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**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-095**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A PROJECT AGREEMENT WITH THE WEILER ENGINEERING CORPORATION, TO PROCEED WITH ANY ENGINEERING SERVICES NECESSARY TO COMPLETE THE STATE REVOLVING FUND LOAN APPLICATION FOR WASTE WATER FUNDING

WHEREAS, the City of Marathon, Florida (the "City"), has a continuing services agreement with the Weiler Engineering Corporation (the "Consultant") to provide design and engineering services to the City from time to time under individual project agreements; and

WHEREAS, the City is under a time constraint to complete the State Revolving Fund Loan Application for waste water funding ; and

WHEREAS, the Consultant has on file with the City an hourly rate schedule for engineering services.

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 Project Agreement between the City and Consultant for engineering services necessary to complete the State Revolving Fund Loan Application 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 28th day of June, 2005.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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

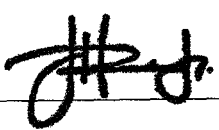
ATTEST:



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

EXHIBIT "A"

PROJECT AGREEMENT

Between

CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

for

Work Authorization No. Eleven - 11

General Wastewater Consulting – SRF Funding Application

PROJECT AGREEMENT
Between

THE CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

For

Work Authorization No. Eleven (11)

General Wastewater Consulting – Design/Build Economic Proposal

Pursuant to the provisions contained in the “Continuing Services Agreement” between the CITY OF MARATHON, FLORIDA (the “CITY”) and THE WEILER ENGINEERING CORPORATION, (“CONSULTANT”) dated June 23, 2004, this Project Agreement authorizes the CONSULTANT to provide the services as set forth below:

The CITY and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONSULTANT shall provide engineering services to the CITY for the Project as described in the “Project Description” attached as Exhibit “1.”

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

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

SECTION 2. DELIVERABLES

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

Updated Facilities Plan. Backup documents for SRF Application.

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect until a bidder has been chosen, unless otherwise terminated pursuant to Section 4 or other applicable provisions of this Project Agreement. The City Manager, in his sole discretion, may extend the term of this Agreement through written notification to the CONSULTANT. Such extension shall not exceed 30 days. No further extensions of this Agreement shall be effective unless authorized by the CITY Council.

3.2 **Commencement.** The CONSULTANT’S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification of Commencement (“Commencement Date”) provided to the CONSULTANT from the CITY. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the City Manager prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the “Project Schedule,” a copy of which is attached and incorporated into this Agreement as Exhibit “3”. The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the CITY in writing, in the event that the CONSULTANT fails to meet to the contract time for completion of services as determined by the Project Schedule, the CONSULTANT shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$ N/A per day.

The CONSULTANT may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONSULTANT shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONSULTANT an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONSULTANT overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONSULTANT those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Compensation.** CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES.

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the CITY), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the CITY.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 **Invoices**

5.1.1 **Lump Sum & Hourly Compensation and Reimbursable Expenses.** CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3", to this Project Agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the CITY. The CITY shall pay CONSULTANT within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONSULTANT to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONSULTANT is disputed, or additional backup documentation is required, the CITY shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The CITY, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY's reasonable satisfaction.

5.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONSULTANT until the project is completed. Said retainage may be withheld at the sole discretion of the City Manager and as security for the successful completion of the CONSULTANT'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONSULTANT.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the CITY, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the CITY

for cause and it is subsequently determined by a court by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

6.2 **For Convenience.** This Project Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subconsultant obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 5.1 of this Project Agreement. Under no circumstances shall the CITY make any payment to the CONSULTANT for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONSULTANT's work product shall become the property of the CITY and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this Project Agreement. Further, upon the CITY'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the CITY.

6.4 **Suspension for Convenience.** The CITY shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the CITY, the CONSULTANT shall immediately comply with same. In the event the CITY directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the CITY shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

SECTION 7. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

ATTEST:

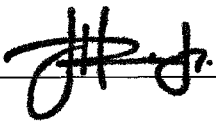
CITY OF MARATHON


City Clerk

By: 
Mike Puto, City Manager

Date: 06/30/05

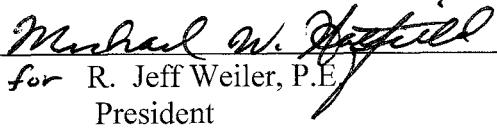
**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**


City Attorney

ATTEST:

WEILER ENGINEERING CORPORATION

Assistant Secretary

By: 
for R. Jeff Weiler, P.E.
President

Please type name of Assistant Secretary

Date: 28 Jun 05

(CORPORATE SEAL)

WITNESSES:

Print Name: _____

Print Name: _____

Exhibit "1"

Project Description

The City of Marathon is in the process of applying for funding assistance from the DEP through their State Revolving Loan Fund. WEC will assist the City by completing the updated to the Facility Plan and providing other documents necessary to be placed on the Funding List. Work will be as directed by City Staff.

Exhibit "2"

Scope of Services and Project Schedule

ENGINEER shall:

1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.
2. Advise OWNER as to the necessity of OWNER's providing data or services which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.
3. Identify, consult with, and analyze requirements of the Request for Proposals and the Florida Keys Aqueduct Authority.
4. Identify and evaluate up to 5 submittals and, after consultation with CLIENT, recommend to CLIENT those solutions which in ENGINEER's judgment meet CLIENT's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, compare each submittal to the criteria outlined in the request for proposals.
6. Furnish 1 review copies of the Report to CLIENT within 15 days of authorization to begin services and review it with CLIENT.
7. Attend a pre-selection meeting with selection committee and proposers.
8. Revise the Report in response to CLIENT's and other parties' comments, as appropriate, and furnish 1 final copies of the revised Report to the CLIENT within 3 days after completion of reviewing it with CLIENT.

B. ENGINEER's services under this Phase will be considered complete on the date when the final copies of the revised Report have been delivered to CLIENT.

CONSULTANT will begin work upon receipt of the Notice to Proceed. Final completion will be upon the selection of a design/build team or termination of the project.

EXHIBIT "3"

Payment Schedule

Hourly.

EXHIBIT "B"

PAGE 1 OF 2

CONSULTANT'S BILLING RATE

THE WEILER ENGINEERING CORPORATION

Principal	\$ 155.00
Project Manager	\$ 130.00
Professional Structural Engineer.....	\$ 130.00
Registered Professional Engineer	\$ 130.00
Registered Engineer Intern (E.I.T.).....	\$ 100.00
Senior Engineering Designer	\$ 85.00
Construction Inspector	\$ 75.00
Engineering Technician	\$ 65.00
Clerical	\$ 45.00
Reimbursable Expenses	
Blueprints	\$ 2.30
Vellums	\$ 10.00(24 x 36 sheet)
Mylars	\$ 25.00(24 x 36 sheet)
Travel	Cost plus 15%
(Travel outside of County)	
Overnight mail	Cost plus 15%

EXHIBIT "B"

PAGE 2 OF 2

GENERAL DESCRIPTION OF EMPLOYEE CATEGORIES

R. Jeff Weiler, P.E., Principal - Mr. Weiler is a Professional Engineer registered in the State of Florida. He is the President of The Weiler Engineering Corporation. He will be the Principal In Charge of this project.

Michael W. Hatfield, P.E., Project Manager - Mr. Hatfield is a Professional Engineer registered in the State of Florida. He will be the Manager for this project.

Ed R. Castle, P.E., Project Engineer – Mr. Castle is a Professional Engineer registered in the State of Florida. He will be the Engineer in Responsible Charge for this project.