

Sponsored by: Burnett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-128**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH U.S. WATER SERVICES CORPORATION FOR WASTEWATER TREATMENT PLANT & COLLECTION SYSTEM OPERATION AND MAINTENANCE AND STORMWATER FACILITY OPERATION AND MAINTENANCE; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the "City") desires to hire a professional firm to operate, manage, maintain and repair the City's Wastewater and Stormwater Facilities; and

WHEREAS, the City published a Request for Proposals ("RFP") for wastewater treatment plant operation and maintenance and stormwater facilities maintenance on June 20, 2009, with bid opening taking place on July 27, 2009; and

WHEREAS, U.S. Water Services Corporation was the low price bidder and the highest scorer on the technical evaluation; and

WHEREAS, staff recommends award of the contract to U.S. Water Services Corporation.

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

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

Section 2. The City Council hereby approves the contract between the City of Marathon and U.S. Water Services Corporation, a copy of which is attached hereto as Exhibit "A", For Wastewater Treatment Plant & Collection System Operation and Maintenance And Stormwater Facility Operation And Maintenance For A Period Of Two Years With The Option Of Two (2) One (1) Year Renewals, 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; and authorizes the Manager to execute the agreement.

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

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 8th day of September, 2009.

THE CITY OF MARATHON, FLORIDA



Mayor Mike Cinque

AYES: Ramsay, Snead, Vasil, Worthington, Cinque
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



Jimmy Morales, City Attorney

**OPERATIONS AND MAINTENANCE AGREEMENT
CITY OF MARATHON, FLORIDA**

THIS AGREEMENT (the "Agreement") is dated as of this 8th day of September, 2009 by and between the CITY OF MARATHON, FLORIDA (hereinafter called the "CITY") and U.S. Water Services Corp (hereinafter called "OPERATOR") located at: 4939 Cross Bayou Blvd., New Port Richey, Florida 34652

WHEREAS, the CITY desires to hire a professional firm to operate, manage, maintain and repair the City's Facilities (defined below) and the OPERATOR desires to provide services to the CITY.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and subject to the terms and conditions herein stated, the parties agree as follows:

ARTICLE 1. DEFINITIONS

Wherever used in this Agreement the following terms shall have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1 **"Adequate Nutrients"** means plant influent nitrogen, phosphorus and iron contents proportional to BOD in the ratio of five (5) parts nitrogen, one (1) part phosphorus, and one-half(0.5) part iron for each (100) parts BOD.
- 1.2 **"Agreement"** means the written instrument, which is evidence of the agreement between CITY and OPERATOR covering the services to be performed, including the Agreement and any exhibits that are attached to the Agreement or made a part thereof; and any other documents, which are incorporated in or referenced in the Agreement and made a part thereof.
- 1.3 **"Annual Fee"** means a predetermined, fixed lump sum for OPERATOR'S services. The Annual Fee includes Cost, overhead and profit.
- 1.4 **"Applicable Law"** shall mean (i) all of the permits required for the performance by the parties under this Agreement, (ii) all State or federal constitutional restrictions, (iii) all State laws, rules, regulations or directives, (iv) all CITY ordinances, laws or directives, (y) all federal or State judicial judgments, orders or decrees, (vi) all federal, State or CITY administrative orders or directives, which are in effect during the term of this Agreement, or subsequently enacted, adopted, promulgated, issued or enforced during the term of this Agreement, or subsequently enacted, adopted, promulgated, issued or enforced, and (vii) all federal, State or CITY consent decrees, stipulations or settlement agreements, in any manner relating to the operation, management, maintenance, repair, upgrade, enhancement, retirement or expansion of the Facilities.
- 1.5 **"Biologically Toxic Substances"** means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of CITY'S Domestic Wastewater Facility Permit, including, but are

not limited to, heavy metals, phenols, cyanides, pesticides and herbicides.

- 1.6 “**Bonds**” means the bid, performance, maintenance and payment bonds and other instruments securing OPERATOR’S performance, if applicable.
- 1.7 “**Change Order**” means a document, which is signed by OPERATOR and CITY and authorizes an addition, deletion or revision in the Services, or an adjustment in the contract price or the contract time, issued on or after the effective date of the Agreement.
- 1.8 “**Contract Documents**” means the documents outlined in Article 16 of the Agreement.
- 1.9 “**Contract Price**” means the compensation outlined in Article 5 of this Agreement.
- 1.10 “**Cost**” means all direct costs and indirect costs determined on an accrual basis in accordance with generally accepted accounting principles.
- 1.11 “**Day**” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
- 1.12 “**Facilities**” means the domestic wastewater collection, transmission, treatment and disposal facilities and the stormwater collection and disposal systems described herein and in the Facilities Plans
- 1.13 “**Facilities Plans**” means the documents entitled “Planning Documents for State Revolving Fund Loan, Marathon Regional Wastewater Project” and “Planning Documents for State Revolving Fund Loan, Marathon Regional Stormwater Project”
- 1.14 “**FDEP**” means the State of Florida, Department of Environmental Protection.
- 1.15 “**FKAA**” means the Florida Keys Aqueduct Authority.
- 1.16 “**Maintenance**” means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or by OPERATOR or otherwise required under standard industry practices to maintain the Facilities in good to excellent condition, ordinary wear and tear excepted, and to maximize the service life of the Facilities.
- 1.17 “**Maintenance and Repair Limit**” means the total Maintenance and Repair expenditures that OPERATOR has included in the Annual Fee.
- 1.18 “**Operator**” means the person, firm or corporation with whom the CITY has entered into the Agreement for the performance of the Services as defined by the Agreement.
- 1.19 “**Permit**” means the construction and operating permits issues by FDEP to construct and operate the domestic wastewater collection, transmission, treatment

and disposal systems, and by the SFWMD to construct the stormwater collection and disposal systems.

- 1.20 **“Project”** means all the work performed pursuant to the Agreement at the Facilities.
- 1.21 **“Repairs”** means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, sewer or facilities or some component thereof.
- 1.22 **“Reports”** means all annual reports including discharge monitoring reports, annual reuse reports and any other reports as required by the Permit or manufacturers.
- 1.23 **“Services”** means the Scope of Services outlined in Article 3 of the Agreement.
- 1.24 **“Service Area”** means the service areas as shown in the Facilities Plans and in the exhibits to the RFP and any incidental future expansions of the service areas that may occur
- 1.25 **“Subcontractor”** means an individual, firm or corporation who enters into a Contract with OPERATOR for the performance of any part of OPERATOR’S Services. The term “Subcontractor” does not include a separate OPERATOR or Subcontractors of a separate OPERATOR.
- 1.26 **“Unforeseen Circumstance(s)”** shall mean any event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement including but not limited to; (i) an act of God, lightning, tornado, fire, explosion, flood, acts of terrorism; (ii) preliminary or final order of any local, state or federal court, administrative agency or governmental body of competent jurisdiction; (iii) any change in any Applicable Laws as defined herein; (iv) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or work stoppages by employees of OPERATOR; (v) loss of or inability to obtain service from a utility necessary to furnish power for the operation, maintenance, management and repair of the Project; and (vi) failure of Facility’s design, technology or process during start-up; excluding:
- (i) General economic conditions, interest or inflation rate fluctuations, commodity prices or changes in process, or currency or exchange rate fluctuations;
 - (ii) Changes in the financial condition of the CITY, the OPERATOR, or any of their affiliates or Subcontractors;
 - (iii) Union work rules which increase the OPERATOR’S operating cost for the Facilities;

(iv) Any impact of prevailing wage laws on the OPERATOR'S costs, provided however that such requirements or demands may constitute a change of law entitling the OPERATOR to additional compensation;

(v) The consequence of OPERATOR error, including any errors of OPERATOR affiliates or Subcontractors; and/or

(vi) Litigation against the CITY and/or OPERATOR.

1.27 "CITY" means the City of Marathon, CITY Council, CITY'S Representative or CITY'S representative, as applicable.

ARTICLE 2. CITY'S REPRESENTATIVE

2.1 It is understood that the CITY shall designate, in writing, at the time of execution of the Agreement, a representative that shall be the sole and exclusive contact for the OPERATOR and act on its behalf with respect to the Services provided under this Agreement. The CITY'S REPRESENTATIVE referred to in any of the Contract Documents designated herein is:

Susie Thomas, Director of Community Services

2.2 The representative shall be authorized to transmit instructions, receive information, and make decisions with respect to the performance of the Services.

ARTICLE 3. SCOPE OF SERVICES & OPERATOR RESPONSIBILITIES

The OPERATOR shall provide the following services:

Section 3.1 Start-Up

(a) OPERATOR shall implement a start-up program for each future Facility and shall conduct sampling necessary to determine operational performance and permit compliance. On direction from the CITY'S Representative, the OPERATOR shall arrange for seeding of the wastewater treatment plant, filling of chemical storage tanks, filling of process tanks with wastewater or reuse water, and other duties commonly associated with start-up of a new facility.

(b) OPERATOR shall be present on-site while the equipment manufacturers are providing on-site training during the system start-up.

(c) OPERATOR shall produce Standard Operating Procedures (SOPs) based on the information provided in the Original Manufacturer's Manuals and at Facility Start-Up. These SOPs shall be implemented and shall be updated at least annually or as needed to reflect any changes in operations and maintenance.

Section 3.2 General Operation and Maintenance/Staffing

- (a) OPERATOR shall maintain, manage, operate and repair the Facilities so that wastewater is collected from the CITY customers and is treated and discharged in accordance with the Permit and Applicable Laws.
- (b) OPERATOR shall provide a lead operator with at least the minimum required licensure level on site for at least the minimum times as required by the Permit and by Chapter 62-699 FAC. An operator meeting the lead operator classification level of the plant shall be available to be contacted as needed to initiate appropriate action in a timely manner 24 hours per day.
- (c) OPERATOR shall provide smooth and uninterrupted transition of operations and Maintenance between design/builder and OPERATOR.
- (d) OPERATOR shall provide equipment, tools and supplies for the operation and Maintenance and Repair of the Facilities.
- (e) OPERATOR shall assume full responsibility for the continuous operation of the Facilities and shall operate, manage, maintain, repair and monitor the Facilities in accordance with the requirements established by the Applicable Laws and the Permit. OPERATOR shall be fully responsible for meeting or exceeding the general performance requirements of the Permits.
- (f) OPERATOR shall calibrate meters used to measure flow at least annually or more frequently as recommended by the manufacturer and maintain calibration records.
- (g) OPERATOR shall provide all personnel and associated wages, salaries, benefits; all services; all tools, supplies, spare parts, vehicles and materials, including fuel, oil, lubricants, filters, spark plugs, gaskets, and other consumables; necessary to operate the Facilities in accordance with all Applicable Laws. The Facilities shall be operated in a manner to ensure that the Facilities satisfy all Applicable Laws. Provisions shall be made to employ a state of the art predictive maintenance program within (90) days of start up. The CITY reserves the right to directly purchase certain consumables, including but not limited to Sodium Acetate, Alum, Sodium or Calcium Hypochlorite and other bulk supplies.. The OPERATOR will maintain responsibility for ordering, receipt, storage and safekeeping of any consumables purchased by the CITY
- (h) OPERATOR shall meet with representatives of the CITY as needed and as requested by the CITY or, at minimum at least monthly, to review operations, reports and costs. OPERATOR shall attend a weekly staff meetings and shall attend regularly scheduled monthly Council meetings as requested by the CITY. OPERATOR shall maintain a professional, responsible and responsive working relationship with representatives of

the CITY, regulatory authorities, suppliers of materials, utilities and services, and the public.

- (i) While performing services under the Agreement, all personnel shall wear uniform shirt with the logo of the OPERATOR and shall wear a CITY identification tag. While performing services under the Agreement, all personnel shall be equipped with communication equipment, including but not limited to cellular telephones. A list of all cellular telephone numbers of such personnel shall be submitted to the CITY'S Representative at the time of execution of the Agreement and such list shall be updated and provided to the CITY'S Representative on a regular basis.
- (j) OPERATOR shall maintain inventory of all consumable materials and spare parts required for operation of the Facilities.

Section 3.3 Maintenance and Repair

- (a) OPERATOR shall perform all Maintenance and Repair on the Facilities, including activities associated with usual and customary repairs, and have the capability to perform emergency repairs on components of the collection, treatment and disposal systems. OPERATOR shall install new vacuum valves and appurtenances into vacuum pits installed by others as required and incorporate new vacuum pits into the Facilities.
- (b) OPERATOR shall develop and implement a preventive maintenance program, a copy of which shall be delivered to the CITY for review and comment no later than thirty (30) days after execution of this Agreement. Such program shall include all lubrications, adjustments, inspections, monitoring and repairs as necessary to maintain the Facilities throughout the term of this Agreement.
- (c) OPERATOR shall perform all maintenance and repairs on the Facilities, including the sewer collection system, sewer force mains, reuse systems and stormwater systems and submit a monthly accounting to CITY.
- (d) OPERATOR shall develop and/or supply and utilize computerized programs for maintenance, process control, cost accounting, and laboratory QA/QC.
- (e) OPERATOR shall develop operator testing spreadsheet with reduced sampling periods after the Facilities is stable and in compliance as an alternative to the recommended startup sampling protocol
- (f) OPERATOR shall assist the CITY in collection and input of data into an asset management program. The data will include but is not limited to equipment name plate data, maintenance procedures and schedules, inventories of spare parts and supplies and records of labor associated with maintenance and repair procedures performed.

Section 3.4 Collection and Disposal

- (a) OPERATOR shall properly dispose of screenings generated at Facilities.
- (b) OPERATOR shall provide for the collection, removal and transport of sludge and process solids for disposal directly at the [Miami-Dade Blackpoint Treatment Facility or via the Monroe County Transfer Station.]. The CITY will directly contract with the Sludge Hauler and pay Sludge Hauler's invoices.
- (c) OPERATOR shall maintain all manifests or other documentation required for disposal of sludge and process solids, and such documentation shall be signed by OPERATOR in the name of the CITY and a copy provided to the CITY'S Representative.

Section 3.5 Testing and Laboratory Analysis

- (a) OPERATOR shall perform all laboratory testing and sampling presently required by the Permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, pen-nit or license requirements or judicial and regulatory orders, agreements and decrees. OPERATOR shall deliver and certify such results to the CITY and submit the results to the FDEP.
- (b) OPERATOR'S failure to meet or exceed the applicable performance or Permit requirements will only be excused in those instances where the failure was caused by an Unforeseen Circumstance. In the event an Unforeseen Circumstance prohibits OPERATOR from meeting the applicable performance requirements, OPERATOR shall immediately take all reasonable steps to stop the discharge of the non-compliant effluent and to bring the Facilities into compliance with the performance requirements.
- (c) All laboratory tests required by the Permit shall be performed by a laboratory that has been certified by the Department of Health for any specific method or analysis combination that is used to comply with the Permit. The on-site test procedures shall be performed by a laboratory certified test for those parameters under the direction of an operator certified under Chapter 62-602 and using the applicable procedures described in DEP-SOP-001/01 (January 2002), as maybe amended.
- (d) OPERATOR shall conduct analysis of any repeated or persistent non-compliance issues, and recommend remedial measures to the CITY for system modifications, if appropriate.
- (e) OPERATOR shall conduct any and all process control testing required to ensure proper and compliant operation of the Facility. Such testing may include but is not limited to: Ammonia Nitrogen, Nitrate + Nitrite Nitrogen, Reactive Phosphorus, Dissolved Oxygen, Oxidation-Reduction Potential, Alkalinity, Total Suspended Solids, pH, Total Residual Chlorine and Salinity. OPERATOR shall maintain all process control testing equipment, including on-line instrumentation, in good working order and

shall perform laboratory quality assurance and quality control checks as are standard for the industry.

Section 3.6 Odor and Noise Control

- (a) OPERATOR shall operate the Facilities using methods that will minimize odor and noise within the limits and capabilities of the Facilities.
- (b) OPERATOR shall report to the CITY within (24) hours all odor complaints received and respond in a timely manner to all customer service complaints. Complaints shall contain the name, address, phone number, date and time of said complaint and OPERATOR contact person. Odor complaints shall specify nature of odor, probable origin of the odor and the action the OPERATOR will implement or has implemented to remedy and/or mitigate said odor.

Section 3.7 Training and Personnel

- (a) OPERATOR shall provide ongoing training and education for appropriate personnel in all necessary areas of modern process control, operations, industrial pretreatment, reclaimed water, stormwater, laboratory, energy management, customer service, maintenance, repair, safety, supervisory skills and emergency operations.
- (b) OPERATOR shall develop and implement an organized in-house safety program that will include regularly scheduled safety training sessions for all plant personnel; standard operating procedures for chemical handling, confined space entry, lock-out/tag-out, and emergency response; and the care and use of the proper safety equipment to perform these procedures.
- (c) OPERATOR shall staff the Facilities with employees who have met appropriate licensing and certification requirements of the State of Florida and meet the requirements of the Permit.
- (d) OPERATOR shall develop a site-specific Emergency Preparedness Plan as described in Article 18 and submit this plan to the CITY'S representative for review and approval no later than 30 days after Agreement date. The plan should address, at a minimum, the potential for chemical spills, sewage spills, fire, tropical storms and hurricanes.

Section 3.8 Reuse Program

- (a) CITY intends to implement a wastewater reuse program. OPERATOR shall respond in a timely manner to any and all reclaimed water line breaks and make all necessary Repairs up to the customer service connection on direction from CITY.
- (b) OPERATOR shall provide for annual re-certification of up to 15 water meters used for reclaimed water available from the CITY'S reuse system.

Section 3.9 Records and Reports

- (a) OPERATOR shall prepare and process comprehensive monthly reporting to the CITY of the Facilities operating parameters, laboratory, maintenance plans and activities, improvement activities, treatment results, equipment and parts inventories, manpower utilization and other relevant information in accordance with all Applicable Laws.
- (b) OPERATOR shall prepare and submit to the CITY all Reports and all other information required by, and in accordance with the Permits and manufacturers' warranties, as well as monitoring and measurement logs on bound 8 by 14 inch record books with pre-printed schedules.
- (c) OPERATOR shall prepare a monthly and year to date financial summary of expenditures. This report shall be submitted as part of the appropriate monthly report.
- (d) Once each year, at a time to be determined in advance by CITY, OPERATOR shall submit Reports that record significant events of the past year, describe the status of the Facilities and compare the status of planned activities.
- (e) OPERATOR shall maintain safety records in connection with its operation of the Facilities and performance of Services under this Agreement. The OPERATOR must record the relevant details regarding any accidents or injuries occurring at the Facilities. The OPERATOR shall prepare a monthly report for the CITY detailing its safety record from the time of the last report.
- (f) OPERATOR shall prepare state and federal permit plant performance Reports and submit them to CITY for signature and transmittal to appropriate authorities, as required by permit and all Applicable Laws.
- (g) OPERATOR shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall provide these reports to the CITY in a timely manner.
- (h) OPERATOR assist the CITY'S Engineer in the preparation of capacity analysis reports in accordance with the Permits and all Applicable Laws.
- (i) OPERATOR shall provide all documents in draft form to the CITY prior to submittal to any regulatory agency or manufacturers, as requested. Final copies of all Reports shall be provided to the CITY,

Section 3.10 Permits

- (a) OPERATOR shall assist the CITY'S Engineer in preparation of Permit renewal applications by providing all relevant operating data including flows, performance, and records of new connections. OPERATOR shall provide the necessary information and backup for preparation of the

detailed operation and maintenance performance report required as part of the Permit renewal application.

- (b) OPERATOR shall assist the CITY'S Engineer to ensure that the Permit is processed and renewed by the FDEP and will provide the information needed to respond to all additional requests by FDEP in support of obtaining Permit renewal.
- (c) OPERATOR shall assume responsibility for payment of any penalties, fines, damages or recovery costs and the CITY'S expenses, including attorneys' fees, expenses, fees and costs, to defend any claim from Federal or State agencies arising out of, related to or resulting from OPERATOR'S violations of any laws and permits, faulty operation or operation not in conformance with Applicable Law or the Permit.
- (d) OPERATOR shall assist the CITY'S Engineer to obtain and maintain all required Permits, licenses and authorizations associated with the CITY'S wastewater and stormwater facilities.

Section 3.11 Manufacturers' Warranties

- (a) OPERATOR shall be responsible for conducting all services necessary to maintain existing warranties and obtain all manufacturers' warranties on equipment purchased on behalf of the CITY and shall assist the CITY in enforcing manufacturers' warranties and guarantees.
- (b) OPERATOR shall provide the CITY with full documentation that preventive maintenance is being performed on all CITY owned equipment in accordance with manufacturers' recommendations at intervals and in sufficient detail as may be determined by the CITY.
- (c) OPERATOR shall be responsible for notifying the CITY of any required modifications in the Facilities or treatment processes in accordance with all warranties and Applicable Laws. OPERATOR shall not be responsible for any violations of Applicable Laws and conditions under the warranties due to failure of the Facilities design and construction.
- (d) The maintenance program must include documentation of corrective and preventive maintenance and a spare parts inventory.

Section 3.12 Construction and Inspection Processes

- (a) OPERATOR shall conduct a yearly comprehensive plant inspection with representatives of the CITY to evaluate and document condition of the Facilities, safety issues or other concerns. OPERATOR shall inspect Facilities and notify the CITY of specific capital expenditure needs annually.

- (b) OPERATOR shall provide, as a Representative of the CITY, inspection of all new sewer connections within 48 hours (two (2) working days) upon receipt of a service work order from the CITY.
- (c) OPERATOR shall work with the CITY to maintain access and minimize disruption and outages to the existing equipment and components during a construction phase or other modification of any part of the Facilities.
- (d) OPERATOR shall use all best and reasonable efforts to locate all sewer lines, manholes, reclaimed water lines, valves, and other appurtenances of the sewer collection system and reuse distribution system within 48 hours upon receipt of written request. OPERATOR will manage the CITY'S Sunshine State One Call of Florida account and provide all required labor and documentation needed under the SSOCOF protocol.
- (e) During any City-approved construction or modification of the Facilities by OPERATOR, the OPERATOR shall obtain all necessary Bonds and comply with all Applicable Laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall develop and maintain all necessary safeguards and precautions for such safety and protection.

Section 3.13 Cross Connection Control and Inspection

- (a) OPERATOR shall be responsible for coordinating cross-connection control and inspection efforts with the FKAA as needed. Until the CITY adopts a cross-connection control and inspection program, OPERATOR shall use the most recent version of the FKAA Manual of Cross Connection Control and AWWA Manual M14 ("Recommended Practice for Backflow Prevention and Cross-Connection Control") as guidance. OPERATOR shall apprise the CITY of any cross-connection issues and recommend to the CITY any required improvements or changes.
- (b) OPERATOR shall ensure cross-connection control compliance for the CITY, which shall include identification and inspection of any potential cross-connection health hazards between FKAA potable water distribution system and the Facilities reclaimed water transmission system and other CITY non-potable liquid conveyance systems.
- (c) OPERATOR shall verify appropriate protection devices and the proper installation of equipment, operating as designed.
- (d) OPERATOR shall ensure that all backflow prevention devices that are components of the CITY'S wastewater collection, treatment and disposal systems are inspected and serviced annually as required at no additional cost to the CITY.

Section 3.14 Security and City Access

- (a) OPERATOR shall maintain security at Facilities on a 24-hour, seven (7) days per week basis. Security shall include perimeter fencing, signage and automated alarm monitoring, where applicable.
- (b) OPERATOR shall provide 24-hour per day access to the Facilities for CITY personnel so designated by CITY'S representative. OPERATOR shall provide master keys for the Facilities to the CITY.
- (c) OPERATOR shall ensure that visitors to the Facilities shall comply with OPERATOR operating and safety procedures.

Section 3.15 Customer Service

- (a) For all emergency calls and customer complaints, OPERATOR shall make initial response within 30 minutes. Initial response may be limited to acknowledgment of the emergency condition, including return calls to customers, acknowledgement of alarms, notification of the emergency to CITY'S Representative or other appropriate initial response as outlined in the approved Emergency Preparedness Plan. Follow-up actions for emergency situations shall be implemented in the timeframe and manner outlined in the approved Emergency Preparedness Plan.
- (b) For all non-emergency situations, OPERATOR shall provide resolution to customer complaints within two (2) working days from the time a complaint is submitted to the OPERATOR by the CITY, or provide a schedule for resolution that is acceptable to the CITY'S Representative. The CITY'S Representative shall be advised of all complaints received by OPERATOR and OPERATOR'S response to same customer complaints concerning service. Complaints shall contain the name, address, phone number, date and time of said complaint and OPERATOR contact person.

ARTICLE 4. TERM /RENEWAL

- 4.1 This Agreement shall become effective upon execution by both parties and shall remain in full force and effect for two (2) years.
- 4.2 The CITY shall have the option to renew this Agreement upon the same terms and conditions for up to two (2) successive one (1) year extensions (the "Option").
- 4.3 Each Option may be exercised at the sole discretion of the City. Such extension shall be effective upon written notice from the CITY'S Representative to the OPERATOR no later than **30** days prior to the date of termination of the Term or any renewal term.

ARTICLE 5. COMPENSATION

Compensation under this Agreement shall consist of the following:

5.1 Annual Lump Sum Fee:

The Annual Fee includes all costs associated with labor and materials for plant staffing, testing and reporting as required by the Permits and all routine scheduled preventive and predictive maintenance procedures or minor corrective maintenance procedures for the wastewater and stormwater collection, treatment and disposal systems. The Annual Fee schedule includes provisions for testing, maintenance and administrative functions. Exercise of valves and equipment, routine testing of mechanical and electrical equipment, lubrication and changing of filters and other normal maintenance activities are included. Labor needed to prepare monthly and annual reports as described in the Agreement, including FDEP required reports, financial reports and status reports is included. Labor for meetings with representatives of the City related to operation, compliance, permitting and maintenance issues is included in the Annual Fee

The annual lump sum fee for Services for the period starting on the effective date set forth in Article 4.1 is **\$376,490**. This annual lump sum fee will be adjusted as provided in Section 7.1 as additional phases of the CITY's wastewater and stormwater systems become operational.

5.2 Hourly Compensation for Additional Services:

Non-routine and out of scope services are classified in two categories. The first category is Regular Time and consists of scheduled work that can be performed at times convenient to the Contractor. The second category is Call Out Time and consists of work that is time sensitive and requires unscheduled responses. This second category includes emergency call outs, responses to alarm conditions at the treatment facility and other work that may require immediate execution. The hourly rates for both Regular Time and Call Out Time for three levels of labor, to be billed in .25 hour increments, are as follows:

Labor Category	Regular Hourly Rate	Call-Out Hourly Rate
General Labor	\$45.00	\$67.50
Skilled Labor	\$60.00	\$90.00
Administrative Labor	\$80.00	\$80.00

The hourly rate applied to the additional services billed by the OPERATOR will be based on the skills required for the task performed as determined by the CITY's REPRESENTATIVE, not by the level of skill or licensing held by the personnel performing the work.

These hourly rates may be adjusted as provided in Section 7.1 as additional phases of the CITY's wastewater and stormwater systems become operational.

5.3 Materials Cost Reimbursement:

5.3.1 The OPERATOR will be reimbursed for the cost of materials and supplies purchased by the OPERATOR, to include chemicals, repair and

maintenance parts, lubricants and other materials and supplies needed for proper operation and maintenance of the collection, treatment and disposal systems. The OPERATOR will be reimbursed for the actual cost of the materials purchased, including shipping and handling charges and taxes, plus a percentage markup of **12%**. This percentage markup may be adjusted as provided in Section 7.1 as additional phases of the CITY's wastewater and stormwater systems become operational

- 5.3.2 The City reserves the right to directly purchase any materials and supplies for the operation and maintenance of the systems. All responsibilities for receipt and storage of any materials directly purchased by the City remain with the Contractor
- 5.3.3 OPERATOR shall obtain prior written approval from the CITY'S REPRESENTATIVE before purchasing any parts or materials in excess of **\$ 100**.
- 5.3.4 In addition to repair and maintenance items, OPERATOR may modify the process and/or Facilities to achieve the objectives of this Agreement and be reimbursed for the cost of parts and materials for such modifications under the contract; provided, however, OPERATOR shall obtain the prior written approval from the CITY'S REPRESENTATIVE.
- 5.3.5 Office supplies, computer supplies, toiletries and other materials incidental to the work performed under the Annual Fee will not be reimbursed. All costs thereof, including the OPERATOR's overhead costs and profit, shall be considered as included in the proposed Annual Fee.

5.4 Storm Structure Cleaning Unit Cost:

The OPERATOR will be compensated at the following unit prices for cleaning of each of the two types of storm structures. These unit prices may be adjusted as provided in Section 7.1 as additional phases of the CITY's wastewater and stormwater systems become operational.

Structure Type	Cost Each
Cylindrical Inlet Catch Basin	\$95.00
Rectangular Well Control Structure	\$95.00

5.5 Sludge Thickening Incentive

- 5.5.1 The Sludge Disposal Costs will be paid by the CITY under a separate Agreement with a Sludge Hauler. The cost for operation and maintenance of sludge handling and thickening equipment by the OPERATOR is to be included in the Annual Fee.. In order to provide an incentive to minimize the volume of liquid sludge to be hauled, the OPERATOR will receive additional compensation or a deduction from the Annual Fee as follows:

The Little Venice treatment facility includes a rotary drum sludge thickener and polymer feed system. The target sludge concentration at time of hauling shall be 3% solids. The Contractor will be compensated for thickening the sludge beyond 3% according to the following formula:

$$\text{Compensation} = (((\% \text{ solids} - 3.0)/3.0) \times \text{Volume Hauled} \times \$/\text{gallon}) \times 0.5$$

If the sludge is hauled at a concentration less than 3% solids, a deduction will be made from the monthly invoice on the Annual Fee calculated by the formula:

$$\text{Deduction} = ((\% \text{ solids} - 3.0)/3.0) \times \text{Volume Hauled} \times \$/\text{gallon}$$

5.5.2 This incentive will be applied for the period starting on the effective date set forth in Article 4.1. It is the CITY's intention to purchase, lease or otherwise obtain the use of a mobile centrifuge to dewater the digested waste activated sludge and discontinue this incentive. This incentive will be discontinued upon 30 days written notice from the CITY to the OPERATOR.

- 5.6 Starting on the first day of the first month of the second Agreement year and every consecutive year thereafter, for the entire term of the Agreement, the Annual Fee in effect at that time shall be automatically adjusted according to the annual Consumers Price Index-(CPM Miami-Ft. Lauderdale, FL Area) or four percent (4 %), whichever is less.

ARTICLE 6. PAYMENT PROCEDURES

- 6.1 OPERATOR shall submit on a monthly basis an invoice in a format approved by the CITY'S Representative which shall include all required back-up documentation to support the amounts invoiced. OPERATOR shall submit a monthly invoice to the CITY no later than the 15th day of the following month for which services were provided.
- 6.2 OPERATOR shall be paid the Annual Lump Sum Fee in 12 monthly installments, adjusted by the Sludge Thickening Incentive as provided in Section 5.1.
- 6.3 OPERATOR shall include in its monthly invoice any compensation for additional hourly services, as provide for in Article 5, with sufficient detail for the CITY's REPRESENTATIVE to determine the applicable hourly rates.
- 6.4 OPERATOR shall provide copies of invoices, receipts and proof of payment for reimbursable items provided for in Section 5.3
- 6.5 CITY shall process all submitted invoices from the OPERATOR on a monthly basis. The CITY shall pay the OPERATOR for all approved invoices, in a manner consistent with the Florida Prompt Payment Act, Chapter 218, Florida Statutes.
- 6.6 CITY may refuse to make the whole or any part of any payment if, in the CITY or CITY REPRESENTATIVE's opinion, the invoice is not prepared in accordance

with the terms and conditions of the contract, or does not contain sufficient backup documentation to determine the validity of the requested amounts. In this case, the CITY will return the invoice to the OPERATOR within 15 days of receipt of the invoice, indicating in writing the CITY's reasons for refusing to make payment. The CONTRACTOR may make the necessary corrections and resubmit the invoice.

ARTICLE 7. CHANGES IN THE SCOPE OF SERVICES

A Change in Scope of Services shall occur as a result of:

- 7.1 Completion of additional Phases of the CITY's wastewater and stormwater facilities. The CITY will provide the operator with **30** days written notice of the anticipated operational start date of each additional Phase. As of that date, OPERATOR shall have staff assigned to the Facilities in accordance with the requirements of the Permits and this Agreement. The CITY will negotiate with the OPERATOR any adjustments to the Annual Lump Sum Fee, Hourly Compensation Schedule, Materials Markup percentage or Storm Structure Cleaning unit cost for the additional scope of work for each Phase. Such adjustments will be incorporated into the contract by Change Order in accordance with Article 27 at least **30** days prior to the operational start date of each phase. Payment for any preliminary work provided by OPERATOR associated with any Phase whose effective date has not yet been reached may be made in accordance with the Hourly Compensation payment schedule, by mutual agreement between the CITY and the OPERATOR..
- 7.2 Any change in Facilities operations, personnel qualifications or staffing or other cost which is mandated or otherwise required by a change in any Applicable Law or Permit, or any Unforeseen Circumstance;
- 7.3 Capital improvements to the Facilities by or at the request of the CITY which result in the change by OPERATOR of its methods or costs of operation of the Project.
- 7.4 CITY and OPERATOR shall negotiate an increase in Annual Fee for Changes in Scope based on Section 7.2 and 7.3.

ARTICLE 8. CITY'S RESPONSIBILITIES

- 8.1 CITY shall pay directly all usual and customary electric, solid waste and water bills associated with OPERATOR's operation of the facilities as described in the Contract Documents. All other utility related expenses will be the responsibility of the OPERATOR as part of the negotiated Annual Fee outlined in Section 5. 1. OPERATOR shall use its best efforts to minimize usage of electricity, solid waste disposal and water.
- 8.2 CITY shall be responsible for all real estate and personal property taxes applicable to CITY owned property in use at the Facilities.

- 8.3 Upon receipt by the CITY, CITY shall provide OPERATOR a set of as-builts drawings of the sewer collection system, force mains, reuse system, and stormwater system including CAD maps in electronic format, and shall periodically update the drawings for changes in the Facilities. CITY shall make GIS database accessible to OPERATOR to assist in maintenance and operation of the facilities
- 8.4 CITY shall coordinate with OPERATOR to perform other work at or within the Facilities by the CITY'S own forces, have other work performed by utility owners or directly Contract for such other work. Written notice thereof will be given to OPERATOR prior to starting any other work not previously noticed to OPERATOR in order to minimize disruption or interference with OPERATOR's obligations under this Agreement.
- 8.5 The CITY shall enter into an Agreement with a licensed Sludge Hauler to provide residuals disposal services and shall pay for disposal of sludge. The CITY shall obtain any and all modifications to Permits that may be necessary to make use of alternative sludge disposal options.
- 8.6 CITY shall ensure that all CITY personnel and invitees are informed of the OPERATOR'S safety and operating procedures and comply therewith.

Limitations on CITY'S Responsibilities:

- 8.7 CITY shall not supervise, direct, or have control or authority over, nor be responsible for, OPERATOR'S means, methods, techniques, sequences, or procedures, or the safety precautions and programs incident thereto, or for any failure of OPERATOR to comply with Applicable Laws applicable to the performance of the Services. CITY shall not be responsible for OPERATOR'S failure to perform the Services in accordance with the Contract Documents unless such failure to perform by OPERATOR is caused by CITY, CITY'S representative, or an employee or agent of the CITY.

ARTICLE 9. SUBCONTRACTORS

- 9.1 OPERATOR shall be fully responsible to CITY for all acts and omissions of the Subcontractors, Suppliers and other persons directly or indirectly employed by Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Services under a direct or indirect contract with OPERATOR to the same extent that OPERATOR is responsible for the acts and omissions of persons directly employed by OPERATOR. Nothing in the Contract Documents shall create any contractual relationship between the CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY to pay or to see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by Applicable Laws.

- 9.2 OPERATOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those not acceptable to CITY), whether initially or as a replacement, against whom CITY may have objection. OPERATOR shall submit names, addresses and contact information of any and all Subcontractors to CITY in writing prior to commencement of Services and during Project progress if Subcontractors change or are added.
- 9.3 OPERATOR shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Services under a direct or indirect contract with OPERATOR. OPERATOR shall require all Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Services to comply with the requirements imposed on OPERATOR under this Agreement. All Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Services shall communicate with the CITY through OPERATOR.
- 9.4 CITY requires the identity of Subcontractors, Suppliers, and other individuals or entities to be submitted to the CITY in advance of the Project for acceptance by CITY. CITY'S acceptance of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. OPERATOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. No acceptance by CITY of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of CITY to reject defective Services.
- 9.5 All Services performed for OPERATOR by a Subcontractor will be pursuant to an appropriate agreement between OPERATOR and the Subcontractor, which specifically binds the Subcontractor to the applicable terms and conditions of the Agreement for the benefit of CITY.

ARTICLE 10. INSURANCE

- 10.1 OPERATOR shall deliver to CITY, with copies to each additional insured identified herein, Certificates of Insurance (and other evidence of insurance requested by CITY or any other additional insured), which OPERATOR is required to purchase and maintain.
- 10.2 OPERATOR shall purchase and maintain at its own expense and keep in effect during the full term of the Agreement such liability and other insurance as is required in this Article:
- (i) Claims under workers' compensation at Florida Statutory minimum, disability benefits, and other similar employee benefits;
 - (ii) Claims for damages because of bodily injury, occupational sickness or disease, or death of OPERATOR'S employees;

(iii) Claims for damages because of bodily injury, sickness or disease, or death of any person other than OPERATOR'S employees;

(iv) Claims for damages insured by reasonably available personal injury liability coverage which are sustained: (1) by any person as a result of an offense directly or indirectly related to the employment of such person by OPERATOR, or (2) by any other person for any other reason;

(v) Claims for damages, other than to the Project itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

(vi) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

10.3 The policies of insurance so required to be purchased and maintained shall:

(i) Include at least the specific coverages and be written for not less than the limits of liability provided herein or required by Applicable Laws or Regulations, whichever is greater;

(ii) Include completed operations insurance;

(iii) Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to CITY and OPERATOR and to each other additional insured to whom a Certificate of Insurance has been issued;

(iv) Remain in effect at least until final payment and at all times thereafter when OPERATOR may be correcting, removing, or replacing defective work;

(v) With respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least one year after final payment (and OPERATOR shall furnish CITY and each additional insured identified herein, to whom a Certificate of Insurance has been issued, evidence satisfactory to CITY and any additional insured of continuation of such insurance at final payment and one year thereafter),

(vi) Include all major divisions of coverage and be on a comprehensive basis including:

a) Premises Operations (including X, C and U coverages applicable).

b) Independent OPERATOR'S Protective.

c) Products and Completed Operations. 10.3.6.4 Personal Injury Liability with Employment Exclusion deleted.

d) Contractual Liability. 10.3.6.6 Owned, non-owned and hired motor vehicles. 10.3.6.7 Broad Form property damage including Completed Operations.

(vii) Provide coverage for not less than the following:

a) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employer's Liability Act and the Homes Act. Employer's Liability Insurance shall be provided at the statutory coverage amount with a minimum of \$100,000.00 per accident. OPERATOR shall agree to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

(viii) OPERATOR'S Liability Insurance which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of OPERATOR, and shall include:

a) General Aggregate (except products – completed operations) in the amount of \$2,000,000.

b) Each Occurrence (Bodily injury and Property Damage Combined) in the amount of \$1,000,000.

c) Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable.

d) Business Automobile Liability with minimum limits of \$300,000.00 per person, per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability each. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned Vehicles, Hired and Non-Owned Vehicles and Employers' Non-Ownership.

10.4 OPERATOR shall either require each of its Subcontractors to procure and maintain Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the same amounts specified above or insure the activities of its Subcontractors in the OPERATOR'S own policies.

10.5 Notice of Cancellation and/or Restriction - The policy (ies) must be endorsed to provide the CITY with at least 30 days notice of cancellation and/or restriction.

10.6 If the initial insurance expires prior to the completion of the work, renewal copies of policies shall be furnished at least 30 days prior to the date of their expiration.

10.7 All deductibles must be declared by the OPERATOR and must be approved by the CITY. At the option of the CITY, either the OPERATOR shall eliminate or

reduce such deductible with respect to the CITY, or the OPERATOR shall procure a bond, in a form satisfactory to the CITY, covering the same.

- 10.8 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability B+ to A+.
- 10.9 CITY is to be expressly included as an Additional Insured in the name of the City of Marathon, Florida on the above-referenced policies.
- 10.10 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above described insurance.
- 10.11 OPERATOR shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance.
- 10.12 The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy, of insurance in which CITY is named as an additional named insured shall not apply to CITY. CITY shall provide written notice of occurrence within 15 working days of CITY'S actual notice of such an event.
- 10.13 OPERATOR shall not commence work under the Agreement until after it has obtained all of the minimum insurance herein described and submitted Certificates of Insurance to the CITY as herein required.
- 10.14 OPERATOR agrees to perform the work under the Agreement as an independent OPERATOR, and not as a Subcontractor, agent or employee of CITY.
- 10.15 Violation of the terms of this Article and its sub-parts shall constitute a breach of the Agreement and CITY, at its sole discretion, may cancel the Agreement pursuant to Article 14 hereof and all rights, title and interest of the OPERATOR shall thereupon cease and terminate.

CITY'S Liability and Insurance:

- 10.16 CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of OPERATOR, Subcontractors or others on the Project. CITY specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statutes Sections 768.28 and 95.11.

ARTICLE 11. INDEMNIFICATION

OPERATOR agrees to the following indemnities, which indemnities shall survive termination or expiration of this Agreement.

- 11.1 OPERATOR shall indemnify, save and hold harmless the CITY, its officers, agents and employees, from or on account of all claims, damages, losses, obligations, penalties, fines, liabilities and expenses, direct, indirect or consequential, including, but not limited to, reasonable fees and charges of engineers, architects, attorneys, OPERATOR and other professionals, all settlements, liens or judgments of any nature, and trial and appellate court and arbitration costs arising out of or relating to or resulting from the performance of the Services by OPERATOR, OPERATOR'S errors and omissions, or OPERATOR'S compliance or failure to comply with its obligations under the Agreement, excluding claims arising from the sole negligence of CITY. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (a) any and all bodily injuries, sickness, death, disease; (b) injury to or destruction of tangible personal property, including the loss of use resulting therefrom or which arise from negligent acts or omissions or environmental damage of the OPERATOR performing Services at the Facilities; (c) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the operation, management, Maintenance and Repair, including the warranty period; (d) OPERATOR'S or OPERATOR'S Subcontractors use of any improper materials; (e) any construction defect including patent defects relating solely to Facilities constructed by OPERATOR or Subcontractors; (f) any act or omission of OPERATOR or Subcontractors, agents, servants or employees; (g) the violation of any Applicable Law or any federal, state, county or CITY laws, ordinances or regulations by OPERATOR, its Subcontractors, agents, servants or employees; (h) any patent or copyright infringement by OPERATOR; and (i) the breach or alleged breach by OPERATOR of any term of the Agreement, including the breach or alleged breach of any warranty or guarantee.
- 11.2 In the event that any claims are brought or actions are filed against the CITY with respect to the indemnity contained herein, the OPERATOR agrees to defend against any such claims or action regardless of whether such claims or actions are rightfully or wrongfully brought or filed. CITY reserves the right to select its own legal counsel to conduct any defense in any such proceedings and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of OPERATOR.
- 11.3 Such OPERATOR'S indemnification shall not be limited to the amount of comprehensive general liability insurance which OPERATOR is required to obtain under the Agreement. Nothing contained herein is intended nor shall it be construed to waive CITY'S rights and immunities under the common law or Florida Statute 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Paragraph and its subparts.

ARTICLE 12. OPERATOR'S REPRESENTATIONS AND WARRANTIES

In order to induce CITY to enter into this Agreement, OPERATOR makes the following representations:

- 12.1 OPERATOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Request for Proposal Documents including technical data.
- 12.2 OPERATOR has visited the Facilities, and has become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of Services for the Project.
- 12.3 OPERATOR is familiar with and is satisfied as to all Applicable Laws, and all other federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Project.
- 12.4 OPERATOR has made, or caused to be made, examinations, investigations, tests and/or studies as necessary to determine surface and subsurface conditions at or on the site. OPERATOR acknowledges that CITY does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground facilities at or contiguous to the site. OPERATOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Services or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by OPERATOR and safety precautions and programs incident thereto. OPERATOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Services at the Contract Price, within the contract times and in accordance with the other terms and conditions of the Agreement.
- 12.5 OPERATOR is aware of the general nature of the Services to be performed by CITY and others at the site that relates to the Project as indicated in the Agreement.
- 12.6 OPERATOR has correlated the information known to OPERATOR, information and observations obtained from visits to the site, reports and drawings identified in the Agreement and all additional examinations, investigations, explorations, tests, studies and data with the Agreement.
- 12.7 OPERATOR has given the CITY'S REPRESENTATIVE written notice of all conflicts, errors, ambiguities or discrepancies that OPERATOR has discovered in the Contract Documents and the written resolution thereof by the CITY'S REPRESENTATIVE is acceptable to OPERATOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Services.

12.8 OPERATOR warrants the following:

- (a) **Anti-Discrimination:** The OPERATOR agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Agreement because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal, state and local laws regarding non-discrimination.
- (b) **Anti-Kickback:** The OPERATOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the CITY, SFWMD or FDOT has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.
- (c) **Licensing, Bonds and Permits:** The OPERATOR warrants that it shall have, prior to commencement of work under this Agreement and at all times during said work, all required licenses, Bonds and permits whether federal, state, County or CITY.
- (d) **Public Entity Crime Statement:** The OPERATOR represents that the execution of this Agreement will not violate the Public Entity Crimes Act, (Sec. 287.133 Florida Statutes), which provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY and may not transact business with CITY in excess of the threshold amount provided in section 287.017, Florida Statutes, for category two purchases for a period of thirty six months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this agreement and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities. In addition to the foregoing, the OPERATOR further represents that there has been no determination, based on an audit, that it committed and act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing and act defined as a "public entity crime" regardless of the amount of money involved or whether the Operator has been placed on the convicted vendor list.

12.9 The OPERATOR represents and warrants to the CITY that:

- (a) It is financially solvent and has sufficient working capital to perform the obligations under this Agreement;
- (b) It is experienced and skilled in the specialized type of Services described in the Agreement;
- (c) It is able to provide the labor, materials, equipment and machinery necessary to perform the Services for the agreed upon fees;
- (d) It is fully licensed under all Applicable Laws and authorized to do business in the State of Florida in the name of the entity identified as the "OPERATOR" in the Agreement; and
- (e) It will comply with all Applicable Laws, and other federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents.

12.10 **Truth in Negotiation:**

- (a) OPERATOR warrants that all cost and pricing data provided to the CITY and CITY during the term of the Agreement shall be complete, accurate and current when provided. Should there be any changes in the Cost and Pricing Data previously submitted, the OPERATOR shall notify and provide the new information to the CITY immediately. CITY shall be entitled to issue an appropriate Change Order to adjust the Contract Price and contract times based on correcting inaccurate or incomplete information provided by OPERATOR.
- (b) Despite any provisions in the Contract Documents to the contrary, any amounts paid by CITY to OPERATOR in excess of that to which OPERATOR is entitled under the Agreement shall be reimbursed by OPERATOR to CITY. The making of Final Payment to OPERATOR shall not be a waiver of CITY'S right to reimbursement from OPERATOR nor shall it discharge OPERATOR's obligation to refund the overpayment. The terms of this Article shall survive the CITY'S making final payment.
- (c) OPERATOR shall insert a provision containing all the requirements of this Article, in all Subcontracts between OPERATOR and Subcontractors, Engineers or Suppliers or other persons, altering the section only as necessary to identify properly the contracting parties.

12.11 OPERATOR warrants and represents that its employees have received sexual harassment training and that OPERATOR maintains appropriate sexual harassment and anti-discrimination policies.

12.12 OPERATOR warrants and represents that its employees will abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.

12.13 OPERATOR shall maintain a Drug-Free workplace as that term is defined in Florida Statutes.

ARTICLE 13. TERMINATION

- 13.1 CITY may elect to terminate all or a portion of the Services provided by OPERATOR in this Agreement by giving OPERATOR written notice of at least **180** calendar days prior to the effective date of termination. Upon receipt of written notice of termination, OPERATOR shall not enter into any third party agreements and shall incur only those expenses specifically approved or directed in writing by the CITY'S Representative. Upon written notice of termination, the CITY'S Representative may elect not to use the services of OPERATOR.
- 13.2 OPERATOR may terminate the Agreement at any time by giving the CITY written notice of at least **180** calendar days prior to the effective date of termination.
- 13.3 In the event that this Agreement is terminated for convenience, the OPERATOR shall be paid for any Services performed up to the date of termination. Upon receipt of a notice of termination, the OPERATOR shall perform only those services specified by the CITY'S Representative and shall not incur additional expenses without the CITY'S Representative's prior written approval.
- 13.4 CITY may, if OPERATOR neglects to perform Services properly or to perform any provision of the Agreement, or does, or omits to do, anything whereby safety or operations may be endangered or whereby damage or injury may result to person or property, after 48 hours written notice to the OPERATOR, without prejudice to any other remedy CITY may have, make good all Services, material, omissions or deficiencies, and may deduct the cost therefore from the amount included in the Contract Price due or which may thereafter become due to the OPERATOR, but no action taken by CITY hereunder shall affect any of the other rights or remedies of CITY granted by this Agreement or by law or otherwise relieve the OPERATOR or the OPERATOR'S surety from any consequences or liabilities arising from such acts or omissions.
- 13.5 Upon termination or expiration, any compensation payable by CITY to OPERATOR shall be withheld until all Reports and documents are provided to CITY pursuant to Article 15 of this Agreement.
- 13.6 Upon termination or expiration, the CITY shall not be liable to OPERATOR for any additional compensation, consequential or incidental damages, lost profits, or any other compensation, beyond the compensation structure specifically provided for in this Agreement.
- 13.7 Upon termination or expiration of this Agreement and all renewals and extensions thereof, OPERATOR will return the Facilities to CITY in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by OPERATOR for use in the operation or maintenance of the Services shall remain the property of

OPERATOR upon termination of this Agreement unless the property was directly paid for by CITY or CITY specifically reimbursed OPERATOR for the cost incurred to purchase the equipment or personal property or this Agreement provides to the contrary.

ARTICLE 14. EVENT OF DEFAULT

In the absence of Unforeseen Circumstances, the following shall constitute default and give the CITY the light to terminate this Agreement with OPERATOR for cause, without payment to OPERATOR for Services beyond date of termination:

- 14.1 Should OPERATOR persistently fail to perform the Services required under this Agreement, or materially and repeatedly cause the work to be rejected as defective; cause any material portion of the Facilities to be rejected by any governmental entity-, persistently fail or refuse to promptly make any or all necessary repairs, including repairing work found to be defective; or
- 14.2 Should OPERATOR become insolvent, be declared bankrupt, make an assignment for the benefit of creditors, or fail to pay Subcontractors or suppliers promptly in accordance with the terms of it Subcontractors; or
- 14.3 Should OPERATOR fail to pay required taxes (unless being disputed pursuant to Applicable Laws), or fail to maintain required insurances and guarantees, or otherwise fail to pay any of its material obligations under this Agreement, or otherwise repudiates the terms of this Agreement.
- 14.4 Upon default by the OPERATOR, the CITY may terminate the Agreement provided that written notice of such default is first provided and the default is not cured or corrected within 60 calendar days of receipt of such notice. In the event that the nature of the default cannot be cured within a 60 day period, then the CITY may, at its sole discretion, extend the cure period to such time as the breach could reasonably be cured.
- 14.5 If and when any default of this Agreement occurs, the CITY may avail itself of any legal or equitable remedies that may apply, including, but not limited to, actual damages and specific performance. Such remedies may be exercised in the sole discretion of the CITY. Nothing contained in this Agreement shall limit the CITY from pursuing any legal or equitable remedies that may apply.

ARTICLE 15. TRANSITION/PHASE-OUT PERIOD

- 15.1 In the event of termination or expiration, OPERATOR and the CITY shall cooperate in good faith in order to effectuate a smooth and harmonious transition from OPERATOR to the CITY, or to any other person or entity the CITY may designate and to maintain during such period of transition the same scope of Services provided to the CITY pursuant to the terms of the Agreement.
- 15.2 OPERATOR will take all reasonable and necessary actions to transfer all books, records and data of the CITY in its possession in an orderly fashion to either the CITY or its designee in a hard copy and computer format.

- 15.3 Upon completion of the transition period and in further event that the CITY is unable to procure the same level of Services through its own means at such time of termination or expiration, the then pending term of this Agreement shall be extended by the written request of the CITY'S Representative in 120 day increments or until the CITY is capable of rendering such Services.
- 15.4 The compensation to be paid during this period shall be prorated pursuant to Article 5 upon termination or expiration.

ARTICLE 16. CONTRACT DOCUMENTS

The Contract Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Agreement as though physically attached as a part thereof:

- 16.1 **Change Orders**
- 16.2 **Contract for Operations and Maintenance**
- 16.3 **Exhibits to this Agreement**
- 16.4 **DEP Permit # FLA 187364**
- 16.5 Request for Proposal Documents, including but not limited to: Addendum, Request for Proposal, and Proposal Provided by OPERATOR.'
- 16.6 Addenda subject matter takes the same precedence of the respective subject matter that it is modifying. Furthermore, each subsequent addendum takes precedence over previous addenda.
- 16.7 The documents listed above shall be incorporated into this Agreement (except as expressly noted otherwise above.
- 16.8 There are no Contract Documents other than those listed above in this Article.

ARTICLE 17. RECORDS/RIGHT TO INSPECT AND AUDIT

- 17.1 Ownership of all documents, including but not limited to drawings, as-built, plans and specifications and related computerized documents utilized or prepared by the OPERATOR in the performance of the Services shall remain with the CITY. The OPERATOR, any Subcontractors or Supplier or other person or organization performing or furnishing any of the Services under a direct or indirect Agreement with the CITY shall not reuse any documents without the prior written consent of the CITY.
- 17.2 Upon termination or expiration of the Agreement, OPERATOR shall take all reasonable and necessary actions to transfer all records, including but not limited to, books, logs, data reports, receipts of the CITY in its possession in an orderly fashion to either the CITY or its designee in a hard copy and computer format.

- 17.3 OPERATOR shall maintain exact duplicate copies of all written correspondence, electronic mail, records of conversation, receipts, and reports related to the operation and maintenance of the Facilities, and all records retention requirements outlined in the Permit in an organized manner in an obvious and readily accessible location at the Facilities and available for inspection at any time.
- 17.4 CITY reserves the right to review all documents in draft form prior to OPERATOR'S submittal to the regulatory agency and be copied on all final documents submitted.
- 17.5 OPERATOR shall comply with the applicable provisions of Chapter 119, Florida Statutes. The CITY shall have the right to immediately terminate this Agreement for the refusal by the OPERATOR to comply with Chapter 119, Florida Statutes. The OPERATOR shall retain all records associated with this Agreement for a period of five (5) years from the date of expiration of this Agreement.
- 17.6 CITY reserves the right to audit the records (pertaining to this Project) of OPERATOR at any time during the performance and term of the Agreement and for a period of three (3) years after termination or expiration of this Agreement. If required by CITY, OPERATOR agrees to submit to an audit by an independent certified public accountant selected by CITY. OPERATOR shall allow CITY to inspect, examine and review the records of OPERATOR at any and all times during normal business hours during the term of the Contract. If an auditor determines that the OPERATOR was paid for Services not performed or paid in excess of materials provided, the OPERATOR shall reimburse the CITY for such overpayment.

ARTICLE 18. EMERGENCIES AND HURRICANE PREPAREDNESS

OPERATOR shall prepare and update in coordination with the CITY an Emergency Preparedness Plan for the Facilities. OPERATOR shall provide resources for responding to emergency situations and unanticipated system failures on a 24-hour basis and in accordance with the OPERATOR'S Emergency Preparedness Plan, if applicable.

- 18.1 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, OPERATOR is obligated to act in a timely manner and to use OPERATOR'S best efforts to prevent threatened damage, injury or loss. OPERATOR shall give CITY prompt written notice if OPERATOR believes that any significant changes in the Facilities or variations from the Contract Documents have been caused thereby or are required as a result thereof OPERATOR shall be responsible for providing first aid and medical care in accordance with applicable laws and regulations.
- 18.2 OPERATOR shall use best efforts to secure or remove from the Facilities, prior to a storm event, any materials or equipment which could cause bodily injury, damage to the CITY'S installations and/or public or private property or that may result in a loss of equipment or supplies. Site excavations shall be required to be secured and/or backfilled. No OPERATOR equipment may be parked within 100 feet of any CITY facilities. In the event of the issuance of a storm warning, the

CITY will attempt to notify the OPERATOR, however, the OPERATOR is responsible for preparing for a storm event. The OPERATOR shall take the necessary precautions to protect the walking and motoring public from harm due to OPERATOR'S work activity.

- 18.3 CITY'S REPRESENTATIVE may, but is not required to, order the Services to be stopped if a condition of imminent danger exists. Nothing shall be constructed to shift responsibility or risk of loss for injuries and/or damages, cost of stoppage or delay of work, from the OPERATOR to the CITY. The OPERATOR shall remain solely and exclusively responsible for compliance with all safety requirements and the safety of all persons and property at the Facilities.
- 18.4 In any emergency threatening the safety of persons or property, OPERATOR may act without written amendment or change order, at OPERATOR reasonable discretion, to prevent threatened damage, injury or loss, the CITY shall compensate OPERATOR for any such emergency work notwithstanding the lack of a written amendment.
- 18.5 OPERATOR shall be responsible for any hazardous environmental conditions created by the OPERATOR, Subcontractors, Suppliers, or anyone else for whom OPERATOR is responsible. If OPERATOR encounters a hazardous environmental condition or if OPERATOR or anyone for whom OPERATOR is responsible creates a hazardous environmental condition, OPERATOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all performance of Services in connection with such condition and in any area affected thereby, and (iii) notify CITY and immediately thereafter confirm such notice in writing.
- 18.6 During such periods of time as are designated by the United States Weather Service as being a hurricane watch or warning, or in the event of another emergency affecting the safety or protect of persons, the Facilities, or property adjacent thereto, or to avoid imminent environmental contamination, OPERATOR, without special instruction or authorization from CITY, shall take all precautions necessary to respond to all threatened events and to prevent or minimize such threatened damage, injury or loss.
- 18.7 Compliance with any hurricane watch or warning precautions specific to the Florida Keys shall not constitute a Change in Scope of Services as provided in Article 7 herein.
- 18.8 In the event of any emergency condition involving the Facilities which is found by the CITY to present a significant, immediate danger to public health, whether the cause of OPERATOR or otherwise, and OPERATOR is either unable or unwilling to correct such condition, CITY may replace OPERATOR without notice during the emergency condition, provided that at the conclusion of any condition, OPERATOR shall be reinstated by CITY. Provided further, however, that CITY shall not be obligated to reinstate OPERATOR at the conclusion of the emergency condition and may terminate this Agreement if OPERATOR'S inability or unwillingness to correct such condition itself constitutes grounds for

termination of this Agreement as provided under Article 13. OPERATOR shall not be entitled to any compensation for the time in which it was removed.

- 18.9 If the emergency condition is found to have been caused by the fault, action, inaction, omission or negligence of OPERATOR, OPERATOR shall be liable for the costs incurred by CITY in replacing OPERATOR, remedying the emergency condition, and repairing any damage caused thereby, or making compensation to CITY or other governmental entity, the Facilities, or any effected third party.

ARTICLE 19. ASSIGNMENT/SUBCONTRACTS

- 19.1 No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.
- 19.2 The obligations undertaken by OPERATOR pursuant to the Agreement shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of the Agreement by OPERATOR and the CITY may, at its discretion, cancel the Agreement and all rights, title and interest of OPERATOR without any further notice.
- 19.3 CITY and OPERATOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Agreement.

ARTICLE 20. SEVERABILITY

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

ARTICLE 21. REMEDIES

If and when any default of this Agreement occurs, the CITY may avail itself of any legal or equitable remedies that may apply, including, but not limited to, actual damages and specific performance. Such remedies may be exercised in the sole discretion of the CITY. Nothing contained in this Agreement shall limit the CITY from pursuing any legal or equitable remedies that may apply.

ARTICLE 22. COUNTERPARTS

This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

ARTICLE 23. NOTICES

Whenever any party is required to give or deliver any notice to any other party under this Agreement, or desires to do so, such notices shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, sent via registered or certified mail with postage prepaid return receipt requested, or by private postal service, addressed to the parties below:

FOR OPERATOR: **U.S. Water Services Corp.**

 4939 Cross Bayou Blvd

 New Port Richey, Florida 34652

WITH A COPY TO:

FOR CITY: City of Marathon, Florida
 9805 Overseas Highway
 Marathon, Florida 33050
 Attn: CITY Manager

WITH COPY TO:

 Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
 150 W. Flagler Street, Suite 2200
 Miami, Florida 33130
 Attn: City Attorney

ARTICLE 24. INDEPENDENT CONTRACTOR

- 24.1 OPERATOR is and shall remain an independent contractor and is not an employee or agent of the CITY. Services provided by OPERATOR shall be by employees of OPERATOR working under the supervision and direction of OPERATOR and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the CITY. OPERATOR agrees that it is a separate and independent enterprise from the CITY.
- 24.2 OPERATOR shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with OPERATOR. This Agreement shall not be construed as creating any joint employment relationship

between OPERATOR and the CITY, and the CITY will not be liable for any obligation incurred by OPERATOR, including but not limited to unpaid minimum wages and/or overtime payments.

ARTICLE 25. WAIVER OF JURY TRIAL AND VENUE

CITY and OPERATOR knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in state and or federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Agreement, arising out of, under, or in connection with the Project, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Agreement shall be in the Middle Keys Division, Monroe County, Florida.

ARTICLE 26. ATTORNEYS' FEES

If either the CITY or OPERATOR is required to enforce the terms of the 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 such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees.

ARTICLE 27. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT

This Agreement contains the entire Agreement between the CITY and the OPERATOR and supersedes all prior or contemporaneous communications, representations, understandings or agreements. This Agreement may only be amended or modified by the prior written approval of the parties or by execution of a Change Order.

ARTICLE 28. COMPUTATION OF TIME/DAYS

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period.

ARTICLE 29. CUMULATIVE REMEDIES

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws or by special warranty or guarantee, or by other provisions of the Agreement, and the provisions of this paragraph will be as effective as if repeated specifically in the Agreement in connection with each particular duty, obligation, right, and remedy to which they apply.

ARTICLE 30. SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive expiration or termination of the Agreement.

ARTICLE 31. CONTROLLING LAW

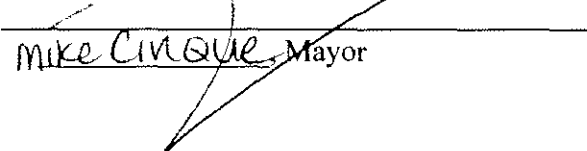
The Laws of the State of Florida shall govern this Agreement.

ARTICLE 32. ADVERTISING

No advertising shall be permitted upon any part of the site or structures located on the site. News or press releases pertaining to the Services, work product(s), or performance of OPERATOR under this Agreement or the Services to which it relates shall be at the sole discretion of CITY.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF MARATHON, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the 8th of September, 2009, and by (OPERATOR) US water, signing by and through its President, duly authorized to execute same.

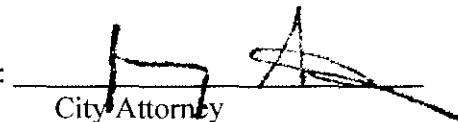
CITY OF MARATHON, FLORIDA

By:  Mayor

ATTEST:




CITY CLERK

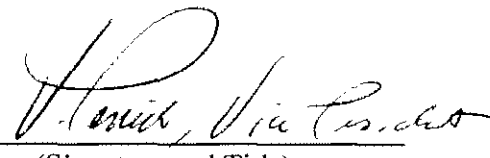
APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF CITY OF MARATHON, FLORIDA ONLY:

By: 
City Attorney

OPERATOR

Witnesses:

By: 
(Signature and Title)

(* In the event that the OPERATOR is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Victoria Penick, certify that I am the Vice Pres/Sec/Treas of U.S. Water Services Corporation and that Victoria Penick, who signed the Agreement with the City of Marathon, Monroe County Florida for Utility Operating Services is Vice President of said Corporation with full authority to sign said Agreement on behalf of the Corporation.

Signed and sealed this 28th day of Sept, 2009.



Signature

Victoria Penick, Vice Pres - Sec/Treas

Typed w/Title

STATE OF FLORIDA

COUNTY OF ~~MONROE~~ PASCO

SWORN TO AND SUBSCRIBED before me this 28th day of Sept, 2009.

My Commission Expires:



NOTARY PUBLIC STATE OF FLORIDA
Cecil Delcher
Commission # DD531419
Expires: MAY 01, 2010
Bonded Thru Atlantic Bonding Co., Inc.

CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, Victoria Penick, certify that I am the Vice President of U.S. Water Services Corp., who signed the Agreement with the City of Marathon, Monroe County Florida for the project titled Operations and Maintenance Agreement and that the following persons have the authority to sign payment requests on behalf of the Corporation.

[Signature]
(Signature)

Victoria Penick, V. Pres / Sec. Treas
(Typed Name w/Title)

[Signature]
(Signature)

Guy Deremo, Pres.
(Typed Name w/Title)

[Signature]
(Signature)

Lee Penick, Regional Manager
(Typed Name w/Title)

Signed and sealed this 28th day of Sept, 2009.

[Signature]
Signature

Victoria Penick - Vice President - Sec/Treas
Typed w/Title

STATE OF FLORIDA

COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this 28th day of Sept, 2009.

My Commission Expires:

[Signature]

NOTARY PUBLIC STATE OF FLORIDA
Cecil Delcher
Commission # DD531419
Expires: MAY 01, 2010
Bonded Thru Atlantic Bonding Co., Inc.