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**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-159**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING SOUTH FLORIDA WATER MANAGEMENT DISTRICT CONTRACT NO. 4600001117; AUTHORIZING ACCEPTANCE OF \$600,534 IN GRANT FUNDING FOR THE MARATHON STORMWATER PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE

WHEREAS, the City of Marathon right of ways flood from time to time and untreated stormwater runoff threatens Marathon's nearshore water quality; and

WHEREAS, to address these issues, the City initiated the Marathon Stormwater Project. The goal of the project is to collect and treat stormwater to reduce nuisance street flooding and to protect water quality; and

WHEREAS, The South Florida Water Management District (SFWMD) has awarded the City of Marathon \$600,534 to apply towards the Marathon Stormwater Project.

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. Council hereby approves Contract No. 4600001117, authorizing the acceptance of \$600,534 in grant funding for the City of Marathon Stormwater Project, attached hereto as exhibit A, and authorizes the city manager to execute the agreement.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 13th day of November, 2007.

THE CITY OF MARATHON, FLORIDA



Edward P. Worthington, Mayor

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

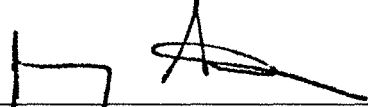
ATTEST:



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



ORIGINAL

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
LOCAL GOVERNMENTAL AGREEMENT**

AGREEMENT NO. 4600001117

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

CITY OF MARATHON

THIS AGREEMENT is entered into as of the DEC 05 2007 by and between the South Florida Water Management District (**DISTRICT**) and City of Marathon (**CITY**).

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

WHEREAS, the **DISTRICT** desires to provide financial assistance to the **CITY** to construct a stormwater management system for Service Area #4 from 39th Street to 60th Street, both north and south of U.S. Highway #1; and

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

WHEREAS, the Governing Board of the **DISTRICT** at its November 15, 2007 meeting, approved entering into this **AGREEMENT** with the **CITY**;

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

1. The **DISTRICT** agrees to contribute funds and the **CITY** agrees to perform the work set forth in Exhibit "A" attached hereto and made a part hereof, subject to availability of funds and in accordance with their respective authorities to construct 30 disposal wells ranging in size from 8 inch diameter to 24 inch diameter; and install 26,000 linear feet of perforated pipe.
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period of One (1) Year.
3. The total **DISTRICT** contribution shall not exceed the amount of Six Hundred Thousand Five Hundred Thirty-Four Dollars and No Cents (\$600,534.00). The **DISTRICT** will provide the full amount based on the Payment and Deliverable Schedule set forth in Exhibit "B", which is attached hereto and made a part of this **AGREEMENT**. The **DISTRICT**'s contribution is subject to adequate documentation to support actual expenditures within the not-to-exceed **AGREEMENT** funding limitation of \$600,534.00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. If the total consideration for this **AGREEMENT** is subject to multi-year funding allocations, funding for each applicable fiscal year of this **AGREEMENT** will be subject to Governing Board budgetary appropriation. In the event the **DISTRICT** does not approve funding for any subsequent fiscal year, this **AGREEMENT** terminate upon

expenditure of the current funding, notwithstanding other provisions in this **AGREEMENT** to the contrary. The **DISTRICT** will notify the **CITY** in writing after the adoption of the final **DISTRICT** budget for each subsequent fiscal year if funding is not approved for this **AGREEMENT**.

4. The **CITY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **CITY** shall report and document the amount of funds expended per month during the quarterly reporting period and the **AGREEMENT** expenditures to date within the maximum not-to-exceed **AGREEMENT** funding limitation.
5. The **CITY** shall cost share in the total amount of Six Hundred Thousand Five Hundred Thirty-Four Dollars and No Cents (\$600,534.00) in conformity with the laws and regulations governing the **CITY**.
6. All work to be performed under this **AGREEMENT** is set forth in Exhibit "A", Statement of Work, which is attached hereto and made a part of this **AGREEMENT**. The **CITY** shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit "A" shall be under the direction of the **CITY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit "A" shall be performed beyond the expiration date of the **AGREEMENT** unless authorized through execution of an amendment to cover succeeding periods.
7. The **CITY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **CITY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT**'s Project Manager. The **CITY** agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the **CITY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).
8. Both the **DISTRICT** and the **CITY** shall have joint ownership rights to all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "A", Statement of Work. Both parties' rights to deliverables received under this **AGREEMENT** shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party. Notwithstanding the foregoing, ownership of all equipment and hardware purchased by the **CITY** under this **AGREEMENT** shall be deemed to be the property of the **CITY** upon completion of this **AGREEMENT**. The **CITY** shall retain all ownership to tangible property.
9. The **CITY**, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the **CITY** and the officers, employees, servants and agents thereof. The **CITY** represents that it is self-funded for Worker's Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the **CITY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **CITY** subcontracts any part or all of the work hereunder to any third party, the **CITY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **CITY**. Any contract awarded by the **CITY** shall include a provision whereby the **CITY**'s subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **CITY**'s subcontract.
10. The **CITY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
11. The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **CITY**, their employees, agents, subcontractors or assigns, during or after the term of this **AGREEMENT**. The parties to this **AGREEMENT** shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this **AGREEMENT**

without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.

12. The parties to this **AGREEMENT** assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this **AGREEMENT**.
13. The **CITY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **CITY**, upon request, as to any such laws of which it has present knowledge.
14. Either party may terminate this **AGREEMENT** at any time for convenience upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **CITY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
15. The **CITY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **CITY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **CITY**.
16. The **CITY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **CITY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:

A. Maintenance of Records: The **CITY** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **AGREEMENT** including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration date of this **AGREEMENT**.

B. Examination of Records: The **DISTRICT** or designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **AGREEMENT**. Such examination may be made only within five (5) years from the expiration date of this **AGREEMENT**.

C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **AGREEMENT**, the **CITY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute. All such records shall be made readily available to the **DISTRICT**.

17. Whenever the **DISTRICT**'s contribution includes state or federal appropriated funds, the **CITY** shall, in addition to the inspection and audit rights set forth in paragraph #16 above, maintain records and similarly require each subcontractor to maintain and allow access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act, as follows:

A. Maintenance of Records: The **DISTRICT** shall provide the necessary information to the **CITY** as set forth in Exhibit "C". The **CITY** shall maintain all financial/non-financial records through:

- (1) Identification of the state or federal awarding agency, as applicable
- (2) Project identification information included in the Catalog of State Financial Assistance (CSFA) or the Catalog of Federal Financial Assistance (CFDA), as applicable
- (3) Audit and accountability requirements for state projects as stated in the Single Audit Act and applicable rules of the Executive Office of Governor, rules of the Chief Financial Officer and rules of the Auditor General and the State Projects Compliance Supplement
- (4) Audit/accountability requirements for federal projects as imposed by federal laws and regulations
- (5) Submission of the applicable single audit report to the **DISTRICT**, as completed per fiscal year

B. Examination of Records: The **DISTRICT** or designated agent, the state awarding agency, the state's Chief Financial Officer and the state's Auditor General and/or federal awarding agency shall have the right to examine the **CITY**'s financial and non-financial records to the extent necessary to monitor the **CITY**'s

use of state or federal financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations which may include onsite visits and limited scope audits.

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

South Florida Water Management District

City of Marathon

Attn: Cecelia Weaver, Project Manager
Telephone No. (305) 853-3219

Attn: Susie Thomas, Director of Community
Services

Attn: Rupert Giroux, Contract Specialist
Telephone No. (561) 682-2532

Telephone No. (305) 289-4103

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

Address:
10045-55 Overseas Highway
Marathon, FL 33050

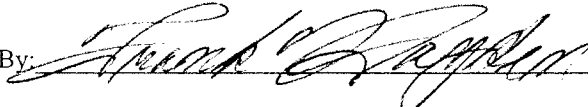
Invoices shall be sent to the attention of Accounts Payable at the **District's** address above.

19. **CITY** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
20. This **AGREEMENT** may be amended, extended or renewed only with the written approval of the parties. The **DISTRICT** shall be responsible for initiating any amendments to this **AGREEMENT**, if required.
21. This **AGREEMENT**, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this **AGREEMENT** will bind any of the parties to perform beyond their respective authority, nor does this **AGREEMENT** alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.
22. Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, **CITY** or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **AGREEMENT**, to the extent that the **AGREEMENT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.
23. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
24. Any dispute arising under this **AGREEMENT** which cannot be readily resolved shall be submitted jointly to the signatories of this **AGREEMENT** with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.
25. This **AGREEMENT** states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this **AGREEMENT**.
26. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
(a) Terms and Conditions outlined in preceding paragraphs 1 – 24

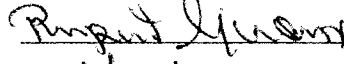
- (b) Exhibit "A" Statement of Work
- (c) all other exhibits, attachments and documents specifically incorporated herein by reference

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

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD**

By: 
Frank Hayden, Director of Procurement *FM*

SFWMD PROCUREMENT APPROVED

By: 
Date: 10/23/07 *FM*

CITY OF MARATHON


By: 
Title: CITY MANAGER

Exhibit “A”

Statement of Work

The City of Marathon Stormwater Management System

1. Introduction

The Florida Keys are comprised of a chain of more than 800 individual islands located at the southern tip of Florida, extending from Soldier Key at the northeastern point, to the Dry Tortugas at the southwestern point. The more developed islands are connected by U.S. Highway 1, a 110-mile stretch of roadway from Key Largo to Key West. A significant portion of the waters adjacent to the islands has been designated as Outstanding Florida Waters, and includes the 2,800-square nautical mile Florida Keys National Marine Sanctuary (FKNMS) the second largest in the United States. The ecosystem and coral reefs within the Keys are complex and dynamic systems and one of earth’s most precious resources. Nevertheless, wastewater and stormwater practices in the islands have placed the marine ecosystem under stress. Ongoing research has determined that continued discharge of nutrients into the nearshore waters (attributable to improperly treated wastewater and to stormwater runoff) is a major direct cause of the degradation of the Keys’ nearshore and coastal waters. The unique geological and hydrological characteristics of the Keys, as well as the protected status of the waters surrounding the islands, mandate the need to construct facilities to treat and dispose of wastewater and stormwater to help restore the health and economic vitality of the Keys’ marine community.

The Marathon Stormwater Project originated from recognition of the need to reduce flooding in the public right of way and to reduce runoff of untreated stormwater into the coastal waters within the City of Marathon in order to restore the health and economic vitality of its nearshore waters. The goals of this project is the collection and treatment of stormwater to reduce nuisance flooding in the streets and reduce or eliminate discharges through surface runoff and through existing stormwater outfalls. The purpose of this facilities plan is to define the most cost-effective, environmentally sound, and most simply implemented program for the management of existing and future stormwater pollutants that act, or will act, to deteriorate the Keys’ water quality in the Marathon area. This plan has been adopted by the City of Marathon.

2. Scope of Services

The Marathon Stormwater Project has been outlined in “City of Marathon – Planning Documents for State Revolving Fund Loan – Marathon Regional Stormwater Project”. A copy of thr document is attached. This document was distributed for review to the various concerned agencies through the State Clearing House and has been approved by the FDEP for eligibility. The City of Marathon proposes to use the District grant funding to support construction of the FDEP approved stormwater management system for Service Area #4. A State Revolving Fund loan acceptance

for the Service Area #4 construction was accepted effective July 12, 2007. A copy of the acceptance letter will be provided. The Service Area #4 stormwater management project has also been permitted by the District. A copy of the permit will be provided.

The City of Marathon has entered into a contract with Globetec Construction to construct the permitted stormwater project in Service Area #4 from 39th Street to 60th Street, both north and south of U.S. Hwy #1. A map depicting the service area is provided below.

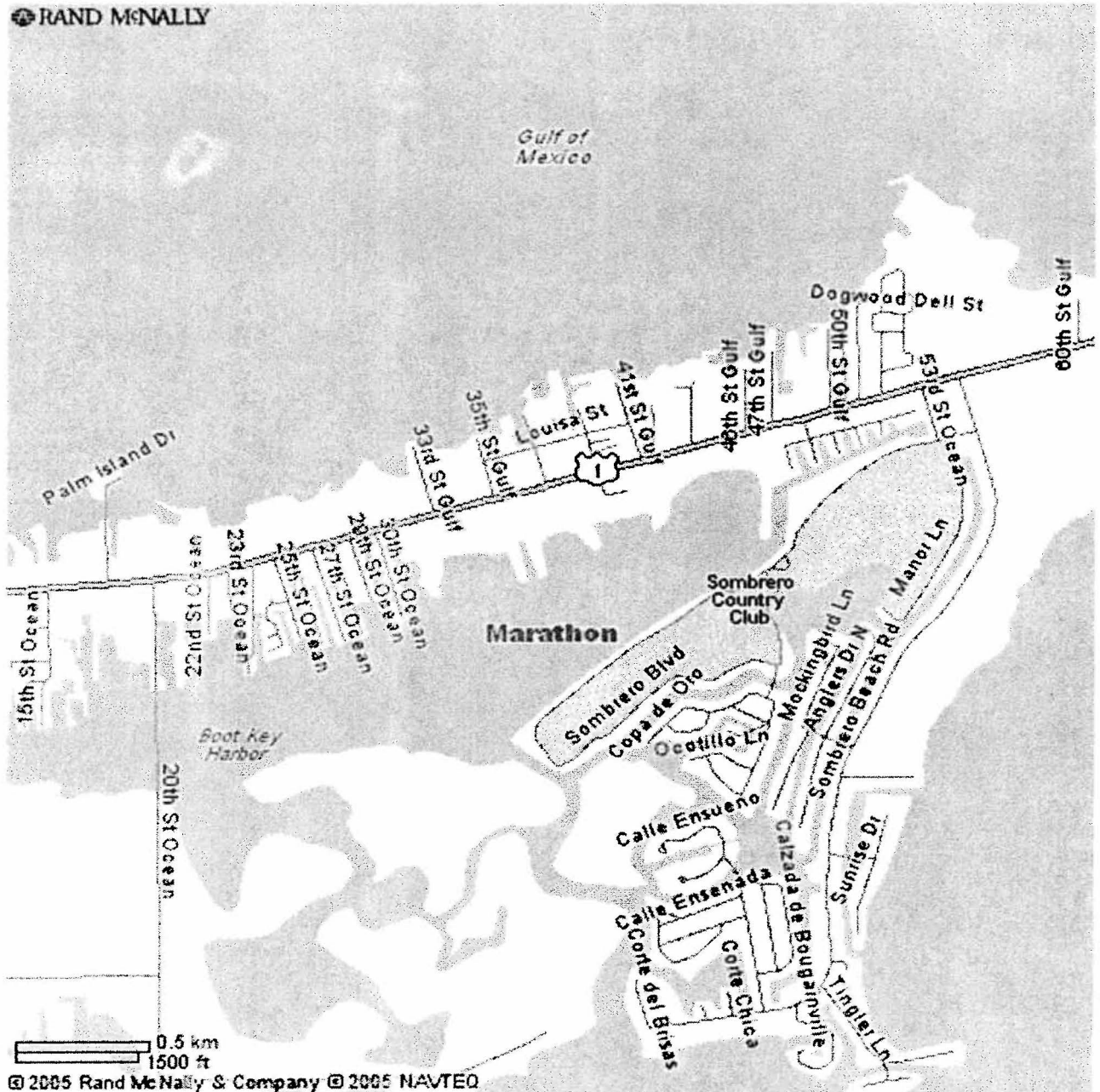


Figure 1-4: Service Area 4 Map, central Vaca Key including Sombrero area

District funds in an amount not to exceed \$600,534 will be applied toward the first \$1,201,068 of the estimated \$9,192,583 total (stormwater) cost of the construction of the project. This funding will be used for construction of the stormwater portion of the project.

3. Detailed Project Description

Working under contract with the City of Marathon, Weiler Engineering has designed a stormwater collection, treatment and disposal system for Service Area #4. The design used topographical survey data to define contributing areas for stormwater basins within Service Area #4.

The design resulted in 108 sub-basins within Service Area #4. Each sub-basin collects stormwater from its contributing area and directs that stormwater toward catch basins through drainage swales to be constructed within the sub-basins. There are a total of 236 catch basins with elevations set to provide treatment volume in the drainage swales before the excess water overtops the catch basin inlet grates.

The catch basins are equipped with baffles to remove floatable contaminants and heavier solids such as grit, sand and rock. The catch basins discharge into the disposal systems in each sub-basin. Hydraulic modeling and construction cost estimates were used to determine the most suitable type of disposal system for each sub-basin. The analysis resulted in design of 30 disposal wells ranging in size from 8" in diameter to 24" in diameter and in approximately 26,000 linear feet of perforated pipe to discharge stormwater into exfiltration trenches. A copy of the design documents and technical specifications will be provided.

Weiler Engineering produced bid documents for competitive procurement. Bids were received and evaluated, resulting in a contract award to Globetec Construction. The stormwater portion of the contract is in the amount of \$9,192,183.18 (of which the first \$1,201,068 will apply to this grant funding). A copy of the construction contract will be provided.

4. WORK BREAKDOWN STRUCTURE

Project Management

The City is responsible for project management, budget management and quality control. The City is responsible for reviewing and approving deliverables from the Engineer and Contractor to ensure that the projects objectives are met.

Service Area 4 Storm Water Management – Major Tasks

- Engineering design and permitting
- Preparation of bid documents and specifications
- Construction, construction monitoring and status reporting.
- Construction certifications

5. Deliverables

- Copy of “City of Marathon – Planning Documents for State Revolving Fund Loan – Marathon Regional Stormwater Project”
- Copy of FDEP acceptance letter for Service Area #4 State Revolving Fund construction loan
- Copy of South Florida Water Management District permit for Service Area #4
- Copy of Construction Documents and Technical Specifications
- Copy of Construction Contract with Globetec Construction
- Copies of Progress Payments with storm water construction values up to the first \$1,201,068 with installed quantities certified by Engineer of Record

EXHIBIT "B"

PAYMENT AND DELIVERABLE SCHEDULE

Construction of Surface Water Improvements

Total Payment by the District to the City of Marathon shall not exceed the amount of \$600,534.00. If the total consideration for this agreement is subject to multi-year funding allocations, funding for each applicable fiscal year of this agreement will be subject to Governing Board budgetary appropriation. In the event the District does not approve funding for any subsequent fiscal year, this agreement shall terminate upon expenditure of the current funding, notwithstanding other provisions in this agreement to the contrary.

All invoices shall be accompanied by adequate documentation to support actual expenditures incurred by the City within the not-to-exceed amounts specified below. The City is responsible for reviewing and approving deliverables to ensure that contractual requirements are met.

Task	Deliverable(s)	Estimated Due Date	District Not-to-Exceed Payment	Total Project Cost Estimate
4.1 Complete planning and design of entire surface water improvement project.	Copy of construction documents and technical specs.	March 1, 2008	\$125,000.00	\$250,000.00
4.2 Complete bidding and commence construction.	Copy of signed contract for project construction.	May 10, 2008	\$15,000.00	\$30,000.00
4.3 Complete construction of stormwater treatment system.	Copy of Engineer of Record's certificate of completion. Copies of progress payments.	September 15, 2008	\$460,534.00	\$921,068.00
TOTAL Not-to-Exceed			\$600,534.00	\$1,201,068.00

EXHIBIT "C"

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

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

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

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

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