

**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-128**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING CITY MANAGER TO ENTER INTO WORK AUTHORIZATION NO. SIXTEEN (16) TO CONTINUING SERVICES AGREEMENT DATED JUNE 22, 2004, WITH WEILER ENGINEERING CORPORATION, FOR BEACH PARKING/ROAD IMPROVEMENT PLAN/SCHEMATIC AS RECOMMENDED BY CITY COUNCIL FROM AVENIDA PRIMICERIA TO THE END OF SOMBRERO BEACH ROAD IN AN AMOUNT NOT TO EXCEED \$6,300

WHEREAS, the City of Marathon (the "City") wishes to make improvements to the roadway and adjacent parking at Sombrero Beach as recommended by the City Council; and

WHEREAS, in order to take this project to Florida Department Of Transportation's (FDOT) scoping committee to request FDOT participation, the City must prepare a preliminary plan and layout for the roadway, parking, buffer and bike path; and

WHEREAS, Work Authorization No. 16 includes the fieldwork, schematic drawing and meeting with both the City Council and FDOT's scoping committee;

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

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

Section 2. The City Council hereby authorizes the City Manager to enter into Work Authorization No. 16 to the Continuing Services Agreement with Weiler Engineering, a copy of which is attached hereto as "Exhibit A", for beach parking/road improvement plan/schematic from Avenida Primiceria to the end of Sombrero Beach Road in an amount not to exceed \$6,300.

Section 3. The City Council authorizes the City Manager to execute the work authorization on behalf of the City.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 11th day of September, 2007.

THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

AYES: Cinque, Tempest, Vasil, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None

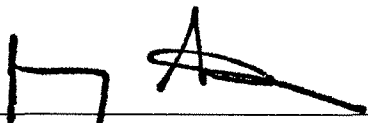
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

EXHIBIT "A"

PROJECT AGREEMENT

Between

CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

for

Work Authorization No. Sixteen (16)

Sombrero Beach Road and Parking Improvements
Preliminary Engineering

PROJECT AGREEMENT
Between

THE CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

For

Work Authorization No. Sixteen (16)

Sombrero Beach Road and Parking Improvements
Preliminary Engineering

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

The CITY and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

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

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

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

Work Order Number 16

Sombrero Beach Road and Parking Improvements Preliminary Engineering

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SECTION 2. DELIVERABLES

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

Preliminary Plan layout for the roadway and parking adjacent to Sombrero Beach

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

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

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

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

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

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

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

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

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Lump Sum Compensation.** CITY agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "2" \$ 6,300 . ~~{OR, IF HOURLY, "CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$ _____,}~~

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

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

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

within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONSULTANT to the CITY.

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

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

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

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

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the

termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the CITY, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the CITY for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

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

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

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

SECION 7. INCORPORATION OF TERMS AND CONDCTIONS OF CONTINUING SERVICE AGREEMENT

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated June 23, 2004 between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

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ATTEST:

CITY OF MARATHON

Diane Clavier
City Clerk

By: Michael Puto
Michael Puto, City Manager

Date: 9/1/07

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

[Signature]
City Attorney

ATTEST:

WEILER ENGINEERING CORPORATION

Janeen Weiler By: Jeff Weiler
Assistant Secretary Jeff Weiler, P.E.
JANEEN M. WEILER President
Please type name of Assistant Secretary

Date: 9/26/07

(CORPORATE SEAL)

WITNESSES:

[Signature]
Print Name: Michael W. Hatfield
[Signature]
Print Name: Theresa R. Brennan

Exhibit "1"

Project Description

The City of Marathon wishes make improvements to the roadway and adjacent parking at Sombrero Beach. WEC has previously presented preliminary drawings to the City Council and received their recommendation. The "Bartus" layout was chosen by Council and will be used to prepare the documents for approval by Council and submittal to the FDOT Scoping Committee in Miami. Included in this work order is preparation of the preliminary plans in a format suitable for submission to the FDOT Scoping Committee and the Marathon City Council. One presentation to Council and one presentation to the Scoping Committee is included.

Exhibit "2"

Scope of Services and Project Schedule

Study and Report Phase –N/A

Design

Based upon the results of the existing surveys and geotechnical report, WEC will design the Sombrero Beach Road Extension and Parking Improvements to include roadway, parking, stormwater and wastewater. The design will include conceptual level plans and details adequate for review and evaluation by the FDOT Scoping Committee and the Marathon City Council.

Preliminary Design Phase

A. After consultation with the OWNER and inclusion of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

1. On the basis of the above acceptance, selection and authorization, prepare Preliminary Design Phase documents consisting of preliminary design criteria, preliminary drawings, outline specifications and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Advise OWNER if additional reports, data, information, or services are necessary and assist OWNER in obtaining such reports, data, information, or services.
4. Based on the information contained in the Preliminary Design Phase documents, submit an ENGINEER's opinion of Total Project Costs for the with each component separately itemized, including the following: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.
5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
6. Furnish the Preliminary Design Phase documents to and review them with OWNER.

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7. Submit to OWNER 12 final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within 45 days after authorization to proceed with this phase.

8. After review and acceptance by OWNER, ENGINEER will deliver the Preliminary Design documents to the Marathon City Council in presentation format and will deliver the Preliminary Design documents to the FDOT Scoping Committee in a presentation format for approval.

B. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to OWNER.

Final Design Phase – N/A

Construction Contract Administration – N/A

Construction Phase – N/A

Post-Construction Phase – N/A

Project Schedule

CONSULTANT will begin work upon receipt of the Notice to Proceed. Preliminary design and submittal to the OWNER and FDOT will be completed within ninety days. Final completion will be dependent upon the review by the OWNER and FDOT.

EXHIBIT "3"

Payment Schedule

Preliminary Design	\$ 6,300
Total for the project	\$ 6,300
Estimate for prints and permit application filing fees	\$ 500

EXHIBIT "B"

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GENERAL DESCRIPTION OF EMPLOYEE CATEGORIES

R. Jeff Weiler, P.E., President - Mr. Weiler is a Professional Engineer registered in the State of Florida. He is the President and Owner of The Weiler Engineering Corporation.

Michael W. Hatfield, P.E., Vice President - Civil Department Manager - Mr. Hatfield is a Professional Engineer registered in the State of Florida. He will be the Engineer in Responsible Charge for this project.

Edward R. Castle, P.E., Vice President - Wastewater Department Manager – Mr. Castle is a Professional Engineer registered in the State of Florida. He will be responsible for the Wastewater design.

Michael Giardullo, E.I., Project Engineer – Mr. Giardullo will be the primary designer.

Bob Bright, Engineering Technician – Mr. Bright will be the senior technician on this project.