

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-067**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING THE CONTINUING SERVICES AGREEMENT BETWEEN THE CITY AND THE WEILER ENGINEERING CORPORATION FOR ENGINEERING SERVICES.

WHEREAS, pursuant to Section 287.055, Florida Statutes, the City of Marathon (the "City") requested qualifications from engineers to provide professional civil and environmental engineering services to the City in December 2003; and

WHEREAS, The Weiler Engineering Corporation (the "Consultant") was recommended by City staff to provide professional services through a continuing services agreement (the "Agreement"); and

WHEREAS, the purpose of this Agreement is not to authorize the Consultant to perform a specific project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for specific projects or services when required.

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

Section 1. The continuing services agreement between the City of Marathon and The Weiler Engineering Corporation to provide engineering services to the City pursuant to project authorizations, 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 execute the agreement on behalf of the City.

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 22nd day of June, 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

CONTINUING SERVICES

A G R E E M E N T

Between

THE CITY OF MARATHON, FLORIDA

And

THE WEILER ENGINEERING CORPORATION

CONTINUING SERVICES

A G R E E M E N T

Between

THE CITY OF MARATHON

And

THE WEILER ENGINEERING CORPORATION

THIS AGREEMENT is made between the CITY OF MARATHON, a Florida municipal corporation, (hereinafter referred to as the "CITY") and THE WEILER ENGINEERING CORPORATION, a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the "CONSULTANT"), whose principal place of business is 20020 Veterans Boulevard, Port Charlotte, Florida 33954.

WHEREAS, pursuant to Section 287.055, Florida Statutes, the CITY requested qualifications from qualified engineers and selected the CONSULTANT to provide professional civil and environmental engineering services; and

WHEREAS, the CONSULTANT is willing and able to perform such professional, services for the CITY within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the CONSULTANT to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the CITY and CONSULTANT agree as follows:

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the CITY for the CONSULTANT's professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Reimbursable Expenses:** the direct non-salary expenses directly attributable to the Project. Reimbursable expenses include long-distance communications, application and permit fees paid for securing approval of authorities having jurisdiction over the Specific Project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.

1.3 **Specific Project Agreement or Project Agreement:** an agreement to provide services for a particular Project.

1.4 **Subconsultant Fee:** the direct and actual cost of the Subconsultant with no markup, as reflected by actual invoices of the Subconsultant.

1.5 **Travel Expenses:** actual mileage at 38 ¢ per mile, meals and lodging expenses incurred directly for the Specific Project for travel outside of Monroe County. No overnight travel or out-of-CITY travel outside of Monroe County shall be reimbursed unless the CONSULTANT has secured advance written authorization for such travel from the City Manager. Reimbursement for such authorized travel expenses shall be at the rates provided for in Chapter 112, Florida Statutes, as may be amended from time to time, which rates shall by reference be made a part of this Agreement as though set forth in full.

SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES

2.1 In accordance with the Consultants' Competitive Negotiation Act, the CONSULTANT may provide professional services to the CITY for Specific Projects as authorized from time to time by either the City Council or City Manager as authorized by subsection 2.6. The services shall be for the following types of Projects or similar disciplines:

- a. NPDES Permitting and stormwater management
- b. Drainage facilities
- c. Road construction and maintenance
- d. Civil Engineering
- e. GIS Mapping assistance
- f. Utility infrastructure evaluation and review
- g. Plat and site plan review
- h. Park and park land development
- i. Environmental engineering
- j. Surveying
- k. Project management
- l. Opinion of probable cost of construction
- m. Public Works permitting and inspections

2.2 When the need for services for a Specific Project occurs, the City Manager may, enter into negotiations with the CONSULTANT for that Specific Project under the terms and conditions of this Agreement. The CITY shall initiate said negotiations by providing the

CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide professional services for the Specific Project. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The City Manager and CONSULTANT shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 2.3.

2.3 The CITY and CONSULTANT shall utilize as the agreement for each Specific Project a Standard Project Agreement ("Project Agreement"), a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation;
- e. The Personnel assigned to the Specific Project;
- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements;
- g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.

2.4 The professional services to be rendered by the CONSULTANT shall commence subsequent to the execution of each Project Agreement. Performance of work by CONSULTANT prior to execution of a Project Agreement shall be at CONSULANT's sole risk.

2.5 The City Manager is authorized to negotiate and execute a Project Agreement for Projects in which the CONSULTANTS' services do not exceed \$10,000.00.

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

SECTION 3. TERM/TERMINATION

3.1 **Term of Agreement.** – This Continuing Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to Section 3.2 or other applicable sections of this Agreement. Each

Project Agreement shall specify the period of service agreed to by the CITY and CONSULTANT for services to be rendered under said Project Agreement.

3.2 **Termination – For Convenience** – This Continuing Services Agreement may be terminated by the CITY for convenience upon thirty (30) calendar days written notice to the CONSULTANT.

3.3 **Effect on Project Agreement** – Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3.4 **Non-Exclusive Agreement** - Notwithstanding the provisions of Subsection 3.1, the City Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the CITY under similar continuing services agreements. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 **Changes Permitted.** Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the CITY by Change Order without invalidating the Project Agreement.

4.2 **Change Order Defined.** Change Order shall mean a written order to the CONSULTANT executed by the CITY, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

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

4.4 **Authority to Execute Changes or Requests for Additional Services.** The City Manager is authorized to negotiate and execute Change Orders, in an amount not to exceed \$10,000.00 per contract. Changes, which exceed \$10,000.00, shall be approved by the City Council.

SECTION 5. SURVIVAL OF PROVISIONS

5.1 Any terms or conditions of either this Agreement or any subsequent Project Agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 6. CITY'S RESPONSIBILITIES

6.1 Assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allow reasonable access to all pertinent information relating to the services to be performed by CONSULTANT.

6.2 Furnish to CONSULTANT, at the CONSULTANT'S written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by CONSULTANT, in possession of the CITY.

6.3 Arrange for access to and make all provisions for CONSULTANT to enter upon public property as required for CONSULTANT to perform services.

SECTION 7. CODE OF ETHICS

7.1 The code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

SECTION 8. POLICY OF NON-DISCRIMINATION/WAGES

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

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

SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES

9.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the CITY or furnished by the CONSULTANT pursuant to any Project Agreement, shall become the property of the CITY, whether the Project for which they are made is completed or not, and shall be delivered by CONSULTANT to the CITY within five (5) calendar days after receipt of written notice requesting delivery of said documents or

digital files. The CONSULTANT shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the CONSULTANT, without the CITY'S prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

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

9.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

SECTION 10. RECORDS/AUDITS

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

10.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable.

10.3 Refusal of the CONSULTANT to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the CITY of this Agreement or any Project Agreement.

SECTION 11. NO CONTINGENT FEE

11.1 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the CITY shall have the right to terminate this Agreement or any Project Agreement, without liability, and

at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 12. INDEPENDENT CONTRACTOR

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

SECTION 13. ASSIGNMENT; AMENDMENTS

13.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the CITY.

13.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 14. INDEMNIFICATION/HOLD HARMLESS

14.1 Pursuant to Section 725.08, Florida Statutes, the 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 such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this or any Project Agreement.

SECTION 15. INSURANCE

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

15.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident.

15.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the CITY against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

15.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the CITY against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

(b) The CITY is to be specifically included as an Additional Insured for the liability of the CITY resulting from operations performed by or on behalf of CONSULTANT in performance of this or any Project Agreement. CONSULTANT'S insurance, including that applicable to the CITY as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the CITY shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

15.4 **Professional Liability:** The CONSULTANT shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of

each Project Agreement. Upon request of the CITY, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The CONSULTANT shall additionally notify the CITY, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$25,000.00 during the policy term.

15.5 **Certificate of Insurance:** Prior to the execution of this Agreement, CONSULTANT shall provide the City Manager with evidence of insurability from the Consultant's Insurance Carrier or a Certificate of Insurance. Prior to execution of any Project Agreement, the CONSULTANT shall provide to the City Manager, Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any Project Agreement and shall state that such insurance is as required by this and any Project Agreement. The CITY reserves the right to require the CONSULTANT to provide a certified copy of such policies, upon written request by the CITY. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the CITY before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City Manager.

15.6 All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The City Manager may require the CONSULTANT, as a condition of execution of a particular Project Agreement, to provide a bond or other monetary consideration to cover the CONSULTANTS' deductible for Professional Liability Insurance.

SECTION 16. REPRESENTATIVE OF CITY AND CONSULTANT

16.1 **CITY Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The CITY designates the City Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

16.2 **CONSULTANT Representative.** CONSULTANT shall inform the CITY Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 17. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

17.1 If either the CITY or CONSULTANT is required to enforce the terms of this Agreement or any Project Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all

costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

17.2 In the event of any litigation arising out of this Agreement or Project Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED

18.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 19. CONSULTANT'S RESPONSIBILITIES

19.1 The CONSULTANT and any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction and shall comply with all applicable CITY Codes, state and federal laws, rules and regulations.

19.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Project Agreement, it is determined that the CONSULTANT'S documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the CITY, the CONSULTANT shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the CITY for any other services and expenses made necessary thereby, save and expect any costs and expenses which the CITY would have otherwise paid absent the CONSULTANT'S error or omission. The CITY'S rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

19.3 The CONSULTANT'S obligations under Paragraph 19.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

SECTION 20. SUBCONSULTANTS

20.1 In the event the CONSULTANT requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the CONSULTANT must secure the prior written approval of the City Manager. The CONSULTANT shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.

20.2 Any subcontract with a Subconsultant shall afford to the CONSULTANT rights against the Subconsultant which correspond to those rights afforded to the CITY against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

20.3 No reimbursement shall be made to the CONSULTANT for any subconsultants that have not been previously approved by the CITY for use by the CONSULTANT.

SECTION 21. NOTICES

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR CONSULTANT:

The Weiler Engineering Corporation
Attention: R. Jeff Weiler, P.E. President
20020 Veterans Boulevard
Port Charlotte, Florida 33954
Telephone: (941) 764-6447
Facimile: (941) 764-8915

With a copy to:

The Weiler Engineering Corporation
Attention: Michael W. Hatfield, P.E., Project Manager
6801 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 289-4161
Facsimile: (305) 289-4162

FOR CITY:

City of Marathon
Attention: Scott Janke, City Manager
10045-55 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033
Facsimile: (305) 743-3667

With a copy to:

Weiss Serota Helfman Pastoriza Guedes Cole & Boniske, P.A.,
City Attorney
Attention: John R. Herin, Esq.
2665 South Bayshore Drive
Suite 420
Miami, FL 33133
Phone: (305) 854-0800
Facsimile: (305) 854-2323

SECTION 22. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the CITY determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

SECTION 23. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Project Agreement. Venue of any action to enforce this Agreement or any Project Agreement shall be in Monroe County, Florida.

SECTION 24. GOVERNING LAW

This Agreement and any Project Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 25. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 26. EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

SECTION 27. SEVERABILITY

If any provision of this Agreement or any Project Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 28. COUNTERPARTS

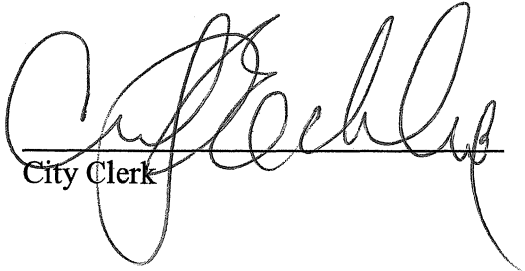
This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The CITY, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by CONSULTANT by and through its President, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

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ATTEST:

CITY OF MARATHON



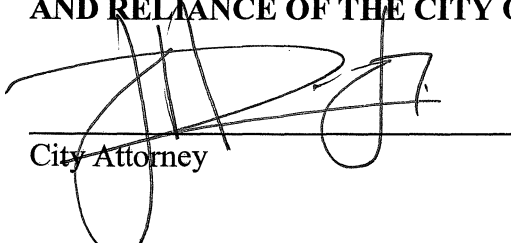
City Clerk

By: 

Scott Janke, City Manager

Date: 6/23/04

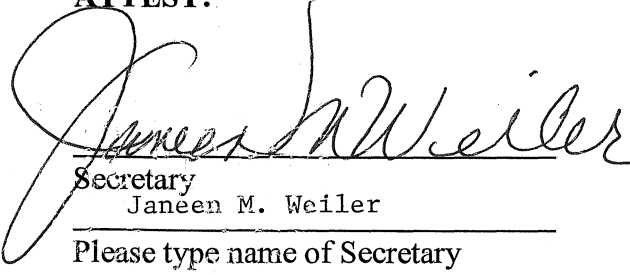
**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**



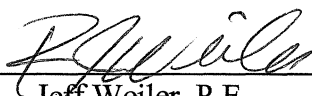
City Attorney

ATTEST:

WEILER ENGINEERING CORPORATION



Secretary
Janeen M. Weiler
Please type name of Secretary

By: 

Jeff Weiler, P.E.
President

Date: 6-11-04

WITNESSES:

Print Name: _____

Print Name: _____

EXHIBIT "B"

PAGE 1 OF 2

CONSULTANT'S BILLING RATE

THE WEILER ENGINEERING CORPORATION

Principal	\$ 125.00
Project Manager	\$ 105.00
Professional Structural Engineer.....	\$ 105.00
Registered Professional Engineer	\$ 105.00
Professional Civil Engineer	\$ 105.00
Professional Landscape Architect.....	\$ 95.00
Registered Engineer Intern (E.I.T.).....	\$ 95.00
Senior Engineering Designer	\$ 85.00
Construction Inspector	\$ 65.00
Engineering Technician	\$ 75.00
Clerical.....	\$ 35.00
Reimbursable Expenses	
Blueprints.....	\$ 2.30
Vellums.....	\$ 10.00(24 x 36 sheet)
Mylars	\$ 25.00(24 x 36 sheet)
Travel.....	Cost
(Travel outside of County)	
Overnight mail	Cost

PRODUCER
Key Agency Inc.
1201 South McCall Road
Englewood FL 34223
Phone: 941-474-9511 Fax: 941-474-7283

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Service Insurance Company	
INSURER B:	Auto Owners Insurance Co.	18988
INSURER C:	Continental Casualty Insurance	
INSURER D:		
INSURER E:		

Weiler Engineering Corp
20020 Veterans Blvd Suite 7-9
Pt Charlotte FL 33954-0000

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	SMP108792	02/01/04	02/01/05	EACH OCCURRENCE	\$ 1000000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1000000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 1000
					PERSONAL & ADV INJURY	\$ 1000000
					GENERAL AGGREGATE	\$ 3000000
					PRODUCTS - COMP/OP AGG	\$ 3000000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
B	AUTOMOBILE LIABILITY	4166427600	11/09/03	11/09/04	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident)	\$
<input type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	<input type="checkbox"/> RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$
	OTHER				E.L. DISEASE - POLICY LIMIT	\$
C	Professional Liab	AEA113827486	09/21/03	09/21/04	Prof Liab	\$1000000
					\$25000ded	\$2000000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

All Operations State of Florida

CERTIFICATE HOLDER

City of Marathon
10045-55 Over Seas Highway
Marathon FL 33050

CANCELLATION

CITYO95

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Key Agency Inc.