Sponsored by: Williams

CITY OF MARATHON, FLORIDA
RESOLUTION 2026-65

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE RANKING OF QUALIFICATIONS FOR PROFESSIONAL ENGINEERING FIRMS TO ENTER INTO A CONTINUING SERVICE AGREEMENTS FOR MULTIPLE ENGINEERING DISCIPLINES. AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDE FOR AN EFFECTIVE DATE.

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

WHEREAS, the City of Marathon, Florida, pursuant to Florida Statutes, Section 287.055, "Consultants Competitive Negotiations Act." is seeking to enter into continuing contracts with qualified professional engineering service firms for various projects within the City of Marathon.

WHEREAS, the City intends to enter into continuing contracts with professional engineering service firms which may then be selected for specific projects and disciplines under separate Project Specific Agreements.

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. Council approves the ranking, attached as Exhibit A and authorizes the City Manager to enter into Continuing Service Agreements for Multi-disciplinary Engineering Services in substantially the form attached as Exhibit "B" hereto.

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 14TH DAY OF JULY, 2026.

THE CITY OF MARATHON, FLORIDA

Lynny Del Gaizo, Mayor

AYES: Still, Landry, Matlock, Struyf, Del Gaizo
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steven Williams, City Attorney

CITY OF MARATHON

CONTINUING ENGINEERING SERVICES AGREEMENT

THIS CONTINUING ENGINEERING SERVICES AGREEMENT (hereinafter referred to as "Agreement") made and entered into this ___ day of _____, 2026, by and between **The City of Marathon, Florida**, a Florida municipal corporation, ("City") and (Engineering Firm) whose address is (Address), ("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 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 two (2) additional one (1) year extensions 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.

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 disciplines as submitted and qualified by RFQ 2024-01. Consultant anticipates utilizing its own staff and/or subconsultants to preform work within the disciplines as may be assigned and specific tasks or projects to be performed based on the qualifications as submitted under the City of Marathon Request for Qualifications (RFQ 2024-01) Submitted on February 21, 2024 and as described in Resolution 2026-XX.

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 in each Project Specific Agreement 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 in each Project Specific Agreement 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 ten (10) 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 telm 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

A. 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.

B. 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.

C. Project Records and Public 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, an electronic copy 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 City, and reproducible copies shall be made available upon request to the City.

All project records shall be maintained by Consultant and made available upon request of the City at all times and during the period stated by Florida Records Retention Schedules. 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.

Additionally, CONSULTANT agrees and understands that it is subject to Public Records laws in relation to the property and is treated as a Contractor pursuant to Florida Statute § 119.0701. Florida Statute § 119.0701 requires the following:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF THE CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS, DIANE CLAVIER, AT 305-289-5020, clavierd@ci.marathon.fl.us, MARATHON CITY HALL, 9805 OVERSEAS HIGHWAY, MARATHON, FLORIDA 33050.

CONSULTANT shall comply with public records law and must:

Keep and maintain public records required by the CITY to perform the service; Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law;
ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if CONSULTANT does not transfer the records to the CITY;

Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of CONSULTANT or keep and maintain public records required by the CITY to perform the service. If CONSULTANT transfers all public records to the CITY upon completion of the contract, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONSULTANT keeps and maintains public records upon completion of the contract, CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

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 during the period stated by Florida Records Retention Schedules.

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 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 the 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) clays 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

E. Business Auto Liability $1,000,000
(All autos-- owned, hired or used)

F. Professional Liability $1,000,000

G. Longshoreman's Insurance (If Applicable) - Insurance coverage as required to comply with the United States Longshore and Harbor workers' Act (USL&H) for all employees covered by USL&H. All subconsultants shall similarly provide USL&I-1 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. Subconsultants 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 famish 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 the 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 Sub agreements 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.

Nothing herein shall be deemed to waive the City's sovereign immunity.

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 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 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. The City and Consultant will abide by Florida Public Records laws.

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: George Garrett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, FL 33050

With a copy to: Steve Williams, City Attorney
City of Marathon, Florida
9805 Overseas Highway
Marathon, FL 33050

For The Consultant: _____

_____

_____

33. 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 folly 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 _____ day of _____, 2024.

CONSULTANT:

By: _____

Its: _____

CITY:

By: _____

Its: Interim 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:

Steve Williams- City Attorney

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

Consultant's Hourly and Expense Rates

Insert Consultant's fee schedule here

Certificate of Insurance

Insert Consultant's Insurance certificate here

							2026 CONSULTANT CONTINUOUS SERVICE CONTRACT RANKING											
	APEX	Avirom & As	Beta Jones	Bowman	Caltran	Chen Moor	Corradino	CPH	CW3	Eastern En	FTC	Kimley Hor	Longitude S	McFarland	RS&H	South Flori	TMC	WSP
Disciplines																		
Architecture								[illegible]										
Asbestos Survey and Removal																		
Benthic Monitoring						[illegible]												
Building Official Services																		
Civil Engineering (water, wastewater, stormwater)			74			[illegible]		79.3333333	82.66667			78.33333				79.66667		82.33333
Coastal Engineering								77.6666667				80.66667						[illegible]
Communications Engineering																		
Computer Aided Drafting and Design			[illegible]															
Construction: Cost Estimating, Inspections and Project Management			71.66667												[illegible]	77.33333		
Ecology and Environmental Engineering														84		84		[illegible]
Electrical Engineering																		
Energy Management																		
Geographic Information Systems											[illegible]							
Geotechnical Engineering																		
Hazardous Material Tanks																		
Hydraulic Engineering																		
Landscaping Architecture						[illegible]						82.66667						
Mechanical, Electrical, Plumbing (MEP)																		
Planning							60.66667							[illegible]			76.66667	
Structural Engineering										[illegible]								
Surveying: Land & Topographic		84.66667		80.33333									[illegible]					
Surveying: Bathymetric													[illegible]					
Traffic/ Transportation Engineering	83.33333				81		77.33333		83.33333					[illegible]			79	
Water Quality Monitoring																		
Water Quality Monitoring																		
				[illegible]				RANKED 2ND				RANKED 3RD						