

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-103**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO
ENTER INTO AN AGREEMENT WITH WEILER ENGINEERING
CORPORATION TO PROVIDE WASTEWATER ENGINEERING AND
CONSTRUCTION MANAGEMENT SERVICES**

WHEREAS, the City of Marathon, Florida (the "City") advertised a Request for Qualifications (the "RFQ") on April 11, 2005, to select a qualified engineering firm to provide wastewater system design and construction management services (the "Services"); and

WHEREAS, in response to the RFQ, Weiler Engineering Corporation ("Weiler") submitted a statement of qualifications to provide the Services and was the lowest responsible and responsive respondent; and

WHEREAS, the City wishes to enter into an agreement with Weiler to provide the Services.

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

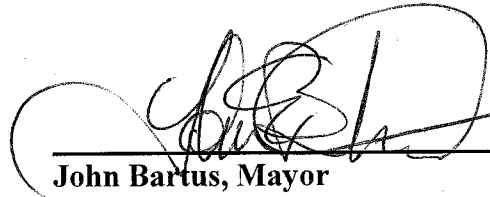
Section 1. The above recitals are true and correct and are incorporated herein.

Section 2. The agreement between the City of Marathon and Weiler Engineering Corporation, to provide the Services, 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 and the agreement approved herein with The Weiler Engineering Corporation shall not take effect until such time as the City and the Florida Keys Aqueduct Authority enter into an interlocal agreement for the distribution of MSTU funds for the payment of the Services to be rendered by The Weiler Engineering Corporation to the City pursuant to the agreement.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 26th day of July, 2005.

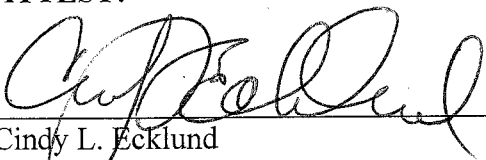
THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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

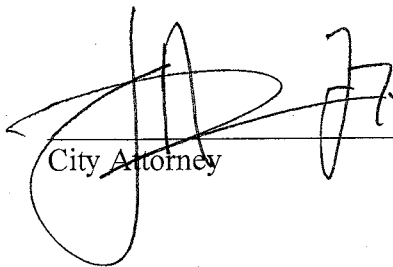
ATTEST:



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

AGREEMENT

Between

THE CITY OF MARATHON, FLORIDA

And

THE WEILER ENGINEERING CORPORATION

For

**WASTEWATER ENGINEERING CONSULTING,
DESIGN AND CONSTRUCTION MANAGEMENT SERVICES**

AGREEMENT

Between

THE CITY OF MARATHON

And

WEILER ENGINEERING CORPORATION

THIS AGREEMENT (the "Agreement") is made and entered into as of the 29 day of July, 2005 by and between the **CITY OF MARATHON**, a Florida municipal corporation ("City"), having an address at 10045-55 Overseas Highway, Marathon, Florida 33050 and the **WEILER ENGINEERING CORPORATION**, a Florida corporation ("Weiler"), having an address 20020 Veterans Blvd. #7, Port Charlotte, Florida 33954.

RECITALS

1. On April 11, 2005, the City issued a Request for Proposals RFQ-April 2005-0-2005/ST ("RFQ"), for the provision of professional wastewater engineering design and construction management services (the "Services").

2. In response to the RFQ, Weiler submitted a statement of qualifications to provide the Services.

3. The City desires to engage Weiler, and Weiler agrees to provide the Services, all as set forth below.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, do covenant and agree as follows:

1. **SERVICES SUMMARY.**

The following summary (the "Summary") provides the pertinent facts and certain general terms with regard to the services Weiler is to provide to the City, which is the subject of this Agreement. Capitalized terms not defined in the text shall have the meanings ascribed to them in Article 2 of this Agreement.

1.1 Description/Scope of Services. The "Project" consist of two (2) phases:

1.1.1 The planning, design and permitting of one or more wastewater systems to comply with State mandated requirements to accommodate the City's wastewater needs as described in the RFQ and Sections A1.01-04 of Exhibit "A" attached hereto (the "Design Phase").

1.1.2 Construction management services as described in the RFQ and Sections A1.05-06 of Exhibit "A" attached hereto (the "Construction Management Phase").

1.2 **Project Representatives.** For purposes of this Project, the following shall serve as the Project Representative for each party: City: Susie Thomas
Weiler: Ed Castle

1.3 **Services.**

1.3.1 Weiler shall complete the planning, design, permitting and construction management of a fully operational and permitted wastewater treatment collection systems (the "Project") in accordance with the terms and conditions of this Agreement and the Scope of Services set forth in Exhibit "A" to this Agreement. The parties acknowledge and agree that nothing in this Agreement shall be construed as to provide, grant or confer any rights unto Weiler and its Subconsultants with respect to the provision of any other services (whether design, construction management services or otherwise), except for Work expressly set forth in this Agreement.

1.4 **Schedule for Performance.** Weiler shall complete the Design Phase and the Construction Management Phase of the Project pursuant to the schedule for each set forth in Exhibit "A1" to this Agreement (the "Contract Times"); provided, however, that Weiler shall perform the Design Phase in accordance with said Contract Times as well as the schedule of performance set forth on Exhibit "A". The Contract Times set forth in Exhibit "A1" shall commence on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the effective date of this Agreement.

1.5 **Compensation.**

1.5.1 **Project.** It is the intent and agreement of the parties that the City shall pay Weiler for Weiler's performance of its obligations hereunder a lump sum for the Work that shall not exceed a guaranteed maximum price ("GMP") established for the Work, subject to additions and deductions by Change Order as provided in this Agreement. The GMP for the Work is \$7,232,751.-. Payment by the City of the GMP shall be deemed full compensation to Weiler for the performance of the Work required by this Agreement.

1.5.2 In the event additional labor, costs or expenses are necessary to complete the Work such amounts shall be the sole responsibility of Weiler; it being acknowledged and agreed that the GMP for the Work shall be the maximum amount the City shall be required to pay for the Work.

1.5.3 If at any time the lowest bid received for the construction of any of the Basins exceeds the probable construction cost (the "Construction Cost Estimate"), as that term is described in Exhibit "A", then Weiler shall, at the City's request and at Weilers sole cost and expense, revise the Schematic and Design Development Documents and Plans and Specifications for that Basin.

2. DEFINITIONS.

For the purposes of this Agreement, the following terms are defined as:

2.1 "Addenda" and "Amendment" means a written modification to this Agreement or the Contract Documents executed by Weiler and the City covering changes, additions, or reductions in the terms of this Agreement.

2.2 "Agreed Cost" is defined in Section 7.2.

2.3 "Approved 60% Construction Documents" is defined in Section 4.2.3.

2.4 "Approved 100% Construction Documents" is defined in Section 4.2.3.

2.5 "Approved 100% Schematic and Design Development Documents" is defined in Section 4.2.3.

2.6 "Basin" describes each of the eight (8) service areas described in Exhibit "A" attached hereto.

2.7 "Building Department" means the City of Marathon Building Department.

2.8 "Change Order" is defined in Section 7.1

2.9 "Change Order Request" is defined in Section 6.2.

2.10 "City's Project Representative" is defined in Section 7.3 and named in Section 1.2.

2.11 "Contract Documents" means this Agreement, the RFQ and all exhibits and documents related thereto or contemplated thereby, as well as all Addenda and Amendments related to each with respect to the Project and all changes to said documents issued by the City after execution of this Agreement.

2.12 "Contract Times" is defined in Section 1.4.

2.13 "Construction Documents" is defined in Section 4.1.1.

2.14 "Construction Management Services" means construction oversight of any contractor or contractors selected by the City to construct the Project and operational testing of the Project.

2.15 "Construction Work" means the actual construction of the wastewater system(s) designed by Weiler.

2.16 "County" means Monroe County.

2.17 "Date of Termination" is defined in Section 32.1.

2.18 "Day" or "Days" or "day" or "days" means calendar days.

2.19 "Construction Cost Estimate" is defined in Section 1.5.3.

2.20 "Design Services" are all design, planning and permitting services performed by and required of Weiler pursuant to this Agreement and includes services performed by the Weiler's Subconsultants.

2.21 "Environmental Claims" is defined in Section 10.5.4.

2.22 "Environmental Laws" is defined in Section 14.3.

2.23 "Field Office" means a field office provided at the Project Site by Weiler. Expenses relating to the Field Office are included in the GMP for the Construction Management Services.

2.24 "Final Completion" means that all Work required under the Contract Documents has been fully and properly completed, including, but not limited to, punch list items, issuance of certificates of final occupancy or use, issuance by all governmental or governing authorities having jurisdiction over the Project of all required final approvals, permits, and licenses required for the operation of the wastewater collection system (including operational testing), delivery of record drawings, electronic files, and manuals, performance of all required training, turnover to the City-selected operator to allow customer connection and operational flow, and the attainment of all other applicable regulatory requirements sustained for a 30-day period.

2.25 "Final Completion Date" is defined in Section 4.1.10.

2.26 "Final Payment" is defined in Section 7.6.

2.27 "Final Request" is defined in Section 7.6.

2.28 "GMP" or "Guaranteed Maximum Price" is defined in Section 1.5.

2.29 "Hazardous Substance" is defined in Article 14.

2.30 "Liquidated Damages" is defined in Section 4.1.10 and shown on Exhibit "A."

2.31 "Materials" means materials, supplies, apparatus, appliances, equipment, fixtures, machinery, tools and all other items furnished or delivered in connection with the Project.

2.32 "Notice to Proceed" means written notification by the City to Weiler authorizing commencement of any phase of the Work as may be required by this Agreement in the form attached hereto as Exhibit "K."

2.33 "Plans and Specifications" is defined in Section 4.1.1.

2.34 "Progress Schedule" is defined in Section 3.7.

2.35 "Progress Sets" is defined in Section 4.2.1.

2.36 "Project" is defined Section 1.1.

2.37 "Project Location" or "Project Site" means the property upon which the Project is to be constructed.

2.38 "Project Summary" is defined in Section 1.

2.39 "Schedule of Values" is defined in Section 7.2.

2.40 "Schematic and Design Development Documents" means the drawings and other documents illustrating the scale and relationship of Project components including the selection of materials, systems, and equipment, and methods of Project delivery, as well as initial program drawings and documents that establish and describe the size and character of the Project as to architectural, structural, mechanical, electrical, plumbing, and fire protection systems, materials and such other elements as may be appropriate, and shall also include a review of all applicable laws to determine compliance, scheduling and construction budget information.

2.41 "Subconsultant" means any person or entity, other than Weiler's own employees, employed or retained by, or under contract with Weiler to perform a portion of the Design Services under this Agreement.

2.42 "Subconsultant Contract" means any contract in writing between the Weiler and a Subconsultant.

2.43 "Subcontractor" means any person or entity, other than Weiler's own employees, employed or retained by, or under contract with Weiler to perform the Construction Management phase of the Work.

2.44 "Subcontractor Contract" means any contract in writing between Weiler and a Subcontractor.

2.45 "Substantial Completion" is defined in Section 5.3.11.

2.46 "Substantial Completion Date" shall mean the date the City determines the Project to be in Substantial Completion.

2.47 "Weiler's Representative" is defined in Section 25.2 and named in Section 1.2.

2.48 "Work" means the Design Services and Construction Management Services for the Project required of Weiler under the terms of this Agreement and the Contract Documents.

3. GENERAL RESPONSIBILITIES.

3.1 Weiler agrees that all design documents prepared or furnished, including, without limitation, the Construction Documents, Plans and Specifications and Schematics and Design Development Documents, shall comply with any provisions received by the City for this Project, all applicable laws, statutes, codes, rules and regulations including, without limitation, those adopted by the City, all Environmental Laws as defined in Section 14.3, Floodplain Management

and Protection of Wetlands regulations in 44 C.F.R. Section 9.11(c) and all design requirements established by the Florida Accessibility Code and the Americans with Disabilities Act (ADA).

3.2 Weiler agrees that the Design Services under this Agreement shall be performed in conformance with the standards of care and quality adopted or accepted by nationally recognized architectural and engineering organizations, and other applicable professional organizations for similar applications and in accordance with the Florida Building Code. Any designs, drawings, or specifications prepared or furnished by Weiler that fail to meet the requirements of Section 3.1 above, or otherwise are defective or contain errors, conflicts or omissions, will be promptly corrected by Weiler, within ten (10) days or such other time as agreed to by the City Manager or his designee, at no cost to the City. Weiler will reimburse the City for any and all damages, including fines, consequential and incidental damages, without limitation, resulting from the use of such defective designs, drawings, or specifications within thirty (30) days of an invoice from the City. The City's approval, acceptance, use of, or payment for all or any part of the Design Services shall in no way alter Weiler's obligations with respect to the design of the Project or the City's rights hereunder.

3.3 Weiler shall be fully responsible for coordinating all the Work required under this Agreement regardless of whether performed by its own employees or a Subconsultant or Subcontractor so as to insure that the services required are performed in an efficient, timely and economical manner. Weiler shall be responsible to the City for the services furnished to Weiler by a Subconsultant, or Subcontractor to the same extent as if Weiler had furnished the service itself. All Subconsultant Contracts and Subcontractor Contracts shall be submitted to the City for approval in accordance with Section 8 below. Weiler shall require in such Contracts that the Subconsultant or Subcontractor be bound to, and to assume toward, Weiler all the obligations and responsibilities which Weiler, by this Agreement, assumes toward City. Failure by the Subconsultant or Subcontractor to comply with all of Weiler's obligations and responsibilities set forth in this Agreement shall be a material breach of the Subconsultant's or Subcontractor's Contract. Weiler also agrees to reasonably cooperate and reasonably coordinate with other consultants retained directly by the City.

3.4 Weiler shall not specify in the Plans and Specifications, Construction Drawings or Schematics and Design Development Documents (the "Design Documents") a particular design, process or product that infringes upon any patent. Weiler shall defend suits or claims for infringement of patent rights and indemnify and hold the City harmless from any loss, cost or expense, including attorneys' fees and costs incurred (at both the trial and appellate levels), which results if Weiler violates the requirements of this Section 3.4.

3.5 Weiler shall design and provide Construction Management Services (including operational testing) for the Project for the City at the Project Location with supporting improvements, facilities and equipment as described or reasonably inferable from the Design Documents prepared by Weiler. Without limiting the foregoing, Weiler's Work shall be in compliance with this Agreement. To the extent practicable, Weiler shall require that the City's contractor utilizes "value engineering" in connection with the Project.

3.6 Weiler agrees and represents that it possesses the requisite skills to perform the Work.

3.7 Weiler shall provide, in a digital format acceptable to the City, a critical path schedule, or such other type of schedule as the City may approve, and periodic updating thereof and other necessary schedules (all of which are hereinafter collectively referred to as the "Progress Schedule") in the interest of completing the Design Documents and the Construction Management Services the Project in the most expeditious and economical manner and in accordance with Section 1.4. Within twenty-one (21) calendar days after execution of this Agreement, Weiler shall prepare and submit for the City's approval the Progress Schedule for the Work. The City shall have fourteen (14) days to review and approve the Progress Schedule. If the City does not approve Weiler's submitted Progress Schedule, Weiler and the City shall work together to develop a Progress Schedule acceptable to all parties. The Progress Schedule shall indicate the dates for the commencement and completion of the various stages of the Work and shall be revised as required, subject to approval by the City. The Progress Schedule shall encompass the Design Phase and the Construction Management Phase of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a weekly basis. The parties acknowledge and agree that notwithstanding any theoretical delays or theoretical extensions of time for Substantial Completion (as defined in Section 5.3.11) as may be shown on the Progress Schedule, Substantial Completion shall be governed by this Agreement and shall be extended only in accordance with the procedures set forth in this Agreement.

3.8 Weiler shall prepare or cause to be prepared, as part of the Work, all shop drawings, samples, submittals and detail drawings not made a part of the Plans and Specifications, and Addenda which are required in the performance of Weiler's obligations under this Agreement. All shop drawings, submittals, samples, and detail drawings shall be submitted to the City. The City's review or approval of the shop drawings, submittals, detail drawings and samples shall in no way diminish or release the responsibility of Weiler for any failure of the shop drawings, submittals, detail drawings or samples to be in compliance with the Contract Documents, any governing codes, laws or ordinances, as well as the adequacy and fitness of the intended purpose or Weiler's obligations in this respect. Weiler shall maintain copies of all shop drawings, submittals and detail drawings, and maintain all samples at the Project and shall afford the City access to the documents at all times during regular working hours.

3.9 Weiler shall pay all sales, consumer, use and other similar taxes, if any, for the Work or portions of each, which are legally required at any time during Weiler's performance of the Work.

3.10 Weiler shall pay all royalties and license fees that are legally required at any time during Weiler's performance of the Work.

3.11 Weiler and any Subconsultants, or Subcontractors shall use their best efforts to cooperate with the City during the Design Phase and the Construction Management Phase of the Project in order to minimize disruption of services.

4. DESIGN PHASE.

4.1 Basic Services.

4.1.1 Weiler shall provide or cause to be provided to the City (a) the Schematic and Design Development Documents for each Basin, (b) those services, including, without limitation, architectural, structural, mechanical, electrical, plumbing, fire protection and any other engineering services necessary to produce a complete and accurate set of plans and specifications for the permitting and construction of the Project and of each Basin individually (collectively referred to as the "Plans and Specifications" or "Construction Documents"), and (c) all design services required to facilitate the complete integration of future phases to the Project. Weiler warrants that at the time of completion, the Plans and Specifications will be adequate and fit to accomplish the intended purpose of the Project. The City's review and approval of the Plans and Specifications shall in no way diminish or release the foregoing warranty of adequacy and fitness for the intended purpose and Weiler's obligations in this respect.

4.1.2 The Design Services shall be performed in accordance with the schedule for performance set forth in Exhibit "A" and Section 4.2. Time is of the essence with respect to the performance of the Design Services. Weiler shall not, except for cause beyond the reasonable control of Weiler, exceed time limits established by this Agreement. Any adjustments to the schedule must be approved in writing by the City and must be requested in writing by Weiler pursuant to Section 6 of this Agreement.

4.1.3 Weiler shall be responsible for preparing and filing the documents required for approval of governmental or governing authorities having jurisdiction over the Project to ensure that final approvals, permits, and licenses for the performance of the Work (including operational testing) will be obtainable prior to the Construction Management Phase. Such documents shall be submitted to the City for review and approval prior to filing with said authorities. Weiler shall interface and coordinate with permitting agencies and shall participate in meetings with appropriate agencies and respond to and incorporate appropriate preliminary and final permit review comments.

4.1.4 Weiler shall procure surveys as required describing physical characteristics, legal limitations and utility locations for the Project Location. The surveys may include, as applicable, grades and lines of streets, alleys, pavements and adjoining structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, boundaries and contours of the Project Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

4.1.5 Weiler shall establish an organization and lines of authority in order to coordinate, monitor, and report the progress of each phase of the design and shall furnish a competent staff for the administration, coordination, and supervision of the Design Services. All Design Services shall be performed by Weiler's own staff or Subconsultants approved as part of Weiler's team, unless otherwise authorized in writing by the City. The employment of, contract with, or the use of the services of any Subconsultant shall be subject to the City's written approval in accordance with Section 9 below. No such approval shall be construed as an agreement between the City and any Subconsultant.

4.1.6 Weiler shall furnish to the City for review and approval, a description of key personnel to be used on the Project. Such description shall include a current resume of academic training and professional experience. Weiler represents to the best of its knowledge that the descriptions and resumes submitted to the City pursuant to this Agreement shall be true in all material respects. Weiler shall not substitute any personnel without the City's prior written consent. Before any such substitution, Weiler shall submit to the City a detailed justification supported by the qualifications of any proposed replacement.

4.1.7 Weiler shall prepare and submit to the City a Design/Production Schedule and Work Plan, including a Proposed List of Drawings, a Quality Assurance Plan, and a schedule of key interface dates with the City, including milestone submittal dates. This information shall be defined as the Design Work Plan. Once approved by the City, the Design Work Plan shall be updated as necessary and/or as requested by the City. The Design Work Plan shall include at a minimum the following:

- a. Design Team Organization and Directory identifying all team members and contact information.
- b. Project Management/Quality Assurance Plan detailing the duties and responsibilities of the Design Team, and how Project management and coordination will be organized.
- c. Design/Production Schedule including workforce projections.

4.1.8 Weiler shall provide or cause to be provided detailed construction documents including architectural, structural, mechanical, electrical, plumbing, fire protection and others in accordance with Exhibit "A" and Section 4.2 and the Contract Documents.

4.1.9 Weiler shall verify existing site conditions and conduct field investigations, as reasonably necessary to assure all documentation is accurate. Weiler shall provide logs of field investigations to the City on a bi-weekly basis for review. Field verification logs shall consist of names of field investigators, date, time, area, findings, issues and results. Weiler's responsibilities to field verify include, but are not limited to, developing as-built drawings from field surveys, site exploratory work, and any other means and methods necessary to ensure a complete verification of existing conditions.

4.1.10 If Weiler shall neglect, fail, or refuse to complete any Design Services by the date specified in the schedule attached hereto as Exhibit A1, subject to any proper extension granted by the City, then Weiler agrees to pay to the City, or to cause Weiler's surety to pay to the City, the amounts specified on Exhibit "A1", not as a penalty, but as liquidated damages for the damages ("Liquidated Damages") that would be suffered by the City as a result of delay for each and every calendar day that Weiler shall have failed to complete the Work by the Substantial Completion Date or the Final Completion Date. The amounts are fixed and agreed upon by and between Weiler and the City because of the difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and the amount is agreed to be the amount of damages that the City would sustain. The amount may be retained by the City from current periodic pay estimates or from retainage, but if the amount owing or retained is insufficient to

fully pay the City said Liquidated Damages, Weiler agrees to pay, or cause Weiler's surety to pay, said insufficiency to the City.

4.2 Submittals and Review of Design Documents.

4.2.1 Progress Submittals. Weiler shall submit progress sets of the 100% Schematic and Design Development Documents, and 60% and 100% Construction Documents for review and approval by the City. Progress sets of the 100% Schematic and Design Development Documents, and 60% and 100% Construction Documents shall be submitted a minimum of two (2) weeks prior to the milestone submittal due dates. Additionally, Weiler will provide the City with progress plans and/or prints anytime the City requests such documents. Progress set submittals shall consist of a minimum of three (3) full-size drawing sets and three (3) sets of specifications along with revised construction cost estimates ("Progress Sets"). Upon written approval by the City of the applicable Progress Set submittal, Weiler shall transmit a complete package including plans, specifications, checklists and other requirements, as applicable. Reviews will not commence until the complete Progress Set submittal has been received.

4.2.2 Review Procedures. The following procedures shall be followed for review of the 100% Schematic and Design Development Documents, 60% and 100% Construction Documents, and any other Design Services submittals by Weiler.

- a. Weiler shall submit Schematic and Design Development Documents and Construction Documents for review in accordance with the schedule established on Exhibit "A."
- b. The City will be required to provide all review comments to Weiler within fourteen (14) days from receipt of the milestone submittal.
- c. Weiler shall respond to and incorporate milestone review comments transmitted by the City. Any budgetary overruns or discrepancies shall be resolved by design and engineering modifications to match the available funds.
- d. Unless otherwise agreed to in writing, Weiler shall respond in writing, within seven (7) days of receipt of the review comments. The City will log, transmit and facilitate the exchange of review comments. Weiler shall also maintain a similar log and make it available to the City at all times.
- e. Replies to Responses: The City will reply within seven (7) days to any responses requiring confirmation and will advise Weiler if any further reconciliation is required.
- f. Resolution of differences: The City will schedule a meeting between Weiler and the City, to take place within seven (7) days after review comments are issued to Weiler, in order to resolve all issues between teams. The City will arrange additional meetings or conference calls if

necessary, in order to expedite resolution and avoid impact to the Project Schedule or the Contract Documents.

- g. Backcheck Review: If any comments remain unsatisfied, additional backcheck submittals shall be required until all comments have been satisfied. Any costs associated with Weiler's preparation of the backcheck submittals shall be Weiler's responsibility and shall be taken into consideration for evaluation of Weiler's performance and progress payments.
- h. Resolution of all review comments is requisite for completion of any phase of the Design Services.

4.2.3 Milestones Submittals and Reviews. Weiler shall submit the Schematic and Design Development Documents and Construction Documents in accordance with the dates set forth on Exhibit "A" and participate in interim reviews for the milestone submittals as directed by the City in accordance with Section 4.2.1. The Schematic and Design Development Documents 100% milestone submittal shall consist of six (6) full size sets of drawings; three (3) 11" x 17" size sets of drawings and shall include such other information fully explaining and supporting the Schematic and Design Development Documents. The City shall review this submittal pursuant to the review procedures set forth in Section 4.2.2. This set, with full resolution of review comments, as determined by the City, shall establish compliance with completion of the Schematic and Design Development Documents 100% milestone submittal. Once approved by the City, the 100% Schematic and Design Development Documents shall become the "Approved 100% Schematic and Design Development Documents" and shall not be altered, modified, or revised without the City's prior written approval. Any material design modifications to the Approved 100% Schematic and Design Development Documents requested by the City shall be an additional cost to the City and reflected in a Change Order, and shall not be included in the GMP.

The 60% Construction Documents Progress Set submittal shall be based upon the Approved Schematic and Design Development Documents. The Construction Documents 60% milestone submittal shall consist of six (6) full size sets of drawings; three (3) 11" x 17" size sets of drawings and five (5) sets of Project manuals, and shall include design narratives for all disciplines, with calculations and other information fully explaining and supporting the Contract Documents including construction cost estimates. The City shall review this submittal pursuant to the review procedures set forth in Section 4.2.2. This set, with full resolution of review comments, as determined by the City, shall establish compliance with completion of the Construction Documents 60% submittal milestone. Once approved by the City the 60% Construction Documents shall become the "Approved 65% Construction Documents" and shall not be altered, modified, or revised without the City's prior written approval. Any material design modifications to the Approved 60% Construction Documents requested by the City shall be an additional cost to the City and reflected in a Change Order, and shall not be included in the GMP.

The 100% Construction Documents Progress Set submittal, which shall be based upon the Approved 60% Construction Documents, shall serve to monitor progress of the Work. All

recommendations of the City from this review shall be incorporated into the Construction Documents prior to submission of the Construction Documents 100% submittal milestone. The Construction Documents 100% submittal milestone shall consist of six (6) full size sets of drawings; three (3) 11" x 17" size sets of drawings and five (5) sets of Project manuals for the City to review pursuant to review procedures set forth in Section 4.2.2. This set with all resolution of comments from this review incorporated into the documents shall establish completion of the Construction Documents 100% submittal milestone. The 100% Construction Documents with full resolution and all comments pending from any previous reviews shall establish completion of the Construction Documents 100% submittal milestone. Once approved by the City the 100% Construction Documents shall become the "Approved 100% Construction Documents" and shall not be altered, modified, or revised without the City's prior written approval. Any material design modifications to the Approved 100% Construction Documents requested by the City shall be an additional cost to the City and reflected in a Change Order, and shall not be included in the GMP; provided, however, any changes or revisions to the Approved 100% Schematic and Design Development Documents, the Approved 60% Construction Documents, or the Approved 100% Construction Documents necessary to (a) comply with applicable governmental requirements, (b) satisfy field conditions or (c) correct inconsistencies between various documents shall not be considered an additional cost to the City and will be deemed included in the GMP.

5. CONSTRUCTION MANAGEMENT PHASE.

5.1 Weiler shall be responsible for coordinating with the City in order to prepare and file the documents required for the approval of governmental authorities having jurisdiction over the Project.

5.2 Weiler shall provide competent Construction Management supervision onsite of all phases of the Construction Work. Weiler's Project Representative is set forth in Section 1.2. Any change in Weiler's Project Representative must be approved by the City, such approval not to be unreasonably withheld. Weiler's Project Representative shall represent Weiler and communications given to the Project Representative shall be as binding as if given to Weiler.

5.3 The City makes no warranties to Weiler, express or implied, that the Contract Documents or the Design Documents are free of errors or omissions. Rather, Weiler shall carefully study and compare Contract Documents and the Design Documents with each other, with information furnished by the City, and shall carefully inspect and verify field conditions, and shall at once report to the City all errors, inconsistencies or omissions discovered. If Weiler proceeds with the Design Work or allows any Construction Work knowing it involves a recognized error, inconsistency or omission without such notice, Weiler shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction. The intent of the Contract Documents is to include all items necessary for the proper performance and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents shall not be required unless it is reasonably inferable as being necessary to produce the intended results.

5.3.1 If during construction of the Project conditions are encountered at the site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by Weiler shall be given to the City promptly before such conditions are disturbed. If the conditions differ materially from those indicated in the Contract Documents and were not known and were not readily ascertainable with due diligence to contractor at the time the construction contract was executed, and causes a material increase or decrease in the contractor's cost of, or time required for, performance of any part of the Work, Weiler and City shall jointly determine if a change order shall be granted to the contractor.

5.3.2 Throughout the course of construction, Weiler shall maintain an up-to-date set of Plans and Specifications and reproducible drawings, which show and describe all clarifications, addenda, substitutions and approved Change Orders and construction change orders. Upon Final Completion, based on information provided by Contractor, Contractor's construction surveyor and Weiler's inspector, Weiler shall provide the City with a set of record drawings and electronic files, as directed by the City, showing the complete Project as built (incorporating data concerning as-built conditions) as well as specifications and other documents as may be required by the City. This shall include all changes in the Work during the Construction Management Phase.

5.3.3 During the construction management phase, Weiler shall reasonably cooperate with, and respond to, any reasonable requests or requirements of the City.

5.3.4 Weiler shall not allow the contractor to proceed with the construction phase of the Work until all Design Documents have been reviewed and approved by the City in accordance with Section 4.2.2 of this Agreement.

5.3.5 The parties acknowledge and agree that the City has engaged a Consultant to assist the City in the administration of the construction of the Work. Weiler shall act as an "owner's representative" and shall have no authority to bind the City or direct the construction contractor except as expressly set forth herein.

5.3.6 Weiler shall at all times have access to the Project Location and the Work wherever it is in preparation or progress.

5.3.7 Weiler shall maintain one record set of Contract Documents in good order and marked currently to record all changes made during construction and an accurate location of all portions of the Work sufficient to prepare accurate as-built Plans and Specifications as further described in Section 15 of this Agreement. All of these, including the as-built Plans and Specifications, shall be delivered to the City upon Final Completion of the Work for review and incorporation into the record set of documents.

5.3.8 Required certificates of inspection, testing or approval shall be obtained by the City's Contractor and promptly delivered to the City. If the City desires to observe said inspections, tests or approvals required by the Contract Documents, the City shall notify Weiler

of that desire, and Weiler shall notify the City of the dates and times of said inspections, tests or other approvals.

5.3.9 If requested by the City, Weiler shall prepare proposed change orders as provided for in the construction contract with supporting detailed cost documentation and data for the City's approval and execution in accordance with the construction contract. If requested by the City, Weiler shall evaluate the detailed cost estimate and scope of the contractor's proposals with respect to proposed change orders and substitutions proposed by the contractor and make recommendations to the City.

5.3.10 Weiler will, within ten (10) days after payment request by the contractor, either indicate in writing a recommendation of payment to the City, or return the payment request to the contractor indicating in writing Weiler's reasons for refusing to recommend payment. In the latter case, the contractor may make corrections, if necessary, and resubmit the payment request. The City shall make payment to the contractor within thirty (30) days after approval by the City of contractor's payment request.

5.3.11 Weiler shall assist the City in determining substantial completion of the Work has been achieved. "Substantial Completion" shall be defined as Final Completion exclusive of minor items of unfinished work which do not preclude beneficial use of the wastewater treatment collection and disposal system. Substantial Completion shall be deemed to have occurred upon (a) the submission of a Certificate of Substantial Completion (in the standard AIA form) to the City by the engineer of record, (b) the issuance of a Temporary Certificate of Occupancy or Temporary Certificate of Use, as applicable, for any portion of the Project requiring said Certificates, (c) the issuance of all necessary approvals, permits and licenses for the operation of the Project and (d) the completion of all operational testing indicating the Project can be used for the purposes and to the capacity required by the Contract Documents. Prior to performing the Substantial Completion review, Weiler shall inspect the Project and prepare a list of all deficient and unfinished work. The list shall be submitted to the City for review. At Substantial Completion, a Final Punch List will be prepared and provided to the contractor. The Final Punch List will contain a listing of all known remaining incomplete items of the Work.

5.3.12 All the time limits stated in the Contract Documents are of the essence. No claim for damages or any claim other than for an extension of time shall be made or asserted against the City by reason of delays. Weiler shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the City for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable unless such delay is caused solely by the actions of the City, or another governmental entity (a "Permitted Delay"). A Permitted Delay shall be handled through the Change Order procedures outlined in this Agreement. Weiler shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above.

6. CHANGE ORDERS.

6.1 From time to time, the City may authorize changes in the Work, issue additional instructions, require additional Work or direct the omission of Work previously ordered. Only those changes in the Work that are approved on a Change Order in the form of Exhibit "B" and executed by an authorized representative of the City ("Change Order"), shall be binding on the City.

6.2 The City may order changes in the Work by initiating a change order request ("Change Order Request"), setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, Weiler shall prepare a statement setting forth in detail, with a suitable detailed breakdown by trades and work classifications with respect to a change in the scope of the construction and a detailed breakdown of the time and expenses related to the Design Phase, Weiler's estimate (the "Weiler's Estimate") of the changes in the GMP attributable to the changes set forth in such Change Order Request and proposed adjustments, if any, to the Substantial Completion Date resulting from such Change Order Request. The City shall review Weiler's Estimate. If the City and Weiler agree on a cost ("Agreed Cost"), a Change Order shall be processed by the City and delivered to Weiler for signature. Weiler shall not commence changes in the Work until it receives the City's written Notice to Proceed or, in the case of a Change Order, when the Change Order is executed.

6.3 Weiler may request a change in the Contract Time or GMP by initiating a Change Order Request within five (5) days of Weiler's knowledge of facts or occurrence of events giving rise to the Change Order Request. Weiler's Change Order Request shall set forth in detail the nature of the requested change and include a statement setting forth in detail, with a suitable detailed breakdown of the time and expenses related to the design phase, Weiler's Estimate of the changes in the GMP attributable to the changes set forth in such Change Order Request and proposed adjustments, if any, to the Substantial Completion Date resulting from such Change Order Request. The Change Order Request shall be processed by the City pursuant to Section 6.2 of this Agreement.

6.4 Weiler's Change Order Requests shall be referred by the City to the City's Project Representative for review and recommendation. Written notice of the City's Project Representative's recommendation shall be delivered to the City Manager within seven (7) working days of receipt of a written request by the City. The City Manager will review the recommendation and make a final decision on the Change Order Request. The City Manager's decision shall be final.

6.5 It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the Plans and Specifications, and Addenda set forth in Exhibit "B." No adjustment in the GMP or the Substantial Completion Date, shall be made for any such refinement or detailing unless (a) such refinement or detailing results in changes in the scope, quality, function or intent of the Plans and Specifications not reasonably inferable or anticipatable by an engineer of Weiler's experience and expertise, (b) Weiler submits a Change Order Request to the City pursuant to Section 6.2 and (c) the City agrees to the Change Order Request.

6.6 In the event that changes in the Work are required on an emergency basis in order to protect the health and safety of the public, Weiler shall proceed at the written direction of the

City's Representative without a written Change Order from the City. Weiler shall keep separate records of all costs and time required to perform the emergency work. Upon the conclusion of the emergency, Weiler shall submit a Change Order Request to the City pursuant to Section 6.2.

6.7 Approval of any Change Order shall constitute a final settlement on all items affected therein, included without limitation any adjustment in the GMP, the Substantial Completion Date, the Contract Time, subject to performance thereof and payment therefore pursuant to the terms of this Agreement and such Change Order.

7. PAYMENTS.

7.1 In full consideration of the full and complete performance of the Work and all other obligations of Weiler hereunder, the City shall pay to Weiler the GMP specified in Section 1.5.1 of this Agreement, subject to additions and deductions as provided in this Agreement and evidenced by executed Change Orders.

7.2 On or before the first day of each month during the performance of the Work, or such other day of the month agreed to by the parties, Weiler shall submit to the City for its approval an original Request for Payment in the form attached as Exhibit "C". Submission of any original certificates, waivers of liens and claims, or other documents required in this Agreement to be submitted, is a condition precedent to the City's obligation to pay Weiler hereunder. Fifteen (15) days prior to the first Request for Payment, Weiler shall prepare, and submit to the City for its approval a schedule of values allocating the entire GMP among the various portions of the Work (the "Schedule of Values"). The City shall have fourteen (14) days to review and approve the Schedule of Values. If the City does not approve Weiler's submitted Schedule of Values, Weiler and the City shall work together to develop a Schedule of Values acceptable to all parties. The Schedule of Values approved by the City shall be used as a basis for reviewing Weiler's Request for Payment. The Request for Payment shall show a complete breakdown of (a) the requested costs for planning, design and engineering of the Project components including all labor and materials, (b) the actual portion of the Work completed and the amount due, (c) the share of the GMP allocated to that portion of the Work as set forth in Schedule of Values, and (d) such supporting evidence as may be required by the City including, but not limited to, the documents set forth in Section 3.4. The Request for Payment shall constitute a representation to the City that (i) the Work has progressed to the point indicated, (ii) the quality of the Work is in accordance with this Agreement, and (iii) all monies previously reimbursed by the City to Weiler have been disbursed to the appropriate Subconsultants and Subcontractors based upon the prior Request for Payment. Provided that Weiler submits all required documentation as required herein, the City shall tender all payments to Weiler within thirty (30) days of receipt of the Request for Payment less any retainage required by Section 7.5 below and minus amounts, if any, for which the City has withheld funds pursuant to its rights under any portion of the Contract Documents. Inadequately supported charges are subject to disallowance, however, the City will make payments of the balance of the Request for Payment when such amounts are approved.

7.3 The City's Project Representative may make such exceptions as are reasonably deemed necessary or appropriate under the state of circumstances then existing. In no event shall the City be required to make payment for items to which the City reasonably takes exception.

7.4 The City shall make payment to Weiler in the amount approved, subject to Section 1.5. The payment of any Request for Payment by the City, including the Final Request, does not constitute approval or acceptance by the City of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of the City's rights hereunder or at law or in equity.

7.5 Weiler agrees that five percent (5%) of the amount due for Design Services of each Basin, (excluding fees paid to subcontractors but including self-performed Work) as set forth in each Request for Payment shall be retained by the City until the completion of the Design Services Phase for that specific Basin. All requests for retainage reductions must be made in writing prior to invoicing for same. The City may, but shall not be obligated to, request consent of Weiler's surety to such reduction.

7.6 Within thirty (30) days after Final Completion of the Work and acceptance thereof by the City or as soon thereafter as possible, Weiler shall submit a final request for payment ("Final Request") which shall set forth all amounts due and remaining unpaid to Weiler (including the unpaid portion of the retainage, if any) and shall include a set of as-built Plans and Specifications as described in Section 15 of this Agreement. Upon approval of the Final Request by the City, the City shall pay to Weiler the amount due under such Final Request ("Final Payment") within thirty (30) days of the satisfaction of requirements for Final Payment as set forth in Section 7.7 below.

7.7 Any provision hereof to the contrary notwithstanding, the City shall not be obligated to make full payment to Weiler if any one or more of the following conditions exists:

- a. Weiler is in default of any of its obligations under this Agreement or any other agreement or transaction between Weiler and the City in connection with the Project; or
- b. any part of such payment is attributable to Work which is defective; or
- c. if the City, in its good faith judgment, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the Work in accordance with this Agreement whereupon no additional payments will be due Weiler hereunder unless and until Weiler, at its sole cost, performs a sufficient portion of the Work so that such portion of the GMP then remaining unpaid is determined by the City to be sufficient to so complete the Work.

The City, in its reasonable discretion, shall determine the value associated with conditions (a) through (c) above and shall reduce Weiler's payment by the determined amount.

7.8 Notwithstanding anything herein to the contrary, the Work shall not include and Weiler shall not be reimbursed for the following:

7.8.1 The services and related expenses, of any officers or general office supervisory personnel of Weiler and of personnel in Weiler's personnel, legal, advertising, data processing, scheduling, labor relations, insurance and tax departments and all other costs of

doing business (including, but not limited to, copying, fax and computer charges), services and related expenses required to maintain and operate Weiler's general offices and any established branch offices, other than the field office for the Work.

7.8.2 The services and related expenses of Weiler's purchasing, secretarial, estimating and accounting departments and clerical staff at Weiler's general offices or any established branch offices. These services shall include all costs associated with computer equipment and related expenses, copying equipment, fax charges (either by page or machine costs), CADD equipment (unless approved in writing by the City prior to invoicing for same), signage, professional association costs (including, but not limited to, AGC/ABC Fees), bonding charges (including, but not limited to, Fidelity Bonds on office or job site personnel), or other related expenses.

7.8.3 The use of capital including interest employed for the Work.

7.8.4 Amounts required to be paid by Weiler for federal, state or local income or franchise taxes.

7.8.5 Costs due to the negligence of Weiler, any Subconsultant employed by Weiler or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials and equipment wrongfully supplied, or making good any damage to property.

7.8.6 Costs in excess of the sum of the GMP for the Work.

7.8.7 Entertainment and meal expenses and charges of a personal nature.

7.8.8 Travel charges unless approved in advance of trip in writing by the City. If travel is authorized the charges are to be billed as a separate line item listing employee name, purpose of trip, dates traveled and the daily cost of individual items for which reimbursement is sought.

7.8.9 Bonuses, profit-sharing or other special labor charges.

7.8.10 Any legal fees and accounting fees.

7.8.11 All losses resulting from lost, damaged, or stolen tools or equipment.

8. SUBCONTRACTOR AND SUBCONSULTANT CONTRACTS AND PURCHASE ORDERS.

8.1 Within thirty (30) days after execution of this Agreement, Weiler shall prepare and submit for the City's approval the names of the persons or entities proposed by Weiler to furnish services for the Project. Weiler shall contract solely in its own name and behalf, and not in the name or behalf of the City with the selected Subcontractor or Subconsultant. Weiler's form of Subcontractor Contract and Subconsultant Contract shall be subject to approval of the City, and once approved may be utilized by Weiler without further approval by the City provided that no substantial deviations are made to the approved form of Subcontractor Contract and

Subconsultant Contract. At a minimum, the Subcontractor Contract and Subconsultant Contract shall provide that the Subcontractor or Subconsultant, as applicable, shall perform its portion of the Project in accordance with all applicable provisions of this Agreement, that Subcontractor or Subconsultant is bound to Weiler to the same extent as Weiler is bound to the City, shall provide for termination of the Subcontractor Contract and Subconsultant Contract by Weiler in the same manner and method as provided in Section 32 of this Agreement, and shall further provide that, in the event this Agreement is terminated for any reason, that the Subcontractor or Subconsultant shall, at the City's option, perform its Subcontract Contract or Subconsultant Contract for the City without additional or increased cost, provided the Subcontractor or Subconsultant is paid in accordance with its Subcontractor Contract or Subconsultant Contract. Weiler shall sign and cause each Subcontractor and Subconsultant to sign an Assignment of Rights Agreement in the form attached hereto as Exhibit "G" (any cost for execution of said assignment will be borne by Weiler and included in the GMP). Nothing contained herein shall, however, create any obligation on the City to assume any Subcontractor Contract or Subconsultant Contract or make any payment to any Subcontractor or Subconsultant unless the City chooses to request Subcontractor or Subconsultant to perform pursuant to this Section or as otherwise provided in this Agreement, and nothing contained herein shall create any contractual relationship between the City and any Subcontractor or Subconsultant.

8.2 Weiler shall not contract with any Subcontractor, Subconsultant, materialman, vendor, or supplier to whom the City has made reasonable objection or with whom the City could not lawfully enter into a contract.

8.3 All Subcontractor Contracts and Subconsultant Contracts shall, so far as practicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the Project.

9. INSURANCE.

9.1 Weiler shall provide or cause to be provided insurance of the type and on the terms and conditions as specified in Exhibit "H" attached hereto. The cost of this insurance is included in the GMP. The failure of Weiler to provide such insurance shall be considered a material breach of this Agreement. Insurance purchased by Weiler shall be purchased from a carrier acceptable to the City. Any decrease in the required insurance coverage shall be approved by the City Manager.

9.2 Weiler shall maintain the coverages for insurance as required by Exhibit "H" as set forth in this Section 9.2 and thereafter during any and every period when Weiler or any of its Subconsultants or Subcontractors are performing any Work or furnishing any services pursuant to this Agreement. Upon execution of this Agreement, Weiler shall provide or cause to be provided the workers' compensation insurance, comprehensive general liability insurance, business automobile insurance, professional liability insurance and the umbrella liability insurance policies.

10. INDEMNITY.

10.1 In consideration of the entry of this Agreement, and to the extent permitted by Chapter 725, Florida Statutes, as may be amended, Weiler agrees to indemnify, protect, defend, and hold harmless the City its elected officials, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Weiler and other persons employed or utilized by Weiler in the performance of the Agreement.

10.2 The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Weiler or any Subcontractor or Subconsultants under worker's compensation acts, disability benefit acts, or other employee benefit acts.

10.3 In the event that any claims are brought or actions are filed against the City with respect to the indemnity contained herein, Weiler agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. Weiler agrees that the City may select the attorneys to appear and defend such claims or actions on behalf of the City. Weiler further agrees to pay at Weiler's expense the attorneys' fees and costs incurred by those attorneys selected by the City to appear and defend such claims or actions on behalf of the City at both the trial and appellate levels. The City, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the City.

10.4 To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of this Agreement shall hereby be interpreted as the parties' intention for the indemnification clauses to comply with Chapter 725, Florida Statutes, as may be amended.

10.5 In addition to the indemnification provided in Section 11, Weiler agrees to indemnify, protect, defend and hold harmless the City, its elected officials, officers, employees, consultants, and agents from liabilities, damages, losses and costs including but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused, resulting, arising from or related to:

10.5.1 Weiler infringing on any patent pursuant to Section 3.4 of this Agreement;
and

10.5.2 Weiler's failure to pay taxes as required by Section 3.9 of this Agreement;
and

10.5.3 Any improperly filed lien pursuant to Section 7.2 of this Agreement; and

10.5.4 Weiler taking part in any of the activities prohibited in Section 14 of this Agreement (collectively, "Environmental Claims"); and

10.5.5 Weiler's failure to stop the Work upon encountering a Hazardous Substance at the Project; pursuant to Article 14 of this Agreement; and

11. **INDEPENDENT CONTRACTOR.** In performing its obligations hereunder, Weiler shall be deemed an independent contractor and not an agent or employee of the City. Weiler shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement, unless the Contract Documents give other specific instructions concerning these matters.

12. **INSPECTIONS AND AUDIT.**

12.1 Weiler represents that he has inspected the Project Location and has satisfied himself as to the condition thereof and that the GMP is just and reasonable compensation for all Work, including all foreseen or foreseeable risks, hazards, and difficulties in connection therewith.

12.2 The City at all times shall have access to the Work for inspection thereof, but shall not be obligated to conduct any such inspection. Weiler shall ensure proper and safe facilities for such access and inspection by The City. If any of the Work is required to be inspected or approved by any public authority, Weiler shall cause such inspection or approval to be performed.

12.3 No inspection performed or failed to be performed by the City shall be a waiver of any of Weiler's obligations or be construed as an approval or acceptance by the City of the Work or any part thereof.

12.4 To ascertain if the Scope of Work as detailed under this Agreement has been performed, the City shall have access to the Work and the right to audit all of Weiler's major Subconsultants books, records, correspondence, instructions, drawings, receipts, payment records, vouchers and memoranda relating to the Work and Weiler and all major Subconsultants shall preserve all such records and supporting documentation for a period of six (6) years after the Final Payment. Weiler further grants to the City the authority to enter its premises for the purpose of inspection of such records and supporting documentation or, at Weiler's option, Weiler may make such records and supporting documentation available to the City at a location satisfactory to the City. For purposes of this Agreement, a major Subconsultant is a Subconsultant that performs more than ten percent (10%) of the Design Services.

12.5 Weiler shall maintain and require any subcontractors to maintain, complete and correct record books, documents, papers and accounts pertaining to the 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 Final Payment. 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.

12.6 Weiler shall comply with Chapter 119, Florida Statutes, as applicable

12.7 Refusal of Weiler to comply with the provisions of Sections 12.5 or 12.6 shall be grounds for immediate termination for cause by the City of this Agreement.

13. **TITLE TO WORK.** Immediately upon delivery and payment by the City to Weiler or the performance of any part of the Work, as between Weiler and the City, title thereto shall vest in the City; provided, however, the vesting of such title shall not impose any obligations on the City or relieve Weiler from any of its obligations hereunder.

14. **HAZARDOUS SUBSTANCES.**

14.1 During the Contract Management Phase of the Project, Weiler agrees that it shall require that the City's contractor does not transport to, use, generate, dispose of, or install at the Project Location any Hazardous Substance, as defined in Section 14.3, except in accordance with applicable Environmental Laws. Further, Weiler shall require that the City's contractor does not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any watercourse or ground water, except in accordance with applicable Environmental Laws.

14.2 In the event the contractor encounters on the Project Location any Hazardous Substance, or what reasonably believed to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project Location, in a manner violative of any applicable Environmental Laws, Weiler shall immediately require the contractor stop Work in the area affected and report the condition to the City in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of the City if in fact a Hazardous Substance has been encountered and has not been rendered harmless.

14.3 For purposes of this Agreement, the term "Hazardous Substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound, or mixture, which are defined in or included under or regulated by any local, state, or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and The Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Chapters 161, 253, 373, 376 and 403, Florida Statutes, the rules and regulations of the Florida Department of Environmental Protection, or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is Weiler's responsibility to comply with this Article 19 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

15. COMPLIANCE WITH LAWS.

15.1 Weiler shall notify the City in writing of all conflicts between the Contract Documents and any laws, ordinances, rules, regulations and restrictions that come to the attention of Weiler or should have come to Weiler's attention with the exercise of due care. If Weiler performs any of the design work knowing, or when with the exercise of due care Weiler should have known, it to be contrary to any such laws, ordinances, rules, regulations or restrictions and fails to give the City written notice thereof prior to performance, Weiler shall bear all related costs, liabilities, and expenses arising from such noncompliance including reasonable attorney's fees and costs.

15.2 Weiler, at its sole cost, shall obtain all necessary licenses, building and other permits, and similar authorizations from governmental authorities required or necessary to perform its obligations hereunder, and shall give all notices required by, and otherwise comply with, all applicable laws, ordinances, rules, regulations and restrictions.

15.3 Weiler agrees that all of Weiler's Services and the Work shall comply with all applicable laws, statutes, ordinances, codes, executive orders, rules, regulations including without limitation, those adopted by the City, all Environmental Laws as defined in Section 14.3, and the federal and State of Florida "Right to Know" laws related to Hazardous Substances in the workplace.

15.4 Weiler shall require that contractor complies with the Trench Safety Act set forth in Sections 553.60 through 553.64, inclusive, Florida Statutes, and OSHA Standard 29 C.F.R. § 1926.650 Subpart P. Without limiting the foregoing, at all times during performance of the Work, under no circumstances shall any trench(es) remain open overnight.

15.5 If any grants are obtained for this Project, Weiler agrees to abide by the conditions in the grant document. The City shall provide Weiler with grant documents, to be included as part of this Agreement, within ten (10) days of notice of the receipt of any grant funding.

16. PERSONNEL.

16.1 All personnel used or employed by Weiler in the performance of the Work shall to the best of Weiler's knowledge be qualified by training and experience to perform their assigned tasks. At the request of the City, Weiler shall not use in the performance of the Work any personnel deemed by the City to be incompetent, careless or unqualified to perform the work assigned to him, or otherwise unsatisfactory to the City.

16.2 Weiler agrees that in the performance of the Work called for by this Agreement, it will employ only such labor, and engage Subconsultants and Subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the Project Location or on any other building, structure, or other improvement which the contractor or any other contractor may then be erecting or altering on behalf of City. Weiler agrees that it shall not employ any labor that will interfere with the introduction and storage of materials and the execution of work by other Subconsultants and Subcontractors.

16.3 Weiler shall furnish the City, on request, resumes of Weiler's key personnel involved in the day-to-day Work on the Project.

17. SAFETY AND PROTECTION.

17.1 Weiler shall be solely responsible for monitoring and supervising all safety precautions and programs in connection with the Work. Weiler shall require that contractor takes all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

17.1.1 all persons on Project Site or who may be affected by the construction;

17.1.2 all Work and Materials and equipment to be incorporated therein, whether in storage on or off the Project Site; and

17.1.3 other property at the Project Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

17.2 Weiler shall require that contractor complies with applicable laws and regulations of any public body having jurisdiction for safety or persons or property to protect them from damage, injury or loss; and contractor erects and maintains all necessary safeguards for such safety and protection. Weiler shall coordinate with contractor to notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of property. Weiler's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and the City has issued a notice to Weiler that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion in Section 6.2).

17.3 **Safety Representative.** Weiler shall designate a qualified and experienced safety representative at the Project Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

17.4 **Hazard Communication Programs.** Weiler shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws or regulations.

17.5 **Emergencies.** In emergencies affecting the safety or protection of persons or the construction or property at the Project Site or adjacent thereto, Weiler, without special instruction or authorization from the City, is obligated to act to prevent threatened damage, injury or loss. Weiler shall give the City prompt written notice if Weiler believes that any significant changes in the construction or variation from the Contract Documents have been caused thereby. If a change in the Contract Documents is required because of the action taken by Weiler in response to such an emergency, a Change Order may be requested by Weiler to revise the Contract Documents pursuant to Section 6 of this Agreement.

18. USE OF SITE AND OTHER AREAS.

18.1 Weiler shall require that the contractor confines construction equipment, the storage of materials and equipment and the operations of construction workers to those lands and areas permitted by the City and other land and area permitted by laws and regulations, rights-of-way, permits and easements, and does not unreasonably encumber any such land or area's with construction equipment or other materials or equipment.

18.2 During the performance of the Work, Weiler shall require that contractor keeps the Project Site free from accumulations of waste materials, rubbish and other debris resulting from the construction. At the completion of the construction Weiler shall require that the contractor removes all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment, temporary construction and machinery and surplus materials.

18.3 Weiler shall not allow contractor to load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor allow contractor to subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

19. RELATED CONSTRUCTION AT SITE.

19.1 Coordination. If the City contracts with multiple contractors for the performance of work on the Project at the Project Site, the following information will be provided in writing to Weiler prior to the commencement of such work:

19.1.1 the individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

19.1.2 the specific matters to be covered by such authority and responsibility will be itemized; and

19.1.3 the extent of such authority and responsibilities will be provided.

20. WEILER'S WARRANTIES. Weiler represents and warrants to the City:

20.1 That it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to perform this Agreement; that it is able to furnish the Services; that it is experienced in and competent to perform the Services contemplated by this Agreement; and that it is qualified to do the Work herein and is authorized to do business in the state in which the Project is located.

20.2 That Weiler holds a license, permit or other special license to perform the services included in this Agreement, as required by Florida Statutes and other applicable laws, or employs or works under the general supervision of the holder of such license, permit or special license.

20.3 That the Project shall be designed in a good and workmanlike manner, free from defects, and in strict compliance with the this Agreement.

21. DEFECTS.

21.1 Weiler shall at its sole cost (a) replace any parts of the design that fail to conform with the requirements of this Agreement that appear during progress of the Work on the Project; (b) remedy any defects in the Work due to faulty design which appear within a period of one (1) year from the date of Final Completion of the Work hereunder or within such longer period of time as may be set forth in the Plans, Specifications, and Addenda or other Contract Documents or as may be required by law; and (c) replace, repair or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by the City or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Agreement or are due to defects in the design. The provisions of this Article 21 apply to work performed by Subcontractors as well as work performed directly by employees of Weiler. In addition to Weiler's responsibility to make repairs or redo work under this Article 21, Weiler shall also be responsible to the City for any damages suffered by the City as a result of said design defects, provided however Weiler will not be liable for any consequential damages suffered by the City. Weiler shall commence any work required under this Section promptly after notice from the City and shall diligently complete such work in a good and workmanlike manner in compliance with the terms of this Agreement applicable to the work generally.

21.2 Weiler's express warranty herein shall be in addition to, and not in lieu of, any other warranties or remedies the City may have under this Agreement, at law, or in equity for defective design work.

22. SIGNAGE. Except for safety signage required by applicable laws which shall be installed in compliance with applicable laws, all construction signage, including, but not limited to that appearing on cranes and other construction equipment located at the Project Location, shall be subject to the prior written approval of the City. Weiler recognizes that all signage (except safety signage required by applicable laws) may be disallowed, in the City's sole discretion, and that existing signage or advertising on construction equipment, field offices, trailers, construction fences, etc., may be required to be masked or deleted, all at no cost or expense to the City. Notwithstanding the foregoing, the parties intend to erect a Project sign identifying the City, Weiler and key participants in the Project. Such Project sign shall be installed in compliance with the City's sign regulations.

23. PRESS RELEASES. If the City elects to provide any press releases with regard to the Project, Weiler shall coordinate any public announcement or publicity releases relating to the Project through the City Manager. Weiler shall also require Subconsultants, Subcontractors, materialmen, suppliers, and vendors to comply with this requirement.

24. OWNERSHIP OF CONTRACT DOCUMENTS. All Schematic and Design Development Documents, Plans and Specifications, detail drawings, cost estimates, and other drawings and documents prepared in connection with the Project, upon payment by the City to Weiler therefore, shall be and remain the property of the City and are not to be used by Weiler on any other project and shall be relinquished to the City at Final Completion or sooner if otherwise required by this Agreement, provided, however, that Weiler may maintain one record set of as-built drawings.

25. REPRESENTATIVES.

25.1 The name of the party who is to be the "City's Representative" is shown in the Project Summary unless and until the City notifies Weiler in writing that another individual shall be the City's representative. The City's Representative is authorized to recommend approval of Change Orders and increases in the GMP, but Change Orders and increases in the GMP shall be binding on the City only if approved by the City Manager, or the City Council as applicable.

25.2 The name of the party who is to be the "Weiler's Representative" is shown in the Project Summary. Unless a corporate officer of Weiler advises the City, in writing, of any limitations on the authority of Weiler's Representative, Weiler's Representative shall have full authority to execute any and all instruments requiring Weiler's signature and to act on behalf of Weiler with respect to all matters arising out of this Agreement.

26. ASSIGNMENT. Weiler shall not assign this Agreement or sublet it as a whole without the written consent of the City, which consent may be withheld or conditioned by the City in its sole discretion; nor shall Weiler assign any monies due or to become due to it hereunder, without the previous written consent of the City, which consent may be withheld or conditioned by the City in its sole discretion. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

27. NONDISCRIMINATION. Weiler agrees that it will not knowingly violate any applicable laws or regulations prohibiting discrimination in employment in the performance of its work under this Agreement.

28. WAIVER. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection by, payment by, or tentative approval or acceptance by the City, or the failure of the City to perform any inspection hereunder, shall not constitute a final acceptance of the design work or Work or any part thereof and shall not release Weiler from any of its obligations hereunder.

29. CONSTRUCTION OF TERMS; CONFLICTS.

29.1 Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, unincorporated organization, partnership, trust, government and governmental agency or subdivision, as the context shall require.

29.2 The Contract Documents shall be interpreted so as to eliminate inconsistencies or conflicts, but in the event of any conflict, requirements for greater quantity or more expensive work shall govern; the terms of this Agreement shall prevail.

30. **CAPTIONS.** The captions used for the Sections in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Agreement or any Section hereof.

31. **ENTIRE AGREEMENT; SEVERABILITY; AMENDMENTS.** This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered thereby. All prior negotiations, representations and agreements with respect thereto not incorporated in this Agreement are hereby canceled. This Agreement can be modified or amended only by a document duly executed on behalf of the parties hereto. In the event any provision of this Agreement shall be determined to be illegal, invalid or otherwise unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision, term, covenant or condition of the Agreement shall be enforced to the fullest extent permitted by law.

32. **TERMINATION.**

32.1 The City shall have the right at any time, on not less than seven (7) days prior written notice to Weiler, to terminate this Agreement without cause or for the City's convenience including, but not limited to termination in the event that (a) the Project is abandoned by the City; or the City Council terminates, suspends or modifies the Project. Upon receipt by Weiler of such notice of termination (the "Date of Termination"), Weiler shall immediately discontinue the Work and remove its equipment, if any, and employees from the Project location. In the event of termination under this Section, Weiler shall have the right, as its sole and exclusive remedy, to recover from the City payment for Work performed and accepted by the City up to the Date of Termination (less any payment made to Weiler by the City). In addition, without terminating this Agreement as a whole, the City may, for convenience, terminate a portion of this Agreement (by reducing, in such manner as the City deems appropriate, the scope of the Work to be performed by Weiler). In which event such termination of a portion of this Agreement shall be treated as a reduction in the scope of the Work, to which an equitable reduction shall be made to the GMP as evidenced by a Change Order.

32.2 In addition to the City's right to terminate this Agreement immediately for any material breach or for default under the terms as specified in any other section of this Agreement, if Weiler shall fail to commence the Design Work in accordance with the provisions of this Agreement, fail to perform the Design Work or portions thereof to completion thereof in a diligent, efficient, workmanlike, skillful and careful manner and in strict accordance with the provisions of this Agreement, fail to use an adequate quantity or quality of personnel, equipment, or material to complete the Work within the Contract Time, fail to perform any of its obligations under this Agreement, be adjudged a bankrupt, make a general assignment for the benefit of its creditors, permit a receiver to be appointed on account of its insolvency, otherwise insolvent, or fail to make prompt payments to its Subcontractors, materialmen or laborers, the City shall provide Weiler with written notice thereof, stating the nature of the default complained of. If Weiler does not cure such default within seven (7) days after receipt of such notice (or such longer period agreed to in writing by the parties if the nature of the default is such that it cannot be cured within seven (7) days and Weiler has commenced and is diligently proceeding to cure within the original seven (7) day period), the City shall have the right, on forty-eight (48) hours written notice thereof to Weiler to terminate this Agreement.

32.3 If the City fails to perform any of its obligations hereunder, Weiler shall have the right to give the City written notice thereof, stating the nature of the default complained of. If the City does not cure such default within fifteen (15) days after receipt of such notice (or such longer period agreed to by the parties in writing if the nature of the default is such that it cannot be cured within fifteen (15) days and the City has commenced and is diligently proceeding to cure within the original fifteen (15) day period), Weiler shall have the right, on fourteen (14) days written notice thereof to the City to terminate this Agreement.

32.4 Weiler shall have the right to terminate this Agreement upon thirty (30) days written notice if the Design Work is suspended by the City for a period of ninety (90) consecutive days or more due to causes not the fault of Weiler.

32.5 The City may, if Weiler neglects to perform the Work properly or to perform any provision of the Agreement, or does, or omits to do, anything whereby safety or proper construction may be endangered or whereby damage or injury may result to person or property, after forty-eight (48) hours written notice to Weiler, without prejudice to any other remedy the City may have, make good all Design Work, material, omissions or deficiencies, and may deduct the cost therefore from the amount included in the GMP due or which may thereafter become due Weiler, but no action taken by the City hereunder shall affect any of the other rights or remedies of the City granted by this Agreement or by law relieve Weiler from any consequences or liabilities arising from such acts or omissions.

32.6 The rights and remedies of the City under this Section shall be non-exclusive, and shall be in addition to all the other remedies available to the City at law or in equity.

32.7 In the event of a strike or stoppage of Work resulting from a dispute involving or affecting the labor employed by Weiler or any of its Subcontractors, the City may, at its option and without demand, terminate this Agreement for default pursuant to Section 32.2.

33. DISPUTE RESOLUTION.

33.1 This Agreement shall be governed by the laws of the State of Florida and the applicable laws of the United States of America. Any proceeding seeking to enforce any provision of, or based on any rights arising out of, this Agreement may be brought against any of the parties in the courts of the State of Florida, County of Monroe, or if it has or can acquire jurisdiction in the United States District Court of the Southern District of Florida and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action. As a prerequisite to filing any court action, the parties shall submit the dispute to pre-suit mediation. The disputing party shall be responsible for notifying the other party and for coordinating the mediation. The parties shall jointly select a mediator. If the parties cannot agree on a mediator, each party shall select a mediator and the two mediators so selected shall select a third mediator who shall act as the mediator for the mediation. The parties shall each bear their own costs of mediation, and shall split the cost of the mediator and mediation process equally between them. The parties hereby waive any objection to venue, provided, however, that such venue be consistent with the requirements of Section 47.025, Florida Statutes.

33.2 Pending resolution of any dispute arising under this Agreement, other than termination hereof, Weiler shall diligently proceed with performance of this Agreement and the City shall continue to make payments in accordance with this Agreement, except for performance and payment related to the disputed matter.

34. **NOTICES.** All notices to be given hereunder shall be in writing, and shall be given, served, or made by facsimile transmission followed by one of the following methods: (a) depositing the same in the United States Mail addressed to the party to be notified, postpaid and first class mail, (b) by nationally recognized overnight courier service such as Federal Express or United Parcel Service, or (c) by delivering the same in person to such party. Notices of an alleged default and/or any termination of this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, postpaid, to the recipient party. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices to be given to the parties hereto shall be sent to or made to the addresses shown in Section 36 below. By giving the other party at least fifteen (15) days written notice thereof, the parties hereto shall have the right to change their respective addresses and specify as its address for the purposes hereof any other address in the United States of America.

35. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

36. **ADDRESSES.** All invoices, contracts, copies of notices and other correspondence should be addressed to the City and Weiler as follows:

If to the City:

Michael H. Puto, City Manager
City of Marathon, Florida
10045-55 Overseas Highway
Marathon, Florida 33050
Telephone No. (305) 289-4130
Fax No. (305) 743-3667

With a copy to:

John R. Herin, Jr., Esq.
Stearns Weaver Miller
Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street Suite 2200
Miami, FL 33130
Telephone No. (305) 789-3200
Fax No. (305) 789-3395

If to Weiler:

Weiler Engineering Corporation
20020 Veterans Blvd #7
Port Charlotte, Florida 33954

With a copy to:

37. **ATTORNEYS' FEES.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs, including the fees and expenses of any paralegal, law clerks, and legal assistants, and including fees and expenses charged for representation at the trial level, in all appeals, and in any bankruptcy proceedings.

38. **PUBLIC ENTITY CRIMES ACT.** Weiler represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on agreements of real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City, and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall be a material breach of the Agreement and result in termination of this Agreement and recovery of any monies paid by the City, and may result in debarment from the City's competitive procurement activities. In addition to the foregoing, Weiler further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Weiler has been placed on the convicted vendor list.

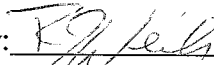
39. **WAIVER OF CONSEQUENTIAL DAMAGES.** Weiler agrees to waive all claims for consequential damages that may arise from this Agreement.

40. **WAIVER OF JURY TRIAL.** The City and Weiler irrevocably and knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.

41. **SURVIVAL OF PROVISIONS.** Any terms and provisions that require acts of Weiler beyond the termination or expiration of this Agreement, including any insurance and


IN WITNESS WHEREOF, this Agreement is hereby executed as of the date first above set forth:

WEILER ENGINEERING CORPORATION
a Florida corporation

By: 
Name: ROJEFF WEILER
Title: PRES


Dated: 7/28/05, 2005

THE CITY OF MARATHON
a Florida municipal corporation

By: 
Michael H. Puto, City Manager

Dated: 7/29/05, 2005

ATTEST:

By: 
Cindy Ecklund, City Clerk

Approved as to form and legal sufficiency:

By: 

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT "A1"

CONTRACT TIMES

A. **Design Services.** Unless otherwise agreed to in writing by the parties, the Design Services shall be commenced pursuant to a Notice to Proceed from the City's Project Representative to Weiler's Project Representative and completed within the timeframe in Exhibit "A". Additionally, Section 4.3 of the Agreement contains certain milestone submittal dates for 100% Schematic and Design Development Documents and 60%, and 100% Construction Documents.

B. **Construction Management Work.** Unless otherwise agreed to in writing by the parties, the Construction Management Work shall be commenced pursuant to approval of the 100% Construction Documents by the City's Project Representative to Weiler's Project Representative with Substantial Completion to occur within the timeframe in Exhibit "A". Pursuant to Section 6.4 of the Agreement, Final Completion shall occur within thirty (30) calendar days following Substantial Completion.

C. **Liquidated Damages.** Pursuant to Section 6.6 of the Agreement, if Weiler shall neglect, fail, or refuse to complete the Design Work by the date specified above, subject to any proper extension granted by the City, then ~~Weiler shall agree to pay to the City, Liquidated Damages in the amount of (a) Two Hundred and Fifty Dollars (\$250.00) per diem commencing upon the first day following expiration of the completion date specified above.~~

D. **Weather Delay Days.** The amount of days provided for weather delays, pursuant to Section 6.2 of this Agreement shall be ten (10) days.

EXHIBIT "B"
CHANGE ORDER

CHANGE ORDER

TO: City of Marathon

PROJECT:

ENGINEER:

DATE: _____

This Change Order will authorize the following change to the Agreement:

The Work as set forth in the Agreement is hereby amended to include the items set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

This Change Order constitutes full, final, and complete compensation to Weiler for all costs, expenses, overhead, and profit, and any damages of every kind that Weiler may incur in connection with the above referenced changes in the Design Work or any other effect on any of the Construction Management Work under this Agreement. Weiler acknowledges and agrees that (a) the Guaranteed Maximum Price of \$ _____ under the Agreement will be [unchanged] [changed] by this Change Order, and (b) the schedule for performance of Design Work will be [unchanged] [changed] by this Change Order. Weiler expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

By signing below the parties indicate acceptance of this Change Order as set forth herein.

CITY OF MARATHON
a Florida municipal corporation

WEILER ENGINEERING CORP.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT "C"
REQUEST FOR PAYMENT FORM

APPLICATION FOR PAYMENT NO. _____

To: _____ (OWNER)
 From: _____ (CONTRACTOR)
 Contract: _____
 Project: _____
 OWNER's Contract No. _____ ENGINEER's Project No. _____
 For Work accomplished through the date of: _____

- | | | |
|----|--|-----------------|
| 1. | Original Contract Price: | \$ _____ |
| 2. | Net change by Change Orders and Written Amendments (+ or -): | \$ _____ |
| 3. | Current Contract Price (1 plus 2): | \$ _____ |
| 4. | Total completed and stored to date: | \$ _____ |
| 5. | Retainage (per Agreement): | |
| | _____ % of completed Work: | \$ _____ |
| | _____ % of stored material: | \$ _____ |
| | Total Retainage: | \$ _____ |
| 6. | Total completed and stored to date less retainage (4 minus 5): | \$ _____ |
| 7. | Less previous Application for Payments: | \$ _____ |
| 8. | DUE THIS APPLICATION (6 MINUS 7): | \$ _____ |

Accompanying Documentation:

CONTRACTOR'S Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied on account to discharge CONTRACTOR's legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through _____ inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

Dated _____

CONTRACTOR
By: _____

State of _____
 County of _____
 Subscribed and sworn to before me this _____
 day of _____, _____

 Notary Public
 My Commission expires: _____

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated _____
ENGINEER

By:

EJCDC No. 1910-8-E (1996 Edition)

Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specification Institute.

APPLICATION FOR PAYMENT

INSTRUCTIONS

A. GENERAL INFORMATION

The sample form of Schedule of Values is intended as a guide only. Many projects require a more extensive form with space for numerous items, descriptions of Change Orders, identification of variable quantity adjustments, summary of materials and equipment stored at the site and other information. It is expected that a separate form will be developed by Engineer and Contractor at the time Contractor's Schedule of Values is finalized. Note also that the format for retainage must be changed if the Contract permits (or the law provides), and Contractor elects to deposit securities in lieu of retainage. Refer to Article 14 of the General Conditions for provisions concerning payments to Contractor.

B. COMPLETING THE FORM

The Schedule of Values, submitted and approved as provided in paragraphs 2.05.B.3 and 2.07 of the General Conditions, should be reproduced as appropriate in the space indicated on the Application for Payment form. Note that the cost of materials and equipment is often listed separately from the cost of installation. Also, note that each Unit Price is deemed to include Contractor's overhead and profit.

All Change Orders affecting the Contract Price should be identified and included in the Schedule of Values as required for progress payments.

The form is suitable for use in the Final Application for Payment as well as for Progress Payments; however, the required accompanying documentation is usually more extensive for final payment. All accompanying documentation should be identified in the space provided on the form.

C. LEGAL REVIEW

All accompanying documentation of a legal nature, such as Lien waivers, should be reviewed by an attorney, and Engineer should so advise Owner.

Application No. _____ Date: _____

ITEM	UNIT PRICE	ESTIMATED QUANTITY	SCHEDULE OF VALUES AMOUNT	QUANTITY COMPLETED	AMOUNT	%	MATERIAL STORED	AMOUNT COMPLETED AND STORED
1.	\$		\$		\$		\$	\$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
21.								
22.								
23.								
24.								
25.								
26.								
27.								
28.								
29.								
30.								
TOTAL			\$		\$		\$	\$

Note: Total Schedule of Values Amount should equal the current Contract Price.

EXHIBIT "C1"

PAYMENT TO WEILER

Payments to ENGINEER for Services and Reimbursable Expenses

STUDY & REPORT

\$331,024

Service Area									
	1	2	3	4	5	6	7	8	
Survey & Geotechnical	\$13,356	\$2,500	\$74,193	\$175,939	\$182,799	\$62,174	\$28,780	\$17,681	\$557,422
Preliminary Design	\$84,249	\$4,609	\$239,106	\$125,635	\$619,607	\$204,175	\$124,029	\$105,072	\$1,506,481
Final Design	\$53,138	\$6,601	\$144,977	\$280,997	\$316,163	\$124,019	\$72,642	\$64,557	\$1,063,094
Bidding & Negotiating	\$6,869	\$561	\$19,204	\$20,332	\$46,789	\$16,410	\$9,834	\$8,481	\$128,479
Construction Admin and Inspection Including Grant Admin assistance	\$93,557	\$1,682	\$637,671	\$1,142,582	\$1,082,863	\$121,551	\$113,486	\$112,189	\$3,305,580
	\$251,168	\$15,952	\$1,115,152	\$1,745,485	\$2,248,220	\$528,329	\$348,770	\$307,981	

Post Construction \$ 78,229

Total Engineering Fees \$6,970,309

Estimated cost of advertising

Prints, express mail & Applications	\$10,047	\$638	\$44,606	\$69,819	\$89,929	\$21,133	\$13,951	\$12,319	<u>\$262,442</u>
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Total with Expenses \$7,232,751

EXHIBIT "D"

CERTIFICATE OF WEILER & FINAL WAIVER OF LIEN

**CERTIFICATE OF WEILER &
FINAL WAIVER OF LIEN**

TO: City of Marathon

WEILER:

PROJECT:

AGREEMENT DATE:

The undersigned, being duly sworn, on oath deposes and says under penalty of perjury:

I am the _____ of the corporation or other entity identified herein as Weiler, which entity has executed the attached Release and Waiver, and I hereby certify that said Weiler has paid all employees, subcontractors and materialmen in full for all labor and materials supplied by them to, for or under Weiler in connection with the above described Project through and including the date of this instrument, except for such persons listed on the attached sheet in the amount indicated opposite their names, who shall be paid in full within ten (10) days after the date hereof.

On behalf of and in the name of Weiler, I hereby further covenant, warrant and represent that should any claim or lien be filed against the City of Marathon, a Florida municipal corporation (the "City"), the Project, the real property upon which the Project is located or any other property owned by the City for material or labor supplied by, to, for or under Weiler in connection with Weiler's participation in the construction of the Project, Weiler will immediately pay and satisfy such claim or lien or furnish a sufficient bond, for the release of such lien, and obtain settlement of any such liens and furnish the City a signed instrument fully releasing any such liens. Weiler further agrees to fully indemnify and hold harmless the City, its agents and employees, from any loss, cost or damage, including but not limited to attorneys' fees, which they may incur by reason of any such claim or lien by, through or under Weiler.

I further certify on behalf of and in the name of Weiler that Weiler has complied with all federal state and local tax laws, including social security laws, and unemployment compensation laws and workers' compensation laws, insofar as same are applicable to the performance of Weiler's obligations in connection with the Project.

THAT the undersigned Weiler, in consideration of payment made to the undersigned of all sums due the undersigned for labor and/or materials supplied prior to, through and including the date of this release, and in connection with that certain project (the "Project") known as _____, located in _____, as described in the RFQ, which Project is owned or leased by

the City, does hereby fully and finally waive and release any and all liens, claims, actions, and demands, and all rights to same, against the City, the Project, the real property upon which the Project is located and any and all other property owned by the City, in connection with labor and/or services supplied by the undersigned to the Project prior to and through the date hereof; and

THAT the undersigned Weiler does hereby acknowledge and represent that:

1. Through the date hereof, the undersigned has received total payments in the amount of \$ _____ for labor and/or materials supplied to or for the Project; and
2. The undersigned Weiler hereby acknowledges receipt of payment in full of all sums agreed and required to be paid to the undersigned in connection with the Project for all labor and/or materials supplied by the undersigned to or for the Project prior to, through and including the date hereof.

This instrument has been executed as of the ____ day of _____, 20__.

WEILER:

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
)
COUNTY OF MONROE)

This instrument was acknowledged before me this ____ day of _____ 2005 by _____ who [] is personally know to me or [] produced _____ as identification.

Notary Public: _____

 (name typed)

My Commission expires: _____

EXHIBIT "E"

CERTIFICATE OF WEILER & PARTIAL WAIVER OF LIEN

**CERTIFICATE OF CORPORATION &
PARTIAL WAIVER OF LIEN**

TO: City of Marathon

WEILER:

PROJECT:

AGREEMENT DATE:

The undersigned, being duly sworn, on oath deposes and says under penalty of perjury:

I am the _____ of the corporation or other entity identified herein as Weiler, which entity has executed the attached Release and Waiver, and I hereby certify that said Weiler has paid all employees, subcontractors and materialmen in full for all labor and materials supplied by them to, for or under Weiler in connection with the above described Project through and including the date of this instrument, except for such persons listed on the attached sheet in the amount indicated opposite their names, who shall be paid in full within ten (10) days after the date hereof.

On behalf of and in the name of Weiler, I hereby further covenant, warrant and represent that should any claim or lien be filed against the City of Marathon, a Florida municipal corporation (the "City"), the Project, the real property upon which the Project is located or any other property owned by the City, for material or labor supplied by, to, for or under Weiler in connection with Weiler's participation in the construction of the Project, Weiler will immediately pay and satisfy such claim or lien or furnish a sufficient bond, for the release of such lien, and obtain settlement of any such liens and furnish the City a signed instrument fully releasing any such liens. Weiler further agrees to fully indemnify and hold harmless the City, its agents and employees, from any loss, cost or damage, including but not limited to attorneys' fees, which they may incur by reason of any such claim or lien by, through or under Weiler.

I further certify on behalf of and in the name of Weiler that Weiler has complied with all federal state and local tax laws, including social security laws, and unemployment compensation laws and workers' compensation laws, insofar as same are applicable to the performance of Weiler's obligations in connection with the Project.

THAT the undersigned Weiler, in consideration of payment made to the undersigned of all sums due the undersigned for labor and/or materials supplied prior to, through and including the date of this release, and in connection with that certain project (the "Project") known as _____, located in _____, as described in the RFQ, which Project is owned or leased by the City, does hereby fully and finally waive and release any and all liens,

claims, actions, and demands, and all rights to same, against the City, the Project, the real property upon which the Project is located and any and all other property owned by the City, in connection with labor and/or services supplied by the undersigned to the Project prior to and through the date hereof; and

THAT the undersigned Weiler does hereby acknowledge and represent that:

1. Through the date hereof, the undersigned has received total payments in the amount of \$ _____ for labor and/or materials supplied to or for the Project; and
2. The undersigned Weiler hereby acknowledges receipt of payment in full of all sums agreed and required to be paid to the undersigned in connection with the Project for all labor and/or materials supplied by the undersigned to or for the Project prior to, through and including the date hereof, it being understood that retainage in the amount \$ _____ of is being withheld pursuant to the terms of the Agreement.

This instrument has been executed as of the ____ day of _____, 2005.

WEILER:

By: _____
 Name: _____
 Title: _____

STATE OF FLORIDA)
)
 COUNTY OF MONROE)

This instrument was acknowledged before me this ____ day of _____ 2005 by _____ who [] is personally know to me or [] produced as identification.

Notary Public: _____

 (name typed)

My Commission expires: _____

EXHIBIT "F"

CERTIFICATE OF SUBCONTRACTOR & PARTIAL WAIVER OF LIEN

**CERTIFICATE OF SUBCONTRACTOR &
PARTIAL WAIVER OF LIEN**

TO: City of Marathon

WEILER:

PROJECT:

AGREEMENT DATE:

The undersigned, being duly sworn, on oath deposes and says under penalty of perjury:

I am the _____ of the corporation or other entity identified below as the Subcontractor, which entity has executed the attached Release and Waiver, and I hereby certify that said Subcontractor has paid all employees, contractors and materialmen in full for all labor and materials supplied by them to, for or under the Subcontractor in connection with the attached described Project through and including the date of this instrument, except for such persons listed on the attached sheet in the amount indicated opposite their names, who shall be paid in full within ten (10) days after the date hereof.

On behalf of and in the name of the Subcontractor, I hereby further covenant, warrant and represent that should any claim or lien be filed against the City of Marathon, a Florida municipal corporation (the "City"), the Project, the real property upon which the Project is located or against Weiler for material or labor supplied by, to, for or under the Subcontractor in connection with the Subcontractor's participation in the construction of the Project, the Subcontractor will immediately pay and satisfy such claim or lien or furnish a sufficient bond, pursuant to Section 713, et seq., Florida Statutes, for the release of such lien, and obtain settlement of any such liens and furnish the City and Weiler a signed instrument fully releasing any such liens. The Subcontractor further agrees to fully indemnify and hold harmless the City, its agents and employees, and Weiler, its sureties, agents and employees, for any loss, cost or damage, including but not limited to attorneys' fees, which they may incur by reason of any such claim or lien by, through or under the Subcontractor.

I further certify on behalf of and in the name of the Subcontractor that the Subcontractor has complied with all federal, state and local tax laws, including social security laws, and unemployment compensation laws and workers' compensation laws, insofar as same are applicable to the performance of the Subcontractor's obligations in connection with the Project.

THAT the undersigned Subcontractor, in consideration of payment made to the undersigned of all sums due the undersigned for labor and/or materials supplied prior to, through and including the date of this release, and in connection with that certain project (the "Project") known as _____, located in _____, as described in the RFQ, which Project is owned or leased by the City, does hereby waive and release any and all liens, claims, actions, and demands, and all rights to same, against the City, the Project, the real property upon which the Project is located and any and all other property owned by the City, in connection with labor and/or services supplied by the undersigned to the Project prior to and through the date hereof; and

THAT the undersigned Subcontractor does hereby acknowledge and represent that:

1. Through the date hereof, the undersigned has received total payments in the amount of \$_____ for labor and/or materials supplied to or for the Project; and
2. The undersigned Subcontractor hereby acknowledges receipt of payment in full of all sums agreed and required to be paid to the undersigned in connection with the Project for all labor and/or materials supplied by the undersigned to or for the Project prior to, through and including the date hereof, it being understood that retainage in the amount of \$_____ is being withheld pursuant to the terms of the Agreement.

This instrument has been executed as of the ____ day of _____, 2005.

SUBCONTRACTOR:

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
)
COUNTY OF MONROE)

This instrument was acknowledged before me this ____ day of _____ 2005 by _____ who [] is personally know to me or [] produced _____ as identification.

Notary Public: _____

 (name typed)

My Commission expires: _____

EXHIBIT "G"
ASSIGNMENT

ASSIGNMENT

TO: City of Marathon

WEILER:

PROJECT:

AGREEMENT DATE:

**ASSIGNMENT OF RIGHTS UNDER
SUBCONTRACTOR CONTRACT/SUBCONSULTANT CONTRACT**

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, WEILER ENGINEERING CORPORATION, a Florida corporation ("Weiler"), having an address 20020 Veterans Blvd #7, Port Charlotte, Florida 33954, does hereby TRANSFER, ASSIGN and CONVEY unto the CITY OF MARATHON, a Florida municipal corporation, whose mailing address is 10045-55 Overseas Highway, Marathon, FL 33050 (the "City"), all of the rights, interests, benefits and privileges of Weiler under (a) that certain Subcontractor Contract/Subconsultant Contract (the "Subcontract") dated _____, 20__, by _____ and _____ between Weiler, and _____ ("the Subcontractor"), a copy of said Subcontract is attached hereto as Exhibit "A" and made a part hereof, providing for a portion of the design services, labor and/or materials that Weiler is obligated to provide the City under that certain Design Build Agreement (the "Agreement") dated _____, 20__, for the design and construction of a project and related improvements in _____, Monroe County, Florida (the "Project"), and (b) any and all payment and performance bonds issued in conjunction with the Subcontract. However, the City does not hereby assume any of Weiler's liabilities, duties or obligations under the Subcontract.

The foregoing Assignment constitutes a part of the security given to the City by Weiler to secure Weiler's performance of the Agreement. Notwithstanding anything in this instrument to the contrary, the City shall not exercise any rights under this instrument unless an event of default or other termination shall have occurred under the provisions of the Agreement. The City shall have the right, but not the duty, in the event of a default and/or termination pursuant to the terms of the Agreement, to exercise all of its rights, interests, benefits and privileges under the Subcontract.

Subcontractor hereby agrees with the City as follows:

That Subcontractor hereby consents to the foregoing assignment and agrees to notify the City in writing at the same time Subcontractor notifies Weiler of the occurrence of any failure of payment under the provisions of the Subcontract or of the occurrence of any other default by Weiler under the provisions of the Subcontract.

That if the City notifies the Subcontractor in writing that an event of default by Weiler, or other termination, has occurred under the Agreement, the Subcontractor shall, at the City's request, waive Weiler's default and continue performance on the City's behalf under the Subcontract in accordance with the terms thereof, provided that the Subcontractor shall be paid in accordance with the Subcontract for the following as and when they are due under the Subcontract:

- (a) all services, work, labor and materials rendered on Weiler's behalf prior to the City's request;
- (b) all services, work, labor and materials rendered on the City's behalf following the City's request; and
- (c) the amount of retainage, if any, withheld by the City from payments to Weiler made by the City prior to the City's request.

That in the event any of Subcontract proceeds are disbursed by the City directly to the Subcontractor, the Subcontractor will receive any such advances and will hold the same as a trust and for the purpose of paying the costs of the labor performed and equipment and supplies used in connection with the Project, and the Subcontractor will apply the same only to payment of such costs and for no other purpose.

That upon the City's request, the Subcontractor shall furnish to the City a current list of all persons or firms with whom the Subcontractor has entered into subcontracts or other agreements relating to the performance of work or furnishing of materials in connection with the Project which have a value of \$1,000 or more, together with a statement as to the status of each of such subcontracts or agreements and the respective amounts, if any, owed by the Subcontractor. Weiler hereby consents to the furnishing to the City of such list and statement.

Subcontractor consents to the City assigning the City's rights hereunder to anyone whom the City may choose to complete Weiler's obligations, including without limitation, Weiler's surety.

That the City has no obligation to exercise its rights under this Assignment and furthermore has no obligation to pay Subcontractor unless the City exercises its rights as set forth herein.

That this Assignment does not create third party beneficiary rights under the Agreement in favor of anyone, including Subcontractor.

IN WITNESS WHEREOF, this instrument shall be effective as of the date of the Subcontract.

CITY OF MARATHON
a Florida municipal corporation

WEILER

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____

STATE OF FLORIDA)
)
COUNTY OF MONROE)

This instrument was acknowledged before me this ___ day of _____ 2005 by _____, on behalf of CITY OF MARATHON, a Florida municipal corporation, who [] is personally know to me or [] produced _____ as identification.

Notary Public: _____

(name typed)

My Commission expires: _____

STATE OF FLORIDA)
)
COUNTY OF MONROE)

This instrument was acknowledged before me this ___ day of _____ 2005 by _____ who [] is personally know to me or [] produced _____ as identification.

Notary Public: _____

(name typed)

My Commission expires: _____

EXHIBIT "H"
INSURANCE REQUIREMENTS

INSURANCE CONTRACT WORDING

Insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The selected firm(s) shall furnish original Certificates of Insurance to the City prior to the commencement of work. The Certificates shall clearly indicate that the selected firm(s) has obtained insurance of the type, amount and classification as required for strict compliance with this Exhibit and that no material change or cancellation of the insurance shall be effective without providing thirty (30) days prior written notice to the City.

COVERAGE	LIMITS OF LIABILITY	DESCRIPTION
Commercial General Liability*	Bodily Injury, Including Wrongful Death: <ul style="list-style-type: none"> • \$1,000,000 per occurrence Property Damage: <ul style="list-style-type: none"> • \$1,000,000 per occurrence 	To protect the selected firm(s) and City from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage arising from such operations by the selected firm(s) or by anyone directly employed by or contracting with the selected firm(s). <i>Insurance certificate shall indicate "per occurrence."</i>
Commercial Automobile Liability Insurance*	Bodily Injury, Including Wrongful Death: <ul style="list-style-type: none"> • \$500,000 per occurrence Property Damage: <ul style="list-style-type: none"> • \$500,000 per occurrence 	To protect the selected firm(s) and City, as an additional named insured, from claims for damages for bodily injury, including death as well as from claims for property damage, which may arise from the ownership, use or maintenance of owned and non-owned automobiles whether such operations be by the selected firm(s) or by anyone directly or indirectly employed by the selected firm(s).
Workers' Compensation and Employers' Liability	Statutory	
Professional Liability Insurance	\$3,000,000	To protect the City from any negligent acts, errors or omissions on the part of the selected firm(s).

*All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the Selected firm(s), shall specifically include the City as an "Additional Named Insured."

The Selected firm(s) shall submit a certificate evidencing the above named coverage in a form satisfactory to the City prior to submitting an agreement for approval. Any insurance written on a claims-made basis is subject to approval of the City Legal Counsel. Insurance coverage in the minimum amounts set forth shall not be construed to relieve the Selected firm(s) of liability in excess of such coverage, nor shall it preclude the City from taking such other actions as are available to it under any other provisions of the law.

EXHIBIT "I"
NOTICE TO PROCEED

NOTICE TO PROCEED

Dated _____, 2005

TO:

ADDRESS:

PROJECT:

CONTRACT: Design Build Agreement/[Section 1.1(a)][Section 1.1(b)]

You are hereby notified that the Contract Times with respect to [Design Services for ____ Basin] [Construction Management Work] under [Section 1.1(a)] [Section 1.1(b)] the above Agreement will commence to run on _____, 20____. By that date, you are to start performing your obligations under the Contract Documents with respect to [Design Services for ____ Basin] [Construction Management Work]. In accordance with the Agreement, the following are certain dates relative to the [Design Services or ____ Basin] [Construction Management Work]: ~~Insert milestone submittal dates for Design Services and Substantial Completion Date for Construction Management Work as appropriate.~~

Before you may start any Work at the site, Section 10.2 of the Agreement requires you and all Subcontractors and Subconstultants, as applicable, each deliver to the City, who shall be listed as an additional insured, certain Certificates of Insurance that each is required to secure and maintain in accordance with the Contract Documents.

Also before you may start any Work at the site, you must

(if necessary, add other requirements)

**CITY OF MARATHON,
a Florida municipal corporation**

By: _____
City's Project Representative

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 _____, whose representative has been duly authorized to execute same.

Attest:

CITY OF MARATHON

Cindy L. Ecklund, City Clerk

Michael H. Puto, City Manager

Date: _____

Approved as to form and legality for the use and reliance of the City of Marathon, Florida only:

CONSULTANT

By: _____

Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.

Date: _____

CITY ATTORNEY