | X         |               | Electrical Engineering                  |
|          |    |           |               | Energy Management                       |
|          |    |           |               | Environmental Engineering               |
| X        |    | X         |               | Geographic Information Systems          |
|          |    |           |               | Geotechnical Engineering                |
|          |    |           |               | Hazardous Material Tanks                |
| X        |    | X         |               | Hydraulic Engineering                   |
| X        |    | X         |               | Land Development                        |
| X        |    | X         |               | Land Surveying                          |
| X        |    | X         |               | Landscape Architecture                  |
|          |    |           |               | Mechanical Engineering                  |
| X        |    | X         |               | Planning                                |
| X        |    | X         |               | Specification Writing                   |
|          |    |           |               | Structural Engineering                  |
| X        |    | X         |               | Surveying                               |
| X        |    | X         |               | Traffic Engineering                     |
| X        |    | X         |               | Utilities                               |
| X        |    | X         |               | Water Resources/Stormwater              |
| X        |    | X         |               | Water and Wastewater Services           |
|          |    |           |               | Water Tank Inspection/Corrosion Control |

Initials ✓  
 Initials \_\_\_\_\_  
 Initials \_\_\_\_\_

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials   *JS*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be “marked as received” or “stamped as received.” Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and “stamped as received.” If Consultant submits an improper payment request, the City will within ten calendar days after the request is “stamped as received”, notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant’s pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel’s recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City’s decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City’s decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City’s decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City’s satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials   ✓    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials   *JD*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials         ✓          
Initials                       
Initials



All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials     ✓      
Initials             
Initials

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   D    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials   *dy*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials   ✓    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   ✓    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials   8    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   D    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant:

Calvin Gordano  
1800 E. Las Olas Dr. 600  
Ft. Lauderdale FL  
33316

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials   *CG*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 13 day of February, 2013

**CONSULTANT:**

By: [Signature]

Its: PRESIDENT

**CITY:**

By: [Signature]

Its: City Manager.

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials D  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 15 day of February, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and CDM SMITH INC. whose address is 800 BRUCEWAY AVE., SUITE 500, MIAMI, FL 33131, ("Consultant").

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:


**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
| X   |    | Y         |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
| X   |    | X         |               | Civil Engineering                       |
| X   |    | X         |               | Coastal Engineering                     |
| X   |    | X         |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
| X   |    | X         |               | Construction Cost Estimating            |
| X   |    | X         |               | Construction Inspections                |
| X   |    | X         |               | Construction Project Management         |
| X   |    | X         |               | Ecology                                 |
| X   |    | X         |               | Electrical Engineering                  |
| X   |    | X         |               | Energy Management                       |
| X   |    | X         |               | Environmental Engineering               |
| X   |    | X         |               | Geographic Information Systems          |
| X   |    | X         |               | Geotechnical Engineering                |
| X   |    | X         |               | Hazardous Material Tanks                |
| X   |    | X         |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
| X   |    | X         |               | Landscape Architecture                  |
| X   |    | X         |               | Mechanical Engineering                  |
| X   |    | X         |               | Planning                                |
| X   |    | X         |               | Specification Writing                   |
| X   |    | X         |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
| X   |    | X         |               | Traffic Engineering                     |
| X   |    | X         |               | Utilities                               |
| X   |    | X         |               | Water Resources/Stormwater              |
| X   |    | X         |               | Water and Wastewater Services           |
| X   |    | X         |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid \_\_\_\_\_

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials     *AS*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials   A    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.


**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**


All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.


**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by ~~the acts, neglect or default of the City~~ or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

### **13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

### **14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

### Coverage Minimums

A. Workers' Compensation Florida Statutory Coverage

B. Employer's Liability

\$100,000 — each accident

\$100,000 — each employee (a \$500,000 policy limit for injury by disease)

C. Comprehensive General Liability

\$1,000,000 — bodily injury each occurrence

\$1,000,000 — bodily injury aggregate

\$1,000,000 — property damage of each occurrence

\$1,000,000 — property damage aggregate

~~D. Products — Completed Operations \$1,000,000 — each occurrence~~ N/A

D. Business Auto Liability \$1,000,000

(All autos — owned, hired or used)

E. Professional Liability \$1,000,000

~~F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.~~ N/A

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ N/A insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.


It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

~~Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.~~

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials             
Initials             
Initials

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.


In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.


If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**


All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties. All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.


**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**


All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: CDM SMITH INC.  
ATT. IGNACIO L. LIZAMA, P.E.  
800 BRICKELL AVE., SUITE 500  
MIAMI, FLORIDA 33121

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.


The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 15<sup>th</sup> day of February, 20173

**CONSULTANT:**

By: [Signature]  
Its: IGNACIO L. LIZAMA, ASSOCIATE

**CITY:**

By: [Signature]  
Its: City Manager

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials [Signature]  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

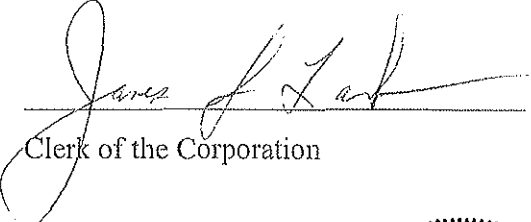


CERTIFICATE

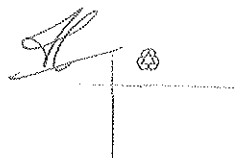
I, James S. Lackman, Clerk of CDM Smith Inc., a Massachusetts corporation, hereby certifies that Ignacio L. Lizama, holds the position of Client Service Manager which entitles Mr. Lizama to execute, and deliver proposals, contracts and agreements for the performance of professional services in the name and on behalf of CDM Smith Inc. with a value up to \$1 million. Furthermore, Mr. Lizama is delegated authority to execute proposals, contracts and agreements for the performance of professional services in the name and on behalf of CDM Smith Inc. in excess of \$1 million.

I further certify that the foregoing is consistent with CDM Smith Inc.'s Contract Signing Authority Policy and with the By-laws of the said corporation.

IN WITNESS WHEREOF, I have executed this certificate and have caused the corporate seal of CDM Smith Inc. to be hereunder affixed on this 31st day of October 2012.

  
Clerk of the Corporation











CDM Smith  
SCHEDULE OF HOURLY BILLING RATES  
COST GROUP II

| <u>CATEGORIES</u>                    | <u>HOURLY RATES</u> |
|--------------------------------------|---------------------|
| <u>PROFESSIONAL SERVICES:</u>        |                     |
| OFFICER                              | \$ 200.00           |
| PRINCIPAL / ASSOCIATE                | \$ 175.00           |
| SENIOR PROFESSIONAL                  | \$ 150.00           |
| PROFESSIONAL II                      | \$ 135.00           |
| PROFESSIONAL I                       | \$ 115.00           |
| <u>PROFESSIONAL SUPPORT SERVICES</u> |                     |
| SENIOR SUPPORT SERVICES              | \$ 130.00           |
| STAFF SUPPORT SERVICES               | \$ 110.00           |
| <u>FIELD SERVICES</u>                |                     |
| SENIOR PROFESSIONAL                  | \$ 125.00           |
| PROFESSIONAL                         | \$ 100.00           |
| <u>PROJECT SUPPORT SERVICES</u>      |                     |
| PROJECT ADMINISTRATION               | \$ 95.00            |

All subconsultant and other project related expenses are subject to a minimum handling/administrative charge of 10%.

CERTIFIED BY:

ERIC J. HARTMANN  
CHIEF FINANCIAL OFFICER

RATES EFFECTIVE THROUGH JUNE 29, 2013



CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 21 day of February, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and CEC Consultants Inc. whose address is 14261 Commercial Way, Suite 102, Miami Lakes, FL 33016 ("Consultant").

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials   *to*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
|     |    |           |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
|     |    |           |               | Construction Cost Estimating            |
|     |    |           |               | Construction Inspections                |
|     |    |           |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
|     |    |           |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

Initials ko  
 Initials \_\_\_\_\_  
 Initials \_\_\_\_\_

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials to  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials   jo    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials to  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials PO  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials ko  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials Ro  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials HO  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials fo  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## 21. Termination.

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   jco    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials PO  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials ko  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City: Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   RO    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

32. **Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials FO  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 21 day of February, 2017.

**CONSULTANT:**

By: [Signature]  
Its: PRESIDENT/CEO

**CITY:**

AK  
By: [Signature]  
Its: City manager.

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials [Signature]  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 12 day of Feb, 2013, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and Chen Moore and Associates whose address is 1444 Biscayne Blvd, \_\_\_\_\_, ("Consultant").  
Suite 204, Miami, FL 33132

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials CM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT       |   |
|-----|----|-----------|---------------------|---|
|     | X  |           |                     | Archeology                              |
|     | X  |           |                     | Architecture                            |
|     | X  |           |                     | Asbestos Survey and Removal             |
|     | X  |           |                     | Building Official Services              |
| X   |    | X         | Cummings Cederberg  | Civil Engineering                       |
| X   |    | X         |                     | Coastal Engineering                     |
|     | X  |           |                     | Communications Engineering              |
| X   |    | X         |                     | Computer Aided Drafting and Design      |
| X   |    | X         |                     | Construction Cost Estimating            |
| X   |    | X         |                     | Construction Inspections                |
| X   |    | X         |                     | Construction Project Management         |
| X   |    | X         | SWC, Inc.           | Ecology                                 |
|     | X  |           |                     | Electrical Engineering                  |
|     | X  |           |                     | Energy Management                       |
| X   |    | X         |                     | Environmental Engineering               |
| X   |    | X         |                     | Geographic Information Systems          |
| X   |    |           | Nutting Engineers   | Geotechnical Engineering                |
|     | X  |           |                     | Hazardous Material Tanks                |
|     | X  |           |                     | Hydraulic Engineering                   |
| X   |    | X         |                     | Land Development                        |
| X   |    |           | Stoner & Associates | Land Surveying                          |
| X   |    | X         |                     | Landscape Architecture                  |
|     | X  |           |                     | Mechanical Engineering                  |
| X   |    | X         |                     | Planning                                |
| X   |    | X         |                     | Specification Writing                   |
| X   |    |           | United Engineering  | Structural Engineering                  |
| X   |    |           | Stoner & Associates | Surveying                               |
| X   |    |           | Caltran Engineering | Traffic Engineering                     |
| X   |    | X         |                     | Utilities                               |
| X   |    | X         |                     | Water Resources/Stormwater              |
| X   |    | X         |                     | Water and Wastewater Services           |
|     | X  |           |                     | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials DM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials PSM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials EM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials PM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000 — bodily injury aggregate
  - \$1,000,000 — property damage of each occurrence
  - \$1,000,000 — property damage aggregate
- D. Products — Completed Operations \$1,000,000 — each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos — owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials PSM  
 Initials \_\_\_\_\_  
 Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials EM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials AM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials DM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

## **22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

A termination for cause or for convenience shall have no affect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials PSM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials PSG  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials RM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Peter Moore, P.E., President  
Chen Moore and Associates  
500 W. Cypress Creek Rd, Ste. 630  
Fort Lauderdale, FL 33309

32. **Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 12<sup>th</sup> day of February, 2017.

CONSULTANT:  
By: [Signature]  
Its: Peter Moore, P.E., President  
Chen Moore and Associates

CITY:  
By: [Signature]  
Its: City manager.

ATTEST:  
[Signature]  
Diane Clavier, City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE CITY OF  
MARATHON, FLORIDA ONLY:  
[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials PM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**EXHIBIT "3"**  
**CONSULTANT'S HOURLY RATES**

| <b>Professional Services</b>      | <b>Hourly Rates</b> |
|-----------------------------------|---------------------|
| Project Administrator/Clerical    | \$60.00             |
| Technician                        | \$75.00             |
| Senior Technician/Designer        | \$90.00             |
| Engineer                          | \$90.00             |
| Construction Specialist           | \$95.00             |
| Project Engineer/Project Designer | \$100.00            |
| Project Landscape Architect       | \$100.00            |
| Senior Construction Specialist    | \$125.00            |
| Senior Engineer                   | \$150.00            |
| Senior Landscape Architect        | \$150.00            |
| Senior Project Manager            | \$165.00            |
| Principal                         | \$210.00            |

**CONSULTANT'S EXPENSE RATES**

| <b>Type</b>                 | <b>Rate</b>        |
|-----------------------------|--------------------|
| <b>Reproduction/Copying</b> |                    |
| 8 ½ X 11 Black & White      | \$ 0.15 Per sheet  |
| 8 ½ X 11 Color              | \$ 1.00 Per sheet  |
| 11 X 17 Black & White       | \$ 0.30 Per sheet  |
| 11 X 17 Color               | \$ 2.00 Per sheet  |
| 24 X 36 Black & White       | \$ 3.00 Per sheet  |
| 24 X 36 Color               | \$ 18.00 Per sheet |
| <b>Other</b>                |                    |
| Mileage                     | \$ 0.56 Per mile   |
| Density Tests               | \$ 30.00 Each      |



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
2/8/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|  |  |   |              |
|--|--|---|--------------|
| PRODUCER<br>Lassiter-Ware Insurance of Tampa Bay<br>4401 West Kennedy Blvd<br>Suite 200<br>Tampa FL 33609                    |  | CONTACT NAME: Jude Sutton<br>PHONE (A/C, No, Ext): (800) 845-8437<br>E-MAIL ADDRESS:<br>FAX (A/C, No): (888) 883-8680 |              |
| INSURED<br>Chen and Associates Consulting Engineers,<br>500 West Cypress Creek Road<br>Suite 630<br>Fort Lauderdale FL 33309 |  | INSURER(S) AFFORDING COVERAGE   |              |
|  |  | INSURER A: Hudson Specialty Ins. Co.  | NAIC # 37079 |
|  |  | INSURER B: Travelers Indemnity Company  | 25658        |
|  |  | INSURER C: Travelers Casualty & Surety Co   | 19038        |
|  |  | INSURER D:  |              |
|  |  | INSURER E:  |              |
|  |  | INSURER F:  |              |

COVERAGES CERTIFICATE NUMBER: 13-14 No Umbr Cert REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE  | ADDL SUBR INSR WVD                       | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS  |  |
|----------|--|--|---------------|-------------------------|-------------------------|---|--|
| A        | GENERAL LIABILITY  |  | ESB1944131304 | 1/1/2013                | 1/1/2014                | EACH OCCURRENCE \$ 1,000,000                            |  |
|          | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY   |  |               |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000    |  |
|          | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                           |  |               |                         |                         | MED EXP (Any one person) \$ 5,000                       |  |
|          |  |  |               |                         |                         | PERSONAL & ADV INJURY \$ 1,000,000                      |  |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:   |  |               |                         |                         | GENERAL AGGREGATE \$ 2,000,000                          |  |
|          | <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC |  |               |                         |                         | PRODUCTS - COMPIOP AGG \$ 2,000,000                     |  |
| B        | AUTOMOBILE LIABILITY   |  | BA4C593558    | 1/1/2013                | 1/1/2014                | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000        |  |
|          | <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS   | <input type="checkbox"/> SCHEDULED AUTOS |               |                         |                         |   | BODILY INJURY (Per person) \$            |
|          | <input type="checkbox"/> HIRED AUTOS   | <input type="checkbox"/> NON-OWNED AUTOS |               |                         |                         |   | BODILY INJURY (Per accident) \$          |
|          |  |  |               |                         |                         |   | PROPERTY DAMAGE (Per accident) \$        |
|          | UMBRELLA LIAB  | <input type="checkbox"/> OCCUR           |               |                         |                         | PIP-Basic \$  |  |
|          | EXCESS LIAB  | <input type="checkbox"/> CLAIMS-MADE     |               |                         |                         | EACH OCCURRENCE \$                                      |  |
|          | DED  | RETENTIONS                               |               |                         |                         | AGGREGATE \$  |  |
| C        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY  |  | UB3984T71013  | 1/1/2013                | 1/1/2014                | <input checked="" type="checkbox"/> WC STATUTORY LIMITS |  |
|          | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)                              | Y/N <input type="checkbox"/>             |               |                         |                         |   | E.L. EACH ACCIDENT \$ 1,000,000          |
|          | If yes, describe under DESCRIPTION OF OPERATIONS below   | N/A                                      |               |                         |                         |   | E.L. DISEASE - EA EMPLOYEE \$ 1,000,000  |
|          |  |  |               |                         |                         |   | E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| A        | Professional Liab Limits   |  | ESB1944131304 | 1/1/2013                | 1/1/2014                | EACH CLAIM \$1,000,000                                  |  |
|          | incl with General Liab   |  |               |                         |                         | CLAIMS MADE FORM  | AGGREGATE \$2,000,000                    |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
The Certificate Holder is an additional insured under the terms and conditions of the General Liability and Auto policies with respect to work performed by the named insured as required by written contract. The General Liability, Auto, and Workers Compensation policies contains a Waiver of Subrogation in favor of the certificate holder providing the contract is executed prior to any loss.

CERTIFICATE HOLDER CANCELLATION

|  |  |
|--|--|
| The City of Marathon, Florida<br>9805 Overseas Highway<br>Marathon, FL 33050 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|  | AUTHORIZED REPRESENTATIVE<br><br>P Schmaltz/JOANR <i>Joanna Schmaltz</i>   |



## COMMENTS/REMARKS

The General Liability is primary and non-contributory when required by written contract.

The terms & conditions of the General Liability policy include an endorsement providing a 30 day Notice of Cancellation by the carrier to the certificate holder as required by written contract.

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 11 day of July, 2013, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and Coast & Harbor Engineering, Inc. whose address is 220 Congress Park Dr #138, Delray Beach, FL 33445, ("Consultant").

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials SP  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
| X   |    | X         |               | Civil Engineering                       |
| X   |    | X         |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
| X   |    | X         |               | Computer Aided Drafting and Design      |
| X   |    | X         |               | Construction Cost Estimating            |
| X   |    | X         |               | Construction Inspections                |
| X   |    | X         |               | Construction Project Management         |
| X   |    |           | X             | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
| X   |    |           | X             | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
| X   |    | X         |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
|     |    |           |               | Specification Writing                   |
| X   |    | X         |               | Structural Engineering                  |
| X   |    |           | X             | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials SP  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials SP  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials SP  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials SP  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials SP  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials   *sl*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials SA  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any



such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials SR  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Coast & Harbor Engineering, Inc.  
Attn: Michael Giovanozzi  
220 Congress Park Drive #138  
Delray Beach, FL 33445

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 11<sup>th</sup> day of February, 2017.3

**CONSULTANT:**

By: [Signature]  
Its: Principal, Corporate Vice President

**CITY:**

By: [Signature]  
Its: City Manager

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials SD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

EXHIBIT "3"  
CONSULTANT'S HOURLY RATES

| <u>Classification</u>     | <u>Billing Rate/hour</u> |
|---------------------------|--------------------------|
| Senior Principal Engineer | \$197.00                 |
| Principal Engineer II     | \$181.00                 |
| Principal Engineer I      | \$170.00                 |
| Engineer VII              | \$152.00                 |
| Engineer VI               | \$126.00                 |
| Engineer V                | \$121.00                 |
| Engineer IV               | \$117.00                 |
| Engineer III              | \$111.00                 |
| Engineer II               | \$101.00                 |
| Engineer I                | \$ 96.00                 |
| Senior Designer           | \$102.00                 |
| GIS/CADD                  | \$ 92.00                 |
| Administrative            | \$ 64.00                 |

Reimbursable expenses will be actual expenses incurred as a direct part of performing the work, plus ten percent (10%).

Vehicle Mileage – Auto      State approved rate

Initials 

Initials \_\_\_\_\_

Initials \_\_\_\_\_

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 7<sup>th</sup> day of FEB, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and DAVID DOUGLAS ASHCROFT whose address is 11400 OVERSEAS HWY, ("Consultant").  
MARATHON, FL. 33050

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials DD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
| X   |    | X         |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
| X   |    | X         |               | Computer Aided Drafting and Design      |
| X   |    | X         |               | Construction Cost Estimating            |
| X   |    | X         |               | Construction Inspections                |
| X   |    | X         |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
| X   |    | X         |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
| X   |    | X         |               | Planning                                |
|     |    |           |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
| X   |    | X         |               | Traffic Engineering                     |
| X   |    | X         |               | Utilities                               |
| X   |    | X         |               | Water Resources/Stormwater              |
| X   |    | X         |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials LSM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials LSM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials       
Initials       
Initials

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials     *CSH*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**


Initials LSH  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability  
\$100,000 — each accident  
\$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability  
\$1,000,000 — bodily injury each occurrence  
\$1,000,000— bodily injury aggregate  
\$1,000,000— property damage of each occurrence  
\$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials LSH  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials len  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials LSH  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials lsp  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials       
Initials       
Initials

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials LSM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   *CRH*    
Initials             
Initials

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: DAVID DOUGLAS ASSOC, INC.  
11400 OVERSEAS HWY  
MARATHON, FL.  
33050

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials DM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 7<sup>th</sup> day of FEBRUARY, 2012.  
2013

**CONSULTANT:**

By: [Signature]  
Its: VICE PRESIDENT

**CITY:**

By: [Signature]  
Its: CITY MANAGER

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials [Signature]  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 6 day of February 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and ELVEZ ASSOCIATES whose address is 140 Third St S Stillwater MN Consultant").  
55082

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
|     |    |           |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
| X   |    | X         |               | Communications Engineering              |
| X   |    | X         |               | Computer Aided Drafting and Design      |
|     |    |           |               | Construction Cost Estimating            |
|     |    |           |               | Construction Inspections                |
| X   |    | X         |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
| X   |    | X         |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |



If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
  
- B. Employer's Liability  
\$100,000 — each accident  
\$100,000 — each employee (a \$500,000 policy limit for injury by disease)
  
- C. Comprehensive General Liability  
\$1,000,000 — bodily injury each occurrence  
\$1,000,000— bodily injury aggregate  
\$1,000,000— property damage of each occurrence  
\$1,000,000— property damage aggregate
  
- D. Products — Completed Operations \$1,000,000— each occurrence
  
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
  
- E. Professional Liability \$1,000,000
  
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant:

Tony C. Kujawski Executive Vice President  
Stark & Associates  
140 Third Street South  
St. Paul, MN 55082

32. **Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 11<sup>th</sup> day of February, 2013.

**CONSULTANT:**

By: [Signature]

Its: Executive V.P.

**CITY:**

By: [Signature]

Its: City manager.

**ATTEST:**

[Signature]

Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 27 day of Feb, 2013, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and EMK Consultant of FL whose address is 7815 N Dale Mabry Hwy ("Consultant").  
Tampa, FL 33614 Ste. 200

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     | ✓  |           |               | Archeology                              |
|     | ✓  |           |               | Architecture                            |
|     | ✓  |           |               | Asbestos Survey and Removal             |
|     | ✓  |           |               | Building Official Services              |
| ✓   |    | ✓         |               | Civil Engineering                       |
| ✓   |    | ✓         | ✓             | Coastal Engineering                     |
|     | ✓  |           |               | Communications Engineering              |
| ✓   |    | ✓         |               | Computer Aided Drafting and Design      |
| ✓   |    | ✓         |               | Construction Cost Estimating            |
| ✓   |    | ✓         | ✓             | Construction Inspections                |
| ✓   |    | ✓         |               | Construction Project Management         |
|     | ✓  |           |               | Ecology                                 |
|     | ✓  |           |               | Electrical Engineering                  |
|     | ✓  |           |               | Energy Management                       |
| ✓   |    |           | ✓             | Environmental Engineering               |
| ✓   |    | ✓         | ✓             | Geographic Information Systems          |
| ✓   |    |           | ✓             | Geotechnical Engineering                |
| ✓   |    |           | ✓             | Hazardous Material Tanks                |
| ✓   |    | ✓         |               | Hydraulic Engineering                   |
| ✓   |    | ✓         |               | Land Development                        |
| ✓   |    | ✓         |               | Land Surveying                          |
| ✓   |    | ✓         | ✓             | Landscape Architecture                  |
|     | ✓  |           |               | Mechanical Engineering                  |
| ✓   |    | ✓         |               | Planning                                |
| ✓   |    | ✓         |               | Specification Writing                   |
| ✓   |    | ✓         | ✓             | Structural Engineering                  |
| ✓   |    | ✓         |               | Surveying                               |
| ✓   |    |           | ✓             | Traffic Engineering                     |
| ✓   |    | ✓         |               | Utilities                               |
| ✓   |    | ✓         |               | Water Resources/Stormwater              |
| ✓   |    | ✓         |               | Water and Wastewater Services           |
| ✓   |    |           | ✓             | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials     *mm*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials WLM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials MM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials WJ  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials KA  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials       
Initials       
Initials



Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials MM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials RM  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials   JAN    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials HW ✓  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City: Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   WA    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant:

H. DUANE MILFORD P.E.  
EMK CONSULTANTS OF FLA. INC  
7815 N. DALE MARRY HWY. SUITE 200  
TAMPA, FL 33614  
813-931-8900

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials mm  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 27th day of February, 2013.

**CONSULTANT:**

By: [Signature]  
H. DUANE MILKERS  
Its: CORPORATE SECRETARY

**CITY:**

By: [Signature]  
Its: City Manager

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials mm  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**EXHIBIT "3"**  
**CONSULTANT'S HOURLY RATES**

**EMK CONSULTANTS OF FLORIDA, INC.**  
**(Effective 02/25/13)**

I. ENGINEERING

Engineers

|                                     |              |
|-------------------------------------|--------------|
| Principal Engineer                  | \$175.00/hr. |
| Project Manager                     | \$145.00/hr. |
| Senior Engineer                     | \$120.00/hr. |
| Project Engineer                    | \$100.00/hr. |
| Cadd Technician III (w/workstation) | \$ 95.00/hr. |
| Cadd Technician II (w/workstation)  | \$ 85.00/hr. |
| Cadd Technician I (w/workstation)   | \$ 75.00/hr. |
| Construction Services Administrator | \$ 80.00/hr. |
| Permitting Technician               | \$ 75.00/hr. |

II. PLANNING

Planners

|                     |              |
|---------------------|--------------|
| Project Planner     | \$110.00/hr. |
| Planning Technician | \$ 85.00/hr. |

III. SURVEYING

Surveyors and Survey Crews

|                                      |              |
|--------------------------------------|--------------|
| Principal Surveyor                   | \$130.00/hr. |
| Survey Project Manager               | \$100.00/hr. |
| 3 Man Survey Crew                    | \$120.00/hr. |
| 2 Man Survey Crew                    | \$100.00/hr. |
| Survey Technician II (w/workstation) | \$ 95.00/hr. |
| Survey Technician I (w/workstation)  | \$ 75.00/hr. |

Note: All surveying rates include cost of miscellaneous materials and ordinary survey equipment.



**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 25 day of March, 2013, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and E Sciences whose address is 34 E. Pine Street, ("Consultant").  
Orlando, FL 32801

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
| ✓   |    |           | ✓             | Archeology                              |
|     | ✓  |           |               | Architecture                            |
| ✓   |    |           | ✓             | Asbestos Survey and Removal             |
|     | ✓  |           |               | Building Official Services              |
| ✓   |    | ✓         |               | Civil Engineering                       |
| ✓   |    |           | ✓             | Coastal Engineering                     |
|     | ✓  |           |               | Communications Engineering              |
| ✓   |    | ✓         |               | Computer Aided Drafting and Design      |
| ✓   |    | ✓         | ✓             | Construction Cost Estimating            |
| ✓   |    | ✓         |               | Construction Inspections                |
| ✓   |    | ✓         |               | Construction Project Management         |
| ✓   |    | ✓         |               | Ecology                                 |
|     | ✓  |           |               | Electrical Engineering                  |
|     | ✓  |           |               | Energy Management                       |
| ✓   |    | ✓         |               | Environmental Engineering               |
| ✓   |    | ✓         |               | Geographic Information Systems          |
| ✓   |    |           | ✓             | Geotechnical Engineering                |
|     | ✓  |           |               | Hazardous Material Tanks                |
| ✓   |    | ✓         |               | Hydraulic Engineering                   |
| ✓   |    | ✓         |               | Land Development                        |
|     | ✓  |           |               | Land Surveying                          |
| ✓   |    | ✓         |               | Landscape Architecture                  |
|     | ✓  |           |               | Mechanical Engineering                  |
| ✓   |    | ✓         |               | Planning                                |
| ✓   |    | ✓         |               | Specification Writing                   |
|     | ✓  |           |               | Structural Engineering                  |
|     | ✓  |           |               | Surveying                               |
|     | ✓  |           |               | Traffic Engineering                     |
|     | ✓  |           |               | Utilities                               |
| ✓   |    | ✓         |               | Water Resources/Stormwater              |
| ✓   |    | ✓         |               | Water and Wastewater Services           |
|     | ✓  |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$\_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.



**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City: Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant:

Peter Parlow  
E Sciences, Inc  
34 E Pine Street  
Orlando, FL 32801

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

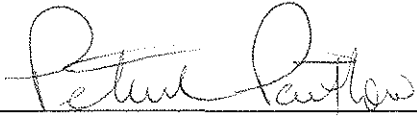
The Consultant and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership,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

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.

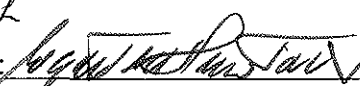
**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 25<sup>th</sup> day of March, 2013.

**CONSULTANT:**

By:   
Its: President

**CITY:**

AK  
By:   
Its: City Manager

**ATTEST:**

  
Diane Clavier, City Clerk

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

  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.







**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 13<sup>th</sup> day of Feb, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and FTE, Inc. whose address is 11458<sup>th</sup> N. 53<sup>rd</sup> St., ("Consultant").  
Tampa, FL 33617

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
| x   |    | x         |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
| x   |    | x         |               | Construction Cost Estimating            |
|     |    |           |               | Construction Inspections                |
|     |    |           |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
| x   |    | x         |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
| x   |    | x         |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
| x   |    | x         |               | Planning                                |
|     |    |           |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
| x   |    | x         |               | Surveying                               |
| x   |    | x         |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability  
\$100,000 — each accident  
\$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability  
\$1,000,000 — bodily injury each occurrence  
\$1,000,000 — bodily injury aggregate  
\$1,000,000 — property damage of each occurrence  
\$1,000,000 — property damage aggregate
- D. Products — Completed Operations \$1,000,000 — each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos — owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials RO  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City: Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Oliver Rodrigues, P.E., PTOE, Project Manager  
Florida Transportation Engineering, Inc. (FTE)  
8750 NW 36th Street, Suite 670  
Miami, FL 33178

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials RO  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



IN WITNESS WHEREOF, the parties have executed this instrument on this 13<sup>th</sup> day of February, 2013,

**CONSULTANT:**

Florida Transportation Engineering, Inc. (FTE)

By: [Signature]

Ravi Devaguptapu, P.E., PTOE

Its: President

**CITY:**

By: [Signature]

Its: City Manager

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials RD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 27<sup>th</sup> day of February, 2013, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and G. M. Selby, Inc. whose address is 6999 N. Waterway Dr., ("Consultant").

Miami, FL 33155

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials PS  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           | X             | Archeology                              |
|     |    |           | X             | Architecture                            |
|     |    |           | X             | Asbestos Survey and Removal             |
|     |    | X         |               | Building Official Services              |
|     |    | X         |               | Civil Engineering                       |
|     |    | X         |               | Coastal Engineering                     |
|     |    | X         |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
|     |    | X         |               | Construction Cost Estimating            |
|     |    | X         |               | Construction Inspections                |
|     |    | X         |               | Construction Project Management         |
|     |    |           | X             | Ecology                                 |
|     |    | X         |               | Electrical Engineering                  |
|     |    | X         |               | Energy Management                       |
|     |    | X         |               | Environmental Engineering               |
|     |    |           | X             | Geographic Information Systems          |
|     |    | X         |               | Geotechnical Engineering                |
|     |    | X         |               | Hazardous Material Tanks                |
|     |    | X         |               | Hydraulic Engineering                   |
|     |    |           | X             | Land Development                        |
|     |    |           | X             | Land Surveying                          |
|     |    |           | X             | Landscape Architecture                  |
|     |    | X         |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
|     |    | X         |               | Specification Writing                   |
|     |    | X         |               | Structural Engineering                  |
|     |    |           | X             | Surveying                               |
|     |    |           | X             | Traffic Engineering                     |
|     |    | X         | X             | Utilities                               |
|     |    | X         | X             | Water Resources/Stormwater              |
|     |    |           | X             | Water and Wastewater Services           |
|     |    |           | X             | Water Tank Inspection/Corrosion Control |



If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials    *AK*     
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials PK  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials                       
Initials                       
Initials



**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials PK  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials AK  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability  
\$100,000 — each accident  
\$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability  
\$1,000,000 — bodily injury each occurrence  
\$1,000,000— bodily injury aggregate  
\$1,000,000— property damage of each occurrence  
\$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   *WJ*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City <sup>(\$<sub>project specific</sub> <sub>agreement</sub> Insert amount of liquidated damages here)</sup> (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials     MK      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## **21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   *JK*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials     *PK*      
Initials             
Initials

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials PK  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials    *RH*     
Initials             
Initials

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Marina Zadikoff  
6999 N. Waterway Drive  
Miami, FL 33156

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials   *MZ*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 27<sup>th</sup> day of February, 2012.

**CONSULTANT:**

By: Marina Lackoff  
Its: President

**CITY:**

By: [Signature]  
Its: City Manager

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials PL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

EXHIBIT "3"  
CONSULTANT'S HOURLY RATES

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_









CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 12<sup>th</sup> day of Feb, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and Gartek Eng. Corp., whose address is 7210 SW 39 Terr., ("Consultant").  
Miami, FL. 33155

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:


**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials 

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
|     |    |           |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
| x   |    | x         |               | Computer Aided Drafting and Design      |
|     |    |           |               | Construction Cost Estimating            |
| x   |    | x         |               | Construction Inspections                |
|     |    |           |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
| x   |    | x         |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
| x   |    | x         |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
| x   |    | x         |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials     *PA*

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.


**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials 

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials PA

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials     *PS*

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials Pa



all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.


**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials 

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials JA

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials     *AS*

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.


**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials 

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## **21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.


If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials  \_\_\_\_\_

A termination for cause or for convenience shall have no affect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**


All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials 

both parties. All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.


**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials 



such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials   *RS*

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Gartek Engineering Corporation  
7210 SW 39 Terrace  
Miami, FL 33155  
Attn. Robert L. Betancourt

32. **Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

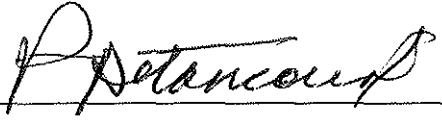
Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

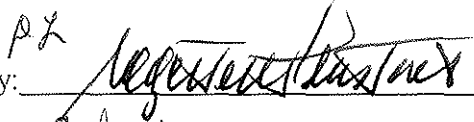
Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials RA

IN WITNESS WHEREOF, the parties have executed this instrument on this 8th day of January February, 2013

**CONSULTANT:**

By:   
Robert L. Betancourt  
Its: President

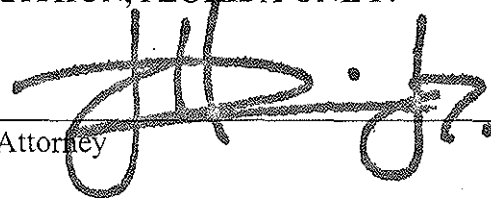
**CITY:**

By:   
Its: City manager


**ATTEST:**

  
Diane Clavier, City Clerk

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

  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials 

CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 12<sup>th</sup> day of Feb, 20  , by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and GLE Assoc., Inc. whose address is 4300 W. Cypress St., ("Consultant").  
Ste. 400 Tampa, FL 33607

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:


**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
| X   |    | X         |               | Architecture                            |
| X   |    | X         |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
| X   |    | X         |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
| X   |    | X         |               | Construction Cost Estimating            |
| X   |    | X         |               | Construction Inspections                |
| X   |    | X         |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
| X   |    | X         |               | Electrical Engineering                  |
| X   |    | X         |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
| X   |    | X         |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
| X   |    | X         |               | Mechanical Engineering                  |
| X   |    | X         |               | Planning                                |
| X   |    | X         |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
| X   |    |           | X             | Surveying                               |
| X   |    |           | X             | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
| X   |    | X         |               | Water Resources/Stormwater              |
| X   |    |           | X             | Water and Wastewater Services           |
| X   |    |           | X             | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials     *CS*      
Initials             
Initials

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials     *RS*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**


All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials             
Initials             
Initials

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials     *MB*      
Initials             
Initials

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability  
\$100,000 — each accident  
\$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability  
\$1,000,000 — bodily injury each occurrence  
\$1,000,000— bodily injury aggregate  
\$1,000,000— property damage of each occurrence  
\$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials     *CS*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ 0 insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials     *RSB*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.


**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials MS  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

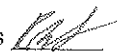
If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials RAV  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.


**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City: Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials       
Initials       
Initials

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Robert B. Greene  
GLE Associates, Inc.  
4300 W. Cypress Street, Suite 400  
Tampa, Florida 33607

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

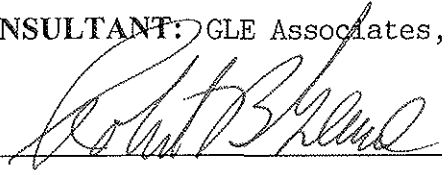
Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials RBG  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 8th day of February, 2013

**CONSULTANT:** GLE Associates, Inc.

By: 

Its: President

**CITY:**

By: 


Its: City manager.

**ATTEST:**




Diane Clavier, City Clerk

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

  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**EXHIBIT "3"**  
**Consultant's Hourly Rates**  
**City of Marathon**  
**Continuing Engineering Services Agreement**

Consulting Services:

|   |          |          |
|---|----------|----------|
| Principal Architect/Engineer                            | Per Hour | \$150.00 |
| Senior Architect, RA                                    | Per Hour | \$125.00 |
| Senior Engineer, PE                                     | Per Hour | \$125.00 |
| Certified Industrial Hygienist                          | Per Hour | \$125.00 |
| Senior Environmental Geologist, PG                      | Per Hour | \$120.00 |
| Licensed Asbestos Consultant                            | Per Hour | \$125.00 |
| Project Engineer, Project Architect,<br>Project Manager | Per Hour | \$ 95.00 |
| Construction Administrator                              | Per Hour | \$ 95.00 |
| Staff Geologist/Environmental Specialist                | Per Hour | \$ 85.00 |
| Staff Industrial Hygienist                              | Per Hour | \$ 75.00 |
| CADD Technician   | Per Hour | \$ 60.00 |
| Asbestos/Lead/Environmental<br>Field Technician         | Per Hour | \$ 55.00 |
| Clerical  | Per Hour | \$ 45.00 |

Other direct cost multiplied by 1.15



**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 15<sup>th</sup> day of Feb, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and HBC Engineering Co. whose address is 13155 SW 13451 Ste 202, ("Consultant").  
Miami, FL 33186

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)



include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
|     |    |           |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
|     |    |           |               | Construction Cost Estimating            |
|     |    |           |               | Construction Inspections                |
|     |    |           |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
|     |    |           |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

3. The Agreement Sum.

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

4. Payment.

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

5. **Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials AL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

6. **Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

7. **Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

8. **Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   *AK*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

9. Financial Records.

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

10. Reimbursable Expenses.

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

11. Printing Costs.

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

12. Time of Performance.

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

Coverage Minimums

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.



15. Subconsultant Insurance.

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

16. Liquidated Damages.

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

17. Change Orders.

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials AL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## 21. Termination.

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials   MZ    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties. All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   RH    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Fl. Lauderdale, FL 33301

For The Consultant: ADEBAYO COLLE  
13155 SW 134TH Street Suite 207  
MIAMI, Florida 33186  
305 232 7932  
305 632 5280

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.

Initials AL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



IN WITNESS WHEREOF, the parties have executed this instrument on this 15<sup>th</sup> day of February, 2017.3

CONSULTANT:

By: [Signature]  
Its: PRESIDENT

CITY:

By: [Signature]  
City Manager.  
Its: \_\_\_\_\_

ATTEST:

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 1 day of February, 2013 by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and JBC Planning Design, Inc. whose address is 1312 Majesty Terr. Weston. ("Consultant").

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
|     |    |           |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
|     |    |           |               | Construction Cost Estimating            |
|     |    |           |               | Construction Inspections                |
|     |    |           |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
| X   |    | yes       |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
| X   |    | yes       |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
| X   |    | yes       |               | Planning                                |
|     |    |           |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

3. The Agreement Sum.

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

4. Payment.

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

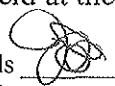
**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.


Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

6. **Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

7. **Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

8. **Project Records.**

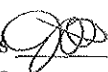
All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and



all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.


**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**


Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
  
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
  
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
  
- D. Products — Completed Operations \$1,000,000— each occurrence
  
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
  
- E. Professional Liability \$1,000,000
  
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

15. Subconsultant Insurance.

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

16. Liquidated Damages.

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.


It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

17. Change Orders.

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## 21. Termination.

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

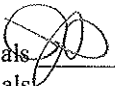
If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**


All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.


**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Jill Cohen  
1312 Majesty Terrace  
Weston FL  
33327

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

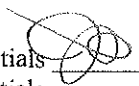
The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 8th day of February, 2013.

CONSULTANT:

By: Bill Cohen, President  
Its: [Signature]

CITY:

By: [Signature]  
Its: City Manager

ATTEST:

Diane Clavier  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials [Signature]  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 28 day of Feb, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and Metric Engineering whose address is 13940 SW 136 St. Ste 200, ("Consultant").  
miami, FL 33186

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
| ✓   |    |           | JANUS         | Archeology                              |
|     |    |           |               | Architecture                            |
| ✓   |    |           | PSI           | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
| ✓   |    | ✓         |               | Civil Engineering                       |
| ✓   |    | ✓         |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
| ✓   |    | ✓         |               | Computer Aided Drafting and Design      |
| ✓   |    | ✓         |               | Construction Cost Estimating            |
| ✓   |    | ✓         | PSI           | Construction Inspections                |
| ✓   |    | ✓         |               | Construction Project Management         |
| ✓   |    | ✓         |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
| ✓   |    | ✓         | PSI           | Environmental Engineering               |
| ✓   |    | ✓         |               | Geographic Information Systems          |
| ✓   |    |           | PSI           | Geotechnical Engineering                |
| ✓   |    |           | PSI           | Hazardous Material Tanks                |
| ✓   |    | ✓         |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
| ✓   |    |           | MGV           | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
| ✓   |    | ✓         |               | Specification Writing                   |
| ✓   |    | ✓         |               | Structural Engineering                  |
| ✓   |    |           | MGV           | Surveying                               |
| ✓   |    | ✓         |               | Traffic Engineering                     |
| ✓   |    | ✓         |               | Utilities                               |
| ✓   |    | ✓         |               | Water Resources/Stormwater              |
| ✓   |    | ✓         |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials RL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials TL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials RL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials RL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials PL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials RL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials RL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials   ZL    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## **21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials JL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials TL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   RL    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: ROBERT LINARES, PE  
SR. VICE PRESIDENT  
METRIC ENGINEERING, INC.  
13940 SW 136 ST., STE 200  
MIAMI, FL 33186

32. **Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials RL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 28<sup>th</sup> day of February, 20123

CONSULTANT:  
METRIC ENGINEERING, INC.

By: TCL

Its: SR. VICE PRESIDENT

CITY:

PL  
By: [Signature]

Its: City Manager.

ATTEST:

[Signature]

Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials TCL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_











**Company: Manuel G Vera & Associates, Inc.**

| <b>Job Position Title</b> | <b>QTY<br/>Required<br/>for Project</b> | <b>Maximum Raw<br/>Salary \$/Hour</b> | <b>Overhead<br/>\$/Hour<br/>142.51%</b> | <b>Fringe<br/>\$/Hour<br/>52.55%</b> | <b>Profit<br/>\$/Hour<br/>25%</b> | <b>Total<br/>Hourly<br/>Rate \$/Hour</b> |
|---------------------------|---|---------------------------------------|---|--------------------------------------|-----------------------------------|--|
| Senior Surveyor           | tbd                                     | \$ 90.00                              | \$ 128.26                               | \$ 47.30                             | \$ 22.50                          | \$ 288.05                                |
| Surveyor & Mapper         | tbd                                     | \$ 52.50                              | \$ 74.82                                | \$ 27.59                             | \$ 13.13                          | \$ 168.03                                |
| Sr. CADD Technician       | tbd                                     | \$ 35.00                              | \$ 49.88                                | \$ 18.39                             | \$ 8.75                           | \$ 112.02                                |
| Survey Intern             | tbd                                     | \$ 56.00                              | \$ 79.81                                | \$ 29.43                             | \$ 14.00                          | \$ 179.23                                |
| Survey Technician         | tbd                                     | \$ 19.00                              | \$ 27.08                                | \$ 9.98                              | \$ 4.75                           | \$ 60.81                                 |
| Party Chief               | tbd                                     | \$ 26.00                              | \$ 37.05                                | \$ 13.66                             | \$ 6.50                           | \$ 83.22                                 |
| Instrument Person         | tbd                                     | \$ 17.00                              | \$ 24.23                                | \$ 8.93                              | \$ 4.25                           | \$ 54.41                                 |
| Rod/Chain Person          | tbd                                     | \$ 13.50                              | \$ 19.24                                | \$ 7.09                              | \$ 3.38                           | \$ 43.21                                 |







CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 5<sup>th</sup> day of April, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and MMCE whose address is 217 HARBOR DR., ("Consultant").

KEY LARCO FL 33037

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
|     |    |           |               | Civil Engineering                       |
| X   |    | X         |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
|     |    |           |               | Construction Cost Estimating            |
|     |    |           |               | Construction Inspections                |
|     |    |           |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
|     |    |           |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials     CW      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials MW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials     JW      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials     mm      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials mw  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials     mw      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

### Coverage Minimums

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials YCW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials YMW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials     *me*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials     CJW      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials     *MS*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no affect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials     JMW      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials     *JW*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   *JRH*    
Initials             
Initials

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: MARY WOODS, MMCE  
217 HARBOR DR.  
KEY LARCO FL  
33037

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials mw  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 5th day of April, 2017.3

**CONSULTANT:**

By: Mary Woods, MMCE  
Its: [Signature]

**CITY:**

By: [Signature]  
Its: City Manager Roger T. Newstedt

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials MW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 15<sup>th</sup> day of Feb, 2013, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and Nutting Engineers whose address is 1310 Neptune Drive, ("Consultant").  
Boynton Beach, FL 33426

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)



include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
|     |    |           |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
|     |    |           |               | Construction Cost Estimating            |
| ✓   |    | ✓         |               | Construction Inspections                |
|     |    |           |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
| ✓   |    | ✓         |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
| ✓   |    | ✓         |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
|     |    |           |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

Initials RMJ  
 Initials \_\_\_\_\_  
 Initials \_\_\_\_\_

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials RW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials RAW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials RUW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials     RW      
Initials       
Initials

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials   *RW*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials RWD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials     *RW*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials Rue  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials     *RW*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials     RW      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant:

RICHARD WOHLFARTH, P.E.  
NOTTING ENGINEERS OF FL, INC  
2051 NW 112 AVE, SUITE 126  
MIAMI, FL 33172

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials Raw  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



IN WITNESS WHEREOF, the parties have executed this instrument on this 15<sup>th</sup> day of February, 2017.3

**CONSULTANT:**

NUTTING ENGINEERS of FLORIDA, INC.

By: Richard Wohlfarth

Its: VICE PRESIDENT

**CITY:**

PJ  
By: [Signature]

Its: City Manager.

**ATTEST:**

[Signature]

Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

**EXHIBIT "A"**  
**PROJECT SPECIFIC AGREEMENT**

Initials RWJ  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**PROJECT SPECIFIC AGREEMENT**  
**Between**  
**THE CITY OF MARATHON, FLORIDA**  
**And**

\_\_\_\_\_  
**For**  
\_\_\_\_\_

Pursuant to the provisions contained in the "Continuing Services Agreement" between the City of Marathon, Florida (the "City") and \_\_\_\_\_, (the "Consultant") dated \_\_\_\_\_, 20\_\_; this Project Specific Agreement authorizes the Consultant to provide the services as set forth below:

**I. Scope of Services**

The Consultant shall provide engineering services to the City for the Project as described in the "Project Description" attached as Exhibit "1."

The "Scope of Services and Project Schedule" and tasks to be provided by the Consultant for this Project are those services and tasks as listed in Exhibit "2."

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

**II. Deliverables**

As part of the Scope of Services and Project Schedule, the Consultant shall provide to the City the following Deliverables:

**III. Term/Time of Performance**

This Project Specific Agreement shall be effective on the date it is fully executed by all parties and shall continue in full force for \_\_ year (s) or until completion of the Project, unless otherwise terminated pursuant to the Continuing Services Agreement or other applicable provisions of this Project Specific Agreement. The City Manager, in his sole discretion, may extend the term of this Project Specific Agreement through written notification to the Consultant. Such extension shall not exceed 180 days. No further extensions of this Project Specific Agreement shall be effective unless authorized by the City Council

The Consultant's services under this Project Specific Agreement and the time frames applicable to this Project Specific Agreement shall commence upon the date provided in a written Notification of Commencement (“Commencement Date”) provided to the Consultant from the City. The Consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Consultant must receive written notice from the City prior to the beginning the performance of services.

Upon receipt of the Notification of Commencement, the Consultant shall commence services to the City on the Commencement Date, and shall continuously perform services to the City, without interruption, in accordance with the time frames set forth in the Project Schedule.”

**IV. Amount, Basis and Method of Compensation**

\_\_\_\_\_ Lump Sum Compensation - City agrees to pay consultant compensation for performance of all services described in Exhibit “2” in the total amount of \$\_\_\_\_\_, plus reimbursable expenses not to exceed \$\_\_\_\_\_. Consultant will submit invoices for monthly progress payments in an amount equivalent to the percentage completion of the total Work.

OR

\_\_\_\_\_ City agrees to pay Consultant compensation for performance of all services described in Exhibit “2” at Consultant’s hourly rates as set forth in Exhibit “3”, up to a maximum amount not to exceed \$\_\_\_\_\_, plus reimbursable expenses not to exceed \$\_\_\_\_\_.

**V. Incorporation of Terms and Conditions of Continuing Service Agreement**

This Project Specific Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated \_\_\_\_\_, 20\_\_ between the City and Consultant as though fully set forth herein. In the event that any terms or conditions of this Project Specific Agreement conflict with the Continuing Services Agreement, the more restrictive provision shall prevail and apply.

Initials     *RWD*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**PAYMENT UNDER THIS PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONSULTANT:**

**CITY:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

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

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

\_\_\_\_\_  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

**EXHIBIT "1"**  
**PROJECT DESCRIPTION**

Initials RWD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**EXHIBIT "2"**  
**SCOPE OF SERVICES AND PROJECT SCHEDULE**

Initials     *RW*      
Initials             
Initials

EXHIBIT "3"  
CONSULTANT'S HOURLY RATES



**EXHIBIT "A"**  
**PROJECT SPECIFIC AGREEMENT**

Project No. 2014-2001

Initials RCW  
Initials Or  
Initials \_\_\_\_\_

**PROJECT SPECIFIC AGREEMENT**  
**Between**  
**THE CITY OF MARATHON, FLORIDA**  
**And**  
**NUTTING ENGINEERS OF FLORIDA, INC.**  
**For**  
**REUSE MIXING TANK GEOTECHNICAL EXPLORATION**

Pursuant to the provisions contained in the "Continuing Services Agreement" between the City of Marathon, Florida (the "City") and NUTTING ENGINEERS OF FLORIDA, INC., (the "Consultant") dated February 15th, 2013; this Project Specific Agreement authorizes the Consultant to provide the services as set forth below:

**I. Scope of Services**

The Consultant shall provide engineering services to the City for the Project as described in the "Project Description" attached as Exhibit "1."

The "Scope of Services and Project Schedule" and tasks to be provided by the Consultant for this Project are those services and tasks as listed in Exhibit "2."

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

**II. Deliverables**

As part of the Scope of Services and Project Schedule, the Consultant shall provide to the City the following Deliverables:

**Deliverables  
include:**

- Soil Boring Log
- Laboratory Test Results
- Exfiltration Test Results
- Double Ring Infiltration Test Results

**III. Term/Time of Performance**

This Project Specific Agreement shall be effective on the date it is fully executed by all parties and shall continue in full force for 1 year (s) or until completion of the Project, unless otherwise terminated pursuant to the Continuing Services Agreement or other applicable provisions of this

Project Specific Agreement. The City Manager, in his sole discretion, may extend the term of this Project Specific Agreement through written notification to the Consultant. Such extension shall not exceed 180 days. No further extensions of this Project Specific Agreement shall be effective unless authorized by the City Council.

The Consultant's services under this Project Specific Agreement and the time frames applicable to this Project Specific Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the Consultant from the City. The Consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Consultant must receive written notice from the City prior to the beginning the performance of services.

Upon receipt of the Notification of Commencement, the Consultant shall commence services to the City on the Commencement Date, and shall continuously perform services to the City, without interruption, in accordance with the time frames set forth in the Project Schedule."

**IV. Amount, Basis and Method of Compensation**

Lump Sum Compensation - City agrees to pay consultant compensation for performance of all services described in Exhibit "2" in the total amount of \$4,825.00, plus reimbursable expenses not to exceed \$0. Consultant will submit invoices for monthly progress payments in an amount equivalent to the percentage completion of the total Work.

OR

\_\_\_\_\_ City agrees to pay Consultant compensation for performance of all services described in Exhibit "2" at Consultant's hourly rates as set forth in Exhibit "3", up to a maximum amount not to exceed \$ \_\_\_\_\_, plus reimbursable expenses not to exceed \$ \_\_\_\_\_.

**V. Incorporation of Terms and Conditions of Continuing Service Agreement**

This Project Specific Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated February 15th, 2013 between the City and Consultant as though fully set forth herein. In the event that any terms or conditions of this Project Specific Agreement conflict with the Continuing Services Agreement, the more restrictive provision shall prevail and apply.

Initials RW  
Initials DR  
Initials \_\_\_\_\_

PAYMENT UNDER THIS PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.

IN WITNESS WHEREOF, the parties have executed this instrument on this 18 day of February, 2014.

CONSULTANT:  
NUTTING ENGINEERS OF FLORIDA, INC.

CITY:

By: Richard Wohlfarth

By: Michael Shuto

Its: VICE PRESIDENT

Its: CITY MANAGER

*EM*  
*2/13/14*

ATTEST:

Betsy Butts  
Witness

Diane Clavier  
Diane Clavier, City Clerk

Elizabeth Smith  
Witness

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials RW  
Initials CS  
Initials \_\_\_\_\_

**EXHIBIT "1"**  
**PROJECT DESCRIPTION**

**See Attached Proposal**

Initials RWD  
Initials OR  
Initials \_\_\_\_\_

**EXHIBIT "2"**  
**SCOPE OF SERVICES AND PROJECT SCHEDULE**

**See Attached Proposal**

Initials Raw  
Initials On  
Initials \_\_\_\_\_





# Nutting Engineers

of Florida Inc. | Established 1967

*Your Project is Our Commitment*

1310 Neptune Drive  
Boynton Beach, Florida 33426  
561-736-4900  
Toll Free: 877-NUTTING (688-8464)  
Fax: 561-737-9975  
Broward 954-941-8700  
St. Lucie 772-408-1050  
Miami-Dade 305-557-3083  
[www.nuttingengineers.com](http://www.nuttingengineers.com)

February 3, 2014

Ms. Zully Hemeyer  
City of Marathon Utilities Manager  
9805 Overseas Highway  
Marathon, Florida 33050  
Phone: 305.289.5009      Email: [hemeyerz@ci.marathon.fl.us](mailto:hemeyerz@ci.marathon.fl.us)

Re: Proposal/Agreement for Geotechnical Exploration Services  
Reuse Mixing Tank for Community Park  
4095 Overseas Highway  
City of Marathon, Florida

Dear Ms. Hemeyer:

Nutting Engineers of Florida, Inc. is pleased to submit this proposal for geotechnical exploration services for the Reuse Mixing Tank at the Marathon Community Park. We understand that a reuse mixing tank will be constructed as part of using effluent for irrigation purposes. We have discussed the project with Mr. Oscar Rubio with A.D.A. Engineering, Inc. concerning the scope of services we need to provide for this project.

As part of the permitting process, the soil conditions need to be obtained using a soil boring to a depth of at least 10 feet below the natural ground water level. We anticipate the groundwater level will be within five feet therefore, we anticipate a maximum depth of 15 feet for the soil boring.

Based on our understanding of the project and your request for proposal, we have prepared the following scope of work and fee schedule.

## **SCOPE OF WORK AND FEES**

We propose to perform one soil boring to a depth of 15 feet below the existing ground surface. During drilling, visual descriptions of each soil type and approximate depth range will be documented. Representative soil samples will be collected for organic matter content, pH, sodium adsorption ratio and cation exchange capacity. We note that we will collect the soil samples and provide the soil samples to a specialty analytical laboratory for the chemical tests.

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

OFFICES  
Palm Beach  
Miami-Dade  
St. Lucie



In addition, one exfiltration test will be performed in general accordance with South Florida Water Management District specifications to a depth of six feet and one double-ring infiltration test will be performed in general accordance with ASTM D-3385 specifications. The results of the field work and laboratory testing will be provided in a brief engineering report.

**FEE SCHEDULE**

The above-indicated scope of work will be performed for an estimated cost of \$4,825.00 based on the following quantities and unit rates.

|  |                     |            |
|--|---------------------|------------|
| Mob/Demob. of equip. and crew                | 1 @ \$1200.00       | \$1,200.00 |
| Soil boring (truck mounted drill rig)        | Lump Sum            | \$250.00   |
| Exfiltration Test                            | 1 @ \$450 each      | \$450.00   |
| Double-Ring Infiltration Test                | 1@ \$800.00         | \$800.00   |
| Sodium Adsorption Ratio                      | 2 @ \$75.00 each    | \$150.00   |
| Cation Exchange Capacity                     | 2 @ \$150.00 each   | \$300.00   |
| Organic Content Test                         | 1 @ \$30.00 each    | \$30.00    |
| pH Test                                      | 2 @ \$20.00 each    | \$40.00    |
| Site visit, boring layout, utility clearance | Lump Sum            | \$200.00   |
| Project Engineer                             | 12 hr @ \$100.00/hr | \$1,200.00 |
| Principal Engineer                           | 1 hr @ \$125.00/hr  | \$125.00   |
| Clerical/admin. for report preparation       | 2 hr @ \$40.00/hr   | \$80.00    |

We can begin the boring layout and utility clearance as soon as we receive written authorization. The field work should take one day to complete. The engineering report should be available within approximately three weeks after the field work has finished.

This work will be performed in accordance with our Continuing Engineering Services Agreement dated February 15, 2013 with the City of Marathon.

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

Sincerely,  
**NUTTING ENGINEERS OF FLORIDA, INC.**

Scott Ersland  
 Division Manager

*Richard Wohlfarth*  
 Richard Wohlfarth, P.E.  
 Principal/Director of Engineering

City of Marathon Reuse Mixing Tank Geo



*Handwritten signature*

**EXHIBIT "A"**  
**PROJECT SPECIFIC AGREEMENT**

Project No. 2015-0002

**PROJECT SPECIFIC AGREEMENT**

**Between**

**THE CITY OF MARATHON, FLORIDA**

**And**

NUTTING ENGINEERS OF FLORIDA, INC.

**For**

GEOTECHNICAL EXPLORATION FOR 104<sup>TH</sup> ST PARCEL

Pursuant to the provisions contained in the “Continuing Services Agreement” between the City of Marathon, Florida (the “City”) and NUTTING ENGINEERS OF FLORIDA, INC., (the “Consultant”) dated FEBRUARY 15, 2013; this Project Specific Agreement authorizes the Consultant to provide the services as set forth below:

**I. Scope of Services**

The Consultant shall provide engineering services to the City for the Project as described in the “Project Description” attached as Exhibit “1.”

The “Scope of Services and Project Schedule” and tasks to be provided by the Consultant for this Project are those services and tasks as listed in Exhibit “2.”

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

**II. Deliverables**

As part of the Scope of Services and Project Schedule, the Consultant shall provide to the City the following Deliverables:

- Soil Sample Analysis and Report; and
- Graphic log of test borings and boring location plan;

**III. Term/Time of Performance**

This Project Specific Agreement shall be effective on the date it is fully executed by all parties and shall continue in full force for one (1) year (s) or until completion of the Project, unless otherwise terminated pursuant to the Continuing Services Agreement or other applicable provisions of this Project Specific Agreement. The City Manager, in his sole discretion, may extend the term of this Project Specific Agreement through written notification to the Consultant. Such extension shall not exceed 180 days. No further extensions of this Project Specific Agreement shall be effective unless authorized by the City Council.

The Consultant's services under this Project Specific Agreement and the time frames applicable to this Project Specific Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the Consultant from the City. The Consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Consultant must receive written notice from the City prior to the beginning the performance of services.

Upon receipt of the Notification of Commencement, the Consultant shall commence services to the City on the Commencement Date, and shall continuously perform services to the City, without interruption, in accordance with the time frames set forth in the Project Schedule."

**IV. Amount, Basis and Method of Compensation**

x Lump Sum Compensation - City agrees to pay consultant compensation for performance of all services described in Exhibit "2" in the total amount of \$ 6,880.00, plus reimbursable expenses not to exceed \$ 0. Consultant will submit invoices for monthly progress payments in an amount equivalent to the percentage completion of the total Work.

OR

\_\_\_\_\_ City agrees to pay Consultant compensation for performance of all services described in Exhibit "2" at Consultant's hourly rates as set forth in Exhibit "3", up to a maximum amount not to exceed \$ \_\_\_\_\_, plus reimbursable expenses not to exceed \$ \_\_\_\_\_.

**V. Incorporation of Terms and Conditions of Continuing Service Agreement**

This Project Specific Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated FEBRUARY 15, 2013 between the City and Consultant as though fully set forth herein. In the event that any terms or conditions of this Project Specific Agreement conflict with the Continuing Services Agreement, the more restrictive provision shall prevail and apply.

Initials RWJ  
Initials MAD  
Initials \_\_\_\_\_

**PAYMENT UNDER THIS PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 9 day of March, 2015.

**CONSULTANT:**

NOTTING ENGINEERS OF FL, INC.

**CITY:**

By: Richard Wolfarth

By: Michael H. Peto

Its: VICE PRESIDENT

Its: CITY MANAGER

Scott E. Erbes DW. Mgr.  
Witness

**ATTEST:**

Diane Clavier  
Diane Clavier, City Clerk

Dianna J. Mauer  
Witness

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

**EXHIBIT "1"**  
**PROJECT DESCRIPTION**

Nutting Engineers shall provide Geotechnical Exploration Services to include Soil Sample Analysis and Report; and Graphic log of test borings and boring location plan. Exhibit 2 provides the scope of services.

Initials     RWD      
Initials     MNO      
Initials

**EXHIBIT "2"**  
**SCOPE OF SERVICES AND PROJECT SCHEDULE**

See attached.

Initials RWJ  
Initials MLP  
Initials \_\_\_\_\_



Geotechnical & Construction Materials  
Engineering, Testing, & Inspection  
Environmental Services

Offices throughout the state of Florida

www.nuttingengineers.com info@nuttingengineers.com

February 25, 2015

Ms. Zully Hemeyer  
City of Marathon Utilities Manager  
9805 Overseas Highway  
Marathon, Florida 33050  
Phone: 305.289.5009 Email: hemeyerz@ci.marathon.fl.us

*Miami Dade County Tier 2 CBE  
Palm Beach County SBE  
SFWMD SBE  
Small Business Administration SBE  
for Federal Projects*

Re: Proposal/Agreement for Geotechnical Exploration Services  
La Palma Property  
West side of 105<sup>th</sup> Street West From US Highway 1 To The Water  
City of Marathon, Florida

Dear Ms. Hemeyer:

Nutting Engineers of Florida, Inc. is pleased to submit this proposal for geotechnical exploration services for the City of Marathon La Palma property. Per your email dated February 24, 2015 and review of the site plan provided, we understand that the site covers approximately 6 acres and is located on the west side of 105<sup>th</sup> Street West beginning on the south side of US Highway 1 and extending south to the water. The property is generally vacant and somewhat wooded over portions of the site. A canal approximately 400 feet long and 50 feet wide bisects the southern half of the property.

We understand there is a stockpile of soils approximately 12 feet in height with plan dimensions of approximately 200 feet by 100 feet on the site. The top of the stockpile is accessible to truck mounted drilling equipment as the sides are gently sloped. It has been requested to evaluate the stockpiled soils for use as structural fill. Future plans also include constructing a storage/maintenance building of approximately 10,000 square feet in the northern portion of the property. We were provided a plat survey showing the property boundaries, however no specific plans of future development were provided.

Based on your request for proposal and our understanding of the project, we propose the following scope of work and fee schedule.

#### **SCOPE OF WORK**

We propose to perform a total of twelve Standard Penetration Test (SPT) borings to depths ranging from 15 to 20 feet at the site. We anticipate performing six borings to a depth of twenty feet on the stockpiled soils and six additional borings will be performed to a depth of fifteen feet within other areas of the site. At the completion of the on-site work, the soil samples will be returned to our laboratory. We will provide an engineering report including a description of our findings and general information concerning the subsurface soil conditions. We understand that no specific recommendations for foundation design are needed at this time. In order to provide information concerning the engineering properties of the



soils encountered, it is anticipated that tests may be performed to determine natural water content, organic content, and sieve analysis on representative soil samples collected from the field. The engineering report will include graphic logs of the test borings and a test boring location plan. We assume the site is accessible to truck mounted drilling equipment and that underground utilities will be cleared by Call Sunshine prior to our performing the on-site work.

In an effort to better evaluate the soil conditions within the stockpiled soil area, we will coordinate with City personnel to observe backhoe excavated test pits through the stockpile. This provides a much better understanding of fill materials and consistency. We understand the City will provide the backhoe.

### **FEE SCHEDULE**

The above-indicated scope of work will be performed for an estimated cost of \$6,880.00 based on the following rates and quantities:

|  |                |            |
|--|----------------|------------|
| Tech. site visit, boring layout, utility clearance | Lump Sum       | \$350.00   |
| Mobilization of equipment/crew                     | 1 @ \$1,200.00 | \$1,200.00 |
| SPT borings (truck mounted drill rig)              | Lump Sum       | \$2,800.00 |
| Casing   | Lump Sum       | \$480.00   |
| Soil classification/ Laboratory analysis           | Lump Sum       | \$200.00   |
| Project Engineer                                   | Lump Sum       | \$1,500.00 |
| Principal Engineer                                 | Lump Sum       | \$250.00   |
| Clerical/Admin. for report preparation             | Lump Sum       | \$100.00   |

We currently anticipate starting this work within approximately four business days of receiving written authorization to proceed. The on-site work should take two business days to complete. The geotechnical report should be available within approximately 10 - 12 business days after the on-site work is completed.

NE has been offering geotechnical engineering, environmental sciences, materials testing, and structural inspection services for 45+ years in South Florida during which time we have worked on many similar projects. Our commitment to practical, cost effective solutions supported by responsive client services distinguishes our firm and enables us to solve your most demanding technical challenges. Another value added component NE brings to your project is our staff of approximately 50 experienced professionals including geotechnical engineers, environmental specialists, and field personnel who are certified and have been trained to provide a wide range of consulting services, and our dedicated administrative staff.

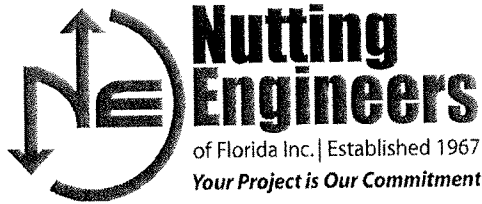
Our laboratory is checked annually by the Construction Materials Engineering Council (CMEC) and is certified to perform geotechnical engineering and materials testing services for the Florida Department of Transportation (FDOT). Note that we carry one million dollar professional liability and one million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

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

Respectfully submitted,  
**NUTTING ENGINEERS OF FLORIDA, INC.**

Scott Ersland  
Division Manager

Richard Wohlfarth, P.E.  
Principal/Director of Engineering



Geotechnical & Construction Materials  
Engineering, Testing, & Inspection  
Environmental Services

Offices throughout the state of Florida

www.nuttingengineers.com info@nuttingengineers.com

**NUTTING ENGINEERS OF FLORIDA, INC.**  
**PROFESSIONAL SERVICE FEE SCHEDULE- CITY OF MARATHON**  
**March 6, 2015**

|            |                     |           |                             |           |                                     |            |               |   |
|------------|---------------------|-----------|-----------------------------|-----------|-------------------------------------|------------|---------------|---|
| March 2015 | Hourly<br>BASE RATE | Plus<br>→ | OVERHEAD<br>RATE<br>160.34% | Plus<br>→ | FRINGE<br>BENEFIT<br>RATE<br>15.12% | Times<br>→ | PROFIT<br>10% | Project<br>Rate<br>Multiplier<br>3.03 = 3.0 |
| PERSONNEL  | 1.00                |           | 1.6034                      |           | .1512                               |            | 1.10          |   |

| DUTY CODE | STAFF POSITIONS   | HOURLY BASE RATE | LOADED RATE |
|-----------|---|------------------|-------------|
| 105       | Administrative/Clerical Assistant                             | \$13.00          | \$39.00     |
| 401       | Technician/Inspector – Level I                                | \$15.00          | \$45.00     |
| 401       | Technician/Inspector – Level II                               | \$18.00          | \$54.00     |
| 401       | Technician/Inspector – Level III                              | \$22.00          | \$66.00     |
| 101       | Engineer/Scientist/Geologist – Level I (E.I)                  | \$28.00          | \$84.00     |
| 101       | Engineer/Scientist/Geologist – Level II (E.I or P.E. or P.G.) | \$34.50          | \$103.50    |
| 101       | Engineer/Scientist/Geologist – Level III (P.E. or P.G.)       | \$40.00          | \$120.00    |
| 101       | Project Manager – Level I (E.I.)                              | \$31.50          | \$94.50     |
| 101       | Project Manager – Level II (E.I. or P.E.)                     | \$38.00          | \$114.00    |
| 101       | Project Manager – Level III (P.E.)                            | \$50.00          | 150.00      |
| 103       | CADD Operator   | \$23.00          | 69.00       |
| 103       | CADD Designer   | \$26.50          | 79.50       |

- The listed hourly costs of personnel are derived from multiplying base salaries by the combined overhead rate (fringe and general overhead) plus a profit margin of 10%.
- We have no direct expenses to report.

**EXHIBIT "A"**  
**PROJECT SPECIFIC AGREEMENT**

Project No. 2015-0003

**PROJECT SPECIFIC AGREEMENT**

**Between**

**THE CITY OF MARATHON, FLORIDA**

**And**

NUTTING ENGINEERS OF FLORIDA, INC.

**For**

PHASE ONE ENVIRONMENTAL SITE ASSESSMENT FOR 104<sup>TH</sup> ST PARCEL

Pursuant to the provisions contained in the “Continuing Services Agreement” between the City of Marathon, Florida (the “City”) and NUTTING ENGINEERS OF FLORIDA, INC., (the “Consultant”) dated FEBRUARY 15, 2013; this Project Specific Agreement authorizes the Consultant to provide the services as set forth below:

**I. Scope of Services**

The Consultant shall provide engineering services to the City for the Project as described in the “Project Description” attached as Exhibit “1.”

The “Scope of Services and Project Schedule” and tasks to be provided by the Consultant for this Project are those services and tasks as listed in Exhibit “2.”

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

**II. Deliverables**

As part of the Scope of Services and Project Schedule, the Consultant shall provide to the City the following Deliverables:

- Examination of materials on site;
- Conduct interviews and research related to historical land use of the site;
- Review of regional and site specific geological and hydrogeological data;
- Examine and report upon the presence of hazardous substances and/or petroleum products and associated wastes observed on site; and
- Provide Phase I Environmental Site Assessment (ESA) Report;

**III. Term/Time of Performance**

This Project Specific Agreement shall be effective on the date it is fully executed by all parties and shall continue in full force for one (1) year (s) or until completion of the Project, unless otherwise terminated pursuant to the Continuing Services Agreement or other applicable provisions of this Project Specific Agreement. The City Manager, in his sole discretion, may extend the term of this Project Specific Agreement through written notification to the Consultant. Such extension shall not exceed 180 days. No further extensions of this Project Specific Agreement shall be effective unless authorized by the City Council.

The Consultant's services under this Project Specific Agreement and the time frames applicable to this Project Specific Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the Consultant from the City. The Consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Consultant must receive written notice from the City prior to the beginning the performance of services.

Upon receipt of the Notification of Commencement, the Consultant shall commence services to the City on the Commencement Date, and shall continuously perform services to the City, without interruption, in accordance with the time frames set forth in the Project Schedule."

**IV. Amount, Basis and Method of Compensation**

x Lump Sum Compensation - City agrees to pay consultant compensation for performance of all services described in Exhibit "2" in the total amount of \$ 1,800.00 , plus reimbursable expenses not to exceed \$ 0 . Consultant will submit invoices for monthly progress payments in an amount equivalent to the percentage completion of the total Work.

OR

\_\_\_\_\_ City agrees to pay Consultant compensation for performance of all services described in Exhibit "2" at Consultant's hourly rates as set forth in Exhibit "3", up to a maximum amount not to exceed \$ \_\_\_\_\_, plus reimbursable expenses not to exceed \$ \_\_\_\_\_.

**V. Incorporation of Terms and Conditions of Continuing Service Agreement**

This Project Specific Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated FEBRUARY 15, 2013 between the City and Consultant as though fully set forth herein. In the event that any terms or conditions of this Project Specific Agreement conflict with the Continuing Services Agreement, the more restrictive provision shall prevail and apply.

Initials RAW  
Initials MAA  
Initials \_\_\_\_\_

**PAYMENT UNDER THIS PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 17 day of March, 2015

**CONSULTANT:**

**CITY:**

By: Richard Wodgett

By: Michael Huto

Its: VICE PRESIDENT

Its: CITY MANAGER

[Signature]  
Witness

**ATTEST:**

Diane Clavier  
Diane Clavier, City Clerk

[Signature]  
Witness

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

**EXHIBIT "1"**  
**PROJECT DESCRIPTION**

Nutting Engineers shall provide Environmental Site Assessment Report.  
Exhibit 2 provides the scope of services.

Initials     RW      
Initials     MM      
Initials



**EXHIBIT "2"**  
**SCOPE OF SERVICES AND PROJECT SCHEDULE**

See attached.

Initials *RWD*  
Initials *MHP*  
Initials \_\_\_\_\_



**NUTTING ENVIRONMENTAL  
OF FLORIDA, INC.**  
*Your Project Is Our Commitment*

- Environmental Property Assessments
- Contamination Assessments
- Remediation
- Monitoring Wells
- IAQ / Mold Evaluation

February 26, 2015

*Palm Beach County - Small Business Enterprise*  
*SFWMD - Small Business Enterprise*

City of Marathon  
9805 Overseas Highway  
Marathon, Monroe County, FL 33050  
Attn: Ms. Zully Hemeyer p. 305-481-6183 [hemeyerz@ci.marathon.fl.us](mailto:hemeyerz@ci.marathon.fl.us)

Re: Proposal for Phase I Environmental Property Assessment  
(ASTM Practice **E-1527-13**) of  
LaPalma of the Florida Keys (8 Parcels/~6 Acres)  
Vicinity of Overseas Highway & 105<sup>th</sup> Street  
Marathon, Monroe County 33050

Dear Ms. Hemeyer:

NUTTING ENVIRONMENTAL OF FLORIDA, INC. (NEF) is pleased to present this proposal for the performance of a Phase I Environmental Site Assessment at the above referenced property (Site), in accordance with your request.

NEF proposes to perform a Phase I Environmental Site Assessment, in limited accordance with components and limitations of ASTM Practice E-1527-13. Client hereby acknowledges that client imposed financial considerations and time constraints often preclude full compliance with ASTM Practice E-1527-13, and that NEF's scope of work is limited to the Scope of Work listed below. If client requires full compliance with any particular component of ASTM Practice E-1527-13, Client shall provide written notice to NEF prior to commencement of NEF's work and NEF's pricing and time of performance shall be subject to adjustment.

This evaluation is intended to assist a user in attempting to satisfy one of the requirements to qualify for the innocent landowner limitations on CERCLA liability. A primary purpose of this evaluation is to develop the basis for an opinion regarding the likelihood of "recognized environmental conditions" (REC), being present at the site. Client hereby acknowledges that "Data Gaps" may be created by the inability to obtain information required by this practice despite *good faith* efforts by NEF to gather such information. It is important the information requested from the property owner, operator and user be provided in its entirety to the best of their ability and in a timely manner in an effort to achieve "All Appropriate Inquiry" as defined in ASTM Practice E-1527-13. Additional services will be required beyond the current proposed project scope in assessing the likely presence of "controlled substances" if the report is to be submitted per the instructions of an EPA Brownfields Assessment Grant.

The "users" of the report also have certain obligations considered in Section 6 of ASTM Practice E-1527-05. It is strongly recommended that the project team including the user and user's environmental attorney should consult with the environmental professional (EP, in this case NEF) as appropriate comply with the obligations described in that section. These obligations include but are not limited to *Review Title and Judicial Records for Environmental Liens or Activity and Use Limitations (AULs)*, *communication of Specialized or Actual Knowledge or Experience of the User* to the EP. In a

transaction involving the purchase of a parcel of *commercial real estate* the user should try to identify *reasons for Significantly Lower Purchase Price which does not reasonably reflect fair market value*, communicating to the EP Commonly Known or Reasonably Ascertainable Information about the property that is material to recognized environmental conditions in connection with the property. If the client is not the purchaser, or if the user changes over the life of this report (six months from the report date), then the actual purchaser/user should be identified to the project team including environmental council so that "user obligations" under this practice may be complied with.

**Historical and Regulatory Agency Research:**

- Review of and comment upon a subcontracted environmental "radius report" for the Site. Additionally, regulatory agency records for the Site and selected adjoining properties may be reviewed at the county and local levels, as available at the time of our study.
- Review and comment upon information obtained describing the current and historical land use of the Site. This includes review of reasonable ascertainable Standard Historical Sources (as defined in the Section 8.3.4 of ASTM Practice E-1527-13), such as aerial photographs, fire insurance maps, property tax files, USGS Topographic Maps, Local Street Directories, Building Department Records, Zoning/Land Use Records and Other Historical Sources, as project time and document availability permit. Recorded Land Title Records (Chain of Title Records) are excluded from the Standard Historical Sources given these records are not reasonably ascertainable (due to cost) and NEF's past experience indicates that the source is "not likely to be sufficiently useful" for this specific project in accordance with Section 8.3.2.3 of ASTM Practice E-1527-13.
- Review of and comment upon regional and site specific geological and hydrogeological data.

**Site Inspection:**

- Examine and comment upon the presence of hazardous substances and/or petroleum products and associated wastes observed at the site and potential evidence of a release.
- Interview of individuals associated with the property as available, for information regarding current and historical site use.

**Non-Scope Items:**

The scope of work of Phase I ESA is limited to specific scope items of ASTM Practice E-1527-13 and no other activities or inquiries were included within the scope of work of this investigation, **including, but not limited to**, all non-scope items (e.g. asbestos, lead based paint, radon, indoor air quality/mold, etc.) identified in the ASTM Practice E-1527-13.

**Prepare Assessment Report:**

- A report of findings and recommendations will be prepared for the subject property. An opinion will be rendered as to the likelihood of "recognized environmental conditions" being present on the property with recommendations as deemed appropriate solely upon the basis of the information reviewed.

**Phase I ESA Cost and Timeframe**

The anticipated timeframe for completion of the Phase I Environmental Site Assessment Report for the subject property is three weeks and can be completed for an estimated cost of \$1,800.00.

|   |                     |
|---|---------------------|
| <b>Phase I Environmental Site Assessment Fee Amount (Electronic Copy only):</b> | <b>\$ 1,800.00*</b> |
|---|---------------------|

\* Fee Amount is based on the provision of an Electronic Copy of the Phase I ESA Report only, hard copies can be provided to the client at an additional fee of \$75.00 per copy.

The Scope of Work and Fee Amount listed above, the Project Information Checklist, and the General Terms and Conditions, represent the entire agreement between the client and NEF with respect to the project. It should be noted that NEF will not be able to initiate the project until the required information is received. If this satisfactorily meets your needs, please sign and return the same to NEF, along with the deposit specified in the General Terms and Conditions section as this will serve as our authorization to proceed.

We look forward to providing these professional services to your firm. Our experienced staff has evaluated thousands of properties for a variety of clients throughout Florida. We have assisted numerous lenders, developers and investors toward identifying areas of environmental concern and documenting the historic use of the properties. For further information regarding our company's qualifications and experience, please refer to our website at [www.nuttingengineers.com](http://www.nuttingengineers.com) or contact the undersigned at your convenience.

We appreciate this opportunity to work with you. By signing below, the parties hereto specifically acknowledge that NEF's separately published "General Terms and Conditions" are incorporated herein by reference.

Sincerely,  
**NUTTING ENVIRONMENTAL OF FLORIDA, INC.**

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2015

By: Lisa Romano  
 Title: Project Coordinator

Signature: \_\_\_\_\_  
 By (print): \_\_\_\_\_  
 Company: \_\_\_\_\_

NOTE: The party listed above will be considered our client and will be responsible for payment of services.

**PROJECT INFORMATION CHECKLIST**

To begin the Phase I Environmental Site Assessment process, the NEF project manager assigned to complete your report will require the following information:

- A site plan or sketch of survey depicting the boundaries of the property to be assessed.
- A legal description of the subject property.
- A phone number and contact information for all "users" of this report as defined in the ASTM practice.
- A phone number and contact information for the property owner.
- A phone number and contact information for access to the property.
- Any past environmental reports prepared for the property.
- Report certification information. Reports and invoices will be addressed to and for the exclusive use of the client as listed in the address block of this letter. If other parties (such as a financial institution) should be listed with the client name on the reports and are authorized to rely upon the reports, please provide the information below. Other parties may not use or rely upon NEF's reports without our expressed written authorization.

**Second Party**

**Third Party**

|                 |       |       |
|-----------------|-------|-------|
| <b>Company:</b> | _____ | _____ |
| <b>Name:</b>    | _____ | _____ |
| <b>Title:</b>   | _____ | _____ |
| <b>Address:</b> | _____ | _____ |
|                 | _____ | _____ |
| <b>Phone:</b>   | _____ | _____ |
| <b>Fax:</b>     | _____ | _____ |

Please return this information along with the signed contract and deposit (if stipulated in the terms section of this quotation below) to avoid delays in the completion of the Phase I Environmental Site Assessment.

#### General Terms and Conditions

For the purpose of this project, the addressee of this proposal will be known as the Client. The client is expected to furnish NEF with full written information as to the client's specific report requirements prior to executing this agreement. The Client is expected to provide NEF with existing environmental data/reports and other information related to the subject property, such as recent sketches of survey to assist us in report preparation. Specific information required by NEF in order to commence the Phase I Environmental Site Assessment process is detailed in the attached Project Information Checklist.

**Delivery** – An electronic copy of the final report will be available within approximately 3 weeks of receipt of written authorization to proceed and deposit unless other arrangements are agreed to in writing. Hard Copies of the Report can be provided to the Client at \$75.00 per copy. NEF will exercise appropriate measures to ensure project completion within the agreed upon time frame. However, NEF will not be held responsible for unavailability of necessary project data within the time frame agreed upon for the investigation. Project delivery may be delayed if the ENTIRE signed proposal and deposit are not received in a timely manner. The ENTIRE signed quotation should be returned along with the required project information listed on the Project Information Checklist above. Unsigned proposal valid for 60 days.

**Payment** – 50% retainer required with signed agreement. Balance due upon delivery of report. Directing NEF to proceed with the work shall constitute acceptance of the terms of NEF's proposal and these General Terms and Conditions. Interest at the rate of 18% per annum, or the highest rate allowable by law whichever is less, will be added to all amounts not paid within 30 days after date of invoice. All attorney fees and expenses associated with collection of past due invoices will be paid by Client.

**Insurance** – NEF maintains Workers' Compensation and Employer's Liability Insurance in conformance with state law. In addition, we maintain Comprehensive General Liability Insurance and Automobile Liability Insurance with bodily injury limits of \$1,000,000.00 and property damage limits of \$1,000,000.00. A certificate of insurance can be supplied evidencing such coverage which contains a clause providing that fifteen days written notice be given prior to cancellation.

**Report "Shelf Life"** – The user as identified this proposal contract may rely upon the report for a maximum period of six months from the report date. Approaching that time certain components of the original inquiry must be updated. If the user identity has changed in that time NEF shall be notified and provided with required "user" information detailed in the ASTM practice. NEF's work is for the exclusive use of client, and its properly disclosed user. In no event shall NEF have any duty or obligation to any third party.

**Right-of-Entry** - Unless otherwise agreed, Client will furnish right-of-entry on the property for NEF to make the planned borings, surveys, and/or explorations. NEF will take reasonable precautions to minimize damage to the property caused by its equipment and sampling procedures, but the cost of restoration or damage which may result from the planned operations is not included in the contracted amount. If Client desires to restore the property to its former condition, NEF will accomplish this and add the cost to its fee.

**Damage to Existing Man-made Objects** - It shall be the responsibility of the Owner or his duly authorized representative to disclose the presence and accurate location of all hidden or obscure man-made objects relative to field tests, sampling, or boring locations. When cautioned, advised or given data in writing that reveal the presence or potential presence of underground or over-ground obstructions, such as utilities, NEF will give special instructions to its field personnel. In addition, Client waives any claim against NEF arising from damage to existing man-made objects.

**Warranty and Limitation of Liability** - NEF shall perform services for Client in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of competent consultants practicing in the same or a similar locality as the project. In the event any portion of the services fails to comply with this warranty obligation and NEF is promptly notified in writing prior to one year after completion of such portion of the services, NEF will re-perform such portion of the services, or if re-performance is impracticable, NEF will refund the amount of compensation paid to NEF for such portion of the services. In addition, Client waives any claim against NEF arising from the failure of the user to comply with "user obligations" under ASTM Practice E-1527-13 or the consequences of "data gaps" arising from omitted information that was pursued in a good faith effort by NEF. This warranty is in lieu of all other warranties. No other warranty, expressed or implied, including warranties of merchantability and fitness for a particular purpose is made or intended by the proposal for consulting services, by furnishing an oral response of the findings made or by any representations made regarding the services included in this agreement. In no event shall NEF or any of its professional employees be liable for any special, indirect, incidental or consequential loss or damages, including but not limited to impact and delay claims. The remedies set forth herein are exclusive and the total liability of consultant whether in contract, tort (including negligence whether sole or concurrent), or otherwise arising out of, connected with or resulting from the services provided pursuant to this Agreement shall not exceed the total fees paid by Client or \$50,000.00, whichever is greater. At additional cost, Client may obtain a higher limit prior to commencement of services.

PURSUANT TO §558.0035, FLORIDA STATUTES, NEF'S INDIVIDUAL EMPLOYEES AND/OR AGENTS MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THEIR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT.

**Indemnification** – Client agrees to defend, indemnify and save harmless NEF from all claims, including negligence claims, suits, losses, personal injuries, death and property liability resulting from NEF's performance of the proposed work, whether such claims or damages are caused in part by NEF, and agrees to reimburse NEF for expenses in connection with any such claims or suits, including reasonable attorney's fees. Client's obligation to indemnify is limited to \$2 million per occurrence, which Client agrees bears a reasonable commercial relationship to the Work undertaken by NEF. Client further agrees that these general conditions are a part of the Work's specifications or bid documents, if any.

**Sampling or Testing Location** - Unless specifically stated to the contrary, the unit fees included in this proposal do not include costs associated with professional land surveying of the site or the accurate horizontal and vertical locations of tests. Field tests or boring locations described in our report or shown on our sketches are based on specific information furnished to us by others or estimates made in the field by our technicians. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in the report. It is understood that all drilling locations are accessible to conventional truck mounted drilling equipment unless otherwise specified by the client.

**Sample Handling and Retention** - Generally test samples or specimens are consumed and/or substantially altered during the conduct of tests and NEF, at its sole discretion, will dispose (subject to the following) of any remaining residue immediately upon completion of test unless required in writing by the Client to store or otherwise handle the samples. (a) NON HAZARDOUS SAMPLES: At Client's written request, NEF will maintain preservable test samples and specimens or the residue there from for thirty (30) days after submission of NEF's report to Client free of storage charges. After the initial 30 days and upon written request, NEF will retain test specimens or samples for a mutually acceptable storage charge and period of time. (b) HAZARDOUS OR POTENTIALLY HAZARDOUS SAMPLES: In the event that samples contain substances or constituents hazardous or detrimental to human health, safety or the environment as defined by federal, state or local statutes, regulations, or ordinances ("Hazardous Substances" and "Hazardous Constituents", respectively), NEF will, after completion of testing and at Client's expense: (i) return such samples to Client; (ii) using a manifest signed by Client as generator, will have such samples transported to a location selected by Client for final disposal. Client agrees to pay all costs associated with the storage, transport, and disposal of such samples. Client recognizes and agrees that NEF is acting as a bailee and at no time does NEF assume title of said waste.

**Discovery of Unanticipated Hazardous Materials** - Hazardous materials or certain types of hazardous materials may exist at a site where there is no reason to believe they could or should be present. NEF and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. NEF and Client also agree that the discovery of unanticipated hazardous materials may make it necessary for NEF to take immediate measures to protect health and safety. NEF agrees to notify Client as soon as practicable should unanticipated hazardous materials or suspected hazardous materials be encountered. Client encourages NEF to take any and all measures that, in NEF's professional opinion, are justified to preserve and protect the health and safety of NEF's personnel and the public. Client agrees to compensate NEF for the additional cost of working to protect employees' and the public's health and safety. In addition, Client waives any claim against NEF arising from NEF's discovery of unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate NEF for any time spent and expenses incurred by NEF in defense of any such claim, with such compensation to be based upon NEF's prevailing fee schedule and expense reimbursement policy relative to recovery of direct project costs.

**Legal Jurisdiction** - The parties agree that any actions brought to enforce any provision of this Agreement shall only be brought in a court of competent jurisdiction located in **Palm Beach County, Florida**. Any and all causes of action arising out of NEF's performance of the Work, including but not limited to claims for indemnity, contribution and equitable subrogation, shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than the date of NEF's last invoice for the Work performed hereunder.

**Force Majeure** - NEF shall not be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, acts of God, act or omission of subcontractors, carriers, client or other similar causes beyond its control.

**Documents** - NEF shall be entitled to rely upon the accuracy and completeness of all surveys, reports and information furnished by the client. If conditions different from those described in our report are found at the site, NEF should be notified in writing immediately upon discovery. NEF reserves the right to revise conclusions and recommendations presented in the final report should additional information regarding the project become available. All permits will be obtained by others unless otherwise specified in this proposal or in writing to NEF. NEF will endeavor to identify recognized environmental conditions (REC), to the best of our ability and limitations at the time of the study, in limited accordance with aspects of ASTM Practice E-1527-13 and the current local standard of care for such studies. The identification of RECs will be made solely upon the information developed and viewed by NEF in this study and specific State of Florida environmental regulations applicable and known at the time of this study. NEF has no liability for consequences of information not provided or unavailable or otherwise not reviewed or known from the normal sources customarily examined by NEF in such investigations within the time frame allowed for this investigation under this agreement.

Filename: LaPalma of the Florida Keys Overseas Hwy Marathon P1q 2-2015



**Scott P. Russell, CFA**  
**Property Appraiser**  
**Monroe County, Florida**

Key West (305) 292-3420  
 Marathon (305) 289-2550  
 Plantation Key (305) 852-7130

## Search Results

Website tested on IE8,  
 IE9, & Firefox.  
 Requires Adobe Flash  
 10.3 or higher

[Search Again](#)

| Alternate Key           | Parcel ID       | Owner                             | Physical Location            |
|-------------------------|-----------------|-----------------------------------|------------------------------|
| <a href="#">9088487</a> | 00104441-000100 | CITY OF MARATHON                  | VACANT LAND MARATHON         |
| <a href="#">9088488</a> | 00104441-000200 | THE ROYAL COMPANY SD INC          | 575 105TH STW MARATHON       |
| <a href="#">9088489</a> | 00104441-000300 | GUERRA ROGER                      | 886 W 105TH STOCEAN MARATHON |
| <a href="#">9088490</a> | 00104441-000400 | JLW LIVING TRUST 4/24/2014        | 888 W 105TH STOCEAN MARATHON |
| <a href="#">9088491</a> | 00104441-000500 | JLW LIVING TRUST 4/24/2014        | 910 W 105TH STOCEAN MARATHON |
| <a href="#">9088492</a> | 00104441-000600 | JLW LIVING TRUST 4/24/2014        | 950 W 105TH ST MARATHON      |
| <a href="#">9088493</a> | 00104441-000700 | USIAK WAYNE AND SHANNAN           | VACANT LAND MARATHON         |
| <a href="#">9088494</a> | 00104441-000800 | GREENWOOD HOWARD W AND NANCY<br>E | 10355 OVERSEAS HWY MARATHON  |

This page has been visited 554,004 times.

Monroe County Monroe County Property Appraiser  
 Scott P. Russell, CFA  
 P.O. Box 1176 Key West, FL 33041-1176

# LAPALMA OF THE FLORIDA KEYS

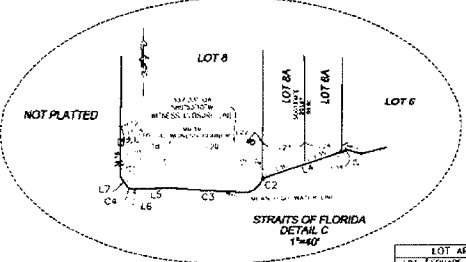
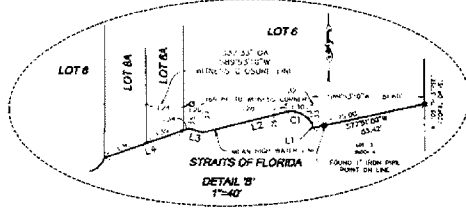
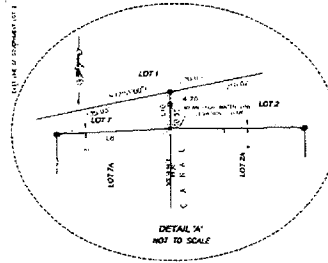
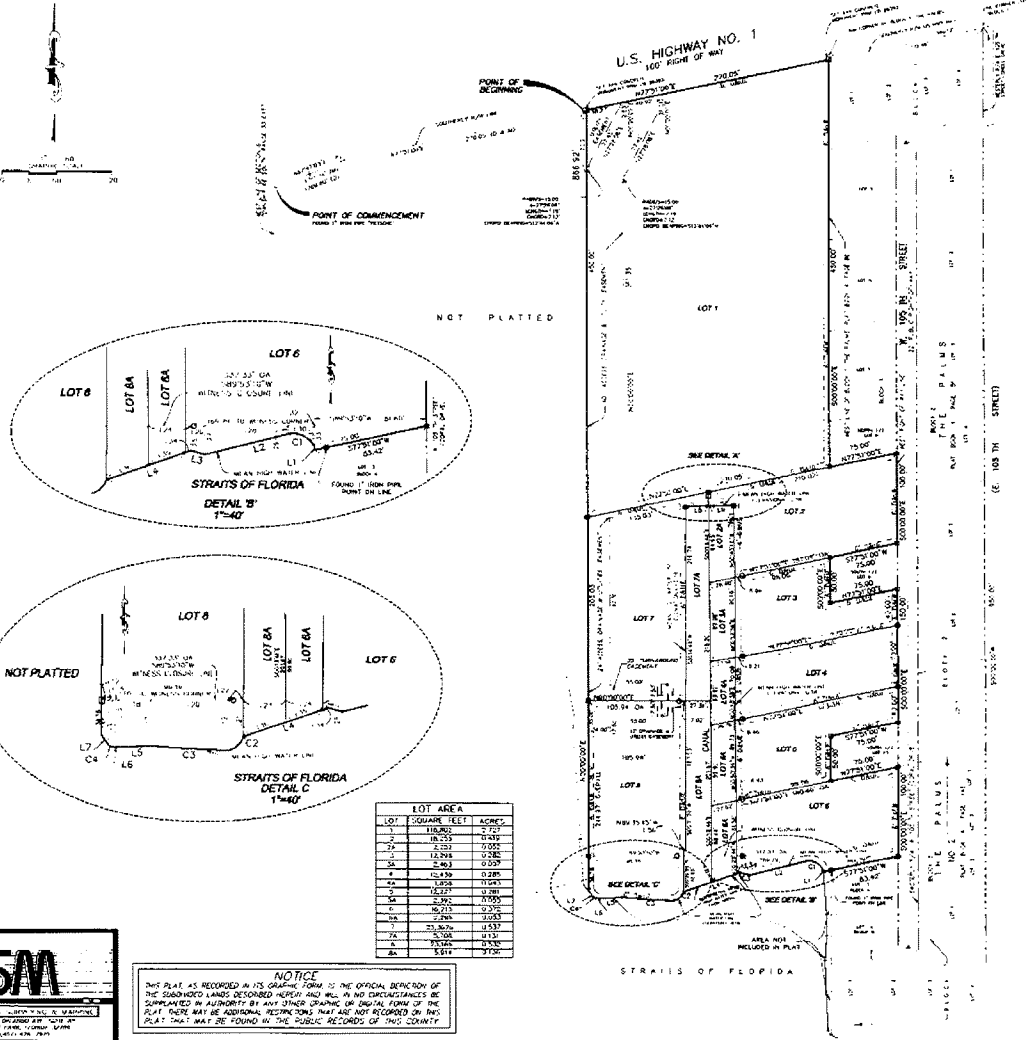
A REPLAT OF A PORTION OF LOTS 8 AND 9, ALL OF LOT 10 AND A PORTION OF LOT 11, BLOCK 1, THE PALMS (PLAT BOOK 4, PAGE 86); ALL OF LOTS 1 AND 2, BLOCK 6; AND A PORTION OF GOVERNMENT LOT 2 SECTION 6, TOWNSHIP 66 SOUTH, RANGE 33 EAST KEY VACA, MONROE COUNTY, FLORIDA.

AMERICAN SURVEYING & MAPPING, INC.  
1030 NORTH GARDNER AVENUE, SUITE 8  
WEST PALM BEACH, FLORIDA 33411  
(407) 832-7979  
DAVID W. GARDNER, PLS. #2012

PLAT  
BOOK

PAGE

SHEET 2 OF 2



| LOT | SQUARE FEET | ACRES |
|-----|-------------|-------|
| 1   | 116,800     | 2.65  |
| 2   | 18,255      | 0.42  |
| 3   | 2,253       | 0.05  |
| 4   | 12,294      | 0.28  |
| 5   | 2,463       | 0.06  |
| 6   | 124,000     | 2.85  |
| 7   | 1,928       | 0.04  |
| 8   | 2,392       | 0.05  |
| 9   | 15,227      | 0.35  |
| 10  | 10,273      | 0.23  |
| 11  | 23,306      | 0.53  |
| 12  | 15,200      | 0.35  |
| 13  | 13,144      | 0.30  |
| 14  | 3,611       | 0.08  |

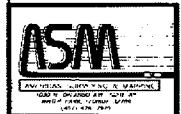
| CURVE | LENGTH | CHORD | CENTRAL ANGLE | CHORD BEARING | CHORD |
|-------|--------|-------|---------------|---------------|-------|
| C1    | 13.87  | 16.57 | 82.1282       | N62.4029°E    | 21.05 |
| C2    | 12.89  | 15.21 | 88.2121       | N78.2121°E    | 19.86 |
| C3    | 56.64  | 68.81 | 43.244        | N66.1555°E    | 56.81 |
| C4    | 1.02   | 1.21  | 95.2425       | N81.1430°E    | 1.22  |

| LINE | LENGTH | BEARING    |
|------|--------|------------|
| L1   | 1.12   | N72.7187°E |
| L2   | 12.67  | N72.7187°E |
| L3   | 10.74  | N74.3924°E |
| L4   | 17.92  | N70.9272°E |
| L5   | 22.57  | N70.9272°E |
| L6   | 8.22   | N69.7171°E |
| L7   | 6.22   | N69.7171°E |
| L8   | 22.29  | S60.4141°E |
| L9   | 10.70  | S60.4141°E |
| L10  | 10.20  | S60.4141°E |
| L11  | 15.20  | S60.4141°E |
| L12  | 4.70   | S60.4141°E |
| L13  | 17.12  | S60.4141°E |
| L14  | 1.07   | S60.4141°E |
| L15  | 4.64   | S60.4141°E |
| L16  | 6.17   | S60.4141°E |
| L17  | 15.17  | S60.4141°E |

| LINE | LENGTH | BEARING    |
|------|--------|------------|
| L18  | 49.77  | S60.4141°E |
| L19  | 26.24  | S60.4141°E |
| L20  | 26.77  | S60.4141°E |
| L21  | 10.30  | S60.4141°E |
| L22  | 40.60  | S60.4141°E |
| L23  | 18.31  | S60.4141°E |
| L24  | 10.29  | S60.4141°E |
| L25  | 10.29  | S60.4141°E |
| L26  | 11.37  | S60.4141°E |
| L27  | 1.81   | S60.4141°E |
| L28  | 20.82  | S60.4141°E |
| L29  | 12.22  | S60.4141°E |

- LEGEND:**
- BENCHMARK PERMANENT REFERENCE MONUMENT 1/2" IRON ROD AND NETA CAP (60 203) SET IN CONCRETE. VERTICAL DATUM IS ACCORDANCE WITH GEODETIC 1770-551 FLORIDA STATEMENT.
  - SET 1/2" IRON ROD (60 163)
  - ⊙ SET 1/2" IRON ROD (60 163) WITH CORNER (60 163) NOTED.
  - ⊕ FOUND PER STATIONED (60 163) IN BLOCK (60 163) (60 163)
  - PRM PERMANENT REFERENCE MONUMENT
  - INTV INTERVAL
  - P/W RIGHT OF WAY
  - O/R OFFICIAL RECORD
  - DRAL IMPROVED AND STREET ELEVATION
  - CO SURVEY CONTROL
  - DI DRAIN
  - MF MARSH
  - RA RIGHT OF ABUTMENT

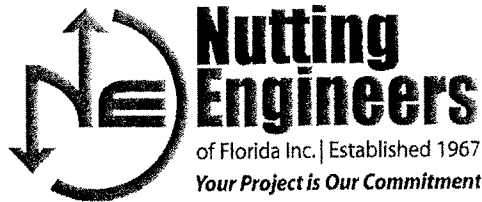
**NOTES**  
1. LOTS 10 AND 11 ALONG STRAITS OF FLORIDA NOT SET OUT IN THIS PLAT. SEE DETAIL 'C' FOR BEARINGS AND DISTANCES.



**NOTICE**  
THIS PLAT, AS RECORDED IN ITS ORIGINAL FORM IS THE OFFICIAL DECISION OF THE SURVEYOR. THE LANDS DESCRIBED HEREIN AND ALL IN ANY CIRCUMSTANCES BE SUPPLEMENTED IN AUTHORITY BY ANY OTHER CHAIN OR DIGITAL FORM OF THE PLAT. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT. THEY MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.







**NUTTING ENGINEERS OF FLORIDA, INC.**  
**PROFESSIONAL SERVICE FEE SCHEDULE- CITY OF MARATHON**  
**March 6, 2015**

|            |                     |           |                             |           |                                     |            |                   |                               |
|------------|---------------------|-----------|-----------------------------|-----------|-------------------------------------|------------|-------------------|-------------------------------|
| March 2015 | Hourly<br>BASE RATE | Plus<br>→ | OVERHEAD<br>RATE<br>160.34% | Plus<br>→ | FRINGE<br>BENEFIT<br>RATE<br>15.12% | Times<br>→ | PROFIT<br><br>10% | Project<br>Rate<br>Multiplier |
| PERSONNEL  | 1.00                |           | 1.6034                      |           | .1512                               |            | 1.10              | 3.03 = 3.0                    |

| DUTY CODE | STAFF POSITIONS   | HOURLY BASE RATE | LOADED RATE |
|-----------|---|------------------|-------------|
| 105       | Administrative/Clerical Assistant                             | \$13.00          | \$39.00     |
| 401       | Technician/Inspector – Level I                                | \$15.00          | \$45.00     |
| 401       | Technician/Inspector – Level II                               | \$18.00          | \$54.00     |
| 401       | Technician/Inspector – Level III                              | \$22.00          | \$66.00     |
| 101       | Engineer/Scientist/Geologist – Level I (E.I)                  | \$28.00          | \$84.00     |
| 101       | Engineer/Scientist/Geologist – Level II (E.I or P.E. or P.G.) | \$34.50          | \$103.50    |
| 101       | Engineer/Scientist/Geologist – Level III (P.E. or P.G.)       | \$40.00          | \$120.00    |
| 101       | Project Manager – Level I (E.I.)                              | \$31.50          | \$94.50     |
| 101       | Project Manager – Level II (E.I. or P.E.)                     | \$38.00          | \$114.00    |
| 101       | Project Manager – Level III (P.E.)                            | \$50.00          | 150.00      |
| 103       | CADD Operator   | \$23.00          | 69.00       |
| 103       | CADD Designer   | \$26.50          | 79.50       |

- The listed hourly costs of personnel are derived from multiplying base salaries by the combined overhead rate (fringe and general overhead) plus a profit margin of 10%.
- We have no direct expenses to report.



CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 11 day of Feb, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and Project Care whose address is 1948 E Sunrise Blvd, Suite 104 Ft. Lauderdale FL 33304 954-767-8886 ("Consultant").

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials RL  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
|     |    |           |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
|     |    |           |               | Construction Cost Estimating            |
|     |    |           |               | Construction Inspections                |
|     |    |           |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
|     |    |           |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

Initials   *JK*    
 Initials             
 Initials

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.


**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials    *JE*     
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.


Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   *RP*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials       
Initials       
Initials

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.


**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability  
\$100,000 — each accident  
\$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability  
\$1,000,000 — bodily injury each occurrence  
\$1,000,000— bodily injury aggregate  
\$1,000,000— property damage of each occurrence  
\$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.


It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials       
Initials       
Initials

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.


In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**


All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.


For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant:

Project Caive  
1948 E. Sunrise Blvd Suite 1  
Ft. Land. Fl 33304  
954-767-9886

32. **Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials       
Initials       
Initials

IN WITNESS WHEREOF, the parties have executed this instrument on this 11<sup>th</sup> day of February, 2013

CONSULTANT:

By: [Signature]  
Its: President

CITY:

By: [Signature]  
Its: City Manager

ATTEST:

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials [Signature]  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and \_\_\_\_\_ whose address is \_\_\_\_\_, ("Consultant").

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

---

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

1. Term of Agreement.

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

2. The Work.

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
|     |    |           |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
|     |    |           |               | Construction Cost Estimating            |
| X   |    | X         |               | Construction Inspections                |
|     |    |           |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
| X   |    | X         |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
| X   |    | X         |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
|     |    |           |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
| X   |    | X         |               | Water Tank Inspection/Corrosion Control |

  
 Initials \_\_\_\_\_  
 Initials \_\_\_\_\_  
 Initials \_\_\_\_\_

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

3. The Agreement Sum.

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

4. Payment.

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

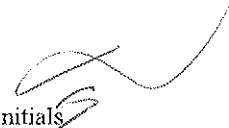
Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

5. Staffing.

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**


All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 --- each accident
  - \$100,000 --- each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 --- bodily injury each occurrence
  - \$1,000,000--- bodily injury aggregate
  - \$1,000,000--- property damage of each occurrence
  - \$1,000,000--- property damage aggregate
- D. Products --- Completed Operations \$1,000,000--- each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos--- owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

15. **Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

16. **Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

17. **Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

\_\_\_\_\_  
Initials  
\_\_\_\_\_  
Initials  
\_\_\_\_\_  
Initials

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no affect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

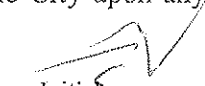
**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Juan Villegas, PE  
Professional Service Industries, Inc.  
7950 NW 64 Street  
Miami, FL 33166

32. **Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 17th day of SEPTEMBER, 2012. 2013

CONSULTANT:

By: [Signature]  
Its: Senior Vice President  
Professional Service Industries, Inc.

CITY:

By: [Signature]  
Its: Roger T. Wenzel, City Manager

ATTEST:

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials [Signature]  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**EXHIBIT 3  
CONSULTANTS HOURLY RATES**

Contract Name: Continuing Engineering Services for the City of Marathon  
 Owner Name: City of Marathon

| TITLE                       | MAXIMUM RAW HOURLY SALARY (\$/HR)<br><br>(However, County will pay only actual hourly rate.) | OVER-HEAD AT | FRINGE AT | PROFIT AT | MAXIMUM RATE |
|-----------------------------|--|--------------|-----------|-----------|--------------|
|                             |  | 86.45%       | 42.91%    | 9%        |              |
|                             |  | +            | +         | +         | =            |
|                             |  | (\$/HR)      | (\$/HR)   | (\$/HR)   | (\$/HR)      |
| Chief Engineer              | \$75.00  | \$64.84      | \$32.18   | \$15.48   | \$187.50     |
| Sr. Geotechnical Engineer   | \$62.00  | \$53.60      | \$26.60   | \$12.80   | \$155.00     |
| Laboratory Manager          | \$35.00  | \$30.26      | \$15.02   | \$7.22    | \$87.50      |
| IT Support Professional     | \$40.00  | \$34.58      | \$17.16   | \$8.26    | \$100.00     |
| CADD Operator               | \$25.00  | \$21.61      | \$10.73   | \$5.16    | \$62.50      |
| Administrative Assistant    | \$18.00  | \$15.56      | \$7.72    | \$3.72    | \$45.00      |
| Project Manager             | \$54.00  | \$46.68      | \$23.17   | \$11.15   | \$135.00     |
| Deputy Project Manager      | \$45.10  | \$38.99      | \$19.35   | \$9.31    | \$112.75     |
| Assistant Project Manager   | \$42.00  | \$36.31      | \$18.02   | \$8.67    | \$105.00     |
| Document Control Specialist | \$23.00  | \$19.88      | \$9.87    | \$4.75    | \$57.50      |
| Level II Technician         | \$33.00  | \$28.53      | \$14.16   | \$6.81    | \$82.50      |
| Level I Technician          | \$28.00  | \$24.21      | \$12.01   | \$5.78    | \$70.00      |
| Technician                  | \$23.00  | \$19.88      | \$9.87    | \$4.75    | \$57.50      |

OVERHEAD (\$/HR) = RAW SALARY x OVERHEAD %  
 FRINGE (\$/HR) = RAW SALARY x FRINGE %  
 PROFIT (\$/HR) = (RAW SALARY + OVERHEAD + FRINGE) x PROFIT %  
 ABOVE COMPUTATIONS RESULT IN AN OVERALL MULTIPLIER OF 2.50

Field Office - Overtime Rates

| TITLE                       | MAXIMUM RAW HOURLY SALARY (\$/HR)<br><br>(However, County will pay only actual hourly rate.) | OVER-HEAD AT | FRINGE AT | PROFIT AT | MAXIMUM RATE* |
|-----------------------------|--|--------------|-----------|-----------|---------------|
|                             |  | 28.14%       | 34.24%    | 9%        |               |
|                             |  | +            | +         | +         | =             |
|                             |  | (\$/HR)      | (\$/HR)   | (\$/HR)   | (\$/HR)       |
| CADD Operator               | \$37.50  | \$10.55      | \$12.84   | \$5.48    | \$66.38       |
| Administrative Assistant    | \$27.00  | \$7.60       | \$9.24    | \$3.95    | \$47.79       |
| Assistant Project Manager   | \$63.00  | \$17.73      | \$21.57   | \$9.21    | \$111.51      |
| Document Control Specialist | \$34.50  | \$9.71       | \$11.81   | \$5.04    | \$61.06       |
| Level II Technician         | \$49.50  | \$13.93      | \$16.95   | \$7.23    | \$87.61       |
| Level I Technician          | \$42.00  | \$11.82      | \$14.38   | \$6.14    | \$74.34       |
| Technician                  | \$34.50  | \$9.71       | \$11.81   | \$5.04    | \$61.06       |

OVERHEAD (\$/HR) = RAW SALARY x OVERHEAD %  
 FRINGE (\$/HR) = RAW SALARY x FRINGE %  
 PROFIT (\$/HR) = (RAW SALARY + OVERHEAD + FRINGE) x PROFIT %  
 ABOVE COMPUTATIONS RESULT IN AN OVERALL MULTIPLIER OF 1.77





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/16/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|  |  |                        |
|--|--|------------------------|
| <b>PRODUCER</b><br>Marsh USA Inc.<br>1717 Arch Street<br>Philadelphia, PA 19103<br>Attn: Philadelphia.Certs@Marsh.com Fax 212-948-0360<br><br>J19623-PSI-GAWUP-13-14 | <b>CONTACT NAME:</b><br>PHONE<br>(A/C, No, Ext):<br>E-MAIL<br>ADDRESS: | <b>FAX (A/C, No):</b>  |
|  | <b>INSURER(S) AFFORDING COVERAGE</b>                                   |                        |
| <b>INSURED</b><br>PROFESSIONAL SERVICE INDUSTRIES, INC.<br>7950 N.W. 64TH STREET<br>MIAMI, FL 33166  | <b>INSURER A :</b> Travelers Property Casualty Co. Of America          | <b>NAIC #</b><br>25674 |
|  | <b>INSURER B :</b> N/A   | <b>NAIC #</b><br>N/A   |
|  | <b>INSURER C :</b> Lexington Insurance Company                         | <b>NAIC #</b><br>19437 |
|  | <b>INSURER D :</b> Charter Oak Fire Insurance Company                  | <b>NAIC #</b><br>25615 |
|  | <b>INSURER E :</b><br><b>INSURER F :</b>                               |                        |

**COVERAGES**                      **CERTIFICATE NUMBER:** CLF-003985492-01                      **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE   | ADDL INSR                                | SUBR WVD | POLICY NUMBER                    | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |              |
|----------|---|--|----------|----------------------------------|-------------------------|-------------------------|--|--------------|
| A        | GENERAL LIABILITY   |  |          | TC2JGLSA8042X73ATIL13            | 03/01/2013              | 03/01/2014              | EACH OCCURRENCE  | \$ 1,000,000 |
|          | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY  |  |          |                                  |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence)                | \$ 1,000,000 |
|          | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  |  |          |                                  |                         |                         | MED EXP (Any one person)                                 | \$ 5,000     |
|          | <input checked="" type="checkbox"/> PROD / COMPLETED OPS.   |  |          |                                  |                         |                         | PERSONAL & ADV INJURY                                    | \$ 1,000,000 |
|          | <input checked="" type="checkbox"/> CONTRACTUAL   |  |          |                                  |                         |                         | GENERAL AGGREGATE  | \$ 2,000,000 |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:  |  |          |                                  |                         |                         | PRODUCTS - COMP/OP AGG                                   | \$ 2,000,000 |
|          | <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC                             |  |          |                                  |                         |                         |  | \$           |
| A        | AUTOMOBILE LIABILITY  |  |          | TC2JCAP8042X741TIL13             | 03/01/2013              | 03/01/2014              | COMBINED SINGLE LIMIT (Ea accident)                      | \$ 2,000,000 |
|          | <input checked="" type="checkbox"/> ANY AUTO  |  |          |                                  |                         |                         | BODILY INJURY (Per person)                               | \$           |
|          | <input type="checkbox"/> ALL OWNED AUTOS  | <input type="checkbox"/> SCHEDULED AUTOS |          |                                  |                         |                         | BODILY INJURY (Per accident)                             | \$           |
|          | <input type="checkbox"/> HIRED AUTOS  | <input type="checkbox"/> NON-OWNED AUTOS |          |                                  |                         |                         | PROPERTY DAMAGE (Per accident)                           | \$           |
|          |   |  |          |                                  |                         |                         | \$   |              |
|          | UMBRELLA LIAB   |  |          |                                  |                         |                         | EACH OCCURRENCE  | \$           |
|          | EXCESS LIAB   |  |          |                                  |                         |                         | AGGREGATE  | \$           |
|          | DED   |  |          |                                  |                         |                         |  | \$           |
|          | RETENTIONS  |  |          |                                  |                         |                         |  | \$           |
| D        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY   |  |          | TC20UB824K294A13 (AOS)           | 03/01/2013              | 03/01/2014              | <input checked="" type="checkbox"/> WC STATU-TORY LIMITS |              |
| D        | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N                                      | N/A      | TROUB8042X76513 (AZ, MA, OR, WI) | 03/01/2013              | 03/01/2014              | E.L. EACH ACCIDENT                                       | \$ 1,000,000 |
|          |   |  |          |                                  |                         |                         | E.L. DISEASE - EA EMPLOYEE                               | \$ 1,000,000 |
|          |   |  |          |                                  |                         |                         | E.L. DISEASE - POLICY LIMIT                              | \$ 1,000,000 |
| C        | PROFESSIONAL LIABILITY  |  |          | 020720814                        | 03/01/2013              | 03/01/2014              | EACH CLAIM   | 1,000,000    |
|          |   |  |          | SIR: 1,000,000                   |                         |                         | AGGREGATE  | 1,000,000    |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 CITY OF MARATHON, FLORIDA IS INCLUDED AS ADDITIONAL INSURED WHERE REQUIRED BY WRITTEN CONTRACT, BUT ONLY TO THE EXTENT OF THEIR LIABILITY RESULTING FROM THE NEGLIGENCE OF THE INSURED AND WITH RESPECT TO SERVICES PROVIDED BY THE INSURED FOR THE ADDITIONAL INSURED, EXCEPT FOR WORKERS COMPENSATION AND PROFESSIONAL LIABILITY. THE ABOVE GENERAL LIABILITY POLICY IS PRIMARY AND NON-CONTRIBUTORY WHERE REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION IS APPLICABLE UNDER THE ABOVE POLICIES WHERE REQUIRED BY WRITTEN CONTRACT.

|   |   |
|---|---|
| <b>CERTIFICATE HOLDER</b><br><br>CITY OF MARATHON, FLORIDA<br>9805 OVERSEAS HIGHWAY<br>MARATHON, FL 33050 | <b>CANCELLATION</b><br><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|   | AUTHORIZED REPRESENTATIVE<br>of Marsh USA Inc.<br><br>Manashi Mukherjee <i>Manashi Mukherjee</i>  |

© 1988-2010 ACORD CORPORATION. All rights reserved.

CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 8<sup>th</sup> day of March, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and REYNOLDS ENGINEERING SERVICES whose address is 22330 LAFFITE DRIVE ("Consultant").  
INC. CUDJOS KEY, FL. 33042

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials   *J*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     | ✓  |           |               | Archeology                              |
| ✓   |    |           | ✓             | Architecture                            |
| ✓   |    |           | ✓             | Asbestos Survey and Removal             |
| ✓   |    | ✓         |               | Building Official Services              |
| ✓   |    | ✓         |               | Civil Engineering                       |
| ✓   |    | ✓         | ✓             | Coastal Engineering                     |
|     | ✓  |           |               | Communications Engineering              |
| ✓   |    | ✓         | ✓             | Computer Aided Drafting and Design      |
| ✓   |    | ✓         | ✓             | Construction Cost Estimating            |
| ✓   |    | ✓         |               | Construction Inspections                |
| ✓   |    | ✓         | ✓             | Construction Project Management         |
|     | ✓  |           |               | Ecology                                 |
| ✓   |    |           | ✓             | Electrical Engineering                  |
|     | ✓  |           |               | Energy Management                       |
| ✓   |    | ✓         | ✓             | Environmental Engineering               |
| ✓   |    |           | ✓             | Geographic Information Systems          |
| ✓   |    |           | ✓             | Geotechnical Engineering                |
| ✓   |    |           | ✓             | Hazardous Material Tanks                |
| ✓   |    | ✓         | ✓             | Hydraulic Engineering                   |
| ✓   |    | ✓         | ✓             | Land Development                        |
| ✓   |    |           | ✓             | Land Surveying                          |
| ✓   |    |           | ✓             | Landscape Architecture                  |
| ✓   |    |           | ✓             | Mechanical Engineering                  |
|     | ✓  |           |               | Planning                                |
| ✓   |    | ✓         | ✓             | Specification Writing                   |
| ✓   |    | ✓         | ✓             | Structural Engineering                  |
| ✓   |    |           | ✓             | Surveying                               |
| ✓   |    |           | ✓             | Traffic Engineering                     |
| ✓   |    | ✓         | ✓             | Utilities                               |
| ✓   |    | ✓         |               | Water Resources/Stormwater              |
| ✓   |    | ✓         | ✓             | Water and Wastewater Services           |
| ✓   |    |           | ✓             | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials     *JK*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials   *E*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   *JD*    
Initials             
Initials

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials   *J*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   *R*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials   *R*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## 21. Termination.

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   *J*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials             
Initials             
Initials

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials   *R*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**


If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City: Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant:

JAMES C. REYNOLDS, PE  
22330 LAFITTE DRIVE  
CUYTOE KEY, FL. 33042

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials   *J*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 8th day of March, 2012.

CONSULTANT:

CITY:

By: JAMES C. REYNOLDS, P.E.

By: [Signature]

Its: PRESIDENT

Its: CITY MANAGER

REYNOLDS ENGINEERING SERVICES, INC.

ATTEST:

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials [Signature]  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 21 day of Feb, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and Solaria Design & Consulting, Co. whose address is 3000 Overseas Hwy ("Consultant").  
Marathon, FL 33050

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:


**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     | X  |           |               | Archeology                              |
| X   |    | X         |               | Architecture                            |
| X   |    |           | X             | Asbestos Survey and Removal             |
| X   |    | X         |               | Building Official Services              |
| X   |    | X         |               | Civil Engineering                       |
| X   |    |           | X             | Coastal Engineering                     |
| X   |    | X         |               | Communications Engineering              |
| X   |    | X         |               | Computer Aided Drafting and Design      |
| X   |    | X         |               | Construction Cost Estimating            |
| X   |    | X         |               | Construction Inspections                |
| X   |    | X         |               | Construction Project Management         |
|     | X  |           |               | Ecology                                 |
| X   |    | X         |               | Electrical Engineering                  |
| X   |    | X         |               | Energy Management                       |
| X   |    | X         | X             | Environmental Engineering               |
| X   |    | X         |               | Geographic Information Systems          |
| X   |    |           | X             | Geotechnical Engineering                |
|     | X  |           |               | Hazardous Material Tanks                |
| X   |    | X         | X             | Hydraulic Engineering                   |
| X   |    | X         |               | Land Development                        |
| X   |    |           | X             | Land Surveying                          |
| X   |    |           | X             | Landscape Architecture                  |
| X   |    | X         |               | Mechanical Engineering                  |
| X   |    | X         |               | Planning                                |
| X   |    | X         | X             | Specification Writing                   |
| X   |    | X         |               | Structural Engineering                  |
| X   |    |           | X             | Surveying                               |
| X   |    |           | X             | Traffic Engineering                     |
| X   |    | X         |               | Utilities                               |
| X   |    | X         |               | Water Resources/Stormwater              |
| X   |    | X         |               | Water and Wastewater Services           |
|     | X  |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.


**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

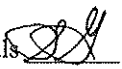
**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

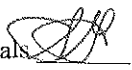
**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials             
Initials             
Initials

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.


**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.


**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

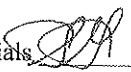
Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ TBD insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.


It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.


**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.


In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

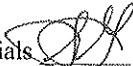
If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**


All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties. All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.


**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

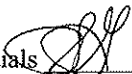
All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Steven Grasley, Pres.  
Solaria Design & Consulting, Co  
3000 Overseas Hwy  
Marathon, FL 33050

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.


The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

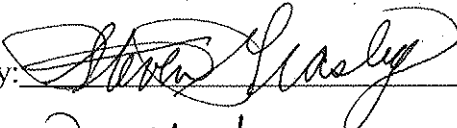
Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 21 day of February, ~~2012~~ 2013

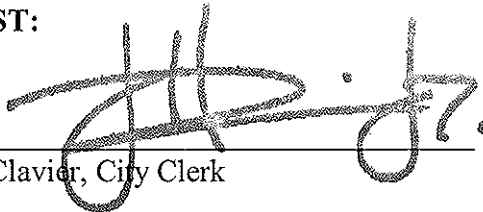
**CONSULTANT:**

By:   
Its: President


**CITY:**

By:   
Its: City Manager


**ATTEST:**

  
Diane Clavier, City Clerk

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

  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_







# CERTIFICATE OF LIABILITY INSURANCE

OP ID: IM

DATE (MM/DD/YYYY)

02/04/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|   |  |   |  |  |  |                |  |
|---|--|---|--|--|--|----------------|--|
| <b>PRODUCER</b><br>Morris & Reynolds Inc.<br>14821 South Dixie Highway<br>Miami, FL 33176<br>Robert D. Reynolds       |  | Phone: 305-238-1000<br>Fax: 305-255-9643          |  | <b>CONTACT NAME:</b><br>PHONE (A/C, No, Ext):<br>E-MAIL ADDRESS:<br>PRODUCER CUSTOMER ID #: <b>SOLARIA</b> |  | FAX (A/C, No): |  |
| <b>INSURED</b><br>Solaria Design & Consulting Co<br>Mr. Steven Grasley<br>3000 Overseas Highway<br>Marathon, FL 33050 |  | <b>INSURER(S) AFFORDING COVERAGE</b>              |  |  |  | <b>NAIC #</b>  |  |
|   |  | <b>INSURER A : Hartford Casualty Insurance</b>    |  |  |  | <b>29424</b>   |  |
|   |  | <b>INSURER B : Sentinel Insurance Company Ltd</b> |  |  |  | <b>11000</b>   |  |
|   |  | <b>INSURER C : RLI Insurance Company</b>          |  |  |  | <b>13056</b>   |  |
|   |  | <b>INSURER D :</b>                                |  |  |  |                |  |
|   |  | <b>INSURER E :</b>                                |  |  |  |                |  |
|   |  | <b>INSURER F :</b>                                |  |  |  |                |  |

**COVERAGES**

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR                                 | TYPE OF INSURANCE  | ADDL INSR                | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                    |              |
|--|--|--------------------------|----------|---------------|-------------------------|-------------------------|---|--------------|
| A  | GENERAL LIABILITY  | X                        | X        | 21SBMZJ7741   | 07/15/2012              | 07/15/2013              | EACH OCCURRENCE                           | \$ 2,000,000 |
|  | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR |                          |          |               |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ 300,000   |
|  |  |                          |          |               |                         |                         | MED EXP (Any one person)                  | \$ 10,000    |
|  |  |                          |          |               |                         |                         | PERSONAL & ADV INJURY                     | \$ 2,000,000 |
|  | GEN'L AGGREGATE LIMIT APPLIES PER:   |                          |          |               |                         |                         | GENERAL AGGREGATE                         | \$ 4,000,000 |
|  | <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC   |                          |          |               |                         |                         | PRODUCTS - COMP/OP AGG                    | \$ 4,000,000 |
|  |  |                          |          |               |                         |                         |   | \$           |
| B  | AUTOMOBILE LIABILITY   |                          |          | 21UECNE4502DV | 07/15/2012              | 07/15/2013              | COMBINED SINGLE LIMIT (Ea accident)       | \$ 1,000,000 |
|  | <input checked="" type="checkbox"/> ANY AUTO   |                          |          |               |                         |                         | BODILY INJURY (Per person)                | \$           |
|  | <input type="checkbox"/> ALL OWNED AUTOS   |                          |          |               |                         |                         | BODILY INJURY (Per accident)              | \$           |
|  | <input type="checkbox"/> SCHEDULED AUTOS   |                          |          |               |                         |                         | PROPERTY DAMAGE (Per accident)            | \$           |
|  | <input type="checkbox"/> HIRED AUTOS   |                          |          |               |                         |                         |   | \$           |
| <input type="checkbox"/> NON-OWNED AUTOS |  |                          |          | \$            |                         |                         |   |              |
|  | UMBRELLA LIAB  |                          |          |               |                         |                         | EACH OCCURRENCE                           | \$           |
|  | EXCESS LIAB  |                          |          |               |                         |                         | AGGREGATE                                 | \$           |
|  | DEDUCTIBLE   |                          |          |               |                         |                         |   | \$           |
|  | RETENTION \$   |                          |          |               |                         |                         |   | \$           |
|  | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY  |                          |          |               |                         |                         | WC STATUTORY LIMITS                       | OTHER        |
|  | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)  | <input type="checkbox"/> | N/A      |               |                         |                         | E.L. EACH ACCIDENT                        | \$           |
|  | If yes, describe under DESCRIPTION OF OPERATIONS below   |                          |          |               |                         |                         | E.L. DISEASE - EA EMPLOYEE                | \$           |
|  |  |                          |          |               |                         |                         | E.L. DISEASE - POLICY LIMIT               | \$           |
| C  | Professional Liab  |                          |          | RDP0007546    | 07/15/2012              | 07/15/2013              | Per Claim                                 | 1,000,000    |
|  |  |                          |          |               |                         |                         | Aggregate                                 | 2,000,000    |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 City of Marathon is listed as additional insured with respects to General Liability as required by written contract. A Waiver of Subrogation applies with respects to General Liability coverage as required by written contract. General Liability coverage is on a primary and non contributory basis.

**CERTIFICATE HOLDER****CANCELLATION**

City of Marathon  
 9805 Overseas Highway  
 Marathon, FL 33050

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2009 ACORD CORPORATION. All rights reserved.





CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 13 day of February, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and Thompson & Associates whose address is 412 SE 18 Street, ("Consultant").  
Fort Lauderdale, FL 33316

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:


**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
| X   |    | X         |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
| X   |    | X         |               | Communications Engineering              |
| X   |    | X         |               | Computer Aided Drafting and Design      |
| X   |    | X         |               | Construction Cost Estimating            |
| X   |    | X         |               | Construction Inspections                |
| X   |    | X         |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
| X   |    | X         |               | Environmental Engineering               |
| X   |    | X         |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
| X   |    | X         |               | Hydraulic Engineering                   |
| X   |    | X         |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
| X   |    | X         | X             | Planning                                |
| X   |    | X         | X             | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
| X   |    | X         | X             | Traffic Engineering                     |
| X   |    | X         |               | Utilities                               |
| X   |    | X         |               | Water Resources/Stormwater              |
| X   |    | X         |               | Water and Wastewater Services           |
| X   |    | X         |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials   *AS*    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials             
Initials             
Initials

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**


All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

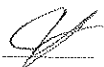
**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.


**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

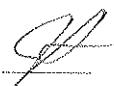
Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
  
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
  
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000 — bodily injury aggregate
  - \$1,000,000 — property damage of each occurrence
  - \$1,000,000 — property damage aggregate
  
- D. Products — Completed Operations \$1,000,000 — each occurrence
  
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
  
- E. Professional Liability \$1,000,000
  
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$0.00 insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.


It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## 21. Termination.

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

A termination for cause or for convenience shall have no affect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

#### **28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

#### **29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any



such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

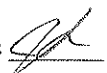
If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City: Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant:

James Thompson, PE  
Thompson & Associates  
PO Box 22398  
Fort Lauderdale, FL 33335

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.


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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**


Initials             
Initials             
Initials

IN WITNESS WHEREOF, the parties have executed this instrument on this 13 day of February, 2012<sup>3</sup>

CONSULTANT:

  
By: James Thompson, PE  
Its: President

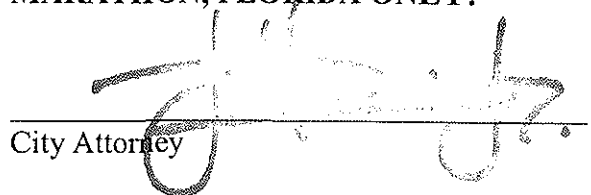
CITY:

  
By: \_\_\_\_\_  
Its: City Manager.

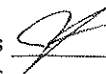
ATTEST:

  
Diane Clavier, City Clerk

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

  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 13<sup>th</sup> day of Feb, 20  , by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and Tierra South Florida, Inc. whose address is 2765 Vista Parkway Ste 10, ("Consultant").  
West Palm Beach, FL 33411

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials                       
Initials                       
Initials

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
| ✓   |    | ✓         |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
|     |    |           |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
|     |    |           |               | Computer Aided Drafting and Design      |
| ✓   |    | ✓         |               | Construction Cost Estimating            |
|     |    |           |               | Construction Inspections                |
|     |    |           |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
|     |    |           |               | Environmental Engineering               |
| ✓   |    | ✓         |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
|     |    |           |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
|     |    |           |               | Planning                                |
|     |    |           |               | Specification Writing                   |
|     |    |           |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
|     |    |           |               | Utilities                               |
|     |    |           |               | Water Resources/Stormwater              |
|     |    |           |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

Initials \_\_\_\_\_  
 Initials \_\_\_\_\_  
 Initials \_\_\_\_\_



If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.


**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.


**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**


All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.


**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability  
\$100,000 — each accident  
\$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability  
\$1,000,000 — bodily injury each occurrence  
\$1,000,000— bodily injury aggregate  
\$1,000,000— property damage of each occurrence  
\$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.


It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.


**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.


In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.


If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



A termination for cause or for convenience shall have no affect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**


All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

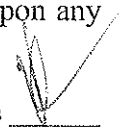
**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**


All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Tierra South Florida, Inc.  
2765 Vista Pkwy, Ste 10  
West Palm Beach, FL 33411  
Ray Krishnasamy, PE

32. **Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.


The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 13<sup>th</sup> day of February, 2017.3

**CONSULTANT:**  
Tierra South Florida  
By: \_\_\_\_\_  
Its: President

**CITY:**  
By: \_\_\_\_\_  
Its: City Manager

**ATTEST:**  
Diane Clavier  
Diane Clavier, City Clerk

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

\_\_\_\_\_  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials \_\_\_\_\_  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 4 day of Feb, 2013, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and TRC WORLDWIDE whose address is 3590 NW 56<sup>th</sup> Street, ("Consultant").  
ENGINEERING, INC Fort Lauderdale, FL 33309

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     | ✓  |           |               | Archeology                              |
|     | ✓  |           |               | Architecture                            |
|     | ✓  |           |               | Asbestos Survey and Removal             |
|     | ✓  |           |               | Building Official Services              |
|     | ✓  |           |               | Civil Engineering                       |
|     | ✓  |           |               | Coastal Engineering                     |
|     | ✓  |           |               | Communications Engineering              |
|     | ✓  |           |               | Computer Aided Drafting and Design      |
| ✓   | ✓  |           |               | Construction Cost Estimating            |
|     | ✓  | ✓         |               | Construction Inspections                |
|     | ✓  |           |               | Construction Project Management         |
|     | ✓  |           |               | Ecology                                 |
|     | ✓  |           |               | Electrical Engineering                  |
|     | ✓  |           |               | Energy Management                       |
|     | ✓  |           |               | Environmental Engineering               |
|     | ✓  |           |               | Geographic Information Systems          |
|     | ✓  |           |               | Geotechnical Engineering                |
|     | ✓  |           |               | Hazardous Material Tanks                |
|     | ✓  |           |               | Hydraulic Engineering                   |
|     | ✓  |           |               | Land Development                        |
|     | ✓  |           |               | Land Surveying                          |
|     | ✓  |           |               | Landscape Architecture                  |
|     | ✓  |           |               | Mechanical Engineering                  |
|     | ✓  |           |               | Planning                                |
| ✓   | ✓  |           |               | Specification Writing                   |
|     | ✓  | ✓         |               | Structural Engineering                  |
|     | ✓  |           |               | Surveying                               |
|     | ✓  |           |               | Traffic Engineering                     |
|     | ✓  |           |               | Utilities                               |
|     | ✓  |           |               | Water Resources/Stormwater              |
|     | ✓  |           |               | Water and Wastewater Services           |
|     | ✓  |           |               | Water Tank Inspection/Corrosion Control |

Initials   BW    
 Initials \_\_\_\_\_  
 Initials \_\_\_\_\_

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and



expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials DW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.


**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials SW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials     *Dr*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability  
\$100,000 — each accident  
\$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability  
\$1,000,000 — bodily injury each occurrence  
\$1,000,000— bodily injury aggregate  
\$1,000,000— property damage of each occurrence  
\$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   DW    
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials     *bu*      
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## **21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials SW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials SLW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials           
Initials           
Initials

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: Derek Wassink  
President, S.E.G.  
3590 NW 56th St.  
Ft. Lauderdale, FL 33309

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

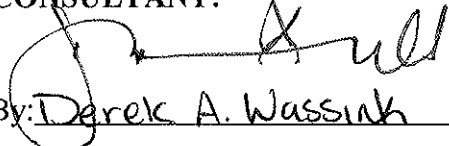
The Consultant and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership,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

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.


**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 4 day of February, 2013

CONSULTANT:

  
By: Derek A. Wassink  
Its: President, S.E.G.

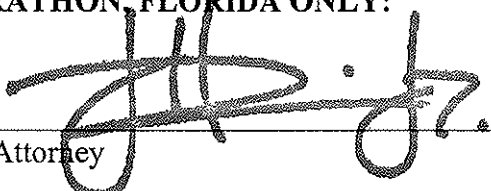
CITY:

  
By: [Signature]  
Its: City Manager

ATTEST:

  
Diane Clavier, City Clerk

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

  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials DW  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 14 day of May, 2013 by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and URS Corp. whose address is 7800 Congress Ave., ("Consultant").  
Boca Raton, FL 33487-1350

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     | ✓  |           |               | Archeology                              |
| ✓   |    | ✓         |               | Architecture                            |
| ✓   |    |           | ✓             | Asbestos Survey and Removal             |
|     | ✓  |           |               | Building Official Services              |
| ✓   |    | ✓         |               | Civil Engineering                       |
| ✓   |    | ✓         |               | Coastal Engineering                     |
|     | ✓  |           |               | Communications Engineering              |
| ✓   |    | ✓         |               | Computer Aided Drafting and Design      |
| ✓   |    | ✓         |               | Construction Cost Estimating            |
| ✓   |    | ✓         |               | Construction Inspections                |
| ✓   |    | ✓         |               | Construction Project Management         |
| ✓   |    | ✓         |               | Ecology                                 |
| ✓   |    | ✓         |               | Electrical Engineering                  |
|     | ✓  |           |               | Energy Management                       |
| ✓   |    | ✓         |               | Environmental Engineering               |
| ✓   |    | ✓         |               | Geographic Information Systems          |
| ✓   |    | ✓         |               | Geotechnical Engineering                |
|     | ✓  |           |               | Hazardous Material Tanks                |
|     | ✓  |           |               | Hydraulic Engineering                   |
|     | ✓  |           |               | Land Development                        |
|     | ✓  |           |               | Land Surveying                          |
| ✓   |    | ✓         |               | Landscape Architecture                  |
| ✓   |    | ✓         |               | Mechanical Engineering                  |
| ✓   |    | ✓         |               | Planning                                |
|     | ✓  |           |               | Specification Writing                   |
| ✓   |    | ✓         |               | Structural Engineering                  |
|     | ✓  |           |               | Surveying                               |
|     | ✓  |           |               | Traffic Engineering                     |
| ✓   |    | ✓         |               | Utilities                               |
| ✓   |    | ✓         |               | Water Resources/Stormwater              |
| ✓   |    | ✓         |               | Water and Wastewater Services           |
|     | ✓  |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

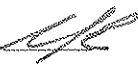
**4. Payment.**

**Invoices.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.


**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

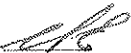
**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_



**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

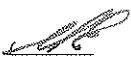
**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.


In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

**21. Termination.**

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.


If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**


All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.


**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.


The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.


**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

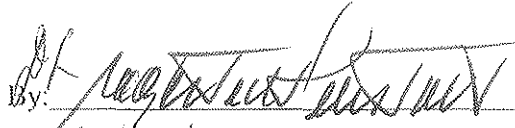


IN WITNESS WHEREOF, the parties have executed this instrument on this 14<sup>th</sup> day of May, 2013.

CONSULTANT:

By:   
Its: Mario Echagarrua  
Vice President

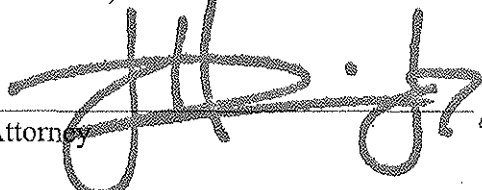
CITY:

By:   
Its: City Manager

ATTEST:

  
Diane Clavier, City Clerk

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

  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

**CITY OF MARATHON**  
**CONTINUING ENGINEERING SERVICES AGREEMENT**

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 15 day of April, 2013, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and W.F. McCain & Assoc. INC., whose address is 1171 19th St, ("Consultant").  
VERO BEACH, FL 32960 (main)

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

**1. Term of Agreement.**

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

**2. The Work.**

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

Initials LD  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     |    |           |               | Archeology                              |
|     |    |           |               | Architecture                            |
|     |    |           |               | Asbestos Survey and Removal             |
|     |    |           |               | Building Official Services              |
| X   |    | X         |               | Civil Engineering                       |
|     |    |           |               | Coastal Engineering                     |
|     |    |           |               | Communications Engineering              |
| X   |    | X         |               | Computer Aided Drafting and Design      |
| X   |    | X         |               | Construction Cost Estimating            |
| X   |    | X         |               | Construction Inspections                |
| X   |    | X         |               | Construction Project Management         |
|     |    |           |               | Ecology                                 |
|     |    |           |               | Electrical Engineering                  |
|     |    |           |               | Energy Management                       |
| X   |    | X         |               | Environmental Engineering               |
|     |    |           |               | Geographic Information Systems          |
|     |    |           |               | Geotechnical Engineering                |
|     |    |           |               | Hazardous Material Tanks                |
|     |    |           |               | Hydraulic Engineering                   |
| X   |    | X         |               | Land Development                        |
|     |    |           |               | Land Surveying                          |
|     |    |           |               | Landscape Architecture                  |
|     |    |           |               | Mechanical Engineering                  |
| X   |    | X         |               | Planning                                |
| X   |    | X         |               | Specification Writing                   |
| X   |    | X         |               | Structural Engineering                  |
|     |    |           |               | Surveying                               |
|     |    |           |               | Traffic Engineering                     |
| X   |    | X         |               | Utilities                               |
| X   |    | X         |               | Water Resources/Stormwater              |
| X   |    | X         |               | Water and Wastewater Services           |
|     |    |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

**3. The Agreement Sum.**

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

**4. Payment.**

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

**Final Payment.** Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

**5. Staffing.**

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants

Initials AS  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

**6. Consultant's Threshold of Performance.**

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

**7. Standards of Conduct - Conflict of Interest.**

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**8. Project Records.**

All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials                       
Initials                       
Initials

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

**9. Financial Records.**

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

**10. Reimbursable Expenses.**

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

**11. Printing Costs.**

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

**12. Time of Performance.**

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and



all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.**

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

**Coverage Minimums**

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials       
Initials       
Initials

**15. Subconsultant Insurance.**

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

**16. Liquidated Damages.**

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

**17. Change Orders.**

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

**18. Publicly Financed Contracts.**

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.


**19. Indemnification.**

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

**20. Disputes.**

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## 21. Termination.

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

**For Cause.** This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

**For Convenience.** This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

**22. Assignment upon Termination.**

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.

Initials                       
Initials                       
Initials

A termination for cause or for convenience shall have no effect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any



such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

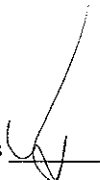
All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: William F. McCain, P.E. LEED AP  
W.F. McCain & Associates, INC.  
103400 Overseas Hwy  
Key Largo, FL 33037-2849

**32. Miscellaneous.**

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

**PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

Initials CO  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this instrument on this 15 day of April, 2012/3

**CONSULTANT:**

By: W. S. Mc  
Its: President / Principal Engineer

**CITY:**

By: [Signature]  
Its: Roger T. Kernstadt, City Manager.

**ATTEST:**

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials [Signature]  
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

CITY OF MARATHON  
CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this 15 day of February, 2013, by and between The City of Marathon, Florida, a Florida municipal corporation, ("City") and The Weiler Engineering Corporation whose address is 20110 Marion Ave, Suite 1306, ("Consultant").

WHEREAS, following a Request for Qualifications process, the City has identified Consultant as qualified to perform engineering services on behalf of the City; and,

WHEREAS, the City desires to enter into a continuing services agreement with Consultant under which Consultant may be assigned specific tasks or projects to be performed by Consultant under the terms and conditions herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00), each to the other in hand paid, the receipt, sufficiency, and adequacy of which is hereby acknowledged, and the mutual covenants, terms and conditions herein, City and Consultant, agree and bind themselves, their successors and assigns as follows:

1. Term of Agreement.

Commencing on the date of this Agreement, this Agreement shall have a three (3) year term with one (1) additional two (2) year extension exercisable at the sole option of the City. In order to exercise the option for the first one year extension prior to the end of the initial three year term the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the City must provide the Consultant with written notice of the City's intent to extend the term for an additional one year prior to the end of the first one year extension.

2. The Work.

The City from time to time has the need for professional services to be performed on behalf of the City. The specific projects or tasks assigned to Consultant, if any, will be described in Project Specific Agreement(s) to be executed by the parties at the time the assignment is given to Consultant. For each Project Specific Agreement, the Consultant and City will agree upon the scope of services to be performed and a mutually satisfactory budget and schedule for the work utilizing the Project Specific Agreement attached hereto as Exhibit "A" and incorporated herein by this reference.

The exact scope of work under any Project Specific Agreement will be determined during the term of this Agreement on a case-by-case, as needed basis. The types of work Consultant represents that it is prepared and qualified to perform (with its own employees or subconsultants)

include the matters in the following table marked "YES". Consultant anticipates utilizing its own staff and/or subconsultants to perform work within the disciplines as indicated below.

| YES | NO | OWN STAFF | SUBCONSULTANT |   |
|-----|----|-----------|---------------|---|
|     | ✓  |           |               | Archeology                              |
|     | ✓  |           |               | Architecture                            |
|     | ✓  |           |               | Asbestos Survey and Removal             |
| ✓   |    |           |               | Building Official Services              |
| ✓   |    |           |               | Civil Engineering                       |
| ✓   |    |           |               | Coastal Engineering                     |
|     | ✓  |           |               | Communications Engineering              |
| ✓   |    |           |               | Computer Aided Drafting and Design      |
| ✓   |    |           |               | Construction Cost Estimating            |
| ✓   |    |           |               | Construction Inspections                |
| ✓   |    |           |               | Construction Project Management         |
|     | ✓  |           |               | Ecology                                 |
|     | ✓  |           |               | Electrical Engineering                  |
|     | ✓  |           |               | Energy Management                       |
| ✓   |    |           |               | Environmental Engineering               |
| ✓   |    |           |               | Geographic Information Systems          |
|     | ✓  |           |               | Geotechnical Engineering                |
|     | ✓  |           |               | Hazardous Material Tanks                |
| ✓   |    |           |               | Hydraulic Engineering                   |
| ✓   |    |           |               | Land Development                        |
|     | ✓  |           |               | Land Surveying                          |
|     | ✓  |           |               | Landscape Architecture                  |
|     | ✓  |           |               | Mechanical Engineering                  |
| ✓   |    |           |               | Planning                                |
| ✓   |    |           |               | Specification Writing                   |
| ✓   |    |           |               | Structural Engineering                  |
|     | ✓  |           |               | Surveying                               |
| ✓   |    |           |               | Traffic Engineering                     |
| ✓   |    |           |               | Utilities                               |
| ✓   |    |           |               | Water Resources/Stormwater              |
| ✓   |    |           |               | Water and Wastewater Services           |
| ✓   |    |           |               | Water Tank Inspection/Corrosion Control |

If Consultant anticipates utilizing a subconsultant to perform all or part of the work described in a Project Specific Agreement, Consultant will notify the City at the time the Project Specific Agreement is being prepared.

Execution of this Agreement does not guarantee any particular volume, level, or amount of work, nor shall Consultant have an exclusive or sole right to perform the work as described in this Agreement.

3. The Agreement Sum.

The compensation sum for each assignment will be determined at the time each Project Specific Agreement is being prepared. City shall pay Consultant in current funds for the performance of the work, subject to the additions and deductions authorized by this Agreement. Consultant agrees to be bound by the prices set forth on Exhibit "A" for the duration of the Agreement. Consultant specifically agrees that any changes in the hourly rates, reimbursable expenses, overhead, or scope of work set forth on Exhibit "A" shall not be paid for unless Consultant has obtained a written change order from City.

4. Payment.

Invoices. Consultant shall submit invoices which are identified by the specific project number on a monthly basis by no later than the 15th of each month. The City shall pay Consultant within twenty (20) calendar days of approval by the City Manager of any invoices submitted by Consultant to the City.

With each request for payment, Consultant shall provide City with a partial release of lien (or final release of lien upon final payment) from Consultant and its subconsultants affirming that Consultant has paid all of its subconsultants, suppliers, and laborers for labor, services, and materials for which Consultant has previously been paid

If the work is being paid for as a lump sum, Consultant will receive payment based on the percentage of work completed. Each invoice under a lump sum Project Specific Agreement shall identify: The total lump sum amount (with any authorized adjustments thereto), the amounts previously invoiced, the amount for which payment is being sought, less retainage of 10% of the amount for which payment is being sought, and the percentage of work completed through the date of the pay application.

If the work is being paid for on an hourly basis, Consultant will receive payments based on the number of hours of work performed, and reimbursable expenses incurred, during the month for which payment is sought. Each invoice shall identify the services performed each day by each timekeeper, the amount of time charged by each timekeeper each day, the hourly rate for each timekeeper, the total charges incurred each day, the total amount sought for services performed, a list of expenses for which reimbursement is sought, the total amount sought for services and

expenses, and the total invoiced to City through the date of the invoice including the total amount of the invoice for which payment is being sought.

Upon receipt of a payment request, the request is to be "marked as received" or "stamped as received." Payment by the City will be made to Consultant within 20 business days after the date the payment request is received and "stamped as received." If Consultant submits an improper payment request, the City will within ten calendar days after the request is "stamped as received", notify Consultant of the impropriety and indicate in writing what corrective action must be done on the part of the Consultant to make the payment request proper. Undisputed sums will be timely paid.

**Disputed Invoices.** In the event that all or a portion of an invoice submitted by the Consultant is disputed, or additional backup documentation is required, the City shall notify the Consultant within fifteen (15) working days of receipt of the invoice of such dispute or request for additional documentation. The Consultant shall provide the City with additional backup documentation within five (5) working days of the date of receipt of the City notice. Upon request Consultant shall provide additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. Consultant agrees to continue performing notwithstanding any dispute regarding Consultant's pay request(s).

If there is a dispute regarding a payment request, the Community Services Coordinator or City Manager shall appoint a panel of two or more members of City management staff to investigate the disputed invoice. The Consultant may appear before the investigation panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the City received the invoice that is disputed. Within five (5) business days after the panel convenes to consider the issue, the investigation panel shall provide the Community Services Coordinator with the panel's recommendation regarding whether the disputed invoice should be paid or not.

On or before the sixtieth (60th) day after the date the disputed invoice was received, the City shall notify the Consultant in writing of the City's decision regarding the disputed invoice and that the decision is a final action. The Consultant has the right to appeal the decision pursuant to § 218.76, Fla. Stat. If the City's decision is in favor of the Consultant, the disputed amount of the invoice shall be paid to the Consultant within fifteen (15) days after the City's decision is rendered.

**Suspension of Payment.** In the event that the City becomes credibly informed that any representations of the Consultant are inaccurate, or in the event that the Consultant is not in compliance with any term or condition of the Continuing Services Agreement or a Project Specific Agreement, the City may withhold payment of sums then or in the future otherwise due to the Consultant until the inaccuracy, or other non-compliance is corrected to the City's satisfaction.

**Retainage.** The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due until the specific project is completed. Said retainage may be withheld at the

sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under the Project Specific Agreement.

Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the City that all obligations of the Consultant to others, including its subconsultants, incurred in connection with the Project, have been paid in full. The Consultant shall deliver to the City all documents requested by the City evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services. Acceptance of final payment shall constitute a waiver of any and all claims against the City by the Consultant.

City shall have the sole and absolute right, at its option, to offset and deduct from the sums due Consultant under the terms of this Agreement any sums due City under the terms of this Agreement or other agreements between City and Consultant. Consultant further agrees that any sums due City under any other agreement(s) between City and Consultant may be satisfied in whole or part by City with funds owed Consultant under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, no certificate given or payment made under this Agreement shall constitute an acceptance of defective work or improper materials or operate as a release of any claims by City against Consultant.

5. Staffing.

Consultant shall maintain an adequate and competent Consultant staff within the State of Florida and may associate with specialists, subprofessionals and/or other professionals, for the purpose of its services hereunder, without additional cost to the City. Should the Consultant desire to utilize other specialists, subprofessionals and/or professionals in the performance of the work, the Consultant shall be responsible for satisfactory completion of all such specialists', subprofessionals' and/or other professionals' work. It is agreed that only specialists, subprofessionals and/or other professionals which have been approved in writing by an authorized representative of the City will be used by the Consultant. The Consultant shall be responsible for all payments to any subconsultants



6. Consultant's Threshold of Performance.

Consultant is employed to render a professional service only and payments made to the Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. The Consultant shall perform to the best of its abilities and complete all work in a workmanlike manner in accordance with sound engineering and professional consulting practices and principles. If at any time during the term of this Agreement or within the applicable time frame in Chapter 95 Fla. Stat., it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the scope of services in the Project Specific Agreement, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

7. Standards of Conduct - Conflict of Interest.

The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in § 112.313 Fla. Stat. as it relates to work performed under this Agreement, which standards are hereby incorporated and made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

8. Project Records.

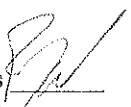
All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

After the City's acceptance of final plans and documents, a reproducible mylar of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the City, and reproducible copies shall be made available upon request to the City.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

All project records shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

9. Financial Records.

All financial records of labor costs and expenses incurred by Consultant performing work for the City shall be maintained by Consultant and made available upon request of the City at all times for the duration of this Agreement and for five (5) years after final payment is made. Copies of such documents and records shall be furnished to the City upon request at direct printing cost.

10. Reimbursable Expenses.

When expenses are to be reimbursed, the same expenses that are reimbursable and the same rates that apply to City employees pursuant to § 112.061, Fla. Stat. will be used to reimburse the Consultant, and only those expenses deemed reimbursable to City employees under § 112.061, Fla. Stat. will be reimbursed to Consultant.

11. Printing Costs.

The Consultant shall furnish to the City at direct printing cost all final work documents, papers and letters, or any other such materials which may be subject to the provisions of Chapter 119, Fla. Stat., made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to provide such records shall be grounds for termination of Consultant's agreement(s) with the City.

12. Time of Performance.

Time is of the essence. Consultant agrees to perform the Work to comply with the job schedule or schedules, as amended from time to time, set by City. Should Consultant fall behind schedule, it will take all necessary measures, including, but not limited to, supplying additional shifts, paying overtime, and adding additional employees, laborers and equipment to bring the Work within the allotted and scheduled time of completion. All such additional measures to meet City's schedule shall be strictly at the Consultant's own expense.

If City sends written notice to Consultant that the Consultant has failed to bring the Work within the allotted time of the schedule or amended schedule, and further, if Consultant does not correct such deficiency within forty- eight (48) hours after the receipt of such written notice, City may, at its option, undertake such actions as it deems are reasonable and necessary to return the Project to the schedule and maintain the schedule or amended schedule, including the exercise of any and

all rights and remedies set forth in this Agreement, and all such measures shall be at the Consultant's expense.

City shall not be liable to Consultant for delay to the Consultant's work by the acts, neglect or default of the City or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the laborers or others, or on account of any acts of God, or any other causes, including any circumstances caused or contributed to by Consultant. Consultant expressly agrees that an extension of time shall constitute Consultant's sole and exclusive remedy should Consultant be delayed, interfered with, disrupted, hindered, or suspended by City or governmental agency, and then only if a written request for extension is made to City within seventy-two (72) hours from the time of the beginning of the delay, interference, disruption, hindrance, suspension, or causation of the damage. Under no circumstances shall City be liable to Consultant for any compensation or damages arising out of or relating to such delays, interferences, disruptions, hindrances, or suspensions. Consultant agrees that its failure to give written notice of claim requesting an extension of the Agreement time as prescribed herein constitutes a waiver by the Consultant of such claim to City. Consultant's written request must contain evidence establishing that the delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of Consultant. City shall ascertain the facts and the extent of the delay and shall extend the time for completing the assignment if in its sole discretion a time extension is appropriate.

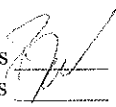
**13. Progress Reports.**

Consultant shall provide City with written progress reports in a format acceptable to the City either monthly or at intervals acceptable to the City. The Consultant shall provide City oral status reports upon request by the City.

**14. Insurance.**

The Consultant shall procure and maintain during the term of this Agreement insurance of the types and in the minimum amounts stated below. Within 7 business days of the date of this Agreement, Consultant shall provide City with an insurance certificate demonstrating Consultant has obtained and is maintaining the minimum coverage listed below. Consultant shall provide a new certificate on an annual basis for the term of this Agreement. 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 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.

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

Receipt of certificates or other documents of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required will not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

Coverage Minimums

- A. Workers' Compensation Florida Statutory Coverage
- B. Employer's Liability
  - \$100,000 — each accident
  - \$100,000 — each employee (a \$500,000 policy limit for injury by disease)
- C. Comprehensive General Liability
  - \$1,000,000 — bodily injury each occurrence
  - \$1,000,000— bodily injury aggregate
  - \$1,000,000— property damage of each occurrence
  - \$1,000,000— property damage aggregate
- D. Products — Completed Operations \$1,000,000— each occurrence
- D. Business Auto Liability \$1,000,000  
(All autos— owned, hired or used)
- E. Professional Liability \$1,000,000
- F. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harborworkers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&H insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Consultant.

Insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. In the event that the Consultant becomes uninsured for any liabilities specified; such default shall be regarded as material breach of this Agreement.

Initials             
Initials             
Initials

15. Subconsultant Insurance.

The Consultant will also cause all professional subconsultants retained by Consultant for the project to procure and maintain comparable insurance coverage. Before commencing the Work, the Consultant shall furnish the City a certificate(s) showing compliance with this paragraph.

16. Liquidated Damages.

City and Consultant recognize that time is of the essence in this Agreement and that the public will be inconvenienced and the City will incur additional administrative costs if the Work is not completed within the allowable time. The Consultant also recognizes that the actual value of the inconvenience to the public; or additional administrative costs suffered by City if the Work is not completed on time are not readily ascertainable at the time this Agreement is being entered into. Accordingly, City and Consultant agree that as liquidated damages to compensate the City for delay (but not as a penalty) Consultant shall pay City (\$ \_\_\_\_\_ insert amount of liquidated damages here) (the "Daily Liquidated Damages Rate") for each calendar day the Work is not substantially complete after the expiration of the allowable Agreement time. After the expiration of the allowable Agreement time if the work is substantially complete but not fully complete, Consultant shall pay City 50% of the Daily Liquidated Damages Rate for each calendar day after the date of substantial completion until the Work is fully complete.

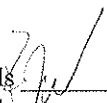
It is understood and agreed that in addition to liquidated damages, the City is entitled to recover from Consultants all actual additional costs or losses incurred by the City (other than additional administrative costs and public inconvenience losses) as a result of the Consultant's untimely performance or other failure to properly perform its obligations under this Agreement or any Project Specific Agreement.

Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Consultant, or if no money is due or the amount due is insufficient to cover the amount charged the Consultant shall be liable for said amount.

17. Change Orders.

Consultant may be ordered in writing by City, without invalidating this Agreement or any Project Specific Agreement, to make changes in the Work within the general scope of this Agreement or any Project Specific Agreement, consisting of additions, deletions or other revisions, and the Agreement sum and Agreement time may be adjusted accordingly. Prior to the commencement of such changed or revised work, Consultant shall submit promptly to City written copies of any claim for adjustment to the Agreement sum or Agreement time for such revised work.

No alteration, addition, omission, or change shall be made in the work, except upon the written change order of City. Any change or adjustment in the Agreement sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Consultant shall furnish to City a detailed breakdown showing the difference in the

Initials   
Initials \_\_\_\_\_  
Initials \_\_\_\_\_

schedule and in the value of the work altered, added, omitted, or changed by the proposed change order. Unless and until the City approves the proposed change order in writing, Consultant shall be under no duty or obligation to perform or carry out such proposed change order and City shall be under no duty, obligation or liability to pay any increase in the Agreement sum or provide additional time as a result of such proposed change order.

18. Publicly Financed Contracts.

The equal opportunity clause set forth in Section 202 of the Executive Order 11246 dated September 24, 1965, as amended by the Executive Order 11375 dated October 13, 1967, and as specified in 41CFR60-4, relating to equal employment opportunity and implementing rules and regulations of the Secretary of Labor is incorporated herein by specific reference.

Consultant will comply with all laws, rules, regulations, executive orders, ordinances, applicable to the Agreement. City specifically agrees that it shall not discharge or fail or refuse to hire any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor shall Consultant limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities upon said basis. Consultant shall not discriminate on the basis of race, color, religion, sex or national origin in the procurement of labor, services or materials for the performance of the Work and Consultant further agrees that the provisions of this paragraph shall be incorporated into any Subagreements which it may enter into (with the consent of City) concerning the performance of the Work.

19. Indemnification.

Consultant 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

20. Disputes.

Consultant shall provide timely written notice of any and all claims for additional compensation or time. In no event shall such notice be provided more than seventy-two (72) hours from Consultant's discovery of conditions that Consultant believes will or may entitle it to an increase in the Agreement sum or time. If Consultant fails to provide timely written notice of its claims for additional compensation or time, then said claims are forever waived and barred.

Consultant's notice of said claim shall be in writing addressed to City describing the events, circumstances and conditions which Consultant believes entitles it to an increase in either the Agreement sum or time. In addition, said written notice shall specify the amount of additional compensation or time claimed. Consultant shall not be entitled to an increase in either the Agreement sum or time until a duly authorized change order is executed between the parties.

In addition to any other remedies permitted by law, if Consultant fails to perform any of its obligations under the terms of this Agreement, City may exercise any or all of the following options:

- A. Forty-eight (48) hours after giving of written notice to Consultant, City may remedy such default utilizing such persons or firms as may be necessary in City's sole discretion for the accomplishment of said purpose, and Consultant shall forthwith pay City the amount of all costs and expenses incurred thereby including but not limited to reasonable attorney's fees, and court costs associated therewith; and
- B. City may recover from Consultant the amount of any loss or damages, whether liquidated or unliquidated, suffered or incurred as a result of such default, including without limitation, reasonable attorney's fees, legal costs or expenses, penalties, increased costs of materials, labor or services or any other costs of any nature, and loss of profits occasioned by Consultant's default.
- C. City may deduct or withhold from payments otherwise due Consultant any of the foregoing amounts which deduction shall be deemed back charges against the Agreement sum.

If Consultant fails to commence or prosecute the Work in accordance with the terms of this Agreement; or cause stoppage, delay or interference with the work of City or other Consultants; or become insolvent; commit any act of bankruptcy; voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws; breach any other term, covenant or condition of this Agreement; or fail to otherwise perform any other obligation of this Agreement, then in such event, City may terminate this Agreement.

## 21. Termination.

In the event of termination of this Agreement, City may use Consultant's work product to complete the Work and Consultant shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Agreement sum exceeds the City's cost of completion such excess shall be paid by City to Consultant. However, if such cost of completion exceeds the unpaid balance of the Agreement sum, Consultant shall immediately pay the difference to City, plus any costs or expenses incurred in the collection of same.

For Cause. This Agreement and/or any Project Specific Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with the material terms of this Agreement and/or any Project Specific Agreement through no fault of the party initiating the termination. The City also may terminate this Agreement and/or any Project Specific Agreement if Consultant has misrepresented anything in the submission made by Consultant in response to the Request For Qualifications advertisement leading up to this Agreement; or for any of the reasons set forth in Sections 28 or 29 of this Agreement; and the City also reserves the right to terminate this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

If it is determined that the City wrongfully terminated this Agreement and/or any Project Specific agreement for cause, said termination(s) shall be deemed to be a termination for convenience.

For Convenience. This Continuing Services Agreement and/or any Project Specific Agreement may be terminated by the City for convenience upon fourteen (14) calendar days' written notice to the Consultant. In the event of termination for convenience, upon receipt of notification of the intent to terminate, the Consultant shall incur no further obligations in connection with the Work and shall terminate all outstanding subconsultant obligations. The Consultant shall be compensated for all services performed to the satisfaction of the City, and for reimbursable expenses incurred, prior to the date of termination. Consultant shall not be entitled to any compensation for consequential damages or compensation for lost profits and/or unrecovered overhead on work not actually performed. The Consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of this Agreement. Under no circumstances shall the City make any payment to the Consultant for services which have not been performed.

22. Assignment upon Termination.

Upon termination of this Agreement and/or any Project Specific Agreement, a copy of all of the Consultant's work product shall become the property of the City and the Consultant shall, within ten (10) working days of receipt of written direction from the City, transfer to either the City or its authorized designee, a copy (in paper and useable electronic format) of all work product in Consultant's possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the Consultant pertaining to this Agreement and/or any Project Specific Agreement.

Consultant hereby assigns to City all rights in Consultant's work and agrees to deliver to City all documents and authorizations needed by City to allow a replacement consultant to use Consultant's work in order to complete the Work. Said assignment shall only become effective if City terminates Consultant under this Agreement prior to the completion of all Work assigned to Consultant. Consultant agrees that City is entitled to specific performance to obtain the relief described in this paragraph.



A termination for cause or for convenience shall have no affect on any insurance coverage required by this Agreement.

The foregoing remedies for default by Consultant shall be considered distinct, separate and cumulative and shall be in addition to any other right or remedy given elsewhere in this Agreement or now or hereafter existing at law or in equity, including any right to the recovery of reasonable attorney's and court cost.

Consultant shall have the rights and remedies available at law or in equity for breach of this Agreement, except as expressly set forth in this Agreement; provided however, any alleged breach or default by City hereunder shall be deemed waived unless Consultant shall, within seventy-two (72) hours, of any such alleged breach or default give written notice to City specifying the details thereof. Upon such notice, City shall have seven (7) business days within which to cure the alleged default prior to the accrual of any cause of action to Consultant or any right to terminate the Agreement.

**23. Attorneys Fees.**

City and Consultant hereby expressly agree that the prevailing party in any litigation proceedings arising out of or related to this Agreement shall be entitled to an award of its court cost, expenses, and reasonable attorney's fees incurred at all levels including the trial, arbitration, any bankruptcy proceeding, and at all appellate levels.

**24. Waiver of Jury Trial.**

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.

**25. Pre-Suit Dispute Resolution.**

All disputes shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the dispute cannot be resolved to the satisfaction of the parties, then City and Consultant agree to submit the dispute to pre-suit mediation.

**26. WBE/MBE.**

The City recognizes fair and open competition as a basic tenet of public procurement and encourages Consultant to obtain participation by minority and women business enterprises in the performance of assignments hereunder.

**27. Entire Agreement.**

City and Consultant hereby expressly agree that the entire agreement between the parties is set forth in the written terms of this Agreement plus any Specific Project Agreement executed by

both parties All prior quotes, bid proposals, quotations, negotiations, oral promises or representations are superseded by the terms of this Agreement and none shall survive the execution of this Agreement with the exception of the representations by Consultant in the Consultant's response to the RFQ which resulted in this Agreement and upon which the City has relied. Consultant acknowledges that all issues, terms, and conditions which Consultant deems to be material, have been incorporated and addressed in this document.

The headings of this Agreement are used for convenience only and shall not otherwise affect the meaning of the terms of this Agreement. The parties do hereby specifically agree that in the event that one or more of the provisions of this Agreement are deemed invalid or unenforceable, the unenforceable or invalid provisions are hereby deemed amended to comply with the minimum requirements as are required by law. 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.

Consultant and City do hereby further agree that City's failure to exercise one or more of the rights, remedies, terms, covenants and conditions of this Agreement shall not constitute a waiver of City's right to enforce said right or rights under the terms of this Agreement.

This Agreement may be executed in two or more copies, either of which may be considered an original contract. The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, representatives, successors and assigns of the parties hereto, if any.

**28. Anti-Collusion.**

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, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

For the breach of violation of the anti-collusion provisions herein, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**29. Contract Crime.**

The City reserves the right to suspend, cancel, or terminate the Agreement without penalty in the event one or more of the Consultant's corporate officers is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City under this Agreement. The City further reserves the right to suspend the qualifications of the Consultant to do business with the City upon any

such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have indictment or direct information dismissed be found not guilty, such suspension on account hereof shall be immediately lifted by the City.

**30. Confidentiality.**

Unless otherwise required by law or judicial order, the Consultant agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing the City's consent in writing. The Consultant also agrees that it shall not publish copyright or patent any of the site specific data furnished in compliance with this Agreement, it being understood that such data or information is the property of the City. This does not include materials previously or concurrently developed by the Consultant for "In House" use. Only data generated by Consultant for work under this Agreement shall be the property of the City.

**31. Truth in Negotiation.**

If this Agreement is for any lump-sum or cost-plus-a-fixed-fee over the threshold amount provided in § 287.017, Fla. Stat. for CATEGORY FOUR (currently \$195,000), the Consultant must provide a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement. The original Agreement sum and any additions thereto will be adjusted to exclude any significant sums by which the City determines the Agreement sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. City will make the appropriate Agreement adjustments within 1 year following the end of the Agreement.

**32. Notices.**

All notice required by this Agreement must be in writing. Any notice required to be given to City or Consultant may be delivered by any means to include, but not be limited to, facsimile, hand-delivery, U.S. Mail or express mail services. Notice shall be effective upon receipt by any person at City's or Consultant's addresses as listed below. Consultant further authorizes delivery of any such notice to any of its officers or employees at the project job site.

For the City:

Roger Hernstadt, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to:

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.

401 E. Las Olas Blvd., Suite 1850  
Ft. Lauderdale, FL 33301

For The Consultant: The Weiler Engineering Corp  
2010 Marion Ave.  
Suite 1306  
Punta Gorda, FL 33950

32. Miscellaneous.

Consultant agrees that it may not assign this Agreement without the express written prior consent of City which may be withheld at City's sole discretion.

This Agreement is not intended to benefit any third parties.

The Consultant shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts, and all safety laws regulations, and rules such as the Occupational Health and Safety Act insofar as applicable to the performance of this Agreement.

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.

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.

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.

PAYMENT UNDER THIS AGREEMENT AND ANY PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.

Initials       
Initials       
Initials

IN WITNESS WHEREOF, the parties have executed this instrument on this 13 day of February, 2013

CONSULTANT:

CITY:

By: [Signature]  
Its: PPES 2/14/13

By: [Signature]  
Its: City Manager.

ATTEST:

[Signature]  
Diane Clavier, City Clerk

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

[Signature]  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

Initials [Signature]  
Initials [Signature]  
Initials \_\_\_\_\_