

Sponsored by: Janke

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2004-067**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MARATHON, APPROVING THE CONTINUING SERVICES AGREEMENT  
BETWEEN THE CITY AND THE WEILER ENGINEERING  
CORPORATION FOR ENGINEERING SERVICES.**

**WHEREAS**, pursuant to Section 287.055, Florida Statutes, the City of Marathon (the "City") requested qualifications from engineers to provide professional civil and environmental engineering services to the City in December 2003; and

**WHEREAS**, The Weiler Engineering Corporation (the "Consultant") was recommended by City staff to provide professional services through a continuing services agreement (the "Agreement"); and

**WHEREAS**, the purpose of this Agreement is not to authorize the Consultant to perform a specific project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for specific projects or services when required.

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

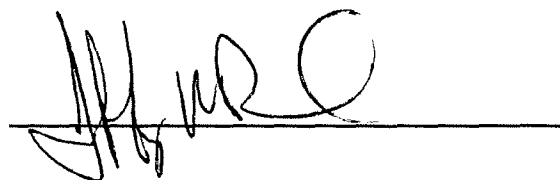
**Section 1.** The continuing services agreement between the City of Marathon and The Weiler Engineering Corporation to provide engineering services to the City pursuant to project authorizations, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

**Section 2.** The City Manager is authorized to execute the agreement on behalf of the City.

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

**PASSED AND APPROVED** by the City Council of the city of Marathon, Florida, this 22nd day of June, 2004.

**THE CITY OF MARATHON, FLORIDA**

A handwritten signature in black ink, appearing to be "J. W. R.", is written over a solid horizontal line. The signature is stylized and cursive.

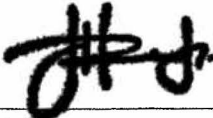
**Jeffrey M. Pinkus, Mayor**

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

**ATTEST:**

  
\_\_\_\_\_  
Cindy L. Ecklund  
City Clerk  
(City Seal)

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

  
\_\_\_\_\_  
City Attorney

**CONTINUING SERVICES**

**A G R E E M E N T**

**Between**

**THE CITY OF MARATHON, FLORIDA**

**And**

**THE WEILER ENGINEERING CORPORATION**

## CONTINUING SERVICES

### AGREEMENT

Between

THE CITY OF MARATHON

And

THE WEILER ENGINEERING CORPORATION

**THIS AGREEMENT** is made between the CITY OF MARATHON, a Florida municipal corporation, (hereinafter referred to as the "CITY") and THE WEILER ENGINEERING CORPORATION, a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the "CONSULTANT"), whose principal place of business is 20020 Veterans Boulevard, Port Charlotte, Florida 33954.

**WHEREAS**, pursuant to Section 287.055, Florida Statutes, the CITY requested qualifications from qualified engineers and selected the CONSULTANT to provide professional civil and environmental engineering services; and

**WHEREAS**, the CONSULTANT is willing and able to perform such professional services for the CITY within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

**WHEREAS**, the purpose of this Continuing Services Agreement is not to authorize the CONSULTANT to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the CITY and CONSULTANT agree as follows:

#### **SECTION 1. DEFINITIONS**

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the CITY for the CONSULTANT's professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Reimbursable Expenses:** the direct non-salary expenses directly attributable to the Project. Reimbursable expenses include long-distance communications, application and permit fees paid for securing approval of authorities having jurisdiction over the Specific Project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.

1.3 **Specific Project Agreement or Project Agreement:** an agreement to provide services for a particular Project.

1.4 **Subconsultant Fee:** the direct and actual cost of the Subconsultant with no markup, as reflected by actual invoices of the Subconsultant.

1.5 **Travel Expenses:** actual mileage at 38 ¢ per mile, meals and lodging expenses incurred directly for the Specific Project for travel outside of Monroe County. No overnight travel or out-of-CITY travel outside of Monroe County shall be reimbursed unless the CONSULTANT has secured advance written authorization for such travel from the City Manager. Reimbursement for such authorized travel expenses shall be at the rates provided for in Chapter 112, Florida Statutes, as may be amended from time to time, which rates shall by reference be made a part of this Agreement as though set forth in full.

## **SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES**

2.1 In accordance with the Consultants' Competitive Negotiation Act, the CONSULTANT may provide professional services to the CITY for Specific Projects as authorized from time to time by either the City Council or City Manager as authorized by subsection 2.6. The services shall be for the following types of Projects or similar disciplines:

- a. NPDES Permitting and stormwater management
- b. Drainage facilities
- c. Road construction and maintenance
- d. Civil Engineering
- e. GIS Mapping assistance
- f. Utility infrastructure evaluation and review
- g. Plat and site plan review
- h. Park and park land development
- i. Environmental engineering
- j. Surveying
- k. Project management
- l. Opinion of probable cost of construction
- m. Public Works permitting and inspections

2.2 When the need for services for a Specific Project occurs, the City Manager may, enter into negotiations with the CONSULTANT for that Specific Project under the terms and conditions of this Agreement. The CITY shall initiate said negotiations by providing the

CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide professional services for the Specific Project. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The City Manager and CONSULTANT shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 2.3.

2.3 The CITY and CONSULTANT shall utilize as the agreement for each Specific Project a Standard Project Agreement ("Project Agreement"), a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each supplemental agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation;
- e. The Personnel assigned to the Specific Project;
- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements;
- g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.

2.4 The professional services to be rendered by the CONSULTANT shall commence subsequent to the execution of each Project Agreement. Performance of work by CONSULTANT prior to execution of a Project Agreement shall be at CONSULANT's sole risk.

2.5 The City Manager is authorized to negotiate and execute a Project Agreement for Projects in which the CONSULTANTS' services do not exceed \$10,000.00.

2.6 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

### **SECTION 3. TERM/TERMINATION**

3.1 **Term of Agreement.** – This Continuing Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to Section 3.2 or other applicable sections of this Agreement. Each

Project Agreement shall specify the period of service agreed to by the CITY and CONSULTANT for services to be rendered under said Project Agreement.

3.2 **Termination – For Convenience** – This Continuing Services Agreement may be terminated by the CITY for convenience upon thirty (30) calendar days written notice to the CONSULTANT.

3.3 **Effect on Project Agreement** – Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3.4 **Non-Exclusive Agreement** - Notwithstanding the provisions of Subsection 3.1, the City Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the CITY under similar continuing services agreements. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.

#### **SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES**

4.1 **Changes Permitted.** Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the CITY by Change Order without invalidating the Project Agreement.

4.2 **Change Order Defined.** Change Order shall mean a written order to the CONSULTANT executed by the CITY, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 **Effect of Executed Change Order.** The execution of a Change Order by the CITY and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONSULTANT, by executing the Change Order, waives and forever releases any claim against the CITY for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order.

4.4 **Authority to Execute Changes or Requests for Additional Services.** The City Manager is authorized to negotiate and execute Change Orders, in an amount not to exceed \$10,000.00 per contract. Changes, which exceed \$10,000.00, shall be approved by the City Council.

#### **SECTION 5. SURVIVAL OF PROVISIONS**

5.1 Any terms or conditions of either this Agreement or any subsequent Project Agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

#### **SECTION 6. CITY'S RESPONSIBILITIES**

6.1 Assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allow reasonable access to all pertinent information relating to the services to be performed by CONSULTANT.

6.2 Furnish to CONSULTANT, at the CONSULTANT'S written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by CONSULTANT, in possession of the CITY.

6.3 Arrange for access to and make all provisions for CONSULTANT to enter upon public property as required for CONSULTANT to perform services.

#### **SECTION 7. CODE OF ETHICS**

7.1 The code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

#### **SECTION 8. POLICY OF NON-DISCRIMINATION/WAGES**

8.1 The CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

8.2 The CONSULTANT shall comply with the wage provisions of Section 287.055, Florida Statutes. If the project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, the CONSULTANT shall be required to comply with the same.

#### **SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES**

9.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the CITY or furnished by the CONSULTANT pursuant to any Project Agreement, shall become the property of the CITY, whether the Project for which they are made is completed or not, and shall be delivered by CONSULTANT to the CITY within five (5) calendar days after receipt of written notice requesting delivery of said documents or



digital files. The CONSULTANT shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the CONSULTANT, without the CITY'S prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

9.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for each Specific Project shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the CITY.

9.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

#### **SECTION 10. RECORDS/AUDITS**

10.1 CONSULTANT shall maintain and require Subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Specific 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 the completion of each Project Agreement. 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.

10.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable.

10.3 Refusal of the CONSULTANT to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the CITY of this Agreement or any Project Agreement.

#### **SECTION 11. NO CONTINGENT FEE**

11.1 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the CITY shall have the right to terminate this Agreement or any Project Agreement, without liability, and

at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

## **SECTION 12. INDEPENDENT CONTRACTOR**

12.1 The CONSULTANT is an independent contractor under this Agreement and any Project Agreements. Personal services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the CITY, Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Project Agreements shall be those of the CONSULTANT.

## **SECTION 13. ASSIGNMENT; AMENDMENTS**

13.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the CITY.

13.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

## **SECTION 14. INDEMNIFICATION/HOLD HARMLESS**

14.1 Pursuant to Section 725.08, Florida Statutes, the CONSULTANT shall indemnify and hold harmless the CITY and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this or any Project Agreement.

## **SECTION 15. INSURANCE**

The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Project Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the CITY against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the CITY, its officials, employees, agents and volunteers. Any insurance maintained by the CITY shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The insurance coverages shall include a minimum of:

15.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident.

15.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the CITY against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

15.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the CITY against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

(b) The CITY is to be specifically included as an Additional Insured for the liability of the CITY resulting from operations performed by or on behalf of CONSULTANT in performance of this or any Project Agreement. CONSULTANT'S insurance, including that applicable to the CITY as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the CITY shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

15.4 **Professional Liability:** The CONSULTANT shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of

each Project Agreement. Upon request of the CITY, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The CONSULTANT shall additionally notify the CITY, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$25,000.00 during the policy term.

15.5 **Certificate of Insurance:** Prior to the execution of this Agreement, CONSULTANT shall provide the City Manager with evidence of insurability from the Consultant's Insurance Carrier or a Certificate of Insurance. Prior to execution of any Project Agreement, the CONSULTANT shall provide to the City Manager, Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any Project Agreement and shall state that such insurance is as required by this and any Project Agreement. The CITY reserves the right to require the CONSULTANT to provide a certified copy of such policies, upon written request by the CITY. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the CITY before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City Manager.

15.6 All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The City Manager may require the CONSULTANT, as a condition of execution of a particular Project Agreement, to provide a bond or other monetary consideration to cover the CONSULTANTS' deductible for Professional Liability Insurance.

#### **SECTION 16. REPRESENTATIVE OF CITY AND CONSULTANT**

16.1 **CITY Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The CITY designates the City Manager or his designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

16.2 **CONSULTANT Representative.** CONSULTANT shall inform the CITY Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

#### **SECTION 17. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL**

17.1 If either the CITY or CONSULTANT is required to enforce the terms of this Agreement or any Project Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all

costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

17.2 In the event of any litigation arising out of this Agreement or Project Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

### **SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED**

18.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

### **SECTION 19. CONSULTANT'S RESPONSIBILITIES**

19.1 The CONSULTANT and any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction and shall comply with all applicable CITY Codes, state and federal laws, rules and regulations.

19.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Project Agreement as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Project Agreement, it is determined that the CONSULTANT'S documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the CITY, the CONSULTANT shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the CITY for any other services and expenses made necessary thereby, save and expect any costs and expenses which the CITY would have otherwise paid absent the CONSULTANT'S error or omission. The CITY'S rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

19.3 The CONSULTANT'S obligations under Paragraph 19.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

### **SECTION 20. SUBCONSULTANTS**

20.1 In the event the CONSULTANT requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the CONSULTANT must secure the prior written approval of the City Manager. The CONSULTANT shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the City of Marathon, Florida, and secondly, Monroe County.

20.2 Any subcontract with a Subconsultant shall afford to the CONSULTANT rights against the Subconsultant which correspond to those rights afforded to the CITY against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

20.3 No reimbursement shall be made to the CONSULTANT for any subconsultants that have not been previously approved by the CITY for use by the CONSULTANT.

**SECTION 21. NOTICES**

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

**FOR CONSULTANT:**

The Weiler Engineering Corporation  
Attention: R. Jeff Weiler, P.E. President  
20020 Veterans Boulevard  
Port Charlotte, Florida 33954  
Telephone: (941) 764-6447  
Facimile: (941) 764-8915

With a copy to:

The Weiler Engineering Corporation  
Attention: Michael W. Hatfield, P.E., Project Manager  
6801 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 289-4161  
Facsimile: (305) 289-4162

**FOR CITY:**

City of Marathon  
Attention: Scott Janke, City Manager  
10045-55 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033  
Facsimile: (305) 743-3667

With a copy to:

Weiss Serota Helfman Pastoriza Guedes Cole & Boniske, P.A.,  
City Attorney  
Attention: John R. Herin, Esq.  
2665 South Bayshore Drive  
Suite 420  
Miami, FL 33133  
Phone: (305) 854-0800  
Facsimile: (305) 854-2323

#### **SECTION 22. TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the CITY determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

#### **SECTION 23. CONSENT TO JURISDICTION**

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Project Agreement. Venue of any action to enforce this Agreement or any Project Agreement shall be in Monroe County, Florida.

#### **SECTION 24. GOVERNING LAW**

This Agreement and any Project Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

#### **SECTION 25. HEADINGS**

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

**SECTION 26. EXHIBITS**

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

**SECTION 27. SEVERABILITY**

If any provision of this Agreement or any Project Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

**SECTION 28. COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

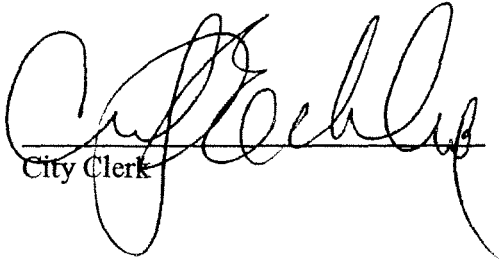
**IN WITNESS WHEREOF**, the parties execute this Agreement on the respective dates under each signature: The CITY, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by CONSULTANT by and through its President, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

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ATTEST:

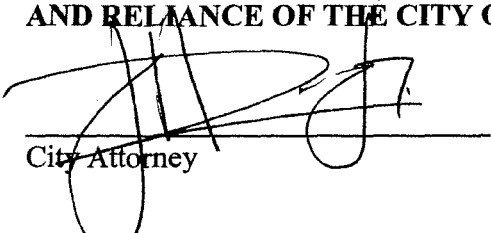
CITY OF MARATHON

  
\_\_\_\_\_  
City Clerk

By:   
\_\_\_\_\_  
Scott Janke, City Manager

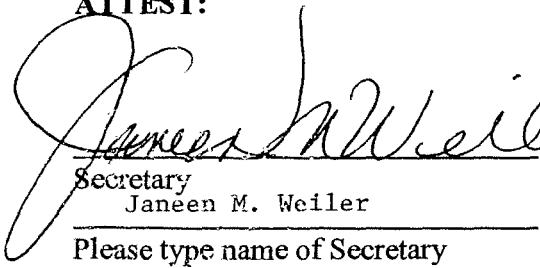
Date: 6/23/04

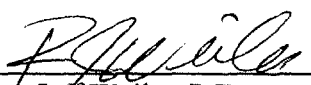
**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
City Attorney

ATTEST:

WEILER ENGINEERING CORPORATION

  
\_\_\_\_\_  
Secretary  
Janeen M. Weiler  
Please type name of Secretary

By:   
\_\_\_\_\_  
Jeff Weiler, P.E.  
President

Date: 6-11-04

WITNESSES:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**EXHIBIT "B"**

**PAGE 1 OF 2**

**CONSULTANT'S BILLING RATE**

**THE WEILER ENGINEERING CORPORATION**

Principal .....	\$ 125.00
Project Manager .....	\$ 105.00
Professional Structural Engineer.....	\$ 105.00
Registered Professional Engineer .....	\$ 105.00
Professional Civil Engineer .....	\$ 105.00
Professional Landscape Architect.....	\$ 95.00
Registered Engineer Intern (E.I.T.).....	\$ 95.00
Senior Engineering Designer .....	\$ 85.00
Construction Inspector .....	\$ 65.00
Engineering Technician .....	\$ 75.00
Clerical .....	\$ 35.00
Reimbursable Expenses	
Blueprints .....	\$ 2.30
Vellums .....	\$ 10.00(24 x 36 sheet)
Mylars .....	\$ 25.00(24 x 36 sheet)
Travel .....	Cost
(Travel outside of County)	
Overnight mail .....	Cost

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID CR  
WEILE-1

DATE (MM/DD/YYYY)  
06/09/04

PRODUCER  
**Key Agency Inc.**  
1201 South McCall Road  
Englewood FL 34223  
Phone: 941-474-9511 Fax: 941-474-7283

**Weiler Engineering Corp**  
2002 Veterans Blvd Suite 7-9  
Pt Charlotte FL 33954-0000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: <b>Service Insurance Company</b>	
INSURER B: <b>Auto Owners Insurance Co.</b>	18988
INSURER C: <b>Continental Casualty Insurance</b>	
INSURER D:	
INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS			
A	GENERAL LIABILITY	SMP108792	02/01/04	02/01/05	EACH OCCURRENCE \$ 1000000			
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1000000			
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 1000			
					PERSONAL & ADV INJURY \$ 1000000			
					GENERAL AGGREGATE \$ 3000000			
					PRODUCTS - COMPI/OP AGG \$ 3000000			
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							
B	AUTOMOBILE LIABILITY	4166427600	11/09/03	11/09/04	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000			
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$			
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$			
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$			
	<input type="checkbox"/> HIRED AUTOS				AUTO ONLY - EA ACCIDENT \$			
	<input type="checkbox"/> NON-OWNED AUTOS				OTHER THAN EA ACC \$			
					AUTO ONLY: AGG \$			
	GARAGE LIABILITY							EACH OCCURRENCE \$
	<input type="checkbox"/> ANY AUTO							AGGREGATE \$
								\$
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$			
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$			
					\$			
	DEDUCTIBLE				\$			
	RETENTION \$				\$			
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	AEA113827486	09/21/03	09/21/04	WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>			
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$			
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$			
	OTHER				E.L. DISEASE - POLICY LIMIT \$			
	Professional Liab				Prof Liab \$1000000 \$25000ded \$2000000			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

All Operations State of Florida

## CERTIFICATE HOLDER

CITY095

**City of Marathon**  
10045-55 Over Seas Highway  
Marathon FL 33050

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL ~~30~~ 20 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
**Key Agency Inc.**

**EXHIBIT "A"**

**PROJECT AGREEMENT**

Between

CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

for

Work Authorization No. 22

Marina Connection to Wastewater System: Congressionally Mandated Projects  
Grant through the United States Environmental Protection Agency

PROJECT AGREEMENT  
Between

THE CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

For

Work Authorization No. 22

Marina Connection to Wastewater System: Congressionally Mandated Projects  
Grant through the United States Environmental Protection Agency

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

The CITY and CONSULTANT agree as follows:

**SECTION 1. SCOPE OF SERVICES**

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

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

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

**SECTION 2. DELIVERABLES**

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

Prepare draft and final Environmental Information Document, prepare all necessary permit applications for execution by City, provide maps and drawings as necessary to support plans and applications, provide summary reports of meetings with Grant Agencies.

### **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 Twenty Four (24) months, 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 90 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" \$ 9,680.00.

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, sub-consultant professionals services such as survey, geotechnical investigation and specialty engineering. 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 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 CONDIONS 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.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

ATTEST:

CITY OF MARATHON

Diane Clavier  
City Clerk

By: Clyde Burnett  
Clyde Burnett, City Manager

Date: 10/31/08

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

[Signature]  
City Attorney

WEILER ENGINEERING CORPORATION

By: Edward R. Castle  
Edward R. Castle, Vice President

Date: 11/3/08

## **Exhibit "1"**

### **Project Description**

The City of Marathon is conducting the grant-funded project listed below. Working in conjunction with the City Staff, Weiler Engineering will identify, evaluate, address, and document environmental reviews for the following grant-funded project.

#### **Marina Connection to Wastewater System: Congressionally Mandated Projects Grant through the United States Environmental Protection Agency**

To protect the waters surrounding the Florida Keys and to meet a State of Florida mandate, the City of Marathon initiated the Marathon Wastewater Project. For this project, the City of Marathon has been divided into seven Service Areas, with each area receiving the most economically feasible wastewater solution. The Service Area 3 Phase of the Marathon Wastewater Project includes the area from 11<sup>th</sup> Street to 33<sup>rd</sup> Street Ocean and Gulf. A vacuum collection system and a .250 MGD nutrient removal wastewater treatment plant will be constructed. Also, Class V shallow injection wells will be built for effluent disposal. This project will consist of the work necessary to install the portion of the collection system, wastewater treatment plant, and injection wells to support the Marina.

## **Exhibit “2”**

### **Scope of Services and Project Schedule**

#### **Scope of Services**

For the project listed in Exhibit “1”, Weiler Engineering will do the following

- Review the project details
- Review the grant program environmental review requirements
- Draft a plan to address the environmental review requirements for each project
- Meet with grant program points of contact and City Staff to assure the plan adequately addresses environmental review requirements
- Update the environmental review plans based on comments received during meetings with grant program points of contact and City Staff
- Work in conjunction with City Staff to execute the environmental review plan for each grant program
- Participate with City Staff in meetings with private, local, state, and federal agencies to resolve issues which arise during the execution of the environmental review plan
- Draft and submit environmental review documents as directed by the City Staff
- Work in conjunction with the City Staff to obtain the necessary permits
- Advise the City in its efforts to identify, evaluate, address and document environmental review concerns associated with each project

#### **Project Schedule**

CONSULTANT will begin work upon receipt of the Notice to Proceed. Final completion will be dependent upon successful completion of environmental reviews for each project

**Exhibit "3"**

**Payment Schedule**

Total for the project.....\$9,680.00

Progress payments may be requested on a monthly basis. Progress payments will be made based on percentage completion of the scope of work.

**EXHIBIT "B"**

**PAGE 1 OF 2**

**CONSULTANT'S BILLING RATE**

**THE WEILER ENGINEERING CORPORATION**

Principal .....	\$ 125.00
Environmental Scientist.....	\$ 125.00
Project Manager .....	\$ 105.00
Professional Structural Engineer.....	\$ 105.00
Registered Professional Engineer .....	\$ 105.00
Professional Civil Engineer .....	\$ 105.00
Professional Landscape Architect.....	\$ 95.00
Registered Engineer Intern (E.I.T.).....	\$ 95.00
Senior Engineering Designer .....	\$ 85.00
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Clerical.....	\$ 35.00
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Blueprints .....	\$ 2.30
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.....	
Mylars .....	\$ 25.00(24 x 36 sheet)
Travel .....	Cost
(Travel outside of County)	
Overnight mail .....	Cost

**EXHIBIT “B”**

**PAGE 2 OF 2**

**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.

**Edward R. Castle, P.E., Vice President - Wastewater Department Manager** – Mr. Castle is a Professional Engineer registered in the State of Florida and Owner of Weiler Engineering. He will be Engineer of Record for this project and the primary point of contact for the Owner.

**Rick Milloy, Environmental Scientist** - – Mr. Milloy has earned a Bachelor of Science degree in Environmental Science. He brings extensive knowledge of the environmental permitting process and experience as a Senior Project Manager with the US ACOE. He will act as the Environmental Scientist on this project and will be the primary author of reports and plans needed by the various agencies.

**Michael Giardullo, E.I., Project Manager** – Mr. Giardullo will be the primary designer for maps and drawings associated with the project

**Serge Mashtakov, Engineering Technician** – Mr. Mashtakov will be the Senior Designer on this project.

**EXHIBIT "A"**

**PROJECT AGREEMENT**

Between

**CITY OF MARATHON, FLORIDA**

And

**WEILER ENGINEERING CORPORATION**

for

Work Authorization No. 21

Marina Dinghy Dockage Addition: Housing and Urban Development  
Economic Development Initiative Special Project Grant



PROJECT AGREEMENT  
Between

THE CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

For

Work Authorization No. 21

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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:

Prepare draft and final Environmental Review Plan, prepare all necessary permit applications for execution by City, provide maps and drawings as necessary to support plans and applications, provide summary reports of meetings with Grant Agencies.

### **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 Twenty Four (24) months, 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 90 days. No further extensions of this Agreement shall be effective unless authorized by the CITY Council.

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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" \$ 7,930.00.

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, sub-consultant professionals services such as survey, geotechnical investigation and specialty engineering. 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.

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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.

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## **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.

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

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement 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.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

ATTEST:

CITY OF MARATHON

Diane Clavier  
City Clerk

By: Clyde Burnett  
Clyde Burnett, City Manager

Date: 10/31/08

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

[Signature]  
City Attorney

**WEILER ENGINEERING CORPORATION**

By: [Signature]  
Edward R. Castle, Vice President

Date: 11/3/08

## **Exhibit “1”**

### **Project Description**

The City of Marathon is conducting the grant-funded project listed below. Working in conjunction with the City Staff, Weiler Engineering will identify, evaluate, address, and document environmental reviews for the following grant-funded project.

#### **Marina Dinghy Dockage Addition: Housing and Urban Development Economic Development Initiative Special Project Grant**

To better meet the public access needs of Marathon’s boaters and to more efficiently manage the use of waterfront resources, the City has initiated a two phase project. The City finished the first phase when it installed a 228-ball mooring field. For boats anchored in Boot Key Harbor, dinghies (small utility boats) are the primary means of traveling to the shore. The City Marina currently has dockage for 108 dinghies, far short of what is needed to adequately support boating traffic in Boot Key Harbor. The second phase of the project will install dockage to support an additional 126 dinghies. To add the needed dockage, the City is going install the following items:

- Floating EZ-Docks
- Pilings/Installation
- Piling Caps
- Piling Brackets
- E-Z Dock 80’s
- E-Z Dock 60’s
- Corner Gussets
- Connection Couplers
- ½ Connection Couplers
- Tie Down Cleats
- Stationary Wooden Marginal Dock
- Pilings/Installation
- Wooden Dock
- Handicap Gangway

## **Exhibit “2”**

### **Scope of Services and Project Schedule**

#### **Scope of Services**

For the project listed in Exhibit “1”, Weiler Engineering will do the following

- Review the project details
- Review the grant program environmental review requirements
- Draft a plan to address the environmental review requirements for each project
- Meet with grant program points of contact and City Staff to assure the plan adequately addresses environmental review requirements
- Update the environmental review plans based on comments received during meetings with grant program points of contact and City Staff
- Work in conjunction with City Staff to execute the environmental review plan for each grant program
- Participate with City Staff in meetings with private, local, state, and federal agencies to resolve issues which arise during the execution of the environmental review plan
- Draft and submit environmental review documents as directed by the City Staff
- Work in conjunction with the City Staff to obtain the necessary permits
- Advise the City in its efforts to identify, evaluate, address and document environmental review concerns associated with each project

#### **Project Schedule**

CONSULTANT will begin work upon receipt of the Notice to Proceed. Final completion will be dependent upon successful completion of environmental reviews for each project



**Exhibit "3"**

**Payment Schedule**

Total for the project.....\$7,930.00

Progress payments may be requested on a monthly basis. Progress payments will be made based on percentage completion of the scope of work.

**EXHIBIT "B"**

**PAGE 1 OF 2**

**CONSULTANT'S BILLING RATE**

**THE WEILER ENGINEERING CORPORATION**

Principal .....	\$ 125.00
Environmental Scientist.....	\$ 125.00
Project Manager .....	\$ 105.00
Professional Structural Engineer.....	\$ 105.00
Registered Professional Engineer .....	\$ 105.00
Professional Civil Engineer .....	\$ 105.00
Professional Landscape Architect.....	\$ 95.00
Registered Engineer Intern (E.I.T.).....	\$ 95.00
Senior Engineering Designer .....	\$ 85.00
Construction Inspector .....	\$ 65.00
Engineering Technician .....	\$ 75.00
Clerical.....	\$ 35.00
Reimbursable Expenses	
Blueprints .....	\$ 2.30
Vellums .....	\$ 10.00(24 x 36 sheet)
.....	
Mylars .....	\$ 25.00(24 x 36 sheet)
Travel .....	Cost
(Travel outside of County)	
Overnight mail .....	Cost

**EXHIBIT "B"**

**PAGE 2 OF 2**

**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.

**Edward R. Castle, P.E., Vice President - Wastewater Department Manager** – Mr. Castle is a Professional Engineer registered in the State of Florida and Owner of Weiler Engineering. He will be Engineer of Record for this project and the primary point of contact for the Owner.

**Rick Milloy, Environmental Scientist** - – Mr. Milloy has earned a Bachelor of Science degree in Environmental Science. He brings extensive knowledge of the environmental permitting process and experience as a Senior Project Manager with the US ACOE. He will act as the Environmental Scientist on this project and will be the primary author of reports and plans needed by the various agencies.

**Daniel Saus, Project Manager** – Mr. Saus will be a senior designer and technical specifications specialist.

**Michael Giardullo, E.I., Project Manager** – Mr. Giardullo will be the primary designer for maps and drawings associated with the project

**Serge Mashtakov, Engineering Technician** – Mr. Mashtakov will be the Senior Designer on this project.

**EXHIBIT "A"**

**PROJECT AGREEMENT**

Between

CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

for

Work Authorization No. 20

Marina Wastewater Upgrade: Housing and Urban Development  
Economic Development Initiative Special Project Grant

PROJECT AGREEMENT

Between

THE CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

For

Work Authorization No. 20

Marina Wastewater Upgrade: Housing and Urban Development  
Economic Development Initiative Special Project Grant

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

The CITY and CONSULTANT agree as follows:

**SECTION 1. SCOPE OF SERVICES**

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

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

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

**SECTION 2. DELIVERABLES**

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

Prepare draft and final Environmental Review Plan, prepare all necessary permit applications for execution by City, provide maps and drawings as necessary to support plans and applications, provide summary reports of meetings with Grant Agencies.

### **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 Twenty Four (24) months, 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 90 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" \$ 9,180.00.

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, sub-consultant professionals services such as survey, geotechnical investigation and specialty engineering. 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 by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

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



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

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

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

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement 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.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

**ATTEST:**

**CITY OF MARATHON**

Diane Clavier

City Clerk

By: Clyde Burnett

Clyde Burnett, City Manager

Date: 10/31/08

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

[Signature]  
City Attorney

**WEILER ENGINEERING CORPORATION**

By: Edward R. Castle  
Edward R. Castle, Vice President

Date: 11/3/08

## **Exhibit “1”**

### **Project Description**

The City of Marathon is conducting the grant-funded project listed below. Working in conjunction with the City Staff, Weiler Engineering will identify, evaluate, address, and document environmental reviews for the following grant-funded project.

#### **Marina Wastewater Upgrade: Housing and Urban Development Economic Development Initiative Special Project Grant**

The City of Marathon identified that its laundry, bathroom, and shower facilities were inadequate to handle the current and projected future number of Marina customers. To address this, the City initiated a project to build a new, expanded bath house to increase the capacity of its laundry, bathroom, and shower facilities. The current Marina wastewater infrastructure lacks the capacity to support the expanded laundry, bathroom, and shower facilities and does not meet new, more stringent, wastewater infrastructure requirements levied by the Florida Department of Environmental Protection. The City is going to upgrade the wastewater infrastructure of the City's Boot Key Municipal Harbor Marina by installing the infrastructure to connect the Marina bath house to the City-wide wastewater system when it is installed in 2010 and connecting the new bath house to the on site sewage treatment plant at the adjacent Marathon Community Park as an interim bath house wastewater solution.

## **Exhibit “2”**

### **Scope of Services and Project Schedule**

#### **Scope of Services**

For the project listed in Exhibit “1”, Weiler Engineering will do the following

- Review the project details
- Review the grant program environmental review requirements
- Draft a plan to address the environmental review requirements for each project
- Meet with grant program points of contact and City Staff to assure the plan adequately addresses environmental review requirements
- Update the environmental review plans based on comments received during meetings with grant program points of contact and City Staff
- Work in conjunction with City Staff to execute the environmental review plan for each grant program
- Participate with City Staff in meetings with private, local, state, and federal agencies to resolve issues which arise during the execution of the environmental review plan
- Draft and submit environmental review documents as directed by the City Staff
- Work in conjunction with the City Staff to obtain the necessary permits
- Advise the City in its efforts to identify, evaluate, address and document environmental review concerns associated with each project

#### **Project Schedule**

CONSULTANT will begin work upon receipt of the Notice to Proceed. Final completion will be dependent upon successful completion of environmental reviews for each project

**Exhibit "3"**

**Payment Schedule**

Total for the project.....\$9,180.00

Progress payments may be requested on a monthly basis. Progress payments will be made based on percentage completion of the scope of work.

**EXHIBIT "B"**

**PAGE 1 OF 2**

**CONSULTANT'S BILLING RATE**

**THE WEILER ENGINEERING CORPORATION**

Principal .....	\$ 125.00
Environmental Scientist.....	\$ 125.00
Project Manager .....	\$ 105.00
Professional Structural Engineer.....	\$ 105.00
Registered Professional Engineer .....	\$ 105.00
Professional Civil Engineer .....	\$ 105.00
Professional Landscape Architect.....	\$ 95.00
Registered Engineer Intern (E.I.T.).....	\$ 95.00
Senior Engineering Designer .....	\$ 85.00
Construction Inspector .....	\$ 65.00
Engineering Technician .....	\$ 75.00
Clerical.....	\$ 35.00
Reimbursable Expenses	
Blueprints .....	\$ 2.30
Vellums .....	\$ 10.00(24 x 36 sheet)
.....	
Mylars .....	\$ 25.00(24 x 36 sheet)
Travel .....	Cost
(Travel outside of County)	
Overnight mail .....	Cost

**EXHIBIT “B”**

**PAGE 2 OF 2**

**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.

**Edward R. Castle, P.E., Vice President - Wastewater Department Manager** – Mr. Castle is a Professional Engineer registered in the State of Florida and Owner of Weiler Engineering. He will be Engineer of Record for this project and the primary point of contact for the Owner.

**Rick Milloy, Environmental Scientist** – Mr. Milloy has earned a Bachelor of Science degree in Environmental Science. He brings extensive knowledge of the environmental permitting process and experience as a Senior Project Manager with the US ACOE. He will act as the Environmental Scientist on this project and will be the primary author of reports and plans needed by the various agencies.

**Daniel Saus, Project Manager** – Mr. Saus will be a senior designer and technical specifications specialist.

**Michael Giardullo, E.I., Project Manager** – Mr. Giardullo will be the primary designer for maps and drawings associated with the project

**Serge Mashtakov, Engineering Technician** – Mr. Mashtakov will be the Senior Designer on this project.

**EXHIBIT "A"**

**PROJECT AGREEMENT**

Between

CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

for

Work Authorization No. 19

104<sup>th</sup> Street Utility and Road Design Project  
Engineering & Construction Administration



PROJECT AGREEMENT  
Between

THE CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

For

Work Authorization No. 19

104<sup>th</sup> Street Utility and Road Design Project

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

The CITY and CONSULTANT agree as follows:

**SECTION 1. SCOPE OF SERVICES**

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

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

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

**SECTION 2. DELIVERABLES**

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

Plan layout and required details for the 104<sup>th</sup> Street Utility and Road Design and Construction Inspection Services

### **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 Twenty Four (24) months, 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" \$ 9,940.00.

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, sub-consultant professionals services such as survey, geotechnical investigation and specialty engineering. 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 by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

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

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONSULTANT's work product shall become the property of the CITY and the

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

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

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

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement 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.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

ATTEST:

CITY OF MARATHON

Diane Clavier  
City Clerk

By: Clyde Burnett  
Clyde Burnett, City Manager

Date: 10/31/08

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

H A  
City Attorney

WEILER ENGINEERING CORPORATION

By: Edward R. Castle  
Edward R. Castle, Vice President

Date: 11/3/08

## **Exhibit “1”**

### **Project Description**

The City of Marathon wishes to provide wastewater, potable water and fire lines on 104<sup>th</sup> street from the U.S. Highway 1 right-of-way to service an affordable housing development and residential properties at the south end of the street. The project will also include a road subgrade and asphalt design. Weiler Engineering will prepare engineering plans and specifications to be reviewed and approved by the City. Assistance with permitting and construction inspection 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 reports, WEC will design the Road and Utilities for 104<sup>th</sup> Street Ocean Side.

##### *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. Use existing surveys supplemented with field surveys and topographic and utility mapping as needed 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: Preliminary design layout
6. Furnish the Preliminary Design Phase documents to and review them with OWNER.
7. Submit to OWNER 2 final copies of the Design Phase documents and revised opinion of probable Construction Cost within 21 days after authorization to proceed with this phase.



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*

A. After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, but subject to any OWNER-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from OWNER, ENGINEER shall:

1. On the basis of the above acceptance, direction and authorization, prepare final Drawings and specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.

3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER.

4. Perform or provide the following additional Final Design Phase tasks or deliverables: N/A

5. Prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel, and other advisors, as appropriate, and assist OWNER in the preparation of other related documents.

6. Submit 5 final copies of the Bidding Documents and a revised opinion of probable Construction Cost to OWNER within 45 days after authorization to proceed with this phase.

B. In the event that the Work designed or specified by ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This

schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

C. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is one.

D. ENGINEER's services under the Final Design Phase will be considered complete on the date when the submittals have been delivered to OWNER.

#### *Construction Contract Administration*

CONSULTANT will assist the City during the construction phase through the preparation of final record documents, attend the pre-construction conference, attend monthly progress meetings, process pay applications, prepare change orders, and attend substantial and final inspections including:

##### *Bidding or Negotiating Phase*

A. After acceptance by OWNER of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by OWNER to proceed, ENGINEER shall:

1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
3. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
4. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:
  5. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase.

##### *Construction Phase*

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from OWNER, ENGINEER shall:

1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement except as otherwise provided in writing.

2. *Resident Project Representative (RPR).* Provide the services of an RPR as needed at the Site to assist the ENGINEER and to provide more extensive observation of Contractor's work. The furnishing of such RPR's services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.

3. *Selecting Independent Testing Laboratory.* Assist OWNER in the selection of an independent testing laboratory, if necessary.

4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

5. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in ENGINEER's judgment are necessary to enable Contractor to proceed.

6. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's work in progress while it is in progress:

a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by ENGINEER, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, ENGINEER will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.

b. The purpose of ENGINEER's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the

Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

7. *Defective Work.* Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

8. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

9. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.

10. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

11. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

12. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents.

ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

13. *Disagreements between OWNER and Contractor.* Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

14. *Applications for Payment.* Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents).

b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens,

claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

15. *Contractor's Completion Documents.*

a. Receive and review maintenance and operating instructions, schedules, and guarantees.

b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.

c. ENGINEER shall transmit these documents to OWNER.

16. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of OWNER, ENGINEER considers the Work Substantially Complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

17. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables:

Upon completion of construction, WEC will coordinate with Contractors surveyor to prepare record documents and final certifications for regulatory submittal.

18. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice that the Work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors.

C. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

*Post-Construction Phase- N/A*

**Project Schedule**

CONSULTANT will begin work upon receipt of the Notice to Proceed. Final design and submittal to the regulatory agencies will be completed within **60 days** (allowing one week for review and approval to proceed from City after Report and Preliminary Design phases). Final completion will be dependent upon the regulatory agencies.

Construction phase services will be dependent upon the timing of the City's notice to proceed to the selected Contractor and on the Contractor's Schedule.

## Exhibit “3”

### Payment Schedule

Progress payments will be invoiced monthly based on percentage completion of the amounts presented in the schedule below. The basis of payment is Lump Sum

Survey and Geotechnical Investigation	\$1,200.00
Preliminary Design	\$3,276.00
Final Design	\$1,404.00
Permitting	\$600.00
Construction	\$3,460.00
<b>Total Lump Sum</b>	<b>\$9,940.00</b>



**EXHIBIT "B"**

**PAGE 1 OF 2**

**CONSULTANT'S BILLING RATE**

**THE WEILER ENGINEERING CORPORATION**

Principal .....	\$ 125.00
Environmental Scientist.....	\$ 125.00
Project Manager.....	\$ 105.00
Professional Structural Engineer.....	\$ 105.00
Registered Professional Engineer .....	\$ 105.00
Professional Civil Engineer .....	\$ 105.00
Professional Landscape Architect.....	\$ 95.00
Registered Engineer Intern (E.I.T.).....	\$ 95.00
Senior Engineering Designer .....	\$ 85.00
Construction Inspector .....	\$ 65.00
Engineering Technician .....	\$ 75.00
Clerical.....	\$ 35.00
Reimbursable Expenses	
Blueprints.....	\$ 2.30
Vellums.....	\$ 10.00(24 x 36 sheet)
.....	
Mylars .....	\$ 25.00(24 x 36 sheet)
Travel .....	Cost
(Travel outside of County)	
Overnight mail .....	Cost

**EXHIBIT “B”**

**PAGE 2 OF 2**

**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.

**Edward R. Castle, P.E., Vice President - Wastewater Department Manager** – Mr. Castle is a Professional Engineer registered in the State of Florida and Owner of Weiler Engineering. He will be Engineer of Record for this project and the primary point of contact for the Owner.

**Daniel Saus, Project Manager** – Mr. Saus will be a senior designer and technical specifications specialist.

**Michael Giardullo, E.I., Project Manager** – Mr. Giardullo will be the primary designer and the Project Manger.

**Serge Mashtakov, Engineering Technician** – Mr. Mashtakov will be the Senior Designer on this project.

**Steve Markey, E.I.** – Mr. Markey is a licensed Engineering Intern and will be assigned as a designer and construction inspector for this project