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**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-018**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, ACCEPTING A GRANT FROM THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT FOR
STORM WATER IMPROVEMENTS IN THE AMOUNT OF \$100,000**

WHEREAS, the City of Marathon, Florida (the "City") recently completed storm water improvements on 20th Street, 42nd Street, 46th Street, Avenue D and 4th Avenue (the "Improvements"); and

WHEREAS, the South Florida Water Management District (the "District") has agreed to award the City a grant in the amount of \$100,000 (the "Grant") for the Improvements; and

WHEREAS, the District requires the City execute an agreement with the District to receive the Grant.

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


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

Section 2. The Local Governmental Agreement between the South Florida Water Management District and the City awarding grant funding for storm water improvements, 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 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 February, 2005.

THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pankus, Mayor

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

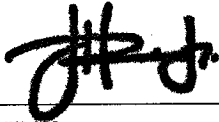
ATTEST:



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



MAR 2 9 2005
ORIGINAL

SOUTH FLORIDA WATER MANAGEMENT DISTRICT LOCAL GOVERNMENTAL AGREEMENT

AGREEMENT NO. OT050678

Received

BETWEEN THE

MAR 29 2005

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

City Clerk

AND

CITY OF MARATHON

THIS AGREEMENT is entered into as of the MAR 21 2005 by and between the South Florida Water Management District (**DISTRICT**) and City Of Marathon (**CITY**).

WHEREAS, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes, to include entering into contracts with public agencies, private corporations or other persons; and

WHEREAS, the **DISTRICT** desires to provide financial assistance to the **CITY** for Stormwater Management System; and

WHEREAS, the **CITY** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **AGREEMENT**; and

NOW, THEREFORE, in consideration of the covenants and representations set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The **DISTRICT** agrees to contribute funds and the **CITY** agrees to perform the work set forth in Exhibit "A" attached hereto and made a part hereof, subject to availability of funds and in accordance with their respective authorities for construction of catch basins and injection wells.
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period of one (1) year.
3. The total **DISTRICT** contribution shall not exceed the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00). The **DISTRICT** will provide the full amount based on the Payment and Deliverable Schedule set forth in Exhibit "B", which is attached hereto and made a part of this **AGREEMENT**. The **DISTRICT**'s contribution is subject to adequate documentation to support actual expenditures within the not-to-exceed **AGREEMENT** funding limitation of \$100,000.00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. If the total consideration for this **AGREEMENT** is subject to multi-year funding allocations, funding for each applicable fiscal year of this **AGREEMENT** will be subject to 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**.

4. The **CITY** shall submit quarterly financial reports 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 within the maximum not-to-exceed **AGREEMENT** funding limitation.
5. The **CITY** shall cost share in the total amount of Two Hundred Seventy-Eight Thousand Eight Hundred Ninety-nine Dollars and No Cents (\$278,899.00) in conformity with the laws and regulations governing the **CITY**.
6. All work to be performed under this **AGREEMENT** is set forth in Exhibit "A", Statement of Work, which is attached hereto and made a part of this **AGREEMENT**. The **CITY** shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit "A" shall be under the direction of the **CITY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit "A" shall be performed beyond the expiration date, unless authorized through execution of an amendment to cover succeeding periods.
7. The **CITY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **CITY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **CITY** agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the **CITY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).
8. 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 "A", 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 completion of this **AGREEMENT**. The **CITY** shall retain all ownership to tangible property.
9. The **CITY**, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the **CITY** and the officers, employees, servants and agents thereof. The **CITY** represents that it is self-funded for Worker's Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the **CITY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that 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 contract awarded by the **CITY** shall include a provision whereby the **CITY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **CITY's** subcontract.
10. 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.
11. The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **CITY**, their employees, agents, subcontractors or assigns, during or after the term of this **AGREEMENT**. The parties to this **AGREEMENT** shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this **AGREEMENT** without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.

12. The parties to this **AGREEMENT** assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this **AGREEMENT**.
13. 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.
14. Either party may terminate this **AGREEMENT** at any time for convenience upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **CITY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
15. 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**.
16. The **CITY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **CITY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:
 - 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 (5) years from the expiration date of this **AGREEMENT**.
 - B. Examination of Records: The **DISTRICT** or 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 (5) years from the expiration date of this **AGREEMENT**.
 - 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. All such records shall be made readily available to the **DISTRICT**.
17. Whenever the **DISTRICT's** contribution includes state or federal appropriated funds, the **CITY** shall, in addition to the inspection and audit rights set forth in paragraph #16 above, maintain records and similarly require each subcontractor to maintain and allow access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act, as follows:
 - A. Maintenance of Records: The **DISTRICT** shall provide the necessary information to the **CITY** as set forth in Exhibit "C". The **CITY** shall maintain all financial/non-financial records through:
 - (1) Identification of the state or federal awarding agency, as applicable
 - (2) Project identification information included in the Catalog of State Financial Assistance (CSFA) or the Catalog of Federal Financial Assistance (CFDA), as applicable
 - (3) Audit and accountability requirements for state projects as stated in the Single Audit Act and applicable rules of the Executive Office of Governor, rules of the Chief Financial Officer and rules of the Auditor General and the State Projects Compliance Supplement
 - (4) Audit/accountability requirements for federal projects as imposed by federal laws and regulations
 - (5) Submission of the applicable single audit report to the **DISTRICT**, as completed per fiscal year
 - B. Examination of Records: The **DISTRICT** or designated agent, the state awarding agency, the state's Chief Financial Officer and the state's Auditor General and/or federal awarding agency shall have the right to examine the **CITY's** financial and non-financial records to the extent necessary to monitor the **CITY's** use of state or federal financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations which may include onsite visits and limited scope audits.

18. All notices or other communication regarding this **AGREEMENT** shall be in writing and forwarded to the attention of the following individuals:

South Florida Water Management District

Attn: Cecelia Weaver, Project Manager
Telephone No. (305) 853-3219 ext. 2286
Attn: Rupert Giroux, Contract Specialist
Telephone No. (561) 682-2532

Address:
P.O. Box 24680
3301 Gun Club Road
West Palm Beach, FL 33416-4680

City Of Marathon

Attn: Susie Thomas, Project Manager
Telephone No. (305) 743-0033
Address:
10045-55 Overseas Highway
Marathon, FL 33050

19. **CITY** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind **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.
20. This **AGREEMENT** may be amended, extended or renewed only with the written approval of the parties. The **DISTRICT** shall be responsible for initiating any amendments to this **AGREEMENT**, if required.
21. This **AGREEMENT**, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this **AGREEMENT** will bind any of the parties to perform beyond their respective authority, nor does this **AGREEMENT** alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.
22. Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, **CITY** 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.
23. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties 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.
24. Any dispute arising under this **AGREEMENT** which cannot be readily resolved shall be submitted jointly to the signatories of this **AGREEMENT** with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.
25. 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**.
26. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
(a) Terms and Conditions outlined in preceding paragraphs 1 – 24
(b) Exhibit "A" Statement of Work
(c) all other exhibits, attachments and documents specifically incorporated herein by reference

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this AGREEMENT on the date first written above.

Jm SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: *Frank Hayden*

Frank Hayden, Director of Procurement

SFWMD procurement approved

By: *Roger Lyons*

Date: _____

CITY OF MARATHON

By: *Michael Hutto*

Title: *CITY MANAGER*

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

[Signature]
City Attorney

Exhibit "A"

Statement of Work

The City of Marathon Stormwater Management System

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. Additionally, the City of Marathon was designated a MS4 by the Department of Environmental Protection in February of 2004. The City is in the process of filing its Notice of Intent application, producing our Best Management Practices and beginning a storm water utility fund for ongoing storm water projects as well as maintenance. The *Stormwater Management Master Plan* identified several problem sites within the City limits that should be addressed. The City is addressing storm water issues from the worst case scenario down. In addition, there are currently no facility/collection systems in place to address persistent stormwater problems at these locations. Currently projects for storm water drainage are designed for: 20th Street Ocean, (\$39,933.33) 46th Street Gulf, (\$39,558.33) 42nd Street Gulf, (\$44,683.33) Avenue D, (\$67,029.89) 4th Avenue Gulf, (\$187,693.75) for a total expenditure of \$378,898.63.

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 Marathon is a series of islands all selected sites are adjacent to canals or open ocean. Runoff quickly reaches the open waters of the Gulf of Mexico or the Atlantic Ocean. The City is committed to constructing quality projects that can be used as templates for similar projects throughout the City.

2. Scope of Services

20th Street=2 catch basins, 100LF french drain
46th Street Gulf = 1 catch basin, 150LF french drain
42nd Street Gulf = 1 catch basin, 150LF french drain, 1200LF graded shoulders
Avenue D=24" Injection well 90' Deep 60' Cased, Double chamber Box
4th Avenue Gulf=24" Injection well 90' Deep 60' Cased, Double Chamber Box, Catch Basin, Graded Swales, 15" RCP

District funds in an amount not to exceed \$100,000 will be applied toward the estimated \$378,898.63 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 systems are based on exfiltration trenches, catch basins, and 24 inch diameter gravity wells.

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 "B"

PAYMENT AND DELIVERABLE SCHEDULE

Total payment by the DISTRICT shall not exceed the amount of \$100,000.00. 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 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	5 months	\$100,000.00
	Not-to Exceed Total Payment		\$100,000.00

* After Agreement date

EXHIBIT C

FUNDS AWARDED TO THE ENTITY PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
			NOT APPLICABLE		

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
			NOT APPLICABLE		

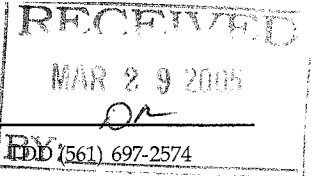
State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:					
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title Or Funding Source Description	State Appropriation Category
				NOT APPLICABLE	
Total Award					

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<http://12.46.245.173/cfda/cfda.html>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<http://state.fl.us/fsaa/catalog>]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045 •
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov



March 23, 2005

Ms. Libby Frazier
City of Marathon
19945-55 Overseas Highway
Marathon, FL 33050

Received
MAR 23 2005
City Clerk

Dear Ms. Frazier:

**Subject: Contract # OT050678
Marathon Stormwater Management System**

Please find enclosed one (1) fully executed copy of the above referenced document.

Thank you for your efforts on behalf of the South Florida Water Management District (District). Should there be any questions, or if you require any additional information, please contact me.

Sincerely,

Rupert Giroux
Contract Specialist
Procurement Department
rgiroux@sfwmd.gov
(561) 682-2532
(561) 681-6275

RG/kr

Enclosure

c: C. Weaver, 2230
Procurement/Original File

GOVERNING BOARD

Nicolás J. Gutiérrez, Jr., Esq., *Chair*
Pamela Brooks-Thomas, *Vice-Chair*
Irela M. Bagué

Michael Collins
Hugh M. English
Lennart E. Lindahl, P.E.

Kevin McCarty
Harkley R. Thornton
Trudi K. Williams, P.E.

EXECUTIVE OFFICE

Henry Dean, *Executive Director*