

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-045**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT TO ACCEPT \$150,000.00 IN STORM WATER MITIGATION FUNDING FOR THE 39TH STREET STORM WATER PROJECT

WHEREAS, the City Manager requested funding from the South Florida Water Management District ("SFWMD") for the City of Marathon's (the "City's") 39th Street Storm Water Project; and

WHEREAS, SFWMD has agreed to provide \$150,000.00 in storm water funding, pursuant to an agreement between SFWMD and the City.

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

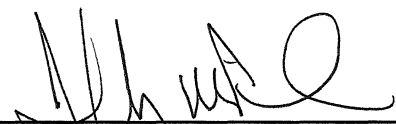
Section 1. The agreement between the City of Marathon and the South Florida Water Management District to accept \$150,000 in storm water mitigation funding for the 39th street storm water project, a copy of which is attached as Exhibit "A", together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

Section 2. The City Manager is authorized to sign the agreement.

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 25th day of May, 2004.

THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None

ABSENT: None
ABSTAIN: None

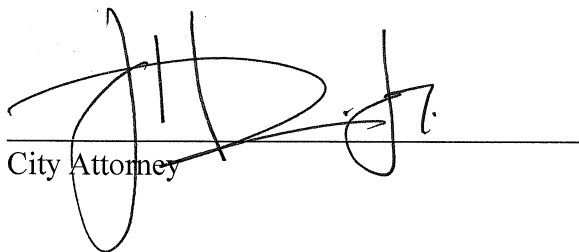
ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

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



City Attorney

ORIGINAL



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (hereinafter referred to as DISTRICT) HEREBY ENTERS INTO THIS AGREEMENT WITH: Name: CITY OF MARATHON Address: 10045-55 Overseas Highway Marathon, FL 33050 Project Manager: ~~Scott Janke~~ Susan Thomas Telephone No: (305) 289-4130 743-0033 Fax No: 005743-3667 Hereinafter referred to as: CITY

This number must appear on all Invoices and Correspondence OT040570 MBE PARTICIPATION: 0% COST SHARING INFORMATION Total Project Cost: \$ 332,000.00 CITY Contribution: \$ 182,000.00

PROJECT TITLE: THE CITY OF MARATHON STORMWATER MANAGEMENT SYSTEM PILOT PROJECT

- The following Exhibits are attached hereto and made a part of this AGREEMENT: Exhibit "A" - Special Provisions Exhibit "B" - General Terms and Conditions Exhibit "C" - Statement of Work Exhibit "D" - Payment and Deliverable Schedule Exhibit "E" - Not Applicable Exhibit "F" - Not Applicable Exhibit "G" - Not Applicable Exhibit "H" - Not Applicable Exhibit "I" - Not Applicable Exhibit "J" - Not Applicable Exhibit "K" - Not Applicable Exhibit "L" - Not Applicable Exhibit "M" - Not Applicable

TOTAL DISTRICT CONSIDERATION: \$150,000.00 AGREEMENT TYPE: Not-to-Exceed Multi-Year Funding (If Applicable) Fiscal Year: Fiscal Year: Fiscal Year: *Subject to District Governing Board Annual Budget Approval

AGREEMENT TERM: One (1) Year EFFECTIVE DATE: Last Date of Execution by the Parties District Project Manager: Cecelia Weaver District Contract Administrator: Rupert Giroux (561) 682-2532 Telephone No: (305) 853-3219 ext. 2286 Fax No.: (561) 682-6397 or (561) 681-6275 Fax No. (305) 853-3221

SUBMIT INVOICES AND NOTICES TO THE DISTRICT AT: South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 Attention: Procurement Department SUBMIT NOTICES TO THE CITY AT: CITY OF MARATHON 10045-55 Overseas Highway Marathon, FL 33050 Attention: Scott Janke

IN WITNESS WHEREOF, the authorized representative hereby executes this AGREEMENT on this date, and accepts all Terms and Conditions under which it is issued. CITY OF MARATHON Accepted By: [Signature] Signature of Authorized Representative Title: City Manager Date: 5/27/04 SOUTH FLORIDA WATER MANAGEMENT DISTRICT BY ITS GOVERNING BOARD Accepted By: [Signature] Frank Hayden, Procurement Director Date: 6-16-04 SFWMD OFFICE OF COUNSEL APPROVED By: [Signature] Date: 4/28/04 SFWMD PROCUREMENT APPROVED By: [Signature] Date: 4/29/04



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

EXHIBIT "A" SPECIAL PROVISIONS

The purpose of this Exhibit "A" is to delineate any and all changes, deletions and/or additions to the Exhibit "B" General Terms & Conditions. In the event of any conflict between this Exhibit "A" and any other provision specified in this Agreement, this Exhibit "A" shall take precedence.

1. A new Article 1.5 is hereby added as follows:



Semi-Annual

"The CITY shall submit ~~quarterly~~ progress reports to the DISTRICT throughout the term of this AGREEMENT. Any requests for changes to the Exhibit "C" Statement of Work shall be submitted by the CITY or the DISTRICT in writing to the other party for approval, and the CITY or the DISTRICT shall submit its comments/approval in writing within ten (10) days after receipt of the request for change. The DISTRICT shall be responsible for initiating any amendments to this AGREEMENT, if required."

2. Article 2.4 is hereby deleted and replaced as follows:



Semi-Annual

"The CITY shall submit ~~quarterly~~ financial statements to the DISTRICT providing a detailed accounting of all expenditures incurred hereunder throughout the term of this AGREEMENT. The CITY shall report and document the amount of funds expended per month during the ~~quarterly~~ reporting period and the AGREEMENT expenditures to date. The DISTRICT shall only be obligated to pay for a maximum not-to-exceed AGREEMENT funding limitation of \$150,000.00. In no event shall the DISTRICT be liable for any expenditure hereunder in excess of \$150,000.00."

3. Article 7.1 is hereby modified to add the following paragraph:

"The CITY shall maintain books, records and documents directly pertinent to performance under this AGREEMENT as described above. The CITY shall similarly require each subcontractor to maintain and allow access to such records for audit purposes."

4. Article 7.2 is hereby deleted in its entirety and replaced as follows:

"Both the DISTRICT and the CITY shall have joint ownership rights to all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "C", Statement of Work. Both parties' rights to deliverables received under this AGREEMENT shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party. Notwithstanding the foregoing, ownership of all equipment and hardware purchased by the CITY under this AGREEMENT shall be deemed to be the property of the CITY upon termination of this AGREEMENT. All tangible property shall remain owned by the CITY."

SFWMD Office of Counsel Approved

By: *Cathy [Signature]* Date: *4/28/04*

SFWMD PROCUREMENT APPROVED

By: *Ronald [Signature]* Date: *4/28/04*



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

ARTICLE 1 - STATEMENT OF WORK

1.1 The **CITY** shall, to the satisfaction of the **DISTRICT**, fully and timely perform all work items described in the "Statement of Work," attached hereto as Exhibit "C" and made a part of this **AGREEMENT**.

1.2 As part of the services to be provided by the **CITY** under this **AGREEMENT**, the **CITY** shall substantiate, in whatever forum reasonably requested by the **DISTRICT**, the methodology, lab analytical examinations, scientific theories, data, reference materials, and research notes. The **CITY** shall also be required to substantiate any and all work completed, including but not limited to, work completed by subcontractors, assistants, models, concepts, analytical theories, computer programs and conclusions utilized as the basis for the final work product required by the **AGREEMENT**. This paragraph shall survive the expiration or termination of this **AGREEMENT**.

1.3 The parties agree that time is of the essence in the performance of each and every obligation under this **AGREEMENT**.

1.4 In the event **CITY** employees or hired workers are authorized by Exhibit "C" to perform services on-site at **DISTRICT** facilities, the **CITY** hereby agrees to be bound by all applicable **DISTRICT** policies and standards of conduct listed in Attachment 1, "Contractor Policy Code Acknowledgement" to Exhibit "C" and shall require each individual performing such on-site work to execute the Attachment 1 form. It is the **CITY's** responsibility to advise its employees or hired workers of the nature of the project, as described in Exhibit "C". The **CITY** shall determine the method, details and means of performing the services, within the parameters established by Exhibit "C". The **DISTRICT** shall provide additional guidance and instructions to **CITY's** employees or hired workers where necessary or appropriate as determined by the **DISTRICT**.

ARTICLE 2 - COMPENSATION/ CONSIDERATION

2.1 The total consideration for all work required

by the **DISTRICT** pursuant to this **AGREEMENT** shall not exceed the amount as indicated on the cover/signature page of this **AGREEMENT**. Such amount includes all expenses which the **CITY** may incur and therefore no additional consideration shall be authorized.

2.2 Notwithstanding the foregoing, the amount expended under this **AGREEMENT** shall be paid in accordance with, and subject to the multi-year funding allocations for each **DISTRICT** fiscal year indicated on the cover/signature page of this **AGREEMENT**. Funding for each applicable fiscal year of this **AGREEMENT** is subject to **DISTRICT** Governing Board budgetary appropriation. In the event the **DISTRICT** does not approve funding for any subsequent fiscal year, this **AGREEMENT** shall terminate upon expenditure of the current funding, notwithstanding other provisions in this **AGREEMENT** to the contrary. The **DISTRICT** will notify the **CITY** in writing after the adoption of the final **DISTRICT** budget for each subsequent fiscal year if funding is not approved for this **AGREEMENT**.

2.3 The **CITY** assumes sole responsibility for all work which is performed pursuant to the Statement of Work, Exhibit "C". By providing funding hereunder, the **DISTRICT** does not make any warranty, guaranty, or any representation whatsoever regarding the correctness, accuracy, or reliability of any of the work performed hereunder.

2.4 The **CITY** by executing this **AGREEMENT**, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The **CITY** agrees that the **DISTRICT** may adjust the consideration for this **AGREEMENT** to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. The **DISTRICT** shall make any such adjustment within one (1) year following the expiration or termination of this **AGREEMENT**.



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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ARTICLE 3 - INVOICING AND PROMPT PAYMENT

3.1 The CITY's invoices shall reference the DISTRICT's AGREEMENT Number and shall be sent to the DISTRICT's address specified on the cover/signature page of this AGREEMENT. The CITY shall not submit invoices to any other address at the DISTRICT.

3.2 The CITY shall submit the invoices on a completion of deliverable basis, pursuant to the schedule outlined in the Payment and Deliverable Schedule, attached hereto as Exhibit "D" and made a part of this AGREEMENT. In the event the schedule does not specify payment on a completion of deliverable basis, all invoices shall be substantiated by adequate supporting documentation to justify hours expended and expenses incurred within the not-to-exceed budget, including but not limited to, copies of approved timesheets, payment vouchers, expense reports (including approved travel costs, if applicable), receipts and subcontractor invoices. Any authorized travel shall be reimbursed in accordance with Chapter 112, Florida Statutes.

3.3 It is the policy of the DISTRICT that payment for all goods and services shall be made in a timely manner and that interest payments are made on late payments. In accordance with Florida Statutes, Section 218.70, Florida Prompt Payment Act, a "proper" invoice is defined as an invoice that conforms to all statutory requirements and all DISTRICT requirements as specified in the AGREEMENT for invoice submission. The time at which payment shall be due from the DISTRICT shall be forty-five (45) days from receipt of a proper invoice and acceptance of services and/or deliverables, based on compliance with the statutory requirements set forth in Section 218.70, F.S. and upon satisfaction of the DISTRICT conditions as detailed in the AGREEMENT.

Failure of the CITY to follow the instructions set forth in the AGREEMENT regarding a proper invoice and acceptable services and/or deliverables may result in an unavoidable delay in payment by the DISTRICT. All payments due from the DISTRICT

for a proper invoice and acceptable services and/or deliverables and not made within the time specified in this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. The CITY shall invoice the DISTRICT for payment of any accrued unpaid interest.

Any disputes regarding invoice payments which cannot be resolved by the appropriate department of the DISTRICT shall be concluded by final written decision of the DISTRICT Leadership Team not later than sixty (60) days after the date on which the proper invoice was received by the DISTRICT.

3.4 Unless otherwise stated herein, the DISTRICT shall not pay for any obligation or expenditure made by the CITY prior to the commencement date of this AGREEMENT.

ARTICLE 4 - PROJECT MANAGEMENT/ NOTICE

4.1 The parties shall direct all technical matters arising in connection with the performance of this AGREEMENT, other than invoices and notices, to the attention of the respective Project Managers specified on the cover/signature page of the AGREEMENT for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this AGREEMENT. The CITY shall direct all administrative matters, including invoices and notices, to the attention of the DISTRICT's Contract Specialist specified on the cover/signature page of the AGREEMENT.

All formal notices between the parties under this AGREEMENT shall be in writing and shall be deemed received if sent by certified mail, return receipt requested, to the respective addresses specified on the cover/signature page of the AGREEMENT. The CITY shall also provide a copy of all notices to the DISTRICT's Project Manager. All notices required by this AGREEMENT shall be considered delivered *upon receipt*. Should either party change its address, written notice of such new address shall promptly be sent to the other party.



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All correspondence to the **DISTRICT** under this **AGREEMENT** shall reference the **DISTRICT's** Contract Number specified on the cover/signature page of the **AGREEMENT**.

ARTICLE 5 - INSURANCE

5.1 The **CITY** assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the **CITY** and the officers, employees, servants, and agents thereof. The **CITY** warrants and represents that it is self-funded for Worker's compensation and liability insurance, covering at a minimum bodily injury, personal injury and property damage with protection being applicable to the **CITY's** officers, employees, servants and agents while acting within the scope of their employment during performance under this **AGREEMENT**. The **CITY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

5.2 In the event the **CITY** subcontracts any part or all of the work hereunder to any third party, the **CITY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **CITY**. Any **AGREEMENT** awarded by the **CITY** for work under this **AGREEMENT** shall include a provision whereby the **CITY's** subcontractor agrees to defend, indemnify, and pay on behalf, save and hold the **DISTRICT** harmless from all damages arising in connection with the **CITY's** subcontract.

ARTICLE 6 - TERMINATION/REMEDIES

6.1 It is the policy of the **DISTRICT** to encourage good business practices by requiring contractors to materially perform in accordance with the terms and conditions of the **DISTRICT AGREEMENT**. In accordance with **DISTRICT** Rule 40E-7, Part II, F.A.C., "material breach" is

defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the **AGREEMENT**.

If the **CITY** materially fails to fulfill its obligations under this **AGREEMENT**, the **DISTRICT** will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The **CITY** shall have thirty (30) days to cure the breach. If the **CITY** fails to cure the breach within the thirty (30) day period, the **DISTRICT** shall issue a Termination for Default Notice. Once the **DISTRICT** has notified the **CITY** that it has materially breached its **AGREEMENT** with the **DISTRICT**, by sending a Termination for Default Notice, the **DISTRICT's** Governing Board shall determine whether the **CITY** should be suspended from doing future work with the **DISTRICT**, and if so, for what period of time. The **DISTRICT's** Governing Board will consider the factors detailed in Rule 40E-7, Part II, F.A.C. in making a determination as to whether a **CITY** should be suspended, and if so, for what period of time. Should the **DISTRICT** terminate for default in accordance with this provision, the **DISTRICT** shall be entitled to recover procurement costs in addition to all other remedies under law and/or equity.

6.2 The **DISTRICT** may terminate this **AGREEMENT** with or without cause at any time for convenience upon thirty (30) calendar days prior written notice to the **CITY**. The performance of work under this **AGREEMENT** may be terminated by the **DISTRICT** in accordance with this clause in whole, or from time to time in part, whenever the **DISTRICT** shall determine that such termination is in the best interest of the **DISTRICT**. Any such termination shall be effected by delivery to the **CITY** of a Notice of Termination specifying the extent to which performance of work under the **AGREEMENT** is terminated, and the date upon which such termination becomes effective.

In the event of termination for convenience, the **DISTRICT** shall compensate the **CITY** for all authorized and accepted deliverables completed



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through the date of termination in accordance with Exhibit "C", Statement of Work. The **DISTRICT** shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this **AGREEMENT**. The **DISTRICT** may withhold all payments to the **CITY** for such work until such time as the **DISTRICT** determines the exact amount due to the **CITY**.

6.3 In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

6.4 The **DISTRICT** may order that all or part of the work stop if circumstances dictate that this action is in the **DISTRICT's** best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the **DISTRICT's** Governing Board, a condition of immediate danger to **DISTRICT** employees, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the **CITY** to the **DISTRICT**. If this provision is invoked, the **DISTRICT** shall notify the **CITY** in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The **CITY** shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the **DISTRICT** is received. Upon resumption of work, if deemed appropriate by the **DISTRICT**, the **DISTRICT** shall initiate an amendment to this **AGREEMENT** to reflect any changes to Exhibit "C", Statement of Work and/or the project schedule.

6.5 The **DISTRICT** anticipates a total project cost as indicated on the cover/signature page, with the balance of matching funds and/or in-kind services to be obtained from the **CITY** in the amount as specified on the cover/signature page of this **AGREEMENT**. In the event such **CITY** matching funding and/or in-kind

services becomes unavailable, that shall be good and sufficient cause for the **DISTRICT** to terminate the **AGREEMENT** pursuant to Paragraph 6.2 above.

ARTICLE 7 - RECORDS RETENTION/ OWNERSHIP

7.1 The **CITY** shall maintain records and the **DISTRICT** shall have inspection and audit rights as follows:

A. Maintenance of Records: The **CITY** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **AGREEMENT** including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five years from completing performance and receiving final payment under this **AGREEMENT**.

B. Examination of Records: The **DISTRICT** or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **AGREEMENT**. Such examination may be made only within five years from the date of final payment under this **AGREEMENT** and upon reasonable notice, time and place.

C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **AGREEMENT**, the **CITY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute, and all such records shall be made readily available to the **DISTRICT**.

7.2 The **DISTRICT** shall retain exclusive title, copyright and other proprietary rights in all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the **CITY**, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by



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the Exhibit "C", Statement of Work (the "Work"). In consideration for the **DISTRICT** entering into this **AGREEMENT**, and other good and valuable consideration the sufficiency and receipt in full of which is hereby acknowledged by the **CITY**, the **CITY** hereby assigns, transfers, sells and otherwise grants to the **DISTRICT** any and all rights it now has or may have in the Work (the "Grant"). This Grant shall be self-operative upon execution by the parties hereto, however the **CITY** agrees to execute and deliver to the **DISTRICT** any further assignments or other instruments necessary to evidence the Grant, without the payment of any additional consideration by the **DISTRICT**. The **CITY** may not disclose, use, license or sell any work developed, created, or otherwise originated hereunder to any third party whatsoever. This paragraph shall survive the termination or expiration of this **AGREEMENT**.

7.3 The **CITY** represents and warrants that proprietary software, if any, to be provided to the **DISTRICT** by the **CITY** hereunder, as specifically identified in Exhibit "C", Statement of Work shall have been developed solely by or for the **CITY**, or lawfully acquired under license from a third party, including the right to sublicense such software. The **CITY** shall include copyright or proprietary legends in the software and on the label of the medium used to transmit the software. The **CITY** shall grant to the **DISTRICT** a perpetual, non-transferable, non-exclusive right to use the identified software without an additional fee. The **DISTRICT** acknowledges that title to the software identified in Exhibit "C" shall remain with the Licensor.

7.4 Any equipment purchased by the **CITY** with **DISTRICT** funding under this **AGREEMENT** shall be returned and title transferred from the **CITY** to the **DISTRICT** immediately upon termination or expiration of this **AGREEMENT** upon the written request of the **DISTRICT** not less than thirty (30) days prior to **AGREEMENT** expiration or termination. Equipment is hereby defined as any non-consumable items purchased by the **DISTRICT** with a value equal to or greater than \$500.00 and with a normal expected life of one (1) year or more. The **CITY** will maintain any such equipment in good working condition while in its possession and will

return the equipment to the **DISTRICT** in good condition, less normal wear and tear. The **CITY** will use its best efforts to safeguard the equipment throughout the period of performance of this **AGREEMENT**. However the **DISTRICT** will not hold the **CITY** liable for loss or damage due to causes beyond the **CITY**'s reasonable control. In the event of loss or damage, the **CITY** shall notify the **DISTRICT** in writing within five (5) working days of such occurrence.

7.5 The **DISTRICT** has acquired the right to use certain software under license from third parties. For purposes of this **AGREEMENT**, the **DISTRICT** may permit the **CITY** access to certain third party owned software on **DISTRICT** computer systems. The **CITY** acknowledges the proprietary nature of such software and agrees not to reproduce, distribute or disclose such software to any third party. Use of or access to such software shall be restricted to designated **DISTRICT** owned systems or equipment. Removal of any copy of licensed software is prohibited.

ARTICLE 8 - STANDARDS OF COMPLIANCE

8.1 The **CITY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **CITY**, upon request, as to any such laws of which it has present knowledge.

8.2 The **CITY** hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this **AGREEMENT**. The **CITY** shall take all measures necessary to effectuate these assurances.

8.3 The laws of the State of Florida shall govern all aspects of this **AGREEMENT**. In the event it is necessary for either party to initiate legal action regarding this **AGREEMENT**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern **DISTRICT** of Florida for any claims



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which are justiciable in federal court.

8.4 The **CITY**, by its execution of this **AGREEMENT**, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the **DISTRICT** is a convicted vendor or has been placed on the discriminatory vendor list. If the **CITY** or any affiliate of the **CITY** has been convicted of a public entity crime or has been placed on the discriminatory vendor list, a period longer than 36 months has passed since that person was placed on the convicted vendor or discriminatory vendor list. The **CITY** further understands and accepts that this **AGREEMENT** shall be either void by the **DISTRICT** or subject to immediate termination by the **DISTRICT**, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The **DISTRICT**, in the event of such termination, shall not incur any liability to the **CITY** for any work or materials furnished.

8.5 The **CITY** shall be responsible and liable for the payment of all of its FICA/Social Security and other applicable taxes resulting from this **AGREEMENT**.

8.6 The **CITY** warrants that it has not employed or retained any person, other than a bona fide employee working solely for the **CITY**, to solicit or secure this **AGREEMENT**. Further the **CITY** warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for the **CITY**, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this **AGREEMENT**. For breach of this provision, the **DISTRICT** may terminate this **AGREEMENT** without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

8.7 The **CITY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **CITY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of

establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **CITY**.

8.7.1 Pursuant to Sections 119.07(3)(o), and 240.241 Florida Statutes, data processing software obtained by an agency under a license **AGREEMENT** which prohibits its disclosure and which software is a trade secret, as defined in Sections 812.081(c), Florida Statutes is exempt from the disclosure provisions of the Public Records law. However, the parties hereto agree that if a request is made of the **DISTRICT**, pursuant to Chapter 119, Florida Statute, for public disclosure of proprietary property being licensed to the **CITY** (Licensee) hereunder, the **DISTRICT** shall advise the **CITY** (Licensee) of such request and, as between the **DISTRICT** and the **CITY** (Licensee), it shall be the **CITY**'s (Licensee's) sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the Courts and to immediately serve notice of the same upon the Licensor to protect the Licensor's claimed exemption under the Statute.

8.8 The **CITY** shall make reasonable efforts to obtain any necessary federal, state, local, and other governmental approvals, as well as all necessary private authorizations and permits, prior to the commencement of performance of this **AGREEMENT**. A delay in obtaining permits shall not give rise to a claim by the **CITY** for additional compensation. If the **CITY** is unable to obtain all necessary permits in a timely manner, either party may elect to terminate this **AGREEMENT**, each party to bear its own costs, notwithstanding other provisions of this **AGREEMENT** to the contrary.

8.9 Pursuant to Section 216.347, F.S., the **CITY** is prohibited from the expenditure of any funds under this **AGREEMENT** to lobby the Legislature, the judicial branch or another state agency.

8.10 The **DISTRICT** is a governmental entity responsible for performing a public service and therefore has a legitimate interest in promoting the goals and objectives of the agency. The work under this **AGREEMENT** involves a project consistent with these goals and objectives. Consequently, the **DISTRICT** is desirous of satisfactorily completing



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and successfully promoting this project with the cooperation of its **CITY**. Therefore, as the **DISTRICT'S CITY** for this project, the **CITY** assures the **DISTRICT** that the **CITY**, its employees, subcontractors and assigns will refrain from acting adverse to the **DISTRICT'S** legitimate interest in promoting the goals and objectives of this project. The **CITY** agrees to take all reasonable measures necessary to effectuate these assurances. In the event the **CITY** determines it is unable to meet or promote the goals and objectives of the project, it shall have the duty to immediately notify the **DISTRICT**. Upon such notification the **DISTRICT**, in its discretion, may terminate this **AGREEMENT**.

ARTICLE 9 - RELATIONSHIP BETWEEN THE PARTIES

9.1 The **CITY** shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance on this **AGREEMENT**. Both parties are free to enter into contracts with other parties for similar services.

9.2 In the event that the **CITY** is providing staff who will be working on-site at **DISTRICT** facilities, it is further understood that the **CITY** shall be the employer of the staff provided pursuant to the **AGREEMENT** for all purposes under state and federal law and that the **CITY's** staff shall not be eligible for any benefit programs the **DISTRICT** offers to its employees. All benefits available to the **CITY's** staff shall be exclusively provided by the **CITY** or by the **CITY's** employee.

The **CITY** is solely responsible for compliance with all labor and tax laws pertaining to officers, agents and **CITY** employees and shall indemnify and hold the **DISTRICT** harmless from any failure by the **CITY** to comply with such laws. The **CITY's** duties with respect to such personnel shall include, but are not limited to, the following:

9.2.1 Billing, collection, payroll services and tax withholding, and any other related services

9.2.2 Providing insurance coverage pursuant to Article 5 of this **AGREEMENT**.

9.2.3 Providing any and all employment benefits, including, but not limited to, annual leave, sick leave, paid holidays, health insurance, retirement benefits and disability insurance.

9.2.4 Complying with the Fair Labor Standards Act, 29 U.S.C. 201, et.seq., including payment of overtime in accordance with the Act.

9.2.5 Providing employee training for all activities necessary for job performance, except those functions that are unique to the **DISTRICT**, in which event, the **DISTRICT**, in its sole judgment and discretion, may provide training.

9.3 It is the intent and understanding of the Parties that this **AGREEMENT** is solely for the benefit of the **CITY** and the **DISTRICT**. No person or entity other than the **CITY** or the **DISTRICT** shall have any rights or privileges under this **AGREEMENT** in any capacity whatsoever, either as third-party beneficiary or otherwise.

9.4 The **CITY** shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this **AGREEMENT** without the prior written consent of the **DISTRICT**. Any attempted assignment in violation of this provision shall be void.

9.5 The **CITY** shall not pledge the **DISTRICT's** credit or make the **DISTRICT** a guarantor of payment or surety for any **AGREEMENT**, debt, obligation, judgement, lien, or any form of indebtedness.

9.6 The **DISTRICT** assumes no duty with regard to the supervision of the **CITY** and the **CITY** shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of **AGREEMENT** performance.



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

ARTICLE 10 - MBE PARTICIPATION

10.1 The **CITY** hereby acknowledges that no Minority Business Enterprises (MBE) participation level has been established for this **AGREEMENT**; however, both parties agree to provide the other advance notice of competitive contracts that may result from this **AGREEMENT** along with timelines for public notice and award of such contracts. In the event subsequent competitive contract awards do result in MBE participation, such participation shall be reported to the other party. Both the **CITY** and the **DISTRICT** will ensure compliance with the provisions of their respective program, laws, ordinances and policies and will support the other's initiatives to the extent allowed by law.

ARTICLE 11 - GENERAL PROVISIONS

11.1 Notwithstanding any provisions of this **AGREEMENT** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **AGREEMENT** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this **AGREEMENT** shall otherwise remain in effect. This provision shall not apply if the "Statement of Work" of this **AGREEMENT** specifies that performance by **CITY** is specifically required during the occurrence of any of the events herein mentioned.

11.2 Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:

- (a) Exhibit "A" Special Provisions, if applicable
- (b) Exhibit "B" General Terms and Conditions
- (c) Exhibit "C" Statement of Work
- (d) all other exhibits, attachments and documents specifically incorporated herein by reference

11.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

11.4 Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **AGREEMENT**, to the extent that the **AGREEMENT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

11.5 This **AGREEMENT** may be amended only with the written approval of the parties hereto.

11.6 This **AGREEMENT** states the entire understanding and **AGREEMENT** between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this **AGREEMENT**. The **CITY** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind the **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

ARTICLE 12 – SAFETY REQUIREMENTS

12.1 The **CITY** shall require appropriate personal protective equipment in all operations where there is



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

exposure to hazardous conditions.

12.2 The **CITY** shall instruct employees required to handle or use toxic materials or other harmful substances regarding their safe handling and use, including instruction on the potential hazards, personal hygiene and required personal protective measures. A Material Safety Data Sheet (MSDS) shall be provided by the **CITY** to the **DISTRICT** on each chemical product used.

12.3 The **CITY** shall comply with the standards and regulations set forth by the Occupational Safety and Health Administration (OSHA), the Florida Department of Labor and Employment Security and all other appropriate federal, state, local or **DISTRICT** safety and health standards.

12.4 It is the **CITY's** sole duty to provide safe and healthful working conditions to its employees and those of the **DISTRICT** on and about the site of **AGREEMENT** performance.

12.5 The **CITY** shall initiate and maintain an accident prevention program which shall include, but shall not be limited to, establishing and supervising programs for the education and training of employees in the recognition, avoidance, and prevention of unsafe conditions and acts.

12.6 The **CITY** shall erect and maintain, as required by existing conditions and performance of the **AGREEMENT**, reasonable safeguards for safety and protection, including posting of danger signs and other warnings, against hazards.

12.7 The **CITY** shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

12.7.1 employees on the work and other persons who may be affected thereby; including pedestrians, visitors, or traveling public;

12.7.2 the work, materials, and equipment to be incorporated therein; whether in storage on or off the site, under care, custody or control of the **CITY**, or the **CITY's** subcontractors; and

12.7.3 other properties at the site or adjacent thereto; such as trees, shrubs, lawns, walks, utilities, pavement, roadways, structures, building, vehicles, and equipment not designated for removal, relocation or replacement in the course of work.

12.8 The **CITY** shall provide first aid services and medical care to its employees.

12.9 The **CITY** shall develop and maintain an effective fire protection and prevention procedures and good housekeeping practices on the work site throughout the **AGREEMENT**.

12.10 *Emergencies:* In emergency affecting safety of persons or property on or about the site or as a result of the work; the **CITY** shall act, timely and with due diligence, to prevent threatened damage, injury, or loss.

12.11 *Environmental:* When the **CITY**, **CITY's** contractors, or subcontractors, use petroleum products, hazardous chemicals, or any other chemicals used on or about the site, the **CITY** shall be responsible for handling these chemical constituents in accordance with federal, state and local regulations during the terms of the **AGREEMENT**. For accidental discharges or releases onto the floor, air, ground, surface waters, ground waters, it shall be the **CITY's** sole responsibility to respond immediately to clean the site, at his expense, to the complete satisfaction of federal, state, local regulatory agencies and to the **DISTRICT** requirements.

12.12 The **DISTRICT** may order the **CITY** to halt operations under the **AGREEMENT**, at the **CITY's** expense, if a condition of immediate danger to the public and/or **DISTRICT** employees, equipment, or property exist. This provision shall not shift the responsibility or risk of loss for injuries or damage sustained from the **CITY** to the **DISTRICT**; and the **CITY** shall remain solely responsible for compliance with all federal, state and local safety requirements, provisions of this section, and safety of all persons and property on or about the site.

EXHIBIT “C”

IA040570

The City of Marathon Stormwater Management System Pilot Project

1. Introduction

The City of Marathon has identified stormwater pollution as a serious issue and is undertaking a proactive response to the problem by implementing a stormwater management system. The *Stormwater Management Master Plan* identified several problem sites within the City limits that should be addressed, including the intersection of Louisa Street and 39th Street. This site is an ideal location for a stormwater management system pilot project for several reasons, including its 1) presence in a fairly dense neighborhood that is comprised of residents earning below the City’s mean income, 2) existence along a highly traveled road leading to several commercial facilities and nearby fish markets, 3) extensive history of significant flooding during storm events, and 4) proximity to several community establishments. Due to the site’s location in a mixed use (residential and commercial) neighborhood, many people will be exposed to this important project. In addition, there is currently no facility/collection system in place to address persistent stormwater problems at this location. While the project design is not finalized, one potential management system design, taken from the City of Marathon’s *Stormwater Management Master Plan* (Calvin, Giordano & Associates, Inc., 2002), would cover an area equivalent to 1.03 acres. At this time, the specific design and cost of the project has not been fully determined.

The overall benefits of a stormwater management system are significant and central to the water quality and flood protection elements of the District’s mission. Because the selected site is adjacent to a canal that serves as a boat basin, runoff quickly reaches the open waters of the Gulf of Mexico. Unfortunately, this stormwater runoff pollution flows freely to the open waters as no gates, air flows, or similar barriers are located on the canal. The City is committed to constructing a quality pilot project that can be used as a template for similar projects throughout the City.

2. Scope of Services

The project consists of a closed drainage system, with an exfiltration trench with a 24 inch diameter injection (gravity) well and overflow outfall.

District funds in an amount not to exceed \$150,000 will be applied toward the estimated \$332,000 total cost of the project. District funds shall be used for the design and construction of the project, returning the landscape to its original state, public signage and information about the location and purpose of the project, and any safety measures that may be necessary to protect the general public as well as maintain the project.

3. Detailed Project Description

The proposed stormwater management system is based on a closed drainage system, exfiltration trenches, 24 inch diameter gravity well, and overflow outfall. The estimated total cost of the project includes roadway and swale reconstruction. This project will impact a total of 1.03 acres.

4. Deliverables

The City will provide the District with semiannual progress reports. Upon completion of project construction, the City will provide a site visit for the District Project Manager. It is estimated that the project will be constructed within one year of contract execution.

EXHIBIT "D"

PAYMENT AND DELIVERABLE SCHEDULE

Total payment by the DISTRICT shall not exceed the amount of \$150,000.00. All invoices shall be accompanied by adequate documentation to support actual expenditures incurred by the CITY within the not-to-exceed amounts specified below in accordance with Article 3.2 of the Agreement. The CITY is responsible for reviewing and approving deliverables from the consultant to ensure that project objectives are met. The CITY is also responsible for project management, budget management and quality control with the consultant.

Task	Deliverable	Due Date*	DISTRICT Not-to Exceed Payment
Construction	Progress Reports	Semi-Annual	\$0
	Completion Report	12 months	\$150,000.00
	Not-to Exceed Total Payment		\$150,000.00

* After Agreement date